IN THE HIGH COURT OF SOUTH AFRICA (WESTERN CAPE HIGH COURT, CAPE TOWN)

CASENOS: 27214/10 & 5176/11

In the matter between

JIST PROJECT MANAGEMENT WORKS CC	Applicant
And	
DELTA TRANSPORT & WASTE CC	First Respondent
THE CITY OF CAPE TOWN	Second Respondent

In re

JIST PROJECT MANAGEMENT WORKS CC	Applicant
and	
DELTA TRANSPORT & WASTE CC	First Respondent
DAVID MARIUS LUUS	Second Respondent

JUDGMENT DELIVERED ON 5 MARCH 2012

DOLAMO, AJ

[1] The Applicant and the First Respondent's business premises are located in Nebula Crescent, Blackheath, Western Cape ("Nebula Crescent") which is a public road within the jurisdiction of the City of Cape Town, the Second Respondent. The Applicant's business premises are located on two sites, situated opposite each other, bordering on Nebula Crescent and in the immediate vicinity of the First Respondent's business premises. From these premises the Applicant's business activities, including, manufacturing; administrative; storage; loading and off-loading were conducted. In short, other than activities on construction and installation sites, the Applicant's business activities were centred around the premises in Nebula Crescent. The Applicant employed a hundred and twenty people, twenty of whom were involved in the administrative and management part of the business while the remaining hundred were employed at its various operational sites. It owned thirty vehicles, twenty of which were trucks and bakkies which were used to transport the Applicant's employees and material to and from Applicant's business premises and the various construction and service sites where Applicant was rendering its services. The remaining ten vehicles, normal sedans, were used by its management and administrative staff. All these vehicles, almost on a daily basis, shuttle between the Applicant's business premises on the one hand and the various construction and services sites where the Applicant had operational activities, on the other.

[2] There is a boom gate at the entrance to Nebula Crescent. All vehicular traffic entering Nebula Crescent had to pass through this boom gate. After passing the boom gate, most vehicles, if not all, had to pass the First Respondent's business premises before and in order to access other premises bordering on Nebula Crescent. Applicant stated in its papers that this boom gate was erected in order to control the passage of vehicular traffic through the

industrial area and with the view to managing the security of the area "for the benefit of all the businesses operating in and around Nebula Crescent".

[3] The Applicant alleged that since approximately June 2009 the area in the immediate vicinity of the Applicant's premises had been obstructed, with increasing regularity, by the unlawful loading and off-loading activities of the First Respondent. These alleged unlawful activities, as long as they were in operation, prevented the Applicant's and other vehicles using Nebula Crescent from accessing their own business premises, to the extreme inconvenience of the Applicant and the other users. The Applicant alleged that they were regularly obliged to wait, up to fifteen minutes at a time, while these unlawful activities were underway. Numerous meetings held with the First Respondent and other concerned parties, in particular the one of the 20th September 2010, have failed to resolve the *impasse.*

[4] From 6 August to 18 November 2010, With a view to bringing this Application which was eventually brought *ex parte* and on an urgent basis, the Applicant caused photos to be taken, allegedly depicting the unlawful activities of the First Respondent along Nebula Crescent. On 14 December 2010 the Application was launched and set down for hearing on 17 December 2010. The Applicant claimed the following relief:

> *"1. Condoning the Applicant's non-compliance with the forms and service provided for by the Rules of this Court and directing that the application be heard as one of urgency in terms of Rule 6(12) (c);*
>
> *2. That a rule nisi do issue calling upon the First Respondent to show cause, if any, on a date to be determines by this Court, why an order should not be made*

interdicting and restraining the First Respondent from in any way preventing, hindering or interrupting the free and proper passage of traffic and more particularly, the vehicular traffic of the Applicant, in and along Nebula Crescent, a public road situate in Blackheath, Western Cape;

3. Directing that the provisions of paragraph 2 above shall operate as an interim interdict, pending the return day of the rule or any extension thereof, subject to the condition that the First Respondent may anticipate the return date upon 24 hours' written notice to the Applicant's attorneys;

4. Costs against the First Respondent on the scale as between attorney and client;

5. Granting the Applicant further and/or alternative relief."

[5] On 17 December 2010 a rule nisi was issued calling upon the First Respondent to show cause on 25 January 2011, if any, why a final order interdicting it should not be granted and, pending the return date, interdicting and restraining it from in any way preventing, hindering or interrupting the free and proper passage of traffic and, in particular, the vehicular traffic of the Applicant in and along Nebula Crescent.

