IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 8907/2024

(1) REPORTABLE: **YES**
(2) OF INTEREST TO THE JUDGES: **YES**
(3) REVISED: **NO**

DATE 18 December 2024 SIGNATURE [redacted]

In the matter between:

THABAZIMBI LOCAL MUNICIPALITY	**FIRST APPLICANT**
LETSEKA GLADWIN TLOUBATLA	**SECOND APPLICANT**
and	
ABSA BANK LTD	**FIRST RESPONDENT**
EMMA MANKGA	**SECOND RESPONDENT**
MELISSA MULLER	**THIRD RESPONDENT**

IN RE:

THABAZIMBI LOCAL MUNICIPALITY	**FIRST APPLICANT**
JUDITH MOTSEI MOGAPI	**SECOND APPLICANT**
TSHEGOFATSO RAMOABI	**THIRD APPLICANT**
LETSEKA GLADWIN TLOUBATLA	**FOURTH APPLICANT**
KEDISALETSE JOHANNES MATLOU	**FIFTH APPLICANT**

and

ABSA BANK LTD	**FIRST RESPONDENT**
BUTANA BEN THLABADIRA	**SECOND RESPONDENT**
RABELANE TSHISWAISE	**THIRD RESPONDENT**
RAPULA LUCKY MOGOROSI	**FOURTH RESPONDENT**

Dates of Hearing: 27-28 August 2024 and 05-06 September 2024

Delivered: 18 December 2024

Summary: Semi urgent contempt of court application- opposed- it is common cause that there was non-compliance with two court orders previously issued- central issue: whether non-compliance was wilful and *mala fides*- respondents given an opportunity to appear ex facie for summary enquiry to establish whether the second leg of the contempt of court proceedings was satisfied; miscellaneous issues: consideration of applications for leave to appeal and Rule 30(1) of the Uniform Rules of Court applications; conduct of legal practitioners.

This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time of hand-down is deemed to be 11:00 am on 18 December 2024.

JUDGMENT

MORGAN AJ:

INTRODUCTION

[1] This is a semi urgent opposed contempt of court application for an order against the respondents, who are alleged to have wilfully and in bad faith failed to comply with two previous orders of this court. It is common cause that the respondents have not complied with both court orders. The central issue for determination before this court is the second leg of the enquiry of contempt of court proceedings, namely: whether the respondents wilfully and in bad faith ignored or otherwise failed to comply with the court orders.

[2] However, because of the protracted and morass litigation history amongst the parties in this matter, which commenced as far back as 2021, the litigation background and history become essential to state here for one to comprehend the necessity of this application.

[3] The parties are:

a. The applicants are the Thabazimbi Local Municipality and its current Municipal Manager, Letseka Gladwin Tloubatla.

b. The first respondent is ABSA Bank Ltd (“ABSA”). The bank accounts of the Municipality are held at the Thabazimbi Branch of ABSA.

c. The second respondent is Emma Mankga (“Mankga”), a Relationship Executive: Public Sector-RBB Limpopo employed by ABSA. She is the person exercising control in respect of the Municipality’s bank accounts held at the Thabazimbi Branch of ABSA.

d. The third respondent is Melissa Muller (“Muller”), a Senior Legal Counsel: Litigation employed by ABSA. She is the legal officer who has been dealing with the legal aspects of the disputed access to and control of the Municipality’s bank accounts with ABSA since at least December 2023.

[4] It is alleged that Mankga and Muller are ABSA's key officials regarding ABSA's decision regarding which persons may have access to and control over the Municipality’s bank accounts. The applicants cited Mankga and Muller in their personal capacities due to their alleged blatant and unwarranted disregard of the order granted by Naude-Odendaal J, coercing compliance with the previous order granted by Phatudi J (as he then was).

URGENCY

[5] This matter was enrolled on the urgent roll in terms of Rule 6(12) of the Uniform Rules of this Court.[1] The test for urgency has been aptly set out in ***East Rock Trading 7 (Pty) Limited and Another v Eagle Valley Granite (Pty) Limited and Others***:[2]

> An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.'

[6] The applicants asserted that this matter is urgent on the basis that orders require extremely urgent execution thereof in order to keep functioning. The applicants highlighted the urgency of the matter, noting that the Municipality urgently required access to its bank accounts, which had been unlawfully withheld by the respondents

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[1] Rule 6(12) of the Uniform Rules of Court:

> "(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as it deems fit.
> (b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.
> (c) A person against whom an order was granted in such person's absence in an urgent application may by notice set down the matter for reconsideration of the order."

[2] 2011] ZAGPJHC 196; [2012] JOL 28244 (GSJ) at para 6.

in direct violation of multiple court orders in order for the office bearers to among other, pay staff salaries, pay service providers to ensure service delivery and collate certain information from bank statements to ensure a proper audit of the municipalities finances and compliance with statutory obligations before the end of the financial year. The applicants further argued that ABSA's recalcitrant behaviour, characterised by frivolous notices of appeal, undermined the integrity of the judicial process. Given these circumstances, the court was justified in taking swift and decisive action.

[7] The respondents argued that the application should be dismissed due to a lack of urgency. They contended that the urgency claimed by the applicants was self-created and did not meet the necessary requirements under Uniform Rule 6(12). Specifically, the respondents argued that the applicants failed to explicitly address why the matter was urgent and why they could not be afforded substantial redress in due course. The respondents further noted that the applicants had previously brought two other urgent applications, which were struck off due to lack of urgency, and that this current application suffered from similar defects.

[8] In my view, having considered the peculiar facts and protracted litigation history of this matter, I find that it to warrant that it be heard and categorised as a semi urgent application deserving of this court's attention. Moreover, matters pertaining to the blatant disregard of a court's order deserve urgent attention and intervention. This is because an attack on the rule of law requires expeditious resolution.

[9] I am fortified in my view by the Constitutional Court in ***Victoria Park Ratepayers' Association v Greyvenouw CC***:

> "[c]ontempt of court has obvious implications for the effectiveness and legitimacy of the legal system and the judicial arm of government. There is thus a public interest element in each and every case in which it is alleged that a party has wilfully and in bad faith ignored or otherwise failed to comply with a court order. This added element provides to every such case an element of urgency."[3]

[10] The Constitutional Court, in the same case, further affirmed:

> "[I]t is not only the object of punishing a respondent to compel him or her to obey an order that renders contempt proceedings urgent: the public interest in the administration of justice and the vindication of the Constitution also render the ongoing failure or refusal to obey an order a matter of urgency. This, in my view, is the starting point: all matters in which an ongoing contempt of an order is brought to the attention of a court must be dealt with as expeditiously as the circumstances, and the dictates of fairness, allow."[4]

[11] As stated above, this case is semi urgent, and it shall be treated as such. The disregard of the court orders continues. It has not abetted or ceased. The respondents continue to disregard the court orders in question, and thus, the applicants are entitled, as a matter of urgency, to this Court's expeditious intervention.[5]

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[3] 2004 JDR 0498 (SE) at para 5.

[4] Ibid at paras 26-27.

[5] See ***Protea Holdings Limited v Wriwt*** 1978 (3) SA 865 (W) at 867G-868H.

BACKGROUND FACTS

[12] The genesis of this matter arose from a political feud amongst rival political parties who have proportional representation in the municipal council ('council') to, amongst others, appoint the public-office bearers to certain positions in the Municipality, such as Executive Mayor, Municipal Manager and at the appointment of senior managers that report to the Municipal Manager. The Chief Financial Officer is one such senior manager whose role and functions are relevant to the current proceedings. The marginal proportional representation in the Municipality ensured that no one party had a definite majority of votes to govern the Municipality. Therefore, a coalition is necessary to ensure governance in the municipality. However, in these coalitions, there happens to be one minority party that is very important in that its vote is required to be a casting vote to obtain a majority. In this matter, the effect of unstable coalitions and spontaneous and sporadic termination of these partnerships tends to create instability such that it causes irregularities and uncertainties, which result in legal feuds over the incumbency of the political positions.

[13] In this matter, no more than five orders were granted against the respondents by different judges of this Court. My order and directive of 28 August 2024 became the sixth order to be granted in favour of the applicants, calling on the respondents to comply with the various court orders made by this court on previous occasions over the same matter.

[14] The orders the applicants sought to enforce the respondents' compliance with and have found in contempt thereof were those of Naude-Odendaal J, dated 20 August

2024, and Phatudi J (as he then was), dated 21 December 2023. Noteworthy is that prior to those orders, there were no less than three orders of this Division given within a short space of time from each other wherein the same parties were involved, and the court orders granted were all in favour of the applicants. However, the same respondents at such an early stage evinced through their conduct that they were recalcitrant and unwilling to abide by these court orders for reasons then known to them, which now, one can infer was an outcome they were not happy with.

