

SOUTH AFRICA / JUDGMENT

Maluleke v Honourable Mr Justice N Ranchod and Others (HCAA 24/2023 ; 215/2023) [2025] ZALMPPHC 52 (20 March 2025)

[2025] ZALMPPHC 52

COURT

Limpopo High Court, Polokwane

BEFORE

Naude-Odendaal, Makoti, Pillay

CASE / FILE NUMBER

HCAA 24/2023

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REPUBLIC OF SOUTH

AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION,

POLOKWANE)

CASE №: HCAA

24/2023

Court

a quo CASE

No: 215/2023

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE

JUDGES: YES/NO

(3) REVISED.

DATE:

20/03/2025

SIGNATURE:K.L.

PILLAY AJ

In

the matter between:

TSUNDZUKA
KEVIN MALULEKE
APPELLANT
and
THE
HONOURABLE MR JUSTICE N RANCHOD
FIRST
RESPONDENT
THE
HONOURABLE MR JUSTICE B MASHILE
SECOND
RESPONDENT
THE
HONOURABLE MR JUSTICE EM MAKGOBA
THIRD
RESPONDENT
MINISTER
OF JUSTICE AND CORRECTIONAL
SERVICES
FOURTH
RESPONDENT
CHIEF
REGISTRAR OF THE LIMPOPO DIVISION
OF
THE HIGH COURT: POLOKWANE
FIFTH
RESPONDENT
LIMPOPO
PROVINCIAL COUNCIL
SIXTH
RESPONDENT
CORAM
: NAUDE-
ODENDAAL J MAKOTI AJ, et PILLAY AJ.
HEARD
: 25
OCTOBER 2024
DELIVERED
: 20
MARCH 2025

JUDGMENT

PILLAY AJ:

INTRODUCTION:

[1] The matter that serves before us is an appeal being sought by the appellant, against the dismissal by Mthimkulu AJ of the appellant's application for contempt of court, delivered on 24 May 2023. The appellant's leave to appeal was granted by Mthimkulu AJ on 21 June 2023. The contempt of court application was only opposed by the sixth respondent in the court a quo and before this court.

GROUND OF APPEAL:

[2] The appellant raised various grounds of appeal as contained in the notice of appeal dated the 18 July 2023[1] in respect of the judgment and order of Mthimkulu AJ delivered on 24 May 2023[2].

BRIEF**BACKGROUND:**

[3] The appellant launched an ex parte application[3] in the High Court of South Africa Limpopo Division Polokwane seeking:

[3.1] Consent to institute proceedings against the first three respondents who were all judges.

[3.2] Seeking a postponement in respect of the striking off the roll as legal practitioner proceedings against him, which was set down for hearing on 17 January 2023.

[3.3] An interdict preventing the judges from hearing the matter.

[3.4] A review of the appointment of the first and second respondents scheduled to hear the matter with the third respondent.

[4] This application served before Acting Judge President Semanya who granted the following order[4]:

[4.1] The matter is to be heard in camera, due to the parties involved and the nature of the application.

[4.2] The application is postponed sine die.

[4.3] The applicant is ordered to serve the papers on the respondents by the 17 February 2023.

[4.4] The respondents are to file their opposing papers on or before the 8 March 2023.

[4.5] The application for postponement is to be heard by the judges seized with the matter as set down today the 17 February 2023.

[4.6] Costs are to be cost in the application.

- [5] The appellant sought the postponement in the main striking off proceedings and same was refused. It is worth mentioning that the appellant had elected not to file any answering affidavit, to the allegations in that court. The matter was finalised on 17 January 2023, with the appellant being struck off the roll of legal practitioners. The appellant served the interlocutory application via email on the respondents on 10 February 2023. This was not in compliance with the provisions of Rule 4(1)(a) of the Uniform Rules of Court in respect of service and in contrast to the undertaking as contained in the interlocutory application, that service would be by Sheriff and in respect of the Judges in compliance with the rules.
- [6] None of the respondents filed opposing papers in respect of the said application. The appellant, thereafter, launched an urgent contempt of court application[5] due to the respondents failing to file the opposing papers by 8 March 2023 deadline. This application was opposed by the sixth respondent[6] and ultimately resulted in the judgement and order delivered by Acting Judge Mthimkulu[7]. This decision is before us for adjudication, consequent to the leave to appeal[8], granted to the appellant.