[6] On 5 January 2011 the First Respondent filed its notice of intention to oppose and on 25 January 2011 filed its answering affidavit. On this latter date the parties agreed to postpone the matter to 10 August 2011 for argument, the rule nisi being accordingly extended. The Second Respondent, on the other hand, filed a notice to abide by the decision of the Court provided no cost order was sought against it. This in essence left the First Respondent as the only Respondent in this matter. I shall henceforth, for ease of reference, refer to the First Respondent simply as the Respondent.

[7] On 25 February 2011 the Applicant filed its replying affidavit.

[8] On 07 March 2011 the Applicant instituted contempt proceedings ("the contempt proceedings") alleging a flagrant disregard of the interim order by the Respondent. Mr Luus (presumably the only member of the Respondent) was cited as the Second Respondent in this contempt proceedings. On 16 March 2011 a rule nisi was granted calling upon the Respondents to show cause if any, why they should not be held in contempt of the interim order granted on 17 December 2010.

[9] On or about 26 July 2011 the Respondent applied for leave to deliver rejoinder papers (the "rejoinder application") in respect of both the main and the contempt applications. To this rejoinder application the Applicants served a notice, which was said to be in terms of Rule 30 (1), allegedly affording the Respondent an opportunity to withdraw the rejoinder application failing which an application to set aside this "irregular step" would be launched. As at the time of hearing of the matter no such application was brought.

[10] Prior to commencement with argument the parties agreed that all the other applications be heard *pari passu* with the main and the contempt applications and on the basis that all the affidavits were before court. I found this to be a practical approach since, in my view, no party could be prejudiced by the admissions of all the other affidavits. I shall however, devote more attention to the main application as the other applications, in my view, are dependent upon the resolution of the issues raised therein. In doing so I shall not lose sight

of the fact that further facts, which are relevant to the determination of the *facta probanta,* came via the affidavits which were filed in the ancillary applications.

[11] In its heads of argument the Applicant submitted that it has established a clear right, which was a right which inheres in every individual who uses a public road by virtue of the provisions of Regulation 319 of the National Road Traffic Regulations 1999 ("Regulation 319"). This right prohibits the wilful and unnecessary prevention hindering or interruption of traffic on a public road. The Applicant further submitted that the question whether Applicant's rights had been infringed is a factual one and that, on the facts set out in the papers the Applicant had established on a balance of probabilities a case entitling it to the final relief sought. To prove the infringement the Applicant, in addition to the averments in its affidavits, relied on a series of photographs which ex *facie* appears to establish a blockage of Nebula Crescent by the Respondent while it was engaged in the loading and off-loading activities.

[12] The Applicant initially applied for an order which restricted and interdicted the Respondent from in any way preventing hindering or interrupting the free and proper passage of traffic in and along Nebula Crescent. Mr *Albertus,* who appeared for the Applicant, conceded that the words "wilfully" or "unnecessarily" have to be inserted in the final order so as to bring the relief sought in line with Regulation 319. He however contended that the words "prevent" "hinder" or "interrupt", used in Regulation 319, must be read disjunctively and not conjunctively with the result that the Respondent would fall foul of the said Regulation if it "prevented" "hindered" or "interrupted" the free and proper passage of the Applicant's vehicle in and along Nebula Crescent. Mr *Albertus* went on to give the

dictionary meaning of these words.[1] Finally he made the submission that on a proper interpretation of Regulation 319 the Applicant has sufficiently established that the Respondent had regularly violated the Applicant's right to the free and proper passage of its vehicles. In support of his submissions Mr *Albertus* referred the court to *Ex Parte Letord: in re Marcus, NO and others 1953 (4) SA 359 (N); Rex v De Jager 1917 CPD 205; and Rex v Schmitt 1918 CPD 11.*