[15] It is curious and unfortunate that an organisation such as ABSA is risking its image and reputation by involving itself in this matter and blatantly disregarding a litany of court orders. Is it based on some belief that, as a large corporation, ABSA is above the law? Is it the result of certain ABSA employees' belief that they can wield corporate power to bully bona fide applicants and this Court? Whatever the belief, it is worryingly misplaced, and ABSA should quickly disabuse itself of this belief.

[16] In its relentless fight, ABSA uses a perceived obligation to impose and exercise the powers and functions of a curator and / or administrator of the Municipality's financial and management affairs. However, it could not take me into confidence in terms of which empowering legislative provision or framework it relies on. Though there is a lot of political instability in terms of political heads or office bearers in the Municipality, it is common cause that the Municipality has not been legally declared dysfunctional and thus placed under administration. Despite this, ABSA submitted its view that it must or can unilaterally exercise the powers and functions of an administrator or curator without a political decision, court order, or empowering statutory provision to that effect.

[17] The central issue in this case is rather narrow. It is simply whether the respondents, collectively or individually, are in contempt of this Court's orders per Naude-Odendaal J and Phatudi J, respectively.

[18] The two orders which the respondents did not comply with provide:

[19] Phatudi J's order granted in the applicants' favour on 21 December 2023 states:

1. The non-compliance with the Rules of this Honourable Court in respect of service and time periods is condoned and the matter is to be heard as one of urgency in terms of Rule 6(12)(a).

2. It is declared that, pending the final determination of the pending appeal to the Constitutional Court under case number CCT131/2024 (Judith Motsei Mogapi and others // Butana Ben Thlabadira) against the order granted by Semenya DJP on 29 September 2023 under case numbers 13207/2022 and 13268/2022 and at all times since 29 September 2023 when the said order was not suspended due to the appeal process:

3. The Third Applicant (Tshegofatso Ramoabi) was until 19 August 2024 the lawful Speaker of the First Applicant and entitled to perform all rights and duties pertaining to that position.

4. The Fourth Applicant (Letseka Gladwin Tloubatla) was and is currently the lawful Municipal Manager of the First Applicant and entitled to perform all rights and duties pertaining to that position

5. The Fifth Applicant (Kedisaletse Johannes Matlou) was and is currently the lawful Acting Chief Financial Officer of the First Applicant and entitled to perform all rights and duties pertaining to that position.

6. The Third Respondent (Rabelane Tshiswaise) and Fourth Respondent (Rapula Lucky Mogoros) are currently not, respectively, the lawfully appointed Acting Municipal Manager and Acting Chief Financial Officer of the First Applicant.

7. The order granted on 21 December 2023 under case number 11869/2023 by Phatudi JP is currently operational and executable.

8. Pending the final determination of the pending appeal to the Constitutional Court under case number CCT131/2024 (Judith Motsei Mogapi and others // Butana Ben Thlabadira) against the order granted by Semenya DJP on 29 September 2923 under case number 13207/2022 and 13268/2022 and pending the urgent appeal in terms of Section 18(4) of Act 10 of 2013 in this Honourable Court under case number HCAA28/2024, Butana Ben Thlabadira // Thabazimbi Local Municipality and others.

9. The First Respondent is hereby ordered to immediately grant to the Fourth Applicant (Letseka Gladwin Tloubatla) and the Fifth Applicant (Kedisaletse Johannes Matlou) access and authority to make transactions in respect of all the bank accounts held by the First Applicant at the Thabazimbi branch of ABSA Bank.

10. The First Respondent is hereby ordered to recognise the Fourth and Fifth Applicants as the officials of the First Applicant having authority to make transactions on all the bank accounts held by the First Applicant at the Thabazimbi branch of ABSA Bank.

11. The First Respondent is interdicted and restrained from allowing access to Second, Third and Fourth Respondents to make any transactions or having any access to any of the bank accounts of the First Applicant held at Thabazimbi branch of ABSA Bank.

12. The First Respondent is interdicted and restrained from accepting and carrying out any instructions from the Second, Third and Fourth Respondents given on behalf of the First Applicant in respect of the bank accounts held by the First Applicant at the Thabazimbi branch of ABSA Bank.

13. The orders in prayers 2 and 3 above shall have immediate effect as interim declaratory orders and interdicts pending finalisation of both the appeals mentioned in paragraphs 2 and 3.

14. The second Respondent is ordered to pay the costs of this application, which costs include the costs of two counsel where so employed.

[20] Naude-Odendaal J's order granted in the applicants' favour on 20 August 2024 states:

1. That the non-compliance with the Rules of this Honourable Court in respect of service and time periods be condoned and that the matter be heard as one of urgency in terms of Rule 6(12)(a).

2. That the First Respondent is hereby ordered to immediately grant access to the Second Applicant **(Letseka Gladwin Tloubatla)** and the Third Applicant **(Kedisaletse Johannes Matlou)** access and authority to make transactions in respect of all the bank accounts held by the First Applicant at the Thabazimbi branch of ABSA Bank.

3. That the second and Third Applicants are recognized as the officials of the First Applicant having authority to make transactions on all the bank accounts held by the First Applicant at the Thabazimbi branch of ABSA bank.

4. That the First Respondent is interdicted and restrained from allowing access to Second, Third and Fourth Respondents to make any transactions or having any access to any of the bank accounts of the First Applicant held at the Thabazimbi branch of ABSA Bank.

5. That the First Respondent is interdicted and restrained from accepting and carrying out any instructions from the Second, Third and Fourth Respondents given on behalf of the First Applicant in respect of the bank accounts held by the First Applicant at the Thabazimbi branch of ABSA Bank.

6. Declaring that the dispute between the Applicants and Respondents in respect of who is authorized to have lawful access to the bank accounts of the First Applicant held at Thabazimbi branch of ABSA Bank has been finally resolved in terms of the order granted under case number 11593/2023 by the Honourable Judge President, Phatudi on 19 December 2023, which disputes include the ex parte

orders obtained by the Fourth Respondent in the Thabazimbi Magistrate's Court under case numbers 738/2023 on 6 December 2023 and 739/2023 on 8 December 2023.

7. That the Respondents are ordered to pay the costs of this application jointly and severally the one to pay the other to be absolved on a scale as between attorney and own client, which costs include the costs of two counsel.

[21] As already stated, non-compliance with the two orders was common cause between the parties. The only outstanding issue I have to determine is whether the respondents' non-compliance with the two court orders was wilful and in bad faith. If I find so, what would be the appropriate sanction for contempt?

[22] However, the procedural irregularities and evasive conduct on the respondents' part in the hearing before me signalled that there seems to be more than what meets the eye. In summary, the blatant comedy of errors and procedural irregularities, misrepresentations and abuse of court processes in the manner in which the litigation was conducted before me by the respondents and, to some extent, their counsel (*in facie*), bad advice given to the clients (that is, to disregard a court directive) informed this court of their attitude towards the court and painted a clear picture of why this court's previous orders was not abided by. This left legitimate concerns for this court about the respondents' respect for court orders and the vindication of the court's authority and dignity.

[23] On 27 and 28 August 2024, the respondents were represented by Mr Boshomane only. In the hearing, Mr Boshomane correctly submitted that the issue of non-

compliance with the two court orders was common cause and that the court was called to determine the narrow issue. The record bears this concession.

[24] No submissions regarding the respondents' wilfulness and *mala fides* were made on the day. In fact, and in law, at that stage, the reverse onus was to prove that though the respondents did not comply with the court orders, the non-compliance thereto was not wilful and *mala fides* on the respondents' part. The reverse onus, which now lay for the respondents to prove, was not sufficiently discharged by the version before me as pleaded in the Answering Affidavit delivered by the respondents.

[25] To afford the respondents a further opportunity to show and place evidence before the court through an oral inquiry in terms of Rule 6(5)(g) of the Uniform Rules of Court, I called for the respondents and the instructing attorney to attend at court in person on Thursday, 5 September 2024 for a summary enquiry.

[26] In short, the directives I gave in my order read:

a. The Second and Third Respondents to appear in person before this Honourable Court to give oral evidence and to show cause through a summary enquiry why they should not be found in contempt of the court orders granted by Naude-Odendaal J and Phatudi J, respectively, and be committed to imprisonment.

b. The Respondents' attorney of record to appear in person before this Honourable Court to give oral evidence and show cause in a summary enquiry

why, in the event that the Respondents cannot be held in contempt of court on the basis that they were acting *bona fide* on advice, she should not be ordered to pay the costs of the application *de bonis propriis* on a scale as between attorney and own client.

