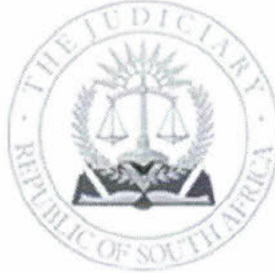


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED: YES/NO

24/10/24

DATE

SIGNATURE

Case No: 67546/2018

In the matter between:

DABANE ISAAC NDLOVU

APPLICANT

and

HERMANUS JOHANNES WESSELS BOTHMA

FIRST RESPONDENT

BOTHMA INCORPORATED

SECOND RESPONDENT

THE LAW SOCIETY OF THE NORTHERN PROVINCES

THIRD RESPONDENT

BRAKSPRUIT BOERDERY TRUST

FORTH RESPONDENT

(Registration Number IT5387/1998)

JUDGMENT

FRANCIS-SUBBIAH J:

[1] This an application for the contempt of the Order handed down by Nel AJ on the 15th of June 2023.

[2] In accordance with the court order the first and fourth respondents had to prepare a full account setting out the interest that it has accrued in the amount of R4 million being the loan amount as from the date of receipt of the loan amount by the fourth respondent and the balance repayable to the Applicant within 48 hours after the granting of the order. The statement of account was to be prepared by the first and fourth respondent to be supported by any and all documents necessary to ready the contents thereof and the calculations contained in the statement of account.

[3] When the matter appeared on the opposed motion roll on 21 August 2024, the respondents opposed the application without filing an answering affidavit. The respondents were given an opportunity to file their affidavits and further comply with the provisions of the court order handed down by Nel AJ. In addition, they were requested to provide bank statements of the fourth respondent. On resumption of the matter on 11 October 2024, the filed answering affidavit of the fourth respondent confirms that the first respondent is the sole trustee of the fourth respondent, being the Trust. No bank statements of the Trust were provided.

[4] On determining whether there is contempt, a court must determine whether the non-compliance by the respondent was wilful and *mala fides*. It was set out in ***Fakie NO v CCII Systems (Pty) Ltd*** 2006 (4) SA 326 (SCA) at paragraph 21:

“... It is generally impermissible to find an accused guilty of a criminal offence in the absence of conclusive proof of its essential elements. ... An accused to bear the lesser evidential burden of having to advance evidence that raises a reasonable doubt about an element of a crime - absent which, the offence is established beyond reasonable doubt.”

[5] The relief sought places the first respondent in contempt personally. The first respondent confirms that he is the sole trustee of the fourth respondent, the Trust is therefore liable. The inference made by the court is that the respondent is refusing to provide the documents and take the action as requested in the court order of Nel, AJ. He is therefore in wilful default of providing the requested documents, the bank statements and full compliance with the court order of Nel, AJ. In this regard, he is found to be in contempt of the court order.

[6] The respondents failed to provide the reasons as to why it has failed to comply with the court order of the 15th of June 2023. The non-compliance is therefore wilful and *mala fide*. In addition, the first respondent failed to provide the financial statements of the Trust for the court to determine the matter. Therefore, the wilfulness and *mala fides* is beyond reasonable doubt. The first and fourth respondents remain in contempt.

[7] It is therefore ordered that;

- a) The first respondent, Hermanus Johannes Wessels Bothma is guilty of contempt of court by intentionally and unlawfully refusing to comply with the court order handed down by Nel, AJ which was granted on the 15th day of June 2023.
- b) An order committing the first respondent to imprisonment for a period of 60 (sixty) days is hereby granted and a warrant for his arrest is authorized for that purpose.
- c) The above order of committal to imprisonment is suspended for a period of 3 (three) days to settle the balance payable to the applicant as provided for the court order of 15 June 2023.
- d) First and Fourth Respondents to pay the costs of this application on an attorney and client basis jointly and severally, the one paying the other to be absolved.



R. FRANCIS-SUBBIAH

JUDGE OF THE HIGH COURT,

PRETORIA

APPEARANCES:

COUNSEL FOR THE APPELLANT: ADV. S. MCHASA

INSTRUCTED BY : MATOME BOPAPE ATTORNEYS

COUNSEL FOR THE RESPONDENT: ADV. C.C. ASCAR

INSTRUCTED BY : BOTHMA INC ATTORNEYS

HEARD ON : 11 OCTOBER 2024

JUDGMENT DELIVERED ON : 24 OCTOBER 2024

This judgment has been delivered by uploading it to the court online digital data base of the Gauteng Division, Pretoria and by e-mail to the attorneys of record of the parties. The deemed date and time for the delivery is 24 October 2024.