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**REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
(LIMPOPO DIVISION, POLOKWANE)**

CASE NO: 1965/2023

REPORTABLE: YES/NO

OF INTEREST TO OTHER JUDGES: YES/NO

REVISED

In the matter between:

**T[...] K[...] M[...] obo N[...]**

**W[...] C[...] M[...]**

**APPLICANT**

And

**DR MATOME GODFREY RAPHAHLELO**

**FIRST RESPONDENT**

**DESIGNATED INFORMATION OFFICER  
(DR MATOME GODFREY RAPHAHLELO)**

**SECOND RESPONDENT**

**E[...] E[...] M[...]**

**THIRD RESPONDENT**

**JUDGMENT**

**KGATLA AJ**

[1] This is an application in terms of which the applicant seeks an order in the following terms:

1.1 That the application be heard as one of urgency in terms of Rule 6 (12) condoning non- compliance with the Uniform Rules of the Honourable Court relating to prior service of papers as well as the prescribed number of days for service of Court processes;

1.2 That non-compliance with the Practice Manual or Directive of the Limpopo Division of the High Court, Polokwane relating to filing of urgent applications and time-frames applicable thereof, be condoned if applicable;

1.3 That a *rule nisi* be issued calling upon the first and second respondents to show cause, if any, on a date to be determined by the Court, why a final order in the following terms should not be made:-

1.3.1 declaring that the first and second respondents are in contempt of paragraphs 2 and 3 of the Court order granted by Makoti AJ, on 25 July 2023, under case number 1965/2023;

1.3.2 imposing a fine of R 100 000.00 ( One Hundred Thousand Rand) or such as is deemed appropriate by the Court, on the first and second respondents;

1.3.3 imposing a period of thirty (30) days imprisonment or such as is deemed appropriate by the Court, on the first and second respondents, suspended on condition/s that the first and second respondents complies with paragraphs 2 and 3 of the order of Makoti AJ, or such period as is deemed appropriate by the Court;

1.3.4 the first and second respondents be ordered to pay costs of this application on Attorney and own client scale, including anyone who may elect to oppose the granting of this application, the one paying the other to be absolved; and

1.3.5 granting the applicant/s such further and/ or alternative relief.

[2] The factual background leading up to the launching of this application are briefly that on 25 July 2023, Makoti AJ granted a Court order with the following terms:

2.1 the first and second respondents' decision not to provide access to information or record as requested by the applicant in terms of section 53 (1) read with section 50 of the Promotion of Access to Information Act 2 of 2000 ("PAIA"), as described in the founding affidavit ("records"), is unlawful and in conflict with the provisions of ("PAIA");

2.2 the aforesaid first and second respondents are directed or ordered to provide the requested information or information which is subject of appeal within ten (10) days from the date of granting of an order hereof;

2.3 the first and second respondents are ordered to comply with any relevant or applicable provision within the purview of section 78 (3) (c ) of ("PAIA") or any relevant provisions of the Promotion of Access to Information Act 2 of 2000, (hereinafter referred to as (PAIA"), including but not limited to providing the reasons and cause same to be delivered to the applicant's Attorney within ten (10) days from the date of an order hereof;

2.4 the first and second respondents are ordered to pay costs of the application on party and party scale.

[3] On 3 August 2023, the applicant delivered the order of Makoti AJ under a covering letter dated 2 August 2023 at the business address of the first respondent who is also the second respondent. For purpose of this judgment, I will refer to the first and second respondents as the respondents. In the letter, the applicant advised the respondents of the existence of the Court order and further urged the respondents to comply with same within the stated period as recorded or reflected therein. This letter was served on E V Nukeri who is employed as a cleaner at the respondents' office.

[4] The respondents are opposing this application on the basis that the application is not urgent and further that the applicant failed to demonstrate or establish the requirements for an application for contempt of court. I pause to state that the answering affidavit was filed late and the respondents have applied for condonation of the late filing thereof. In support of the condonation application, the respondents allege that they received the application for contempt of court on 21 August 2023 at around 14:18 with direction to enter a notice to oppose same day by 23h55 and that they were afforded a short period of time to gather the necessary sufficient funds, look for a legal representative and consultation for purpose of opposing the application which is heard in a court outside their area of jurisdiction.

[5] The applicant opposes the condonation application on the basis that the application was electronically served on the respondents on 21 August 2023 at 11:24, a copy was hand delivered same day on 14:19 however the respondents served their notice to oppose as well as the answering on 24 August 2023 at 12:59, a period of approximately four (4) days after the service of the application. This is despite the fact that the applicant informed the respondents to file the notice to oppose by 23h55 on 21 August 2023 and an answering affidavit on 23 August 2023. The applicant contends that there is no reasonable explanation offered for the delay and more particularly as to when were they able to secure funds, including giving instructions and consultation with their attorneys of record.

[6] In an urgent application, the period within which the affidavits must be filed is truncated. A respondent cannot be held to the time-periods set out by the applicant. The latter is however required to do its best to meet the dead lines. It will be required to explain the delay which should not have been aimed at prejudicing the applicant.

[7] Although the notice to oppose was filed four days late, the answering affidavit was filed a day late. The delay of one day is not excessive and the respondents' explanation is reasonable and adequate. As such the late filing of the answering affidavit is condoned.