[27] On 5 September 2024, Mr Amm SC appeared alongside Mr Boshomane on behalf of the respondents. When I asked whether the respondents and their instructing attorney were present for the inquiry, counsel for the respondents confirmed that they were not. Mr Amm SC explained that the respondents, along with the instructing attorney, had been advised by two Senior Counsel not to attend court. Furthermore, he submitted that, in their view, the directive in my order could be disregarded because their hybrid notice to appeal to a full court under section 18(4)(i) and (ii) of the Superior Courts Act, combined with their application for leave to appeal, suspended the operation of my order, thereby relieving them of the obligation to appear. This explanation, to say the least, caused me concern. I then questioned counsel on the basis and reasoning behind such advice. I also directed that the written advice provided be filed with the court, along with written submissions addressing the court's authority to summon the respondents for a summary enquiry to attend on a specified day and give oral evidence, and whether counsel’s advice could override a directive contained in a court order.

[28] I think it is important for me to provide this legal opinion by Michael R Hellens SC here to provide the full context of what the respondents were advised.

2. On 29 September 2023, Semenya DJP granted an order in favour of the Thlabadira faction reviewing and setting aside the appointment of the Toubatla faction. The Thlabadira faction has sought leave to appeal from the High Court and the Supreme Court of Appeal. Both applications were dismissed.

3. On 21 December 2023, Phatudi JP granted an order allowing the Thlabadira faction access to the accounts. This order was appealed directly to the Constitutional Court.

4. Subsequently, Muller J granted an order in terms of Section 18(1) of the Superior Courts Act, thereby leaving the order of Phatudi JP operational pending the application for leave to appeal.

5. After the Thlabadira faction's application for leave to appeal to the SCA was dismissed, the Thloubatla faction withdrew their application for leave to appeal to the Constitutional Court. This left the parties with the Semenya DJP order and the Phatudi JP order operational.

6. The Tloubatla faction delivered a reconsideration application to the Supreme Court of Appeal, which gave rise to an application dealing with whether the reconsideration application stayed the execution of the Semenya DJP order. Acting Justice Makoti held that it did not and therefore the Thlabadira faction could be granted access to the Municipality's bank accounts. Makoti AJ's is presently awaiting appeal.

7. The reconsideration application was subsequently dismissed, and the Thlabadira faction sought leave to appeal to the Constitutional Court. This application for leave to appeal is currently pending.

8. The Thlabadira factions obtained ex parte rule nisi orders in the Thabazimbi Regional Court interdicting the Tloubatla faction from accessing the bank accounts and interdicting the Tloubatla faction attorneys from representing the Municipality.

9. The order interdicting the loubtla faction from accessing the accounts was then taken on review. Gaisa AJ granted an order setting aside the order of the Thabazimbi Regional Court. This order is subject to an urgent appeal awaiting a hearing on 6 September 2024.

10. The Tloubatla faction then delivered an application seeking to declare the order of Phatudi JP operational. This order was granted by Naude-Odendaal J on 20 August 2024. On 22 August 2024, the Thlabadira faction delivered an urgent appeal to the Naude-Odendaal order.

11. On 24 August 2024, the Toubatla faction delivered their contempt application. This application matter was heard by Acting Justice Morgan the following day, on 27 August 2024. Absa and its officials are said to be in contempt of the Phatudi JP order dated 21 December 2023 and the Naude-Odendaal J order dated 20 August 2024.

12. Following the hearing, Morgan AJ ordered, inter alia, Absa's cited officials to appear for a summary enquiry before him on 5 September 2023. Ms Alexandra Wright was also ordered to appear if the Absa officials could not be held in contempt. Absa and its officials have appealed the decision, alternatively sought leave to appeal the decision.

13. The question is whether the Absa officials and Ms Wright must appear in the Polokwane on 5 September as ordered, pending the appeal/ application for leave to appeal the Morgan AJ order.

14. In our view, *S v Mamabolo* has made an order for summary enquiry unconstitutional save under exceptional circumstances. The Constitutional Court specifically stated that:

> "The summary contempt procedure employed in the present case is, save in exceptional circumstances such as those in Chinamasa's case where ordinary prosecution at the instance of the prosecuting authority is impossible or highly undesirable, a wholly unjustifiable limitation of individual rights and must not be employed."

15. The circumstances in the Chinamasa case referred to in *S v Mamabolo* were such that referring the purported contempt to the Attorney-General would not be beneficial because Mr Chinamasa was the Attorney-General at the time.

16. In *S v Singo* 2002 (4) SA 858 (CC), the Constitutional Court explained the purpose of summary enquires within the context of section 74 of the Criminal Procedure Act 51 of 1977 stating:

> "The purpose of the summary procedure is to get the accused to explain his or her failure to comply with a warning. To achieve this purpose, the burden of proof is imposed upon the accused, which, if he or she should fail to discharge, usually results in a conviction. Thus, remaining silent at the enquiry invariably invites a conviction. This is so because the fact of the warning and failure to comply with it will ordinarily become conclusive proof, and in the absence of the explanation for failure, the conviction must usually ensue."

17. The circumstances in S v Singo are the last ruminates of circumstance allowing for a summary enquiry to be held, namely when it amounts to contempt in facie curiae and the contempt hinders the ongoing proceedings.

18. The ordering of such a summary enquiry under present circumstances violates Absa and its official's Section 35(3) Constitutional Rights to a fair trial, which rights include inter alia:

    a. The right to adequate time and facilities to prepare a defence;
    b. To a public trial before an ordinary court;
    h. To be presumed innocent, to remain silent, and not to testify during the proceedings;
    i. To adduce evidence;
    j. Not to be compelled to self-incriminate.

19. As stated by the Appellate Division in *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) 534 (A) at 549G:

> "In a wide and general sense, the term 'interlocutory' refers to all orders pronounced by the Court, upon matters incidental to the main dispute, preparatory to, or during the progress of, the litigation. But orders of this kind are divided into two classes: (i) those which have a final and definitive effect on the main action; and (il) those, known as 'simple (or purely) interlocutory orders or interlocutory orders proper which do not."

20. The order of Morgan AJ is interlocutory because it is incidental to the main dispute and made during the progress of the contempt application as contemplated in South Cape. However, it has a final effect on Absa and its officials' rights in terms of Section 35 of the Constitution.

21. The rights that would be infringed on give rise to another basis for the order being appealable, In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) at 213D, the Court stated that:

> "This court has granted leave to appeal in relation to interim orders before. It has made clear that the operative standard is the 'interests of justice. To that end, it must have regard to and weigh carefully all germane circumstances. Whether an interim order has a final effect or disposes of a substantial portion of the relief sought in a pending review is a relative and important consideration... It is just as important to assess whether the temporary restraining order has an immediate and substantial effect, including whether the harm that flows from it is serious, immediate, ongoing and irreparable."

22. Considering the importance of the rights which will be infringed, the order of committal, which is sought, and the fact that no subsequent order will allow the officials to protect their constitutional

section 35 rights, it is also in the interests of justice to have the order of Morgan AJ appealed before the decision is made in the contempt application.

23. Ms Wright's position is slightly different because criminal sanctions are not sought against her. The order sought against Ms Wright is an issue for costs premised on the findings against Absa's officials. Without a finding related to the Absa officials, the order regarding the summary enquiry against Ms Wright would also be stayed.

24. It should be noted that Ms Wright deposed to the affidavit on behalf of Abs and its officials. In her affidavit, she stated that Absa and its officials relied on legal advice. She does not directly state who gave it, what information was given and when the advice was given.

25. The above have been considered relevant to a defence that contempt does not exist because the party relied on legal advice (*Samancor Chrome Limited v Bila Civil Contractors (Pty) Ltd* 2022 JDR 3569 (SCA)). To this end, the advice is not disclosed, and the court may seek that Ms Wright discloses this information in contravention of Absa's attorney-client privilege.

26. I agree with the approach and position taken by Absa in its appeal / application for leave to appeal notice served in response to the order of Morgan AJ. In light of the lodging of such notice, I am of the considered view that the notice suspends the operation of the orders of Morgan AJ, and with-it Absa's, its officials', and Ms Wright's need to comply therewith.

[29] I requested these submissions with the understanding that, through proper legal research, the advice the two senior counsel gave their clients to disregard or disobey a court order would not be legally sound. As anticipated, the submissions presented, along with those made by the applicants, did not support or justify the counsel's advice to their clients.

[30] It is trite that:

a. An aggrieved party generally cannot appeal an interim order that is not final in effect, or a ruling or directive given by the court.[6]

b. A court's ruling or directive is binding. It must be abided by the party or parties against or to whom it is made, and that counsel's opinion and advice cannot

[6] ***United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*** [2022] ZACC 34; 2022 (12) BCLR 1521 (CC); 2023 (1) SA 353 (CC).

supersede a court order, directive or ruling. It is binding unless set aside by a competent court.[7]

c. A high court has inherent powers to regulate its own proceedings[8] and, incidentally, the power to call any person as a witness to give oral evidence before it on an issue for determination.[9]

[31] Considering the specific facts of this case, particularly the lengthy litigation history and the ongoing involvement of counsel, I find the respondents' counsel's advice to ignore or disregard the court's directive for a summary enquiry to be both misguided and

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[7] ***Municipal Manager O.R. Tambo District Municipality and Another v Ndabeni*** [2022] ZACC 3; [2022] 5 BLLR 393 (CC); (2022) 43 ILJ 1019 (CC); 2022 (10) BCLR 1254 (CC); 2023 (4) SA 421 (CC).