ISSUES

RAISED BEFORE THIS COURT:

- [7] The appellant indicated that the court a quo erred in dismissing the contempt of court application. The appellant argued that all the legal requirements for civil contempt had been satisfied and that the respondents offered no valid explanation for not complying with the court order dated 17 January 2023.
- [8] The appellant highlighted that the court a quo wrongly found that the respondents chose not to file opposing papers by 8 March
2023. The appellant argued that this conclusion could not be reached, as the respondents had not submitted any version to the court a quo, explaining their failure to comply, with the court order.
- [9] That the court a quo erred by concluding that the first and second respondents, who had proceeded with the main application on 17 January 2023, made it unnecessary for them, to oppose the interlocutory application. This finding, according to the appellant was not supported by any evidence provided by the respondents.
- [10] The appellant maintained that there was a binding directive to the respondents to file opposing papers by 8 March 2023 and same must be complied with unless and until, set aside by the court. Therefore, the court a quo erred by misinterpreting the order and treating it as non-peremptory and discretionary.

- [11] The appellant contended that the court a quo erred in failing to consider that the respondents had not formally placed on record, any decision not to file opposing papers, which according to the appellant was necessary. Moreover, the appellant claimed that the court a quo erred, by implying that the respondents had the option, to not file opposing papers, arguing that the court order did not provide for such a discretion to be afforded the respondents.
- [12] The appellant noted that the version before the court a quo in respect of the civil contempt application was unchallenged, as no answering affidavits were filed by the respondents, to rebut the appellant's claims, and the court a quo erred by not giving sufficient weight, to this uncontested evidence. That the court order was binding on the respondents requiring an answer and regardless of being correct or incorrect, same was to be complied with by the respondents.

The appellant indicated that the court a quo erred in both the interpretation of the court order, and the legal principles regarding contempt proceedings, and therefore erred in dismissing the application for contempt of court against the respondents. The appellant sought that the appeal succeeds with a punitive cost order to be granted against the respondents.

- [13] The sixth respondent in answer, argued that the appellant misunderstood and misconstrued the contents of the court order. The sixth respondent maintained that the court a quo was correct in its interpretation, that the court order provided timelines in which the respondents were to file their answering affidavits, if they sought to oppose the application.
- [14] The sixth respondent indicated that once the main proceedings continued, on the 17 January 2023 and the appellant was struck off the roll of legal practitioners, this application and court order became moot, thus not requiring any response from the respondents, in respect of the interlocutory application.
- [15] The sixth respondent argued that the court a quo correctly applied the principles in respect of civil contempt of court and found no basis to find the respondents in contempt of court. The sixth respondent sought that the appeal be dismissed with costs.

THE LEGAL PRINCIPLES AND ANALYSIS

- [16] Section 47 of the Superior Courts Act[9] indicates as follows:
- (1) Except for an application made in terms of the Domestic Violence Act, 1998 (Act 116 of 1998), no civil proceedings by way of summons or notice of motion may be instituted against any judge of a Superior Court, and no subpoena in respect of civil proceedings may be served on any judge of a Superior Court, except with the consent of the head of that court or, in the case of a head of court or the Chief Justice, with the consent of the Chief Justice or the President of the Supreme Court of Appeal, as the case may be.

[S 47(1) substituted by s 20 of Act 116 of 1998 with effect from 14 April 2023.]

- (2) Where the issuing of a summons or subpoena against a judge to appear in a civil action has been consented to, the date upon which such judge must attend court must be determined in consultation with the relevant head of court.

[17] In *N v Lukoto*[10] Ngoepe JP dealt with an application brought in terms of section 25(1) of the Supreme Court Act 1959, which is the precursor

to section 47(1) and noted the following:

“[4] It is necessary to explain how such applications are traditionally dealt with and the reasons therefor. Normally, it is the Judge President who would receive such an application and consider it in Chambers. This mechanism would quietly dispose of patently frivolous claims which might unjustifiably damage the reputation of a Judge. Where there appears to be at least an arguable case, the Judge President would approach the Judge concerned. In appropriate circumstances, the Judge President might even urge the Judge to oblige; for example, where there is a clear debt against the Judge. The Judge President would impress on the Judge concerned that those who are the ultimate enforcers of the law must themselves make every endeavour to observe it; also of importance is to avoid the appearance of a Judge as litigant in court, particularly in the lower courts. Where there seems to be an arguable case against the Judge, but the latter remains recalcitrant, the Judge President would give the Judge the opportunity to oppose the application for leave to sue him/her. The matter may then be disposed of in Chambers or in an open court, depending on the intensity of the opposition. Once an applicant shows good cause, leave would be granted.”