[13] The Respondent's main ground for opposing the application was the denial of the alleged wrongful acts. As regards the requirements of a final interdict the Respondent alleged that the Applicant has failed to make out a case for such a relief. While it agreed with the Applicant that Regulation 319 of the National Road Traffic Regulation 2000 was relevant to the proceedings it nevertheless alleged that, on those occasions where it had obstructed the free and proper passage of vehicular traffic in Nebula Crescent, such was done out of necessity and certainly not willful: that due to the nature of its business it was required to load and off-load vehicles in and around the immediate vicinity of its premises. It also denied that its action constituted a common law nuisance or that the Applicant had complied with all the requirements for a final interdict thereunder. In particular the Respondent alleged that there were other remedies available to the Applicant and that the latter had not exhausted them. The other remedies it suggested included engaging the local traffic authorities to resolve the matter or traffic in Nebula Crescent travelling clockwise, instead of anti-clockwise, in order to avoid being inconvenienced by the activities of the Respondent when passing next to its premises.

[14] Mr Steenkamp who appeared for the Respondent lamented the lack of authority on the interpretation of Regulation 319. He, however referred the court to the case of *Kumalo v Rex 1945(2) PHO 24 N,* which dealt with the since repealed Ordinance NO: 10 of 1937 (Natal) (the wording of which was similar to that of Regulation 319) as authority for the proposition that the words "prevent" "hinder" or "interrupt" suggest the actual blockading of the road with no prospects of passage. He also submitted that the words "unnecessarily" was subject to the reasonable man test with the result that it would be lawful to prevent, hinder or interrupt traffic provided it was not wilful or unnecessary. According to him the absence of the word "unnecessary" in the relief sought by the Applicant will subject the Respondent to more rigorous rules of the road than any other road user.

[15] On the Applicant's alternative reliance on the common law of nuisance, Mr Steenkamp submitted that there were nine factors which are to be considered in determining whether a particular act amounted to nuisance. These factors, he argued, also go a long way in determining the definition of the term "unnecessary" as used in Regulation 319. In addressing these nine factors the Respondent argued that the Applicant's allegation that, "at times they have to wait up to 10 to 15 minutes while the Respondent was engaged in the unlawful activities", was fictitious; i.e. not supported by any facts; that it is to be expected, since the relevant street is in an industrial area, that trucks and bakkies would be stationary in the road; that the Court is not to come to the assistance of an overly sensitive or thin-skinned person but is to use the measure of an average property owner with sound and balanced judgment; that the Respondent is sincere in running its transport business and consequently loading and off-loading is an integral part thereof; that people would lose their jobs if the Respondent were to be forced to shut its doors; that, while denying that its

conduct amounted to nuisance, the Respondent, on occasion when it prevented, hindered or interrupted the free flow of traffic, only entered the road with its forklift when it was safe to do so; and that the Applicant moved into the area aware of the Respondent's *modus operandi.*

[16] Mr Steenkamp, also drew the court's attention to the time denoted on the photographs attached to the Applicant's papers which were allegedly depicting the unlawful conduct of the Respondent. According to him on close scrutiny no one delay exceeded a period of one minute which consequently calls into application the maxim: *de minimis non curat lex.* For this submission Mr Steenkamp, relied on the judgment of *Fourie J in Bitou Local Municipality v Timber Two Processors CC and Another 2009 (5) SA 618 (C)* at paragraph 32, as authority for the proposition that the Courts have a discretion to disallow an interdict where the complaint is trivial in nature.

[17] The issue that falls for determination is whether, on the facts, the Applicant has made out a proper case for a final order interdicting the Respondent from in anyway preventing, hindering or interrupting traffic including the vehicular traffic of the Applicant in and along Nebula Crescent, or as Mr Albertus conceded in argument did so "wilfully" or "unnecessarily".