[8] ***M.K v Transnet Ltd t/a Portnet*** **[2018] ZAKZDHC 39; [2018] 4 All SA 251** (KZD). See also section 173 of the Constitution reads:

> 'The Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.'

See also, ***Children's Institute v Presiding Officer of the Children's Court, District of Krugersdorp and Others*** [2012] ZACC 25; 2013 (1) BCLR 1 (CC); 2013 (2) SA 620 (CC).

[9] Rule 6(5)(g) of the Uniform Rules provides:

> '*g)* Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the aforegoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.'

clearly incorrect. This issue is further compounded by the fact that distinguished and eminent senior counsel made such an error.

[32] It appears to me that ABSA, through its employees (the second and third respondents), is attempting to unilaterally assume the role of a self-appointed administrator or curator of the Municipality's finances and management, despite the absence of any lawful decision or legislative framework empowering or obliging it to do so. According to the submission made by the respondents' counsel during the hearing, ABSA found itself caught in the middle of a conflict between two political factions within the Municipality, each vying for control of high public office. While this submission may be partially accurate, I believe ABSA's undue interference in matters beyond its concern only worsened the situation.

[33] The straightforward question that remains unanswered is: what harm would ABSA suffer if it does not grant the applicants access to the Municipality's bank account as ordered by this court? The respondents have not provided a clear response. In fact, Mr Boshomane conceded that his legal research was conducted without reference to any claim, as pleaded in the affidavits, that would justify ABSA acting as an administrator or curator over the Municipality's bank account. He further admitted that, in the absence of any legislative provision or framework, the contractual relationship between the Municipality and the Bank also did not grant ABSA the authority or obligation to perform such a role.

Municipality's powers to regulate their own financial affairs

[34] The primary reason for this application, among others, was to compel ABSA to grant the Municipal Manager and the Chief Financial Officer access to the Municipality's bank account to carry out necessary transactions, such as paying creditors to ensure the continued functioning of the Municipality and the provision of services to residents and businesses within its boundaries. Additionally, this access was essential for fulfilling their statutory reporting duties, including the preparation of accurate annual financial statements required for submission for audit and reporting. Without access to the account, ensuring the Municipality's continued operation, service delivery, and compliance with statutory reporting obligations would not be possible, a challenge that appears to be common across many municipalities in the country.[10]

[35] It is trite that the Municipal Systems Act and Municipal Finance Management Act oblige the accounting officer and relevant office-bearers to ensure that the municipality is compliant in executing its constitutional competencies and mandate through the appointed office-bearers.[11]

[10] See the audit reports by Auditor-General South Africa relating to the state of local government: https://mfma-2022. agsareports.co.za/pages/audit-outcomes.

[11] It is important to recognise that, within the context of a municipality's constitutionally protected right to manage its internal affairs (sections 160(1) and (6) of the Constitution), the council plays a pivotal role in defining the duties and responsibilities of the municipal manager. As the employer, the council sets its expectations for the municipal manager's role. However, newer legislation, such as the Local Government: Municipal Structures Act 117 of 1998 and, more significantly, the Local Government: Municipal Systems Act 32 of 2000, introduces key provisions that establish legal powers, duties, and obligations.

[36] In my view, the failure or unsatisfactory performance of these critical functions, which would later lead to non-compliance issues and adverse audit findings against the Municipality, would not only be unfairly caused by ABSA's persistent refusal to grant the applicants access to the bank account but would also have broader implications. This could negatively impact the aggregate grading of municipalities, affecting the country's global ratings, markets, and economy, contributing to the ongoing adverse findings and global credit downgrades that our country currently faces.

INTERLOCUTORY APPLICATIONS IN TERMS OF RULE 30(1) AND NOTICES FOR URGENT APPEAL AND/OR APPLICATION FOR LEAVE TO APPEAL

[37] On 6 September 2024, the respondents failed to appear in court for the scheduled enquiry, per the court's directive.

[38] In their absence, I proceeded to address one of the two Rule 30(1) applications before me. These applications arose in response to two documents submitted by the respondents. The first, dated 3 September 2024 and stamped by the civil section of this court, was styled as a "NOTICE TO APPEAL TO FULL COURT AND/OR APPLICATION FOR LEAVE TO APPEAL". The second, dated 4 September 2024 and stamped by the appeals section, was titled "NOTICE TO URGENT APPEAL IN TERMS OF SECTION 18(4)". Both notices were filed on 3 and 4 September 2024, respectively, and both purported to engage the appeals process in an irregular manner.

[39] Rule 30(1) of the Uniform Rules reads:

> “A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.”

[40] The first Rule 30(1) application specifically challenged the respondents' "Notice for an Urgent Appeal", which purported to rely on section 18(4)(i) and (ii) of the Superior Courts Act 10 of 2013. During a thorough enquiry conducted in open court, it became apparent that the procedural integrity of the case or purported (intended) appeal proceedings had been compromised. The registrar of the appeals section, Ms Khumalo, testified that the case number had been erroneously issued. Upon questioning, she disclosed that she had been misled by the respondents' attorney, Ms Dakalo, who had falsely confirmed that I had issued an order under section 18(3) of the Superior Courts Act on 28 August 2024. However, upon reviewing my actual order from that date, it was clear that no such section 18(3) application had been made. Ms Khumalo confirmed that, had she been in possession of the correct information at the time, she would not have issued the case number, as there was no legal basis for doing so. She requested that the respondents attend her office to retract the erroneously issued case number.

[41] Upon reviewing the arguments and documentary evidence filed in support of the first Rule 30(1) application, I issued an *ex temporae* order, granting the order sought in the application. In the result. I set aside the "NOTICE TO URGENT APPEAL IN TERMS OF SECTION 18(4)" on the grounds that it failed to meet the procedural and substantive requirements for urgent appeals under section 18(4) of the Superior

Courts Act. The notice was found to be irregular and defective *ab initio*, as it sought to invoke appeal procedures for orders that were neither issued under section 18(3) of the Superior Courts Act nor subject to appeal proceedings. Moreover, my order of 28 August 2024 had not been issued pursuant to a section 18(3) application, and none of the orders sought to be appealed had any bearing on the contempt proceedings before me.

[42] The respondents had consistently relied on appeal proceedings that were, in fact, unrelated to the matter before this court. Specifically, they had cited appeal proceedings scheduled before a full court on 6 September 2024 in connection with an order granted by Gaisa AJ. However, those proceedings did not involve the respondents in this case, and their relevance to the contempt proceedings was spurious. I permitted the applicants' counsel to attend the full court appeal, which later that day was decided in the applicants' favour. This development rendered the respondents' reliance on those proceedings moot, as it undermined any argument they might have raised to delay the contempt proceedings. Furthermore, the non-compliance with Gaisa AJ's order was never brought as an issue before me; I was solely concerned with the respondents' contempt of court orders issued by Naude-Odendaal and Phatudi J, respectively.

[43] Following the resolution of the first Rule 30(1) application, I directed both parties to file further submissions addressing the second Rule 30(1) application. This application pertained to the document styled as "NOTICE TO APPEAL TO FULL COURT AND/OR APPLICATION FOR LEAVE TO APPEAL" dated 3 September 2024. I also instructed both sides to prepare to argue the contempt of court proceedings, should

the court not grant leave to appeal the directives issued in my order of 28 August 2024. The hearing for these matters was scheduled to take place virtually on 11 September 2024.

[44] On 11 September 2024, after receiving timely submissions from both parties, I convened the virtual hearing on Microsoft Teams to address the second Rule 30(1) application. After hearing counsel from both sides, I once again issued an *ex tempore* ruling, finding in favour of the applicants. The court determined that the directives contained in my 28 August 2024 order were not appealable, as they constituted procedural guidance rather than a substantive order. The directives merely provided the respondents with an opportunity to address deficiencies in their case, particularly concerning their failure to disprove wilfulness and *mala fides* in their non-compliance with court orders. The "hybrid notice" filed by the respondents was thus found to be irregular and void *ab initio*.

[45] With the Rule 30(1) applications resolved, I proceeded to address the remaining issue in the contempt proceedings: whether the respondents had acted with wilfulness and mala fides. During the hearing, I inquired whether the respondents would be willing to appear in person to clarify matters before the court. However, their counsel resisted this suggestion, arguing instead that the court should either conclude the proceedings based on the existing evidence or allow them further time to explore other legal avenues. Counsel also suggested that the court could either request additional affidavits from the respondents or end the proceedings, relying on inferences drawn from the facts already on record.