[18] In the *Lukoto* matter, the intended action related to a maintenance inquiry, and the proceedings were initiated by a letter from the Public Prosecutor. The request was granted as it was not opposed by the Respondent. There were delays in the finalization of the proceedings requiring the Public Prosecutor to submit a further request in writing seeking consent. The Judge President on determining that leave to institute proceedings was opposed, directed that a formal affidavit be filed, a case number be allocated, and the respondent be given an opportunity to file an opposing affidavit. The matter was heard in open court.

[19] The procedure to be followed in the institution of legal proceedings against a Judge, were endorsed by Mlambo JP in *Engelbrecht v Khumalo*[11] as follows:

“In essence the person seeking consent writes to the head of the court concerned. On receipt of the request the head of court discusses the matter with the judge concerned and may thereafter either grant the consent requested or direct that a formal process be followed

involving the filing and service of an application accompanied by the necessary affidavits. The head of court will then hear argument and thereafter dispose of the matter as he deems fit.”

“I followed a similar approach in this matter. I considered the correspondence from Engelbrecht and from the judge and advised Engelbrecht’s attorneys that I was disinclined to grant consent based on the correspondence at my disposal. I advised that should Engelbrecht be so inclined he was at liberty to pursue the matter formally through a court process where both parties would be afforded the opportunity to file affidavits and advance submissions.”

[20] In the case of *Mthenjwa v Steyn and Another*[12] the court highlighted the following:

“[12] I now revert to the question whether this application should have been preceded by a request for leave to the Head of Court. In my view, the words employed by the legislature in s 47(1) are couched in peremptory terms. The legislature’s intention is to prohibit the institution of any civil proceedings, be it by way of summons or by Notice of Motion, against a Judge without the consent of the Head of that Court in which the Judge serves. The question to be asked is whether the proceedings under consideration constitute civil proceedings by way of Notice of Motion referred to in s 47(1). These proceedings were initiated in the form of a formal application issued by the Registrar of the Court without the knowledge and involvement of the Head of Court. The application was served on the first respondent placing her on terms to respond to the substantive allegations made in the founding affidavit and annexures thereto. She was required to respond within a time frame as prescribed by the Uniform Rules of Court. The proceedings were not specifically directed at the Head of Court. The Head of Court only came into the equation right at the end of the spectrum, after pleadings have closed and the matter was ripe to be heard. Once the application was issued by the Registrar it became a public document to which any member of the public had access. It follows that the present proceedings constitute proceedings referred to in s 47(1) and therefore, leave of the Head of Court was necessary before they could be instituted.

[13] There are good reasons why a form of ‘informal’ notice or communication to the Head of Court is necessary before formal legal proceedings to obtain consent are instituted. This is the substantive aspect of the requirement. The Head of Court must first determine whether the claim, to which the request for consent relates, would have merit if instituted. He/she would also take the matter up with the Judge concerned and where appropriate, impress upon the Judge to satisfy the claim/demand or accede to the consent. Where the Judge unreasonably refuses to satisfy the claim or accede to the request, a party seeking consent would be granted consent to bring a formal application. In such event the Judge would be exposed to filing papers in response to the application which may ultimately be adjudicated either in chambers or in open court.

[14] The requirement to bring a request before issuing a formal application to seek consent serves as a screening process for the Head of Court. It contributes to the need to insulate Judges against ill-conceived and unwarranted legal proceedings. This statutory requirement for the insulation of Judges should therefore start at the very beginning when legal proceedings are contemplated and not only when substantive proceedings are instituted. The requirement for an informal request to institute proceedings is not intended to be a mere courtesy, but an opportunity for the Head of Court not to allow baseless, unwarranted and ill-conceived litigation against the Judge[13].The Judge who refused to heed the advice of

the Head of Court to settle the dispute or agree to the consent exposes himself/herself to a formal application for consent to the Head of the Court.