[8] The respondents oppose the urgency of the matter on the grounds that the applicant failed to explicitly state why the relief sought is urgent and cannot be achieved in the normal cause and further that the urgency alleged by the applicant is self – created. On the one hand, the applicant contends that should the matter be placed on the normal roll, the dispute between the parties will only be adjudicated upon towards mid- June 2025 on the opposed court roll and such a period of time would deny him substantial redress at a hearing in due course as the breach of the order would continue unimpeded. The applicant further contends that contempt proceedings are inherently urgent as it is intolerable to the rule of law in a constitutional dispensation, that court orders can be treated as optional.

[9] I agree with the applicant that contempt of court proceedings demand speedy remedy. I am therefore persuaded that the matter is urgent.

[10] Although the application that serves before me is for a rule nisi the full set of papers on the merits have been delivered and the merits were argued. I will therefore consider the matter as if it is on a return date.

[11] The object of contempt of court proceedings is to compel compliance with the court order in order to vindicate the Court's dignity resulting from the disregard of its

order. A court will only grant a contempt order when the respondent's default is willful and *mala fide*.

[12] The principle as laid down in the case of *Fakie NO v CC II Systems (Pty) Ltd 2006 (4) SA 326 (SCA) at 338C- 339A*, is that the applicant has to show:

12.1 the existence of the order granted against the respondent;

12.2 the order has been served or has come to the attention of the respondent;

12.3 the respondent has failed to comply with the order and have not furnished an explanation raising a reasonable doubt; and

12.4 the respondent acted willfully and *mala fide*.

[13] I am satisfied that the applicant has proved that there is an order existing and that respondents became aware of it on 3 August 2023.

[14] The only issue left for determination is whether the respondents disobeyed the order and if so, whether the disobedience is willful.

[15] The applicant alleges that the court order was not complied with by the respondents. Once it has been proven that an order was issued and that the respondent disobeyed or failed to comply with same, willfulness will be inferred.

[16] A duty to lead evidence will shift to the respondent to prove that the disobedience was not willful.

[17] In discharge the evidential burden on them, the first respondent contends that on 21 August 2023 and at about 10h00, he sent medical records and a cover file page to the third respondent. Apparently the applicant's attorney contacted him and informed

him that the documents are not visible enough and ought to be sent through email. The first respondent further alleges that he was in a constant communication with the applicant's legal representative and as such was surprised to receive the urgent application for contempt of the court order on the same day at around 14:18.

[18] In support of this contention, the first respondent attached as annexure "MTS 2a", a print out of numerous WhatsApp communications between him and NPM Attorneys who were the applicant's legal representative at that time. Unhappily they withdrew as attorneys of records on the morning of the hearing of the application.

[19] Be that as it may, from the communications, it appears that the first respondent tried to serve the medical file via WhatsApp. In reply thereto, the applicant's legal representative responded as follows:

*"Kindly be advised that we cannot read the documents that you are attempting to send to us, kindly email the same to:*

*A[...].@npminc.co.za and N[...].@gmail.com respectively.*

*Regards Npm Inc.*

[20] In his replying affidavit, the applicant denied that the respondents dispatched the medical records on 21 August 2023 and insisted that the respondents failed to comply with the court order. Although not disputing annexure "MTS 2a", he contends that the respondents were advised through the applicant's attorneys of record that they could not read the documents that the respondents were attempting to send and thus advised to forward same through email.

[21] The Constitutional Court in the case of *Pheko and others v Ekurhuleni Metropolitan Municipality & another* 2015 (5) SA 600 (CC) held at para 42 held that:

*“While courts do not countenance disobedience of judicial authority, it needs to be stressed that contempt of court does not consist of mere disobedience of a court order, but of the contumacious disrespect for judicial authority. On whether this Court should make a civil contempt order against the Municipality, it is necessary to consider whether on a balance of probabilities, the Municipality’s non-compliance was born of willfulness and mala fides.”*

[22] The communication between the respondents and the applicant’s legal representative affords support to the submission by the respondents that they did not disobey the order of court. The communication as well as the attachment thereof in the form of a medical records file serve as credible evidence to support that there is merit in the contention by the respondents that they sent medical records and cover file to the applicant’s legal representative via WhatsApp.

[23] I cannot find that there was a disobedience of the order of court. Neither can I infer any willfulness or *mala fides* from the conduct of the respondents.

In the circumstances I am not persuaded that the applicant has made out a proper case for the relief that he seeks. The application should fail.

In so far as costs are concerned there is no justification for departing from the general rule that the costs should follow the result.

[24] In the result I make the following order:

24.1. The applicant’s non-compliance with the rules of this court relating to service and time is hereby condoned and that the application is dealt with as urgent.

24.2. The late filing of the respondents’ answering affidavit is condoned.



24.3. The application is dismissed.

24.4. The applicant is ordered to pay the costs of this application.

**M KGATLA**  
**ACTING JUDGE OF THE HIGH COURT**

**APPEARANCES**

**Heard on : 29 August 2023**

**Judgment delivered on : 29 September 2023**

**For the Applicant : T[...] K[...] M[...]**

**For the 1<sup>st</sup> and 2<sup>nd</sup> Respondents :**

**Instructed by : Maswanganyi & Associates**