[18] It is a matter of common cause between the parties that Nebula Crescent is in an industrial area in Blackheath Western Cape: that by agreement amongst the businesses in Nebula Crescent a boom gate was erected at the entrance and this has the effect of regulating vehicular traffic entering the street: that the street is of a normal width; that the

Respondent load and off-load vehicles, usually big trucks, in the street; that for this purpose it used a forklift which has to be manoeuvred in the road; the residue of the facts which are in dispute, i.e. that the Respondent had unlawfully blocked traffic in Nebula Crescent, can be resolved by applying the principle established in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (PTY) Ltd 1984(3) SA 623 (A),* namely, that where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the Respondent together with the admitted facts in the Applicant's affidavit justify such an order or when a denial by a Respondent of a fact alleged by the Applicant is such as not to raise a real, genuine or bona fide dispute of fact. Adopting this approach I am of the view that the issues in this matter are capable of resolution on the paper.

[19] The first port of call is to analyse the authorities referred to by the parties. The authorities referred to by Mr Albertus draw a clear distinction between, on the one hand, cases involving the common law of nuisance, and on the other, cases involving a statute. In *Ex Parte Letord: In re Marcus N.O. & Others 1953 (4) 359 (N)* a matter wherein the Applicant sought and obtained a declaration which entitled her to the free and unobstructed use in perpetuity of a service lane and an order for the demolishing of or tempering with a corrugated iron fence erected in this lane, which was adjacent to the back of her premises and which reduced the lane from 15 inches at the entrance, *Selke J,* drawing heavily on English authorities, held that the existence at the entrance to this lane of the brick wall and the gate, of which the Applicant complained, amounted to a substantial interference with, or obstruction of the rights to which the Applicant is entitled in respect of the lane. What is immediately apparent is that the facts of that case are clearly distinguishable from those of the present matter. There the Court was seized with a matter relating to an obstruction of a

permanent nature which reduced and restricted the Applicant's use of the lane (at 362 - 365). *In casu* we do not have a permanent obstruction but one which occurs at certain intervals. Regrettably this decision, in my view, is of limited assistance in the present matter and does not establish in our law the English principle of drawing a distinction between a private as distinct to a public right of way, as Mr Albertus inferred. On the facts of the case Selke J decided that "to constitute a contravention there must be substantial obstruction against which the court should grant relief to the Applicant."

[20] In the *De Jager* matter the Appellant was convicted in the Magistrate's court of the contravention of Sec 5(11) Act 27 of 1982 in that he had left his car in a certain street for a period of two hours or more, which was considered unreasonable. This street was approximately thirteen metres wide and there was ample room for other vehicles to pass the accused's vehicle, though it would have been necessary for vehicles travelling on the side of the road where the Applicant's vehicle was standing to veer off slightly to the centre of the street. In setting aside the conviction *Gardener J* held that:

> *"In a sense every vehicle proceeding along a street encumbers it, and obstructs the free passage along it. It blocks up the space occupied by it in the road, and prevents any other vehicle or any foot passenger from using at the same time this space. But of course that is not* the meaning in which the words "encumber" and "obstruct" are used in the sub-section, for *streets are provided for vehicular traffic. It seems to me that the word "obstruct" may be paraphrased "unreasonable hinder or impede."*

[21] In the *Schmitt* case the Appellant was convicted in the Magistrate's Court of contravening of the same Section as in the *De Jager* matter in that he wrongfully and lawfully

encumbered or obstructed the free passage along a public thoroughfare by leaving two vehicles standing thereon. The conviction was overturned on appeal for lack of sufficient evidence. In the course of dismissing the conviction *Juta JP* on page 13 stated the following:

> *"I think I must consider the question of whether the person is making an unreasonable use of the street and for an unreasonable purpose, and therefore if a man, for the purpose of his business, places motor cars outside his workshop for the purpose of working on them or of keeping them there for an unreasonable period until it may suit, him to bring them into his workshop, then I think that the motor car is not in itself a mathematical obstruction, but it is a practical obstruction, and that the man is unreasonably using the street and for an unreasonable purpose."*