- [15] In conclusion I find that the application brought by the applicant is fatally defective on two fronts. Firstly, it is not directed at the Head of the Court. It is issued through the Registrar's Office and directed at the Court. Secondly, the application is issued without the consent of the Head of the Court. For these reasons the application falls to be dismissed."
- [21] It is apparent that there was no preceding informal notice, by letter or otherwise requesting authorization to institute proceedings against the three Judges, prior to the urgent ex-parte application before the Acting Judge President Semenya in terms of Section 47(1) of the Superior Courts Act. The various case law as highlighted above is prescriptive of how such proceedings, are to be litigated and cannot be ignored. The appellant in compliance with the provisions as highlighted above, was bound to provide the Head of Court Acting Judge President Semenya, some form of notice by letter or otherwise seeking authorisation to institute proceedings against the Judiciary. This court is alive to the fact that urgency, would not supersede compliance with the provisions of Section 47(1).
- [22] In terms of the court order the application was postponed sine die. The court order in total is silent in respect of the authorisation, required to institute proceedings against the three Judges. It cannot be inferred that the appellant had received the relevant permission to institute proceedings in terms of Section 47(1), against the three Judges and unless or until the said permission was granted, the application was premature, as highlighted above in the Mthenjwa matter that the need for authorization was necessary prior to any litigation.
- [23] It is not disputed that the interlocutory application sought to halt the finalization of the striking off proceedings. The appellant was struck from the roll of advocates, on the same date, after the postponement, which was sought, was refused. It is not in dispute that the appellant emailed the respondents the application and court order and the contempt of court application was based on the respondent's failure to file answering papers, which was dismissed.
- [24] The court order in issue, firstly ordered, the interlocutory proceedings be postponed sine die, for the purposes of service of this application on the respondents. This court accepts that this application was not served by way of sheriff on the respondents. Regard was had to Rule 4(1) of the Uniform Rules of Court[14]wherein provision is made concerning service of the application and court order. The appellant argued that the manner of service was irrelevant, provided that the court order came to the knowledge of the respondents. This argument is untenable, especially where there was no proper service of this application and court order on the respondents. Service by email on the personal email addresses of the Judges, cannot be motivated, as being compliant with the rules as well as Section 47(1). This court aligns itself with the argument raised by the sixth respondent, that this was not proper service, for the application to have been entertained. The issue of service was not ventilated in the court a quo, and at face value, the fact that the first to the fifth respondents were not

before the court, proper service on them was required,

before the court could proceed with the application. This court noted that based on the presence of the sixth respondent, in the court a quo, that the appellant relied on the allegation that the respondents had knowledge of the court order and is in contempt of same.

[25] The Supreme Court of Appeal in *Fakie NO v Systems (PTY) LTD*[15] dealt with the prerequisite for the committal in respect of contempt of court and held,

“[9] The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed ‘deliberately and mala fide’. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).”

[10] These requirements – that the refusal to obey should be both wilful and mala fide, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt - accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court’s dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent.”

In *Matjhabeng Local Municipality v Eskom Holdings LTD and Others*[16],

The Constitutional Court held that the standard of proof to be applied in contempt cases varied in accordance with the consequences of the remedy. If the sanction involved committal, the standard of proof (beyond reasonable doubt) was always required. But if it involved civil remedies, the civil standard of proof (on a balance of probabilities) sufficed.

[26] The Constitutional Court noted in the matter of *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*[17]: [37] “As set out by the Supreme Court of Appeal in *Fakie*, and approved by this Court in *Pheko II*, it is trite that an applicant who alleges contempt of court must establish that (a) an order was granted against the alleged contemnor.

(b) the alleged contemnor was served with the order or had knowledge of it; and (c) the alleged contemnor failed to comply with the order.[18] Once these elements are established, wilfulness and mala fides are presumed and the respondent bears an evidentiary burden to establish a reasonable doubt.[19] Should the respondent fail to discharge this burden, contempt will have been established.”

