

**IN THE HIGH COURT OF SOUTH AFRICA,  
FREE STATE DIVISION, BLOEMFONTEIN**

Case No: **3535/2022**

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

**DITABA JOHANNES MOKHUTLE**

First Applicant

[Identity No.: [....]]

**BETTY NOZENZA CEZULA**

Second Applicant

[Identity No.: [....]]

**THABISO PETRUS SELIANE**

Third Applicant

[Identity No.: [....]]

and

**INTERIM PROVINCIAL COMMITTEE (IPC),  
FREE STATE PROVINCE**

First Respondent

**CO-ORDINATOR, INTERIM PROVINCIAL  
COMMITTEE, FREE STATE PROVINCE**

Second Respondent

**CONVENOR, INTERIM PROVINCIAL**

**COMMITTEE, FREE STATE PROVINCE**

Third Respondent

**INTERIM REGIONAL COMMITTEE, (IRC)  
MANGAUNG REGION**

Fourth Respondent

**CO-ORDINATOR, INTERIM REGIONAL  
COMMITTEE, MANGAUNG REGION**

Fifth Respondent

**CONVENOR, INTERIM REGIONAL  
COMMITTEE, MANGAUNG REGION**

Sixth Respondent

*In Re:*

Case No.: **2657/2022**

In the matter between:

**DITABA JOHANNES MOKHUTLE**

[Identity No.: [....]]

First Applicant

**BETTY NOZENZA CEZULA**

[Identity No.: [....]]

Second Applicant

**THABISO PETRUS SELIANE**

[Identity No.: [....]]

Third Applicant

and

**AFRICAN NATIONAL CONGRESS (ANC)**

First Respondent

**ACTING SECRETARY GENERAL,  
AFRICAN NATIONAL CONGRESS**

Second Respondent

**TREASURER GENERAL, AFRICAN  
NATIONAL CONGRESS**

Third Respondent

**INTERIM PROVINCIAL COMMITTEE (IPC),  
FREE STATE PROVINCE**

Fourth Respondent

**CO-ORDINATOR, INTERIM PROVINCIAL  
COMMITTEE, FREE STATE PROVINCE**

Fifth Respondent

**CONVENOR, INTERIM PROVINCIAL  
COMMITTEE, FREE STATE PROVINCE**

Sixth Respondent

**INTERIM REGIONAL COMMITTEE, (IRC)  
MANGAUNG REGION**

Seventh Respondent

**CO-ORDINATOR, INTERIM REGIONAL  
COMMITTEE, MANGAUNG REGION**

Eight Respondent

**CONVENOR, INTERIM REGIONAL  
COMMITTEE, MANGAUNG REGION**

Ninth Respondent

**BRANCHES OF THE AFRICAN NATIONAL  
CONGRESS IN THE FREE STATE PROVINCE**

**(AS PER ANNEXURE “A” TO THE NOTICE OF MOTION)** Tenth Respondent

**JUDGMENT BY:** REINDERS ADJP

**HEARD ON:** 11 AUGUST 2022

**DELIVERED ON:** 15 AUGUST 2022

This judgment was handed down electronically by circulation to the parties' representatives by email, and released to SAFLII. The date and time for hand-down is deemed to be 14:00 on 15 AUGUST 2022.

[1] The applicants are members of the African National Congress Party (“the ANC”). On 9 June 2022 the applicants issued an urgent application under case number 2657/2022 (“the main application”) against the ten respondents cited in the heading of this application (indicated under the said case number). In the main application applicants averred that the ANC had breached its own constitution by, amongst others, delaying conferences and allowing interim leadership to remain in place. The relief claimed entailed *inter alia* that the Interim Regional Committee (“the IRC”) for the Mangaung Region (the then seventh respondent) be disbanded.

[2] When the application was to be heard on 8 July 2022 a court order (the “order”) issued “by agreement between the parties”. The order which forms the subject matter of the application before me, is recorded verbatim:

**“IT IS ORDERED THAT: (By agreement between the parties)**

1. The Respondent shall disband the Mangaung Region Interim Regional Committee, the Seventh Respondent.
2. The Reconstituted Interim Regional Committee shall not disband ANC branches during the period of the implementation of the Road Map leading to the Provincial Conference, which will be held on or before **30<sup>th</sup> September 2022**.
3. No order as to costs.”