[46] Despite this, I concluded that further enquiries were unnecessary in the interest of finality and judicial economy. The respondents had already rejected an opportunity for additional clarification and had shown continued resistance to the court's suggestions. Thus, I determined that the matter should be resolved based on the evidence before me, which was sufficient to conclude the issues at hand. The respondents' continued efforts to delay the proceedings could not be countenanced in light of the procedural deficiencies in their case and the clear facts already established on the record.

CONTEMPT OF COURT

[47] Our constitutional democracy is built on fundamental principles, with the rule of law and the supremacy of the Constitution at its core. Any case that involves contempt of court—particularly where a court order is flagrantly disregarded—poses a direct challenge to these foundational values and, more specifically, to the authority of the judiciary. As Nkabinde J aptly observed in ***Pheko II***, the significance of upholding judicial authority cannot be overstated:

> "The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it. As the Constitution commands, orders and decisions issued by a court bind all persons to whom and organs of State to which they apply, and no person or organ of State may interfere, in any manner, with the functioning of the courts. It follows from this that disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or

> decisions is substantially determined by the assurance that they will be enforced.
>
> Courts have the power to ensure that their decisions or orders are complied with by all, including organs of State. In doing so, courts are not only giving effect to the rights of the successful litigant but also, and more importantly, by acting as guardians of the Constitution, asserting their authority in the public interest."[12]

[48] In essence, when contempt of court proceedings arise, they are not merely disputes about non-compliance with specific orders but represent much broader threats to the functioning of the judiciary and the rule of law. The judiciary's legitimacy is inherently tied to the ability to ensure that its orders are respected and carried out. Should a court's rulings be disregarded, the authority of the judiciary as the interpreter and enforcer of the law is severely undermined, eroding public confidence in the legal system.[13]

[49] Moreover, contempt proceedings serve a dual purpose. First, they act as a mechanism to vindicate the court's authority, ensuring that a breach of its order is met with appropriate consequences. Second, they compel compliance with that order, upholding the court's role in delivering justice. It is self-evident that without such mechanisms, the legal system would falter, and the courts would lose their power to enforce the law effectively. This would lead to chaos, not only within the judicial system

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[12] ***Pheko v Ekurhuleni City*** [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC) (*Pheko II*) at paras 1-2.

[13] ***Victoria Park Ratepayers' Association*** supra above at para 5.

but also in society at large, as respect for the rule of law is fundamental to maintaining social order and justice.

[50] The principle that no person or institution is above the law is a cornerstone of any constitutional democracy, and the authority of the courts plays a vital role in safeguarding this principle. The existence of contempt of court proceedings ensures that the rule of law is preserved, and the judicial system remains effective. The power of the courts is not derived from military force or political influence but from public trust, legitimacy, and the belief that the law will be upheld and enforced. A constitutional order, therefore, hinges on the respect and compliance with court orders.[14]

[51] In addressing the well-established test for contempt of court, an applicant must demonstrate three key elements: (i) an order was granted against the alleged contemnor; (ii) the alleged contemnor was either served with the order or had knowledge of it; and (iii) the alleged contemnor failed to comply with that order. Once these elements are proven, a presumption arises that the contemnor acted with wilfulness and *mala fides* (bad faith).[15] At this point, the burden shifts to the respondent, who must provide sufficient evidence to create reasonable doubt. If the respondent fails to meet this evidentiary burden, contempt will be established.

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[14] ***Pheko II*** supra above at para 32; ***Fakie N.O. v CCII Systems (Pty) Ltd*** [2006] ZASCA 52; 2006 (4) SA 326 (SCA) at para 22; ***Consolidated Fish Distributors (Pty) Ltd v Zive*** 1968 (2) SA 517 (C) ('*Consolidated Fish*') at 522E-H

[15] ***Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and others*** supra above at para 37.

[52] Note that where the contempt proceedings concern a committal, the standard of proof is that that the court must be satisfied beyond a reasonable doubt.[16] Here, committal is what is being sought, thus the requirement must be proven beyond a reasonable doubt.

[53] This legal framework was reaffirmed in ***Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others***, and it remains a vital tool in ensuring that court orders are not rendered meaningless. The presumption of wilfulness and *mala fides* reflect the seriousness with which our legal system views disobedience to court orders. A court's authority, as the guardian of justice, cannot be easily dismissed or undermined by those seeking to avoid its obligations.

[54] The Constitutional Court in ***Pheko II*** reinforced this, stating:

> "The presumption rightly exists that when the first three elements of the test for contempt have been established, *mala fides* and wilfulness are presumed unless the contemnor is able to lead evidence sufficient to create a reasonable doubt as to their existence. Should the contemnor prove unsuccessful in discharging this evidential burden, contempt will be established."[17]

[55] This presumption reflects the judiciary's vested interest in preserving its dignity and authority. Without the ability to enforce its judgment, the judiciary would be reduced to

[16] ***Beck Trading (Pty) Ltd v Govender*** [2020] 2 ECL 44 (ECL) [13].
[17] ***Pheko II*** supra above at para 36.

a symbolic institution without real power, and the public's faith in the courts would inevitably diminish.

[56] It is in the public interest to protect the integrity of the judiciary, as its role is essential to the maintenance of the rule of law. The courts serve as the bulwark against abuses of power, ensuring that justice prevails in all matters. However, the courts do not command armies or control financial resources; their strength lies in the moral authority derived from their independence and impartiality.[18]

[57] In ***S v Mamobolo***, the Constitutional Court eloquently summarised the judiciary's position within the broader constitutional framework:

> "In our constitutional order the Judiciary is an independent pillar of State, constitutionally mandated to exercise the judicial authority of the State fearlessly and impartially. Under the doctrine of separation of powers, it stands on an equal footing with the executive and the legislative pillars of State; but in terms of political, financial or military power it cannot hope to compete. It is in these terms by far the weakest of the three pillars; yet its manifest independence and authority are essential. Having no constituency, no purse and no sword, the Judiciary must rely on moral authority. Without such authority it cannot perform its vital function as the interpreter of the Constitution, the arbiter in disputes between organs of State and, ultimately,

[18] ***Ex Parte Zondo and Others; In Re: Administrator of JS Moroka and Others v Kubheka and Another*** [2020] ZAMPMHC 12 at para 138 and I Mahomed CJ 'The Role of the Judiciary in a Constitutional State: Address at the First Orientation Course for New Judges' (1998) 115 *SALJ* 111 at 112.

> as the watchdog over the Constitution and its Bill of Rights – even against the State."[19]

[58] This underscores the importance of moral authority in upholding the rule of law. The courts' power lies not in force, but in the respect they command.[20] Should that respect be eroded, the judicial system's ability to function would be gravely impaired. The obligation to comply with court orders is central to our constitutional framework, and any disregard for such orders threatens to destabilise the very foundations of justice.

[59] In conclusion, we must take heed of the warning issued by Khampepe ADCJ:

> "An act of defiance in respect of a direct judicial order has the potential to precipitate a constitutional crisis: when a public office-bearer or government official, or indeed any citizen of this Republic, announces that he or she will not play by the rules of the Constitution, then surely our Constitution, and the infrastructure built around it, has failed us all."[21]

ARE THE RESPONDENTS GUILTY OF CONTEMPT OF COURT?

[60] The applicants relied on established principles regarding contempt of court, arguing that once it is demonstrated that an order was issued, the respondents were aware of it, and they failed to comply, a presumption of wilfulness and *mala fides* arises. The respondents, then, carry the evidentiary burden to dispel this presumption, which they

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[19] ***S v Mamobolo*** [2001] ZACC 17; [2001] ZACC 17; 2001 (3) SA 409 (CC); 2001 (5) BCLR 449 (CC) at para 16.

[20] A Hamilton *The Federalist No. 78* (1961) at 490.

[21] ***Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State vs Zuma and others*** supra above at para 140

failed to do. This lack of compliance and failure to submit confirmatory affidavits from key individuals (Ms Muller and Ms Mankga) left the applicants with a strong case for contempt.

[61] The respondents claimed they acted on legal advice, a defence similar to one raised in ***Samancor Chrome Ltd v Bila Civil Contractors (Pty) Ltd***.[22] However, the applicants pointed out that no details of the advice were provided, such as when it was obtained, who provided it, or what the advice entailed. Without this information, the applicants argued, the defence is insufficient to discharge the respondents' burden of proof regarding wilfulness and *mala fides*.

[62] One of the core arguments was that there were conflicting court orders regarding who was authorised to access the Municipality's bank accounts. The respondents asserted that ABSA was not in contempt because the orders created uncertainty about which faction should be given access. ABSA had been advised that it could not serve as an arbiter between the warring factions and that it should maintain a neutral position by holding the funds until a court clarified which order was operative. The respondents highlighted that both sides had laid claims to access, and without clarity from the court, the bank was justifiably cautious in withholding access.