- [27] Based on the aforesaid, it would be prudent to first establish the contents of the court order, its literal meaning, the phrase on which the appellant relies in respect of the contempt of court proceedings, and finally in the context of the proceedings whether the respondents, were in contempt, in not complying with the court order.
- [28] The appellant relies on paragraph 4 as motivation for seeking the respondents to be held in contempt of court. This court notes that it has been held by various courts and on numerous occasions, that the provision sought to be relied upon must be read in context and in its entirety and not in isolation of the other provisions. Paragraph 4 of the court order reads, “the respondents are to file their opposing papers on or before 8 March 2023.” The sixth respondent disagreed with this contention relying on the aspect that paragraph 4 refers to time periods and argued that the entire interlocutory application became moot, once the main striking off application, was finalised on 17 January 2023.
- [29] This court had regard to paragraph 5 of the court order which read, “The application for postponement is to be heard by the judges seized with the matter as set down today the 17 February 2023.” The appellant was obliged to seek a postponement of the main striking off application. This was dismissed and the main striking off application was finalized. Furthermore, based on the refusal of this postponement application, the prayers sought in the interlocutory application, concerning the interdict and review pertaining to the Judges, and in respect of the main striking off application, was rendered moot already on the 17 February 2023, with specific reference to paragraph 5 of the court order. The need to respond to this interlocutory application and file opposing papers, in respect of paragraph 4 of the court order, was no longer relevant.
- The court a quo took cognisance of this fact, when considering the entire court order, and adopted the approach of considering paragraph 4, in context with all the other paragraphs of the court order, which was the proper approach, as paragraph 4 could not be read in isolation.
- [30] The court a quo was correct in its appreciation of the fact that the wording of paragraph 4 made specific reference to timelines as this paragraph flows from paragraph 3 which speaks to the timeframe in which this interlocutory application was to be served on the respondents and the date by which the respondents were to respond.
- [31] Rule 6 of the uniform rules of court provide for the procedure of how applications are to be ventilated. Timeframes are dictated by the rules and if the respondent did not comply, the applicant would be entitled to set the matter down on the unopposed court roll, for the court order to be granted, due to the default of the respondent. This was exactly what transpired in the main striking off application, where the appellant failed to file any answering papers, to the allegations and the matter proceeded on an unopposed basis.
- [32] The appellant in this matter was ordered to serve the application and court order on the respondents, this was not done in compliance with the rules. The appellant sought to proceed with contempt of paragraph 4 of the court order only, instead of setting the matter down on the unopposed court roll for the ventilation of this interlocutory application. Had

this interlocutory application been entertained, the relief sought was destined for failure due to the noncompliance of Section 47(1) in respect of the Judges and the main application being granted against the appellant, rendering the court order moot. This

court is satisfied that the court a quo was correct in its findings that paragraph 4 of the court order pertained to timeframes to which the respondents were to answer this interlocutory application. Once the appellant was struck from the roll of advocates on the 17 February 2023 this interlocutory court order was rendered moot.

- [33] The court a quo was correct in its finding that paragraph 4 was not prescriptive requiring the respondents to answer to the application, instead it set the period in which this answer was to be served and filed. The appellant's assertion that the court order did not provide for the discretion, to be afforded the respondents whether to answer or not, but rather that the respondents were ordered to respond is not a sustainable argument, considering the court order, being read in its entirety and in context.
- [34] As indicated earlier, before the principles relevant for contempt of court was applicable, it was necessary to ventilate whether there was a court order placing an onus on the respondents to comply. In this matter the appellant failed to prove that there was a court order which was prescriptive to the respondents to respond. The appellant was selective in only relying on paragraph 4 in motivation for the contempt of court instead of considering the entire court order and as such the court a quo was correct in the conclusion reached that the application for contempt of court be dismissed. The appellant failed to convince this court to find differently and as such the appeal must fail.
- [35] This court was at pains to reiterate the principles relevant for proceedings to be instituted against Judges, this was the starting point. From the content of the ex parte application, the language, tone and manner revealed that the appellant showed a lack of respect for the Judges, who were cited as respondents and a disdain of the process to be followed, when seeking authorization from the Acting Judge President Semanya. Instituting proceedings against the Judges, before obtaining permission to do so, does not bode well with this court and must be censored. What is apparent is that the appellant, amidst not having received authorisation to institute proceedings against the Judges, proceeded to institute the contempt of court application. The appellant thereafter, in non-compliance of the rules in respect of service, sought that the respondents be found in contempt of the court order. Clearly the appellant has a double standard in respect of failing to comply with the rules, but quick to seek orders for contempt of court, in respect of the respondents, amidst the fact that they were not properly before the court a quo, for the order to be granted. This style of litigation harms our Judicial system and must be avoided at all costs.

CONCLUSION:

- [36] Based on all that has been said above and the reasons given, it is just and equitable that this appeal be

dismissed.