It became common cause during the hearing of the application that the fourth to sixth respondents were not part of the said agreement.

[3] Pursuant to the order applicants issued an urgent application under case number 3535/2022 against the six respondents as cited in this application before me. The first respondent is the Interim Provincial Committee (“IPC”), Free State, whilst the second and third respondents are respectively the co-ordinator and convenor of the IPC. Likewise, the fifth and sixth respondents are respectively the co-ordinator and convenor of the IRC (as fourth respondent).

3.1 The relief sought by applicants read as follow:

“1. That, insofar as necessary or relevant, the applicants noncompliance with the prescribed rules relating to form, process, and service be condoned and the application be enrolled and heard as an urgent application.

2. hat (*sic*) a rule *nisi* be issued, returnable on **8<sup>th</sup> September 2022**, calling upon the respondents to show cause, if any, why the following order should not be made final:

2.1

2.1.1 That the first respondent is in contempt of the court order granted on **8 July 2022** under civil case cover number: **2657/2022**.

2.1.2 That the first respondent be found guilty of contempt of the court order granted on **8 July 2022** under civil case cover number: **2657/2022**;

2.1.3 That the first respondent be sentence to payment of a fine of **R50,000.00**, alternatively such sentence as the Court deems meet, the sentence to be suspended for **36 months** on condition that the first respondent comply without delay with the court order granted on **8 July 2022** under civil case cover number: **2657/2022** and is not convicted of contempt of court committed during the period of suspension.

2.1.4 That the first respondent comply, without delay, with the court order granted on **8 July 2022** under civil case cover number: **2657/2022**.

2.2

2.2.1 That the second respondent is in contempt of the court order granted on **8 July 2022** under civil case cover number: **2657/2022**.

2.2.2 That the second respondent be found guilty of contempt of court order granted on **8 July 2022** under civil case cover number: **2657/2022**.

2.2.3 That the second respondent be sentence to payment of a fine of **R50,000.00**, alternatively such sentence as the Court deems meet, the sentence to be suspended for **36 months** on condition that the second respondent comply with the court order granted on **8 July 2022** under civil case cover number: **2657/2022** without delay and is not convicted of contempt of court committed during the period of suspension.

2.2.4 That the second respondent comply, without delay, with the court order granted on **8 July 2022** under civil cover number: **2657/2022**.

## 2.3

2.3.1 That the third respondent is in contempt of court order granted on **8 July 2022** under civil case cover number: **2657/2022**.

2.3.2 That the third respondent be found guilty of contempt of court order granted on **8 July 2022** under civil case cover number: **2657/2022**.

2.3.3 That the third respondent be sentenced to **6 months** imprisonment, alternatively the payment of a fine of **R50,000.00**, alternatively such sentence as the Court deems meet, the sentence to be suspended for **36 months** on condition that the third respondent comply without delay with the court order granted on **8 July 2022** under civil case cover number: **2657/2022** and is not convicted of contempt of court committed during the period of suspension.

2.3.4 That the third respondent comply, without delay, with the court order granted on **8 July 2022** under civil case cover number: **2657/2022**.

2.4 The fourth, fifth and sixth respondents are interdicted from performing any functions and/or duties associated with the African National Congress Mangaung Interim Regional Committee.

2.5 That the first, second and third respondents' (*sic*) pay the costs of the application on attorney and party scale, jointly and severally, the one paying the other to be absolved.

3. That the orders contained in prayers 2.1 to 2.4 shall serve as an interim order with immediate effect.

4. Such further and/or alternative relief as the Court may deem appropriate."

3.2 In argument before me Mr Snellenburg SC, representing the applicants, submitted that the order in terms of paragraph 3 of the notice of motion should read as follows:

"3. That the relief in para 2.4 shall operate as interim interdict with immediate legal effect until finalisation of this application."

[4] The application was opposed by the respondents. The first to third respondents, represented by Mr Mene SC, oppose this application and contend a lack of urgency and denying the first to third respondents to be in contempt of the court order of 8 July 2022. The fourth to six respondents, represented by Mr Nkhahle, likewise launched an attack against the urgency of the application, and the interdictory relief claimed against them. Mr Snellenburg SC submitted that the latter relief is premised on the averred non-compliance of the court order by the first to third respondents.

[5] Having heard arguments in respect of urgency, I enrolled the matter as I was satisfied it was shown to be urgent.