[63] The respondents argued that ABSA acted *bona fide* and relied on sound legal advice. They contended that the bank, in refusing to grant access to the accounts, was acting reasonably to avoid liability and to protect itself from conflicting claims. They also

[22] ***Samancor Chrome Limited v Bila Civil Contractors (Pty) Ltd and Others*** [2022] ZASCA 154 (7 November 2022)

noted that Senior Counsel had advised the bank to wait for a clear order from the court regarding who was entitled to access the Municipality's accounts.

[64] The respondents vehemently denied any contempt or *mala fides* on the part of ABSA. They argued that the bank had acted responsibly by maintaining its neutral stance until the court provided a clear directive on which order should be enforced. They contended that threatening ABSA with contempt in such circumstances was unwarranted and highlighted the bank’s continuous attempts to seek clarity on the competing orders.

[65] The respondents argued that the application was vexatious and part of an ongoing pattern by the applicants to bring urgent litigation against ABSA without a legitimate basis. Given the repetitive nature of the applications and the costs involved, the respondents sought an order for punitive costs against the applicants, specifically on an attorney-and-client scale. They contended that the costs of defending against the applicants' claims had been unnecessarily burdensome and unjustified.

[66] It is undisputed that the respondents were aware of the orders issued by Naude-Odendaal J on 20 August 2024 and Phatudi J on 21 December 2023. The respondents were given ample opportunity to comply with these orders, yet they chose not to. The non-compliance is not in question; the issue before this Court is whether this non-compliance was wilful and in *mala fide*.

[67] In this regard, the respondents' conduct throughout the litigation points unequivocally to wilful defiance. Despite being fully aware of the binding nature of the orders, the

respondents chose to adopt an attitude of non-cooperation, attempting to justify their failure to comply on flimsy and legally indefensible grounds.

[68] The respondents' decision to rely on the advice of senior counsel as justification for their non-compliance reflects an approach characterised by both wilfulness and *mala fides*. Counsel's advice—suggesting that the court's orders could be disregarded due to a pending appeal—is patently incorrect and cannot, under any circumstances, serve as a lawful basis for defiance. The law is clear: unless a competent court suspends a court order, it remains binding, and all parties are obliged to comply. The respondents, by their actions, were clearly not acting in good faith. Instead, they wilfully chose to disregard the authority of this Court, relying on a misguided interpretation of the legal process as a pretext for their inaction.

[69] The fact that the respondents engaged senior counsel for advice does not, in any way, exonerate them from their responsibility to comply with the orders. The reliance on such advice, far from being a mitigating factor, actually aggravates the situation. Senior counsel, as officers of the court, should have provided advice grounded in the well-established principle that court orders must be respected unless set aside by an appellate court. The failure to adhere to this basic tenet of legal practice, even under the guise of legal advice, further confirms the respondents' wilfulness.

[70] Additionally, the conduct of the respondents leading up to this hearing—marked by evasive tactics, procedural irregularities, and refusal to meaningfully engage with the court's directives—indicates a broader pattern of bad faith. The respondents' procedural manoeuvres appear designed not to facilitate compliance with the law, but

rather to delay the inevitable enforcement of the court's orders. Their behaviour demonstrates an intent to frustrate the applicants and undermine the judiciary's authority.

[71] The respondents' decision to file notices of appeal, purportedly in terms of section 18(4) of the Superior Courts Act, further exemplifies their bad faith. These notices were procedurally defective and lacked any basis in law. The respondents knew, or ought to have known, that the filing of such notices did not, and could not, suspend the operation of the court's orders. Nevertheless, they pursued this course of action, relying on the appeal notices as a shield against enforcement, despite the absence of any suspension order. This conduct, too, highlights the respondents' deliberate strategy to evade compliance with lawful orders of the court.

[72] In addition to the defective appeal notices, the respondents presented no valid justification for their failure to comply with the court's orders. When questioned, they offered no coherent explanation for their conduct, and no evidence was provided to suggest that they were acting under any lawful authority or statutory mandate. Their assertion that ABSA, through its employees, was acting as a self-appointed administrator of the Municipality's financial affairs is not only legally unsupported but also wholly unconvincing. The respondents failed to point to any legislative framework or decision that would empower them to take such action. This further underscores the mala fides with which they approached the court's directives.

[73] The respondents' conduct must also be considered in the context of their relationship with the Municipality. Their refusal to allow the Municipal Manager and Chief Financial

Officer access to the Municipality's bank accounts, as ordered by the court, directly impacted the Municipality's ability to function. Without access to these accounts, the Municipality was unable to meet its financial obligations, pay its creditors, or comply with its statutory duties. Therefore, the respondents' failure to comply with the court's orders had significant and far-reaching consequences—not only for the applicants but for the Municipality as a whole. This reflects a complete disregard for the rule of law and the functioning of public institutions.

[74] The cumulative effect of the respondents' actions—ranging from their reliance on legally flawed advice to their deliberate procedural delays and their outright refusal to comply with the orders—paints a clear picture of wilfulness and bad faith. The respondents did not make a genuine effort to comply with the court's directives. Instead, they pursued a course of conduct aimed at frustrating the judicial process and undermining the authority of this Court.

[75] In light of these facts, it is clear that the respondents' non-compliance with the court's orders was both wilful and in bad faith. The respondents were fully aware of their obligations under the orders of Naude-Odendaal J and Phatudi J, yet they chose to defy those obligations based on legally unsound advice and without any credible justification. Their conduct throughout these proceedings demonstrates a deliberate and sustained effort to evade the court's authority and frustrate the applicants' legitimate efforts to enforce the court's orders.

[76] The respondents' wilfulness and *mala fides* are further evidenced by their procedural irregularities, reliance on defective appeal notices, and failure to provide any lawful

basis for their actions. Their actions have not only undermined the authority of this Court but also impeded the proper functioning of the Municipality and caused significant harm to the applicants.

[77] Having found that the respondents' non-compliance was both wilful and in bad faith, I conclude they are guilty of contempt of court. The sanction for this contempt must reflect the seriousness of their conduct and serve as a clear signal that the courts' authority will not be undermined. A failure to impose an appropriate sanction in these circumstances would send the wrong message—that parties can ignore court orders with impunity, relying on defective legal arguments or ill-advised counsel.

[78] it is clear that the respondents' conduct warrants a significant penalty, both to vindicate the authority of the court and to deter future acts of defiance. The rule of law is the cornerstone of our constitutional order, and no party—whether a private individual, a corporation, or a state entity—can be allowed to flout the authority of the courts without consequence.

[79] The seriousness of the respondents' recalcitrant behaviour should not be lost on us. The respondents' behaviour in this matter must be examined not only in terms of their failure to comply with the specific court orders of Naude-Odendaal J and Phatudi J but also within the broader context of their overall approach to this litigation. From the very beginning, the respondents have demonstrated a troubling pattern of conduct that can only be characterised as a deliberate and sustained campaign of defiance against the authority of this Court. Their wilful refusal to comply with lawful orders, their reliance on defective legal arguments, and their attempts to manipulate procedural rules to

their advantage all point to a strategy aimed at frustrating the judicial process and delaying the inevitable enforcement of the court's directives.

[80] This Court cannot overlook the fact that the respondents had, at every stage, ample opportunity to comply with the orders issued against them. The orders of Naude-Odendaal J and Phatudi J were neither ambiguous nor overly burdensome. They were clear and precise, outlining the steps the respondents needed to take to comply. Yet, the respondents chose to engage in a series of procedural maneuvers and legal obfuscations rather than simply fulfilling their obligations under the court's orders.

[81] This is not a case where the respondents were genuinely confused about the scope or meaning of the court's directives. On the contrary, they were fully aware of what was required of them, and they consciously decided not to comply. The record is replete with instances where the respondents were given clear instructions by the court, only to ignore them or attempt to circumvent them through spurious legal arguments. Such conduct demonstrates wilfulness and reflects a broader disregard for the rule of law.

[82] A particularly troubling aspect of this case is the role played by senior counsel in advising the respondents. The respondents have repeatedly relied on the advice of senior counsel to justify their non-compliance with the court's orders. While counsel's advice is certainly relevant, it cannot absolve the respondents of their responsibility to comply with the law. The advice provided to the respondents in this case—namely, that they could disregard the court's orders based on their pending appeal—was

clearly flawed and demonstrates a fundamental misunderstanding of the legal principles governing court orders and appeals.

[83] It is concerning that senior counsel, who are court officers, would provide advice that encourages non-compliance with a lawful court order. The role of counsel is to provide clients with sound legal advice that respects the courts' authority and upholds the rule of law. In this case, the advice given to the respondents was not only legally unsound but also appears to have emboldened the respondents in defying the court's orders.