[22] The *De Jager* and *Schmitt* decisions, involving the provisions of a statute, view an obstruction of a road to be unlawful only if it is done in an "unreasonable" manner. This in my view is a recognition that it is inevitable that vehicles would in the normal course and for various reasons, have to stop in the road and that this may result in the obstruction of traffic. In the *Schmitt* decision an example was given of a driver stopping in the road to pick up or drop a parcel. Though that would amount to an obstruction such an obstruction was not for an unreasonable purpose. The question, as Gardner J, pointed out is whether the obstruction is in such a way as to amount to something beyond a fair and reasonable use of the road. It seems that the duration of the obstruction is also a factor to be considered in determining whether the obstruction was reasonable. So too is the manner in which the obstruction occurred.

[23] Did the Respondent in *casu,* by his actions which are the source of complaint by the

Applicant, wilfully and unnecessarily prevent, hinder and/or interrupt the free and proper passage of traffic in Nebula Crescent.

[24] I am in full agreement with the submission by Mr *Albertus* that the words used to describe the infringement of Regulation 319 are to be read disjunctively with the result that any occurrence of a "prevention", or "hindrance" or "interruption" alone would be a sufficient violation of the regulation. But proof of any prevention or hindrance or interruption alone will not be sufficient to make the actions unlawful and in violation of the regulation. To be unlawful such "interruption", "hindrance" or "prevention" must be wilful, alternatively, "unnecessary". What the legislature intended with these two words in the context of this regulation is fundamental and a key to the determination of the unlawfulness or otherwise of the Respondent's action.

[25] The National Road Traffic Act contains no definition of the words "wilful" and "unnecessary". These words must accordingly be given their ordinary grammatical meaning.

[26] It is also trite that the words used in a statute must be viewed in the broader context of such a statute as a whole. I, however, do not propose an analysis of the words in issue as broadly as to embark on a thesis of the whole statute within which they are used. I deem it sufficient, for present purposes, to briefly state that the National Road Traffic Regulations 2000, of which Regulation 319 is an integral part, were promulgated in terms of Section 75 of the National Road Traffic Act 93 of 1996. This section empowers the Minister to make regulation *inter alia* regarding the operation of any vehicle on a public road to better carry out

the provisions of the whole act and the achievement of its objects. Regulation 319 is located in Part I of Chapter X. This chapter deals with the rules of the road. Regulation 304, for example, prohibits the stopping of vehicles on a public road alongside or opposite an excavation, within a tunnel, in contravention of a road sign; on the right hand side of the road; alongside or opposite any other vehicle; or next to a pedestrian crossing, except in order to avoid an accident or in compliance with a road traffic sign or with a direction given by a traffic officer or for any cause beyond the control of the driver. The same prohibitions apply to parking in terms of Regulations 305. Regulation 306 provides that the so called emergency vehicles may be stopped anywhere on a public road as long as this does not constitute an unnecessary danger or result in confusion to other road users. Regulation 320 permits a traffic officer to remove any vehicle standing on a public road if the traffic officer is of the opinion that it is likely to cause danger or an obstruction to other traffic on such road. Nothing in the Regulations under Chapter X suggests that vehicles may not be stopped on a public road. The conclusion therefore is that a vehicle may be stopped in the road as long as this is done in such a manner as not to cause an unreasonable disturbance of the free flow of traffic or be a source of danger to other road users, in particular vehicular traffic. It is clear in my view that the purpose of the regulation 319 is to prohibit the wilful and unnecessary clogging of a road with the resultant disruption of the free flow of traffic. The whole chapter within which Regulation 319 resort is aimed at facilitating the free flow of traffic on a public road. It does so by prohibiting certain conduct which may result in the blockage of a public road and the disruption of the free flow of traffic thereon.

