

SOUTH AFRICA / JUDGMENT

Plaintiffs Listed in Annexure "RAF 1" and Another v Road Accident Fund and Another (20784/2022) [2022] ZAGPPHC 672 (13 September 2022) [2022] ZAGPPHC 672

COURT

North Gauteng High Court, Pretoria

BEFORE

C J van der Westhuizen

CASE / FILE NUMBER

20784/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO.: 20784/2022

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED

13

September 2022

In

the matter between: PLAINTIFFS
LISTED IN ANNEXURE “RAF 1” First
Applicants
K
MALAO
INCORPORATED Second
Applicant
and
ROAD
ACCIDENT
FUND First
Respondent
COLLINS
LETSOALO: CHIEF EXECUTIVE OFFICER
OF
THE ROAD ACCIDENT
FUND Second
Respondent

JUDGMENT

van der Westhuizen, J

- [1] The applicants approached the court by way of urgency for an order for payment of all outstanding amounts relating to the applicants which were ordered and accepted by the first respondent and ancillary relief thereto and orders holding first and second respondents in contempt of court and the second respondent’s committal to prison, and ancillary orders thereto.
- [2] From the relief sought in the notice of motion, the primary purpose of the application is to obtain payment of all amounts granted in court orders and due to the applicants. The non-payment of the due amounts find the basis of the order for contempt. The order for contempt clearly was an attempt to enforce payment of the amounts due.
- [3] In view of the approach taken in this judgment, it is not required to traverse the history leading to the launching of this application. Suffice to record that considering the primary purpose of this application, that of enforcing payment of the due amounts, alternatively an order for contempt, traversing the history will not assist in any manner.
- [4] On behalf of the respondents, it was submitted that this application stands to be dismissed on a number of issues of which the primary issue was, namely, that the applicants were not entitled to seek a finding of contempt of court, where they seek to enforce a money order. Furthermore, the applicants did not discharge the onus resting upon them to satisfy a finding of contempt of court. The issue of contempt of court being premised upon the alleged non-compliance with a court order.

- [5] In *Matjhabeng Local Municipality v Eskom Holdings Ltd & Others: Shadrack Shivumba Homo Mkhonto & Others v Compensation Solutions (Pty) Ltd*[1] the requisites for contempt and the law relating thereto are set out.
- [6] It is trite that the relief in civil contempt proceedings is not limited to criminal sanctions, but can also be appropriately dealt with in granting other orders, such as: declaratory orders; mandamus and the like.[2]
- [7] In *Eskom*, supra, the Constitutional Court at [56] held as follows:
- “The common law drew a sharp distinction between orders ad solvendum pecuniam, which related to the payment of money, and orders ad factum praestandum, which called upon a person to perform a certain act or refrain from specific action. Indeed, failure to comply with the order to pay money was not regarded as contempt of court, where as disobedience of the latter order was.”*
- [8] The Constitutional Court in the *Eskom*[3] matter further endorsed the dictum in *Mjeni v Minister of Health & Welfare, Eastern Cape*.[4]
- [9] The Supreme Court of Appeal expressly held that the remedy of contempt of court in respect of the wilful and male fide ignoring of court orders ad factum praestandum cannot be extended to embrace court orders ad pecuniam solvendum.[5] The only exception thereto relating to the payment of maintenance

orders.

- [10] It is clear that the primary relief is directed at an order ad pecuniam solvendum, inappropriately premised upon an alleged contempt of court basis. That being so, this application cannot be countenanced by the court.
- [11] Furthermore, there was no urgency for the matter to be heard in the urgent court, albeit that contempt of court proceedings may have elements of urgency. In this matter, no urgency was alleged for the enforcement of an order ad pecuniam solvendum.
- [12] The application stands to be dismissed.

I grant the following order:

1. The application is dismissed;
2. The applicants are to pay the costs, the one paying the other to be absolved, such costs to include the costs consequent on the employment of two counsel where applicable.

C J VAN DER WESTHUIZEN

JUDGE OF THE HIGH COURT

Heard on:

17 August 2022

On behalf of Applicants: J

F Grobler SC

M Moodley

Instructed by:

K Malao Inc

On behalf of Respondents: T

Pillay

C Rip

Instructed by:

Mohulatsi

Attorneys

Judgment

delivered on: 13

September 2022

[1]

(2017) ZACC 35 [49]

[2] Burchell v Burchell

(2005) ZAECHC 35 at [34]; Cape Times Ltd v Union Trade Directories (Pty) Ltd 1956(1) SA 105 (NPD) at 120A-E

[3] At [57]

[4] 2000(4) SA 446 (TKHC) at 451D-E

[5] Jayiya v MEC of Welfare, Eastern Cape et al 2004(2) SA611 (SCA) at [15] and [18]

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Prepared on 13 October 2026 · Esheria