[84] While the respondents may have acted on the advice of senior counsel, this does not mitigate their responsibility for their actions. As parties to the litigation, the respondents had a duty to comply with the court's orders, regardless of any advice they may have received. The fact that they chose to rely on flawed legal advice does not excuse their wilful defiance of the court's directives. If anything, it highlights their bad faith in evading their obligations under the law.

[85] As noted earlier, the non-compliance has multiple consequences on the Municipality. The respondents' failure to comply with the court's orders has had a direct and detrimental impact on the governance and service delivery functions of the Municipality. By denying the Municipal Manager and Chief Financial Officer access to the bank accounts, the respondents effectively incapacitated the Municipality's ability to perform its most basic functions. This failure to comply has created a cascading effect on the Municipality's ability to pay its creditors, including service providers, and to prepare the necessary financial statements for statutory reporting purposes.

[86] The consequence of this paralysis is far-reaching. The respondents ' actions have jeopardised essential services that the Municipality is mandated to provide, such as water, electricity, waste management, and other municipal functions. The inability to pay service providers has caused disruptions in the delivery of these services, leading to dissatisfaction and potential unrest within the community. This situation could have been avoided if the respondents had complied with the orders of this Court.

[87] In addition to the immediate impact on service delivery, the respondents' conduct has compromised the Municipality's ability to meet its statutory reporting obligations. The failure to prepare and submit accurate annual financial statements has serious implications for the Municipality's governance. It not only opens the Municipality to adverse findings from the Auditor-General but also affects its overall grading and standing, both locally and internationally. The global credit ratings of municipalities play a crucial role in their ability to secure funding and investment. The respondents' actions, by causing financial mismanagement and chaos within the Municipality, have contributed to the deterioration of its fiscal standing, which, in turn, affects the broader economic standing of the country.

[88] This Court cannot allow such reckless disregard for the rule of law to continue. The respondents' failure to comply with the court's orders has had tangible and harmful effects on the Municipality's operations, its ability to serve the public, and its standing in the global financial arena. Their conduct is not merely an affront to the applicants, but a violation of the public trust placed in them as custodians of the Municipality's financial affairs.

APPROPRIATE SANCTION

[89] As clearly outlined by the minority in ***Fakie***,[23] there is a significant and essential distinction between coercive and punitive orders. A coercive order allows the respondent the opportunity to avoid imprisonment by complying with the original order and ceasing the offending conduct. The primary purpose of such an order is to ensure the original order's effectiveness by compelling compliance. It only incidentally serves to vindicate the authority of the court that was disobeyed. In contrast, a punitive order carries different characteristics: imprisonment cannot be avoided by any subsequent action to comply with the original order, the sentence is not suspended, it reflects both the seriousness of the non-compliance and the respondent's wilfulness, and the order is shaped by the need to affirm the authority and dignity of the court, serving as a deterrent to others.[24]

[90] Would a coercive order be appropriate in this case? The answer is no. The respondents have failed to comply with six orders thus far and have tried to thwart the process at every step of the way. I think a coercive order would be both futile and inappropriate in these circumstances. It would not secure or compel compliance. This leads to the question of a punitive order.

[91] It is trite that clients stand and fall by their legal representatives' advice. However, they cannot rely on its incorrectness as an excuse for their guilt.

[23] ***Fakie*** supra above.
[24] Ibid 74-76.

[92] Accepting that the respondents' failure to attend court was due to them accepting their counsel's advice, which was subsequently confirmed in writing, too, albeit wrong in law, I accept that the fault for ultimately following the wrong advice is not entirely attributable to them. They employ their legal representatives and counsel under the impression that they have the requisite knowledge and skills to give correct advice.

[93] Furthermore, while the fact that the written legal opinion may have led the respondents to believe it was somewhat valid, this does not excuse their actions. In regard to the instructing attorney, I find it hard to accept that she genuinely believed the counsel's advice was correct. Had she conducted even a brief legal inquiry, she would have realised that counsel has no authority to advise a client to ignore a court's directive, ruling, or order, as doing so would undermine the court's authority. The respondents, particularly the third respondent, should have understood that counsel's opinion does not override a court's decision. At the very least, the third respondent should have undertaken her own legal research or sought a second opinion. Had she done so, it would have been clear that the most appropriate advice to give under such circumstances would have been to comply with the court's directive. If dissatisfied with the outcome, the proper course of action would have been to appeal or seek a review. This is how counsel and the instructing attorney should have approached the matter in accordance with their professional duties.

ABSA (First Respondent).

[94] The sanction the applicants sought against ABSA for being found in contempt was a fine of R 100 000.00 (one hundred thousand rand).

ABSA Employees (Second and Third Respondents)

[95] The applicant seeks a 90-day imprisonment sanction against ABSA's employees if they are found to have been in contempt of the two orders, either individually or collectively.

[96] The respondents were provided with a clear opportunity to furnish arguments regarding the appropriate sanction should they be found in contempt. This was an invitation to demonstrate respect for the authority of the court and engage meaningfully with its processes, as is expected of all parties bound by the rule of law. However, the respondents blatantly ignored this opportunity, persisting in their demonstrably flippant attitude towards the court. Their failure to participate deprived this court of any mitigating factors that might otherwise have informed the determination of an appropriate sanction. Such conduct signals a troubling disregard for the judiciary's authority, which is a cornerstone of the rule of law and fundamental to maintaining a functioning legal order.

[97] The gravity of this contempt is further underscored by the tangible consequences of the respondents' non-compliance with previous court orders. The Municipality, as an organ of state, has been thwarted in performing its statutory and administrative duties. The inability to access its bank accounts has directly resulted in its failure to discharge essential functions, including the payment of employee salaries and the collection of refuse—services that are critical to the public welfare. This obstruction not only frustrates the Municipality's statutory mandate but also erodes public trust in both the local government and the judiciary's ability to enforce its decisions.

[98] The sanction must therefore reflect the seriousness of this contempt, addressing both the respondents' specific disregard for the court's authority and the broader implications for governance and the rule of law. Courts cannot permit such conduct to undermine their role as the ultimate arbiters of justice. Respect for the authority of judicial orders is not optional; it is foundational to a legal system that aspires to fairness, accountability, and the equitable administration of justice.

[99] The failure to comply with judicial orders, particularly in cases where public welfare is directly affected, is a matter of significant concern. The respondents' non-compliance has had a direct and harmful impact on the Municipality's capacity to perform its duties, affecting the very citizens who rely on these services for their well-being. The respondents have failed to recognise that the court's orders are not merely formalities but essential mechanisms for ensuring the effective functioning of the state. By disregarding these orders, the respondents have undermined the rights of the Municipality's employees, as well as the broader community that depends on public services.

[100] In light of these factors, the court must send a clear message that such behaviour will not be countenanced. The respondents' refusal to comply with lawful court orders is not only an affront to the authority of this court but also a deliberate act of obstruction that threatens the very foundation of governance and public service. The sanction imposed should serve not only to punish the respondents but also to reinforce the principle that no individual or institution is above the law. It is imperative that this court acts decisively to protect the integrity of its orders, ensuring that the rule of law is upheld and that the public's trust in the judicial system is maintained.

[101] Furthermore, this court must recognise the broader implications of allowing contempt to go unchecked. The rule of law is essential for ensuring that all citizens, whether individuals or government entities, can rely on the certainty and predictability of legal decisions. When individuals or institutions flout judicial orders without consequence, they undermine this certainty and erode the public's confidence in the legal system. Such conduct cannot be tolerated, as it directly threatens the effective functioning of government and the protection of public rights. In this context, a firm and appropriate sanction is necessary not only to uphold the authority of the court but also to deter similar actions in the future.

[102] The court, in this instance, must act in the interest of justice and the rule of law by imposing a sanction that reflects the seriousness of the respondents' conduct. To do otherwise would be to send a dangerous message that court orders can be ignored with impunity, undermining the very foundation of legal authority and governance. The court's decision must therefore reinforce the principle that contempt of court will result in serious consequences, both as a deterrent and as a safeguard to preserve the rule of law and the public's trust in the judicial process.

[103] Accordingly, I hold that ABSA is liable to pay R100, 000. The second and third respondents are ordered to pay R50,000 each and also be subject to periodic imprisonment for 30 (thirty) days. They must present themselves to the correctional services at 16h00 on Friday and be released at 04h00 on Monday. This will continue for 15 weekends. I make the order of periodic imprisonment in light of the fact that the two respondents are women who may have families that they provide for and I do not want to unduly hamper them for discharging those duties.

BEHAVIOUR OF COUNSEL IN THESE PROCEEDINGS

[104] I pause here to reflect on counsel's behaviour before the courts. Disrespect for our court's authority, both *ex facie* and *in facie,* has become an unprecedented trend that has, over the recent years hastily become entrenched and somewhat normalised in the profession and in society.