COSTS:

[37] The ordinary rule is that costs should follow the result, and the successful party is awarded costs on the scale as between party and party. The appellant sought cost if successful, on a punitive scale as between attorney and own client, motivating that contempt of court is so egregious, worthy of a higher cost order. The sixth respondent sought costs of the appeal. It is unnecessary to ventilate the cost order sought by the appellant, except to note that based on how this matter unfolded, had the sixth Respondent sought such order it would not have been difficult to grant.

ORDER:

[38] In the circumstances the following order is made:

[38.1] The Appeal is dismissed.

[38.2] The Appellant is ordered to pay the costs of the appeal in respect of the Sixth Respondent.

PILLAY AJ

ACTING JUDGE OF THE HIGH COURT, LIMPOPO DIVISION,

POLOKWANE

I, concur, and it is so ordered.

NAUDE-ODENDAAL J

JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

I, concur.

MAKOTI AJ

ACTING JUDGE OF THE HIGH COURT,

APPEARANCES:

Counsel for the Appellants

: Tsundzuka K Maluleke

Instructed by

: In Person

Counsel for the Respondent

: J F Moolman

Instructed by

: Prat Luyt & De Lange Attorneys

Date of the hearing

: 25 October 2024

Date of delivery of Judgment

: 20 March 2025

This judgment was circulated electronically to the parties' legal representatives by email. The date and time for delivery of this judgment is deemed to be 20 March 2025 at 13h00PM.

[1] See Notice of appeal record page 270 to 277 of volume E.

[2] See judgment pages 281 to 287 of volume E

[3] See pages 5 to 18 of volume A.

[4] See pages 175 to 176 of volume C.

[5] See pages 145 to 152 of volume C.

[6] See pages 188 to 191 of volume C

[7] See judgment pages 281 to 287 of volume E

[8] See page 290 of volume E

[9] Act 10 of 2013

[10] N v Lukoto 2007 (3) SA 569 (TPD) at 572B-E par 4

[11] 2016

(4) SA 564 (GP) at 566H-567C

[12] (9028/17)

[2017] ZAWCHC 161 (30 November 2017)

[13] Soller v President of the Republic of South Africa [2005] ZAGPHC 13 [2005] ZAGPHC 13; ; 2005

(3) SA 567 (T) at para 14.

[14] Rule 4(1)

(a) Service of any process of the court directed to the sheriff and subject to the provisions of paragraph (aA) any document initiating application proceedings shall be effected by the sheriff in one or other of the following manners— (i) by delivering a copy thereof to the said person personally:; (ii) by delivering a copy thereof at the place of residence or business of the said person, guardian, tutor, curator or the like to the person apparently in charge of

the premises at the time of delivery, being a person apparently not less than sixteen years of age. For the purposes of this paragraph when a building, other than an hotel, boarding-house, hostel or similar residential building, is occupied by more than one person or family, 'residence' or 'place of business' means that portion of the building occupied by the person upon whom service is to be effected; (iii) by delivering a copy thereof at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently in authority over such person; if the person so to be served has chosen a domicilium citandi, by delivering a copy thereof to a person apparently not less than sixteen years of age at the domicilium so chosen;.....Rule 4(1)

- (d) It shall be the duty of the sheriff or other person serving the process or documents to explain the nature and contents thereof to the person upon whom service is being effected and to state in a return or affidavit or on the signed receipt that the person serving the process or document has done so.

[15]

[2006] ZASCA 52; 2006

- (4) SA 326 (SCA), at paragraph 9 and 10

[16] 2018

- (1) SA 1 (CC) at para 61

[17]

[2021] ZACC 18

- [18] See Pheko II above n Error! Bookmark not defined. at para 32; Fakie above n Error! Bookmark not defined. at para 22; and Consolidated Fish above n Error! Bookmark not defined. at 522E-H, which affirms Southey v Southey 1907 EDC 133 at 137.

- [19] Fakie id at paras 41-2 and endorsed by this Court in Pheko II id at para 36. Additionally, in Uncedo Taxi Service Association v Maninjwa 1998

- (3) SA 417 (E) (Maninjwa) at 425C-G and 428A-C, it was held that the fundamental right to a fair criminal trial guaranteed by section 35(3) of the Constitution

requires that, in order for an applicant in contempt proceedings to succeed, he or she must prove the elements of the offence beyond reasonable doubt. This principle was cited in Victoria Park Ratepayers' Association above n Error! Bookmark not defined. at para 17.

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