[6] The requirements for an order of contempt is trite: The applicant had the onus to prove (a) that a court order was granted; (b) that the court order was served on the respondent or that the respondent had knowledge of the court order; and (c) that the court order was not complied with by the respondent. If the applicant proves these requirements a presumption arises that the respondent's non-compliance is

wilful and mala fide. Once the applicant has satisfied the requirements to prove contempt, an evidentiary burden rests on the respondent to show reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established.

See: ***Fakie NO v CCII Systems (Pty) Ltd 2006 4 SA 326 (SCA)***

[7] The existence of the court order and knowledge thereof are not disputed by the first to third respondents. The issue between the parties is rather whether there was compliance with the court order, and if not, the wilfulness and mala fides of such non-compliance.

[8] The applicants do not seriously dispute that pursuant to the court order, the first to third respondents called a meeting (scheduled for 11 and 12 July 2022), and that a disbandment was indeed effected on 11 July 2022. Annexed to the applicants' founding papers is a media statement (annexure "G") issued by the ANC's provincial spokesperson on 14 July 2022, stating that "the IPC noted the court case ...and court judgement and settlement agreement between the parties. In line with the court judgment and settlement agreement between the parties, the IPC in its meeting resolved to disband all IRC's whose mandate has lapsed in any case and replaced them with newly appointed IRC's."

However, the nub of the applicants' case is that the IRC was merely reinstated and not reconstituted, constituting non-compliance of the court order by the first to third respondents and resulting in the first to third respondents to be in contempt of court.

[9] Mr Snellenburg SC submitted the point of departure to be as ordained in ***Eke v Parsons 2016 (3) SA 37 (CC)*** at para [29]:

"[T]he now well established test on the interpretation of court orders is that the starting point is to determine the manifest purpose of the order, and that in interpreting the order the court's intention is to be ascertained primarily from the language of the order in accordance with the usual well-known rules relating to the

interpretation of documents. As in the case of a document, the order and the court's reasons for giving it must be read as a whole in order to ascertain its intention. The manifest purpose of the order is to be determined by also having regard to the relevant background facts which culminated in it being made."

9.1 It was submitted by Mr Snellenburg SC that the manifest purpose of the order appears from its content and the background facts that culminated in the order being agreed to and made as it appears from the main application upon which the court order was premised. According to him, amongst other matters, the IRC at the time was numerically overpopulated and thereby breaching the number of interim regional structure required by the national leadership in terms of the ANC constitution. He contended that the main application was premised on the applicants' constitutional rights to political association, as enshrined in section 19 of the Constitution, 1996, which right entails to demand exact compliance with such a party's own constitution. Relying on ***Ramakatsa and Others v Magashule and Others* 2013 (2) BCLR 202 (CC)**, he submitted that members are entitled to approach the court for appropriate relief where there is breach by its party.

9.2 To bolster his argument that the IRC was reinstated, Mr Snellenburg SC relied on correspondence by the IRC stating that it "had learned about reports suggesting that it (the IRC) was disbanded by the Court in Bloemfontein", followed by a threat to have the court order rescinded and ultimately culminating in a letter from the applicants' attorney of record to the attorney of record of the fourth to sixth respondents recording:

"2. We hereby acknowledge receipt of your Short Message System (SMS) dated 11<sup>th</sup> instant, wherein you advised us that "it seems like they settled on the basis that the IRC is reinstated."

9.3 Mr Snellenburg SC persisted that the operative word used in the communications was the 'reinstatement' of the IRC and in the context of the correspondence the old IRC was simply restored. The so-called reconstitution which later emerges, so the argument goes, is inherently

contradictory to the reinstatement of the IRC, meaning that the same structure was placed back as the factual position establishes that the same person, occupying the same positions and the same numbers formed the new IRC.

9.4 It was submitted by Mr Snellenburg SC that in the alternative, even if the IRC was purportedly reconstituted, taking into account the conspectus of the relevant facts and circumstances, by replacing the IRC with the same persons and number of persons, it indeed reinstated the committee. He therefore pressed on me to conclude that the first to third respondents are in contempt of the court order of 8 July 2022.

[10] Mr Mene SC submitted that the media statement refers to the court order, making it clear that the IRC was reconstituted, and it cannot be said that it amounts to a reinstatement. He emphasised that the court ought to be alive to the fact that the court, in making the order of 8 July 2022, did not dictate or make an order to the effect that the IRC should not be composed of the same people when it is reconstituted. Moreover, in his view the main application was in fact settled as per the court order.