[105] Nowadays, practitioners have even resorted to misadvising their clients not to regard or abide by a court order, endorsing or proffering incorrect advice that they know or ought to know is plainly wrong. This is what happened in this case.

[106] A few well-known examples where such reprehensible behaviour has been evinced in court and commissions by not only legal practitioners but also their clients who were, in most publicly reported cases been high ranking public office bearers and, in some instances, lay members of the public do not require extensive research but can easily found on online on different platforms. I will not burden this judgment by noting all these instances.

[107] Recently, legal practitioners have been so bold as to disrespect a judge or colleague while court is in session and in the presence of television media to such an extent that the news headlines would be inundated with the legal practitioner's behaviour as the headlines. Most of the time, legal practitioners behave in a way they believe is a progressive approach. I beg to differ. Such conduct is not progressive and is at odds with our Constitution's dictates, values and ethos. More so, the constitutional injunction that all persons (natural and juristic, including organs of state) are to respect

the independence and authority of courts and their orders. The Constitution further places an injunction on all the other arms of governments, including their office bearers, to protect and promote respect for the courts and support the work and functioning of the institution.

[108] If legal practitioners, who are officers of the court and owe their highest duty to it, fail to show respect to judges or presiding officers (including magistrates) who represent the judiciary, one of the three arms of government, this sets a problematic example. Clients of these practitioners, including high-ranking politicians, public office bearers, eminent businesspersons, and moguls, are unlikely to develop respect for the judiciary if they observe such behaviour. Laypersons and individuals observing court proceedings, whether in person or via television and streaming platforms, are similarly influenced.

[109] These observers may include law students or high school learners aspiring to study law. If they see legal practitioners openly displaying disrespect towards judges, it undermines the dignity of the court. When a judge appears timid and helpless on the bench, perhaps to prevent a degeneration of proceedings or avoid a complaint before the judicial conduct tribunal, it further erodes public confidence. This dynamic fosters trial by media and invites unwarranted attacks or baseless criticism on social and mainstream media platforms.

[110] Judicial officer bearers are not sacrosanct and may be criticised for their judicial conduct and reasoning in decisions. This is part of a healthy deliberative democracy where everyone is held accountable. Judges are neither above nor below the law.

They are not immune to reasoned criticism. However, ad hominin attacks at judges are anything but reasoned. Attacks on a judge based on their race, sex, and even age are instances of bigotry and should not be tolerated at all. These kinds of attacks are bad faith attacks that undermine our hard-fought constitutional project.

[111] If one disagrees with the order and reasoning of a judgment, there are mechanisms to challenge such. One can pursue a review or an appeal. If one believes that a judge will either be biased (real or apparent), they can bring an application for that judge to be recused. The law has ways to deal with these problems, and there is hardly ever a need or justification to disrespect, undermine and disregard a judicial officer simply because they do not like them or do not think they are competent. This is misplaced and threatens the functioning of the judiciary and our constitutional democracy.

[112] During the opening of the Constitutional Court in 1995, Nelson Mandela remarked that 'we expect you to stand on guard not only against direct assault on the principles of the Constitution, but against insidious corrosion.' The 'you' in the statement referred to the judges of the Constitutional Court, but I think this statement applies to judges and judicial officers broadly. Our duty is to guard against any assault on the Constitution and against insidious corrosion. These attacks against judges and the judiciary are examples of such insidious corrosions.

[113] Khampepe ACDJ, dealing with a contempt of court case, eloquently asserted that:

> 'It is indeed the lofty and lonely work of the Judiciary, impervious to public commentary and political rhetoric, to uphold, protect and apply the Constitution and the law at any and all costs. The corollary duty borne by all members of South African

> society – lawyers, laypeople and politicians alike – is to respect and abide by the law, and court orders issued in terms of it, because unlike other arms of State, courts rely solely on the trust and confidence of the people to carry out their constitutionally-mandated function. The matter before us has arisen because these important duties have been called into question, and the strength of the Judiciary is being tested. I pen this judgment in response to the precarious position in which this Court finds itself on account of a series of direct assaults, as well as calculated and insidious efforts launched by former President Jacob Gedleyihlekisa Zuma, to corrode its legitimacy and authority. It is disappointing, to say the least, that this Court must expend limited time and resources on defending itself against iniquitous attacks. However, we owe our allegiance to the Constitution alone, and accordingly have no choice but to respond as firmly as circumstances warrant when we find our ability to uphold it besieged.'[25]

[114] These observations are highly pertinent. Disrespect towards a presiding officer not only undermines the individual appointed to the role but also weakens the judiciary as an institution. Such conduct is also a direct affront to the Constitution. Section 165 of the Constitution, which establishes the judiciary as an independent branch of government, explicitly demands respect for the courts and their orders, as well as the protection and promotion of the judiciary's authority. This concerning trend, in my view, reflects not only racial undercurrents in some instances but also generational divides. Younger legal practitioners—whether junior attorneys, advocates, or senior counsel—often mistakenly equate activism and progressiveness with conduct that disregards

[25] ***Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others*** [2021] ZACC 18; 2021 (9) BCLR 992 (CC); 2021 (5) SA 327 (CC) at para 1.

the professional courtesy and decorum ingrained in legal ethics. These principles, taught both before and after admission to the profession, are not outdated traditions but essential elements of the legal framework that have been upheld for generations.

[115] It is my observation that respondents' legal representatives were engaged in conduct that hampered the administration of justice through the advice they gave to their clients on, *inter alia*, compliance with the Court's directives (and legal strategy adopted in opposing this application) they gave to their clients and certain conduct evinced *ex facie* respectively. Thus, ultimately, they failed to discharge their duties as the officers of the court. As the Supreme Court of Appeal recently quoted with approval this passage:

> 'The lawyer's duty to the court is an incident of the lawyer's duty to the proper administration of justice. This duty arises as a result of the position of the legal practitioner as an officer of the court and an integral participant in the administration of justice. The practitioner's role is not merely to push his or her client's interests in the adversarial process, rather the practitioner has a duty to "assist the court in the doing of justice according to law.

[116] The duty requires that lawyers act with honesty, candour and competence, exercise independent judgment in the conduct of the case, and not engage in conduct that is an abuse of process. Importantly, lawyers must not mislead the court and must be frank in their responses and disclosures to it. In short, lawyers "must do what they can to ensure that the law is applied correctly to the case.

[117] The lawyer's duty to the administration of justice goes to ensuring the integrity of the rule of law. It is incumbent upon lawyers to bear in mind their role in the legal process and how the role might further the ultimate public interest in that process, that is, the proper administration of justice. As Brennan J states, "[t]he purpose of court proceedings is to do justice according to the law. That is the foundation of a civilized society.'' When lawyers fail to ensure their duty to the court is at the forefront of their minds, they do a disservice to their client, the profession and the public as a whole.'[26]

ORDER:

[118] In the premise, I make the following order:

1. This matter is enrolled and heard as a semi-urgent application.

2. The respondents are in contempt of court of this court's orders per Naude-Odendaal J, dated 20 August 2024, and Phatudi J, dated 21 December 2023.

3. The first respondent is ordered to pay the Registrar of this Court a fine of R100 000 (one hundred thousand rand).

4. The second and third respondents are ordered to pay R50,000 (fifty thousand rand) each and also be subject to periodic imprisonment for 30 (thirty) days, comprising of weekends and public holidays. They must present themselves to the Station Commander of the Polokwane Police Station every Friday at 13h00 or the day

[26] *Public Protector of South Africa v Chairperson of the Section 194(1) Committee and Others* [2024] ZASCA 131; [2024] 4 All SA 693 (SCA) at para 47.

preceding a public holiday at 13h00 to be processed and committed to the nearest correctional facility for the duration of the weekend or public holiday and are to be released at 4am every Monday or next working day if they were committed for a period during the public holiday. This will continue for 15 weekends or less, if the public holidays complete the 30 days periodical imprisonment imposed.

5. The second and third respondents are to present themselves to the Station Commander of the Polokwane Police Station within 5 days of this order. Failing which, the Station Commander and Provincial Commissioner of Polokwane are directed to cause the respondents to be arrested, processed, and committed to a correctional facility in the Province to commence serving their sentence per paragraph 3 of this order.

6. The respondents shall be jointly and severally liable for the costs of this application on attorney and client scale.

[redacted]

M MORGAN

ACTING JUDGE OF THE HIGH COURT,

POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE APPLICANTS : ADV AB ROSSOUW WITH ADV J AL PRETORIUS

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FOR THE RESPONDENTS : ADV GW AMM SC with ADV. KM BOSHOMANE

INSTRUCTED BY : LOWNDES DLAMINI ATTORNEYS