

SOUTH AFRICA / JUDGMENT

Whitfiels v Francis and Another (71018/2016) [2017] ZAGPPHC 607 (11 September 2017)

[2017] ZAGPPHC 607

COURT

North Gauteng High Court, Pretoria

BEFORE

Hughes

CASE / FILE NUMBER

71018/2016

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 71018/2016

Reportable: No

Of interest to other Judge: No

In the matter between:

HEATHER FRANCIS EMMERENTIA WHITFIELDS APPLICANT

and

CLARENCE FRANCIS 1st RESPONDENT

MARIA CILLIE HEWSON 2nd RESPONDENT

Coram: HUGHES J

REASONS

- [1] This is an application which I encountered during the course of my duties in the urgent court.
- [2] The applicant in essences seeks a contempt of court order with ancillary relief.
- [3] It is trite that when seeking a contempt order in a civil matter the test is "whether the breach was committed deliberately and mala fide". See Fakie Nov CC II systems (Pty) Ltd

[2006] ZASCA 52; 2006 (4) SA 326 at 333 para [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’.¹² 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. ¹³ Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith)¹⁴”

- [4] What emerges from the papers before me is that the respondents have listed a host of issues pertaining to the applicant complying with the court order to the letter, so to speak, that being the removal, repair, and restoration with regards to the property in question.
- [5] However, when the applicant seeks to perform what she is duty bound to do pertaining to the court order, the respondents are the ones who deny her access. Interfere with the employees she has employed to assist her in their duties and even rearrange appointment for the applicant to come out at the last minutes.
- [6] Just to mention but a few instances that the applicant sets out indicating how she was hindered from complying with the court order:

12 August 2017

- (a) The employees of the applicant were found seated on the pavement as they were instructed to stop all work by the first respondent.
- (b) During the course of the duties on the very same day, the first respondent stopped the employees from carrying out the instructions received from the applicant with regards to the septic tank, which was to be removed in terms of the court order.

17 August 2017

The applicant through her attorney received notification that if the applicant required to work on the premises on 19 August 2017 her employees were required to be supervised and she would have to call for the respondents come out to the property to lock and unlock the gate.

18 August 2017

The attorney for the applicant was advised, on 18 August 2017, that the applicant was to have access to the premises on 19 August 2017 at 09h47. However, later on that very same day at 14h24, the attorney for the respondent advised the applicant's

attorney that access was denied. This information only came to the attention of the applicant on 19 August 2017 when she arrived on the premises as planned.

- [7] Taking into account the history set out between the parties and the conduct of the respondents towards the applicant during the course of her attempt to comply with the court order. It is clear to me that the attitude and conduct of

the respondents, is such that it amounts to being unreasonable, to the extent that it is relevant, the respondent's actions are being deliberate and mala fide .

[8] For these reasons I found that the applicant made out a case for the contempt order sought in the notice of motion.

W. Hughes

Judge of the High Court Gauteng, Pretoria

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Prepared on 12 October 2026 · Esheria