10.1 Mr Mene SC submitted that applicants are very much aware that the old IRC was disbanded as such fact appears on a statement from the provincial co-ordinator of the IPC (annexure “H”), attached to the Applicant’s founding affidavit. Annexure “H” records:

*“Therefore, the Interim Provincial Committee (IPC) at its meeting held on 11<sup>th</sup> – 12<sup>th</sup> July 2022 resolved to disband the Interim Regional Committees across the province whose term has lapsed since their appointment on 24 September 2021. As a consequence, the IPC in the same meeting appointed new IRCs in the five ANC regions, namely, Fezile Dabi, Lejweleputswa, Mangaung, Thabo Mofutsanyana and Xhariep.”*

10.2 According to Mr Mene SC reliance by the applicants on the media statements and letters that were penned down subsequent to the

reconstitution of the IRC to indicate that the first to third respondents were continuing with their relentless disregard and disobedience of the court order, is misplaced. In his view such reliance is indicative thereof that the applicants do not recognize or simply ignore the fact that there was a resolution that was made by the first respondent to disband the old IRC in compliance with the court order.

10.3 Mr Mene SC submitted that, in the event the court should find that the IRC was reinstated instead of being reconstituted, it is evident that the first to third respondents did not act wilfully or mala fide. In his view the first to third respondents were complying or attempting to comply with the court order, and no deliberate intention not to comply therewith can be found in any of the communiqué indicating that, despite the court order, the first to third respondents continues with the old IRC. He submitted the application stands to be dismissed with costs.

[11] Mr Nkhahle in principle echoed the submissions of the first to third respondents relating to urgency and contempt of court. He stressed that the court order in issue did not prescribe the manner, form, criteria and/or the procedure or persons who should or should not be part of the new committee in regards to the reconstitution. According to Mr Nkhahle the first to third respondents cannot be shown to be in contempt of court. It was submitted by Mr Nkhahle that the newly appointed IRC effectively assumed responsibilities on 12 July 2022 and thus did, and still can, proceed with its duties. He urged me to dismiss the application with costs.

[12] The legal representatives of the respective parties are thanked for their willing and able arguments and heads herein and I duly considered same. In my view the long and the short of the court order dated 8 July 2022 was that the Mangaung Region Interim Regional Committee had to be disbanded. Save for the relief in paragraph 2 of that order, there were no further directions in the order that could be contravened or which had to be complied with. It is common cause, or at least not seriously disputed, that the aforementioned committee was disbanded on 11 July 2022 during a meeting of the IPC, Free State. In my view the applicants cannot prove that this directive was not complied with. What they do complain about is the

manner in which the new IRC was thereafter reconstituted. Or at best I suppose that I must find that it was not really ever disbanded since the proceedings of disbandment were nothing short of a sham (which is to be deduced from the fact that it was reinstated with the same members on 12 July 2022) - therefore that there was never compliance with the order which is conduct in defiance of the order ultimately being contempt of court. Although it may well be a possibility I cannot conclude so beyond a reasonable doubt. That onus, to prove that much, was on the applicants and as stated it could not be seriously disputed that the aforementioned old IRC was in fact disbanded within a few days of the order. It follows that I cannot conclude the relevant respondents to be in contempt of court. Since it is the applicants' case that the purpose of the interdictory relief claimed against the fourth to sixth respondents is to halt the continuous acts of contempt by the first to third respondents, it follows therefore that no case was made out against the fourth to sixth respondents to interdict them from performing any of their functions and/or duties.

[13] There is no reason why costs should not follow the event, save that costs should, notwithstanding requests to the contrary, be limited in respect of counsel to the cost of employment of one counsel.

[14] I therefore make the following order:

The application is dismissed with costs.

**C. REINDERS, ADJP**

For the applicants:

Instructed by:

Adv N Snellenburg SC

Mhlokonya Attorneys

BLOEMFONTEIN

For the first to third respondents:

Adv B S Mene SC

Adv MS Mazibuko

Adv LC Tlelai

Instructed by:

Seobe Attorneys Inc

BLOEMFONTEIN

For the fourth to sixth respondents:

Adv RJ Nkhahle

Adv MB Mojaki

Instructed by:

Muller Gonsior Inc

BLOEMFONTEIN