[27] In the present case there can be no doubt as to what regulation 319 prohibits: It prohibits any person from "wilfully" or "unnecessarily" preventing, hindering or interrupting

the free and proper passage of traffic on a public road. As a result the Respondent may be said to wilfully or unnecessarily prevent, hinder or interfere with the ordinary flow of traffic, within the meaning of Regulation 319, if such prevention, hindrance or interference goes beyond a fair and reasonable use of the road. i.e. it is unreasonable. I accordingly agree with Mr Steenkamp's submission that vehicles may hinder, prevent or obstruct a public road as long as this is not done wilfully or unnecessarily. In my view whether a prevention, hindrance or interference is unlawful will depend on whether this was done wilfully or unreasonably.

[28] As in the *Schmitt* judgment I align myself with the view that the prevention, or hindering of vehicular traffic would only be unlawful if it was done for an unreasonable purpose. It is a common occurrence on our roads that vehicles are stopped for various purposes including, loading and off-loading. Most streets would have a specifically demarcated bay for these purposes. But as it is often the case one would find such bays occupied. This inevitably would force a vehicle to stop, load or off-load, in the driving lanes. Whether or not action would be taken against the driver of the vehicle which had stopped in the driving lane would depend upon the circumstances of each case.

[29] The actions of the Respondent which form the basis of the complaint were not of a permanent or continuous nature and duration. They occurred only during the loading or off-loading of vehicles in the road. How frequent this occurred is not clear from the papers. The Applicant's contention, however, is that they occurred with such frequency, and duration, sometimes up to 15 minute at a time, as to cause an unlawful infringement of its rights justifying protection through an interdict. I am of the view that the frequency and intensity of this alleged unlawful conduct can be determined by resort to the photographs attached to the

Applicant's papers. Of course the use of photographic material as evidence, especially where as in this case their authenticity is not in dispute, can be of a great probative value. The Applicant admitted that these photographs were intended to give content to the averments in its affidavits and therefore constituted supplementary evidence. I consequently proceed to analyse these photographs with a view of establishing whether they indeed supplement these averments and provide proof of the alleged unlawful conduct by the Respondent. I have in doing so divided these photographs into three categories: The first category comprises photographs which display the dates and times on which they were shot. The second category is of photographs which were shot from the side of the road and where the driving surface is not shown: The last category, though the driving surface of the road is visible, show no dates or times on which they were shot. The last two categories do not help much in answering the question whether the Respondent wilfully and unnecessary blocked the road. I shall therefore focus on the photographs in the first group.

> On page 94 the Special Utility Vehicle is no longer in the picture. The time however is still 11:27 am. On page 95 the forklift is visible in the street whereas the SUV no longer appear. The same is on page 96 where the time is reflected at 11:29 am: i.e. the forklift is visible but there is no other vehicle which appear to be impeded save for a truck which is moving away from the scene. On page 97 at 16:40 pm the forklift is of appears to be off-loading a truck.

[30] The photos on JC 14 were shot on 21 January 2011. At 09h13 a forklift, which admittedly belongs to the Respondent, is standing unattended in the photographs on page

91. There is however no vehicle whose passage is blocked thereby. On pate 92 at 09h14 a driver is seen on the forklift which is lifting a load from the truck which is standing on the right hand side of the photograph. Again there is no vehicle whose passage in the road is blocked by the activity. It is a matter of one minute between the time when the forklift had no driver and when it is operated and off-loading the truck on the left hand side of the road.

[31] Moving to page 93 of the record the photograph on this page was shot again on 21 January 2011. In the first photograph at 11h27 the forklift is seen in the road with a load of what appears to be a white driver. In the second photograph a motor vehicle with rear brake lights on appeared in the road. There is a person in the third photograph whose hand is held up and appears to be motioning to the vehicle to stop. On the next page (page 94) the photograph was taken at 11h27. The vehicle which had its rear brake lights on is no longer in any of the pictures. The conclusion from the time depicted thereon is that the SUV was unable to proceed on its way within a minute. On page 95 the photograph was shot at 11 h28. The forklift is still operational in the road but there is no vehicle in site which is hindered thereby. The same is the case with the photographs on page 96 which were shot at 11 h29.

[32] On page 97 at 16h40 the forklift appears to be off-loading a truck which is standing on the incorrect side of the road. But there appears to be no vehicle in the road which is obstructed from proceeding by the activities.

[33] On 2 February 2011 at 15h57 (page 99) the forklift is seen off-loading goods from a truck which is standing on the incorrect side of the road. On the next page (page 100) an

Audi vehicle had appeared on the third photograph in the series. It appears to be moving away from the activities where the forklift is involved. These photographs were shot at 15h58. The Audi vehicle therefore was able to move in the road within a minute. There is no photograph showing the forklift blocking the passage.

[34] I have not been able to find any series of photographs, with date, time sequences, showing the road being blocked as alleged in the Applicant's papers.

[35] The angle from which the other photographs have been shot do not assist much as they did not show the driving surface.

[36] I find therefore that no factual proof came forth from the photographs to support the averments in the Applicant's papers. In the circumstances I find that the Applicant had failed to prove the factual allegations that the Respondent had wilfully and unnecessarily blockaded the free flow of traffic in Nebula Crescent, especially for any duration of time as to call for this court to intervene.

[37] I turn my attention to the contempt proceedings. Contempt of court proceedings permits a private litigant who has obtained a court order requiring an opponent to do or not to do something to approach the court again, in the event of non-compliance for a further order declaring the non-compliant party in contempt of court, and imposing a sanction.

[38] The test whether disobedience of a civil order constitutes contempt is whether the

breach was committed deliberately and *mala fide* while mere non-compliance did not necessarily constitute contempt.

[39] The Respondent contended that the order in question, as it stood, was not clear. The Respondent argued that the meaning of the terms *"preventing, hindering or interrupting the true and proper passage of traffic"* had never been tested in isolation, i.e. whether it means complete obstruction or partial obstruction and whether it means unnecessary obstruction.

[40] I find that there is merit in the Respondent's argument. This is confirmed by the fact that the Applicant itself sought a final order which is different in its terms to the interim one. It requested the insertion of the word "wilfully" in the final order it sought. It did so because it found the interim order to be too wide in its terms.

[41] I am of the view that the Applicant's request for the final order to be worded differently to the interim one is an indication that the latter was couched in terms which were not clear. While I am mindful that a Respondent cannot ignore a court order because the basis upon which it was obtained may be open to attack and the order stands until it is set aside or varied upon a proper application to court it remains valid and enforceable. *[Heg Consulting Enterprises (Pty) Ltd and others v Siegwart and others 2000(1) SA 507 (C) at 518 C-D],* I am of the view that a failure to comply with an order which is too wide in its terms, does not necessarily show any *mala fides* on the part of the Respondent. A failure to comply may be occasioned by the wide terms of the order. This may have been the case in this matter.

[42] If that was the case the Respondent would neither have been wilful or *mala fide* in

continuing with their operation because the interim order was couched in terms which were wide and which may have had absurd consequences if strictly adhered to. It is inconceivable that the order intended to prohibit the Respondent from in any way (including for legitimate purposes) preventing, hindering or interrupting traffic.

[43] The conclusion I have arrived at, therefore, is that on the facts of this case the Applicant has failed to establish a case for this court to confirm the interim order in its original terms nor to grant it on the terms suggested in argument by Mr Albertus. It follows that for the same reasons the rule *nisi* in the contempt proceedings should also be discharged.

[44] This judgment however is not to be construed as a licence to the Respondent to turn Nebula Crescent into its shunting yard or operational area. It should not, in anyway be construed as authorizing the wilful and unnecessary obstruction of vehicles using Nebula Crescent.

[45] The order I make therefore is the following:

45.1. The interim order is hereby discharged;

45.2. The rule *nisi* in the contempt proceedings under Case No 5176/2011 is discharged; and

45.3. The Applicants are ordered to pay the costs in both applications.

DOLAMO, AJ