HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)

Case No.: 1528/2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

04 March 2025
DATE

[redacted]
SIGNATURE

In the matter between:

ANGLO BLACK (PTY) LTD (In Business Rescue) First Applicant

DEON MARIUS BOTHA N.O. Second Applicant

and

WILLIAM PATRICK BOWER First Respondent

WILLIAM PATRICK BOWER (PTY) LTD Second Respondent

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 04 March 2025 at 10:00

Date heard: 21 November 2024

JUDGMENT

BHENGU AJ

Introduction

[1] This is an extended return date of a rule nisi order issued by this Court in favour of the applicants on 15 April 2024 calling upon the first respondent, Mr Bower:-

> "to show cause on 31 May 2024 why an order should not be made on a final basis-
>
> Declaring the first respondent to be in contempt of the order of this court under case number 976/2024 dated 15 March 2024.
>
> Declaring the first respondent to be in contempt of court pursuant to a declaration by him dated 11 *(sick)* April 2024 addressed inter alia to the Honourable Justice Langa and this Honourable Court titled "LAWFUL NOTICE AND CHALLENGE".

[2] The order was granted in Mr Bower's absence, and he has since filed an affidavit opposing the contempt proceedings.

Issues

[3] Whether the first respondent was in contempt of court in respect of the court order, under case number 976/2024 dated 15 March 2024.

[4] Whether the first respondent was in contempt of court *ex facie* in respect of his publication dated 03 April 2024 titled "LAWFUL NOTICE AND CHALLENGE"

Background Facts

[5] The second applicant ("Mr Botha") is acting in his *nomine officio* capacity as a business rescue practitioner appointed for the first applicant ("Anglo Black") in business rescue. The first respondent, "Mr Bower" is an adult male businessman and is the director of the second respondent.

[6] On 20 September 2023 Anglo Black and Mr Bower in his representative capacity as a director of the second respondent entered into an agreement whereby Anglo Black purchased shares and mining rights in respect of the

coal mine situated on portion 6 and 23 of the farm Grootvlei and portion 12 of the farm Lakenvlei, Belfast for an amount of R74 000 000.00. The terms of the agreement are common cause between the parties. On signature of the agreement, Anglo Black took possession of the mine and commenced with mining activities.

[7] A dispute ensued between the parties relating to the agreement. The details of the dispute are not relevant for purpose of this judgement save to state that on 15 March 2024 the applicants obtained an order ("Langa J order") prohibiting the first respondent from entering the mining site and to restore undisturbed possession of the mine to the applicants and ancillary relief. The applicants regained possession of the mine. On 19 March 2024 the respondent's attorneys gave an undertaking that the respondents would respect the court order pending an appeal process to be launched against the judgement. The Application for leave to appeal was served on the applicants on 27 March 2024.

[8] The events that followed the application for leave to appeal gave rise to the contempt proceedings. These contempt proceedings deal with two different forms of contempt alleged to have been committed by the first respondent, Mr Bower. The first contempt related to Mr Bower's alleged forced entry into the mining area in contravention of the spoliation order dated 15 March 2024. The second one related to the alleged scandalous and defamatory statements published by Mr Bower in a document titled "LAWFUL NOTICE AND CHALLENGE" addressed to the Mpumalanga High Court, Judge Langa, the National Prosecuting Authority and five other recipients. I intend to deal with each alleged contempt separately.

LEGAL FRAMEWORK

[9] Contempt of court proceedings exists to protect the rule of law and the authority of the Judiciary.[1] Contempt of court can be defined as the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official capacity[2].

[10] The Constitutional Court in Mamabolo[3], held that: -

> "This manner of conducting the business of the courts is intended to enhance public confidence. In the final analysis it is the people who have to believe in the integrity of their judges. Without such trust, the judiciary cannot function properly; and where the judiciary cannot function properly the rule of law must die. Because of the importance of preserving public trust in the judiciary and because of the reticence required for it to perform its arbitral role, special safeguards have been in existence for many centuries to protect the judiciary against vilification. One of the protective devices is to deter disparaging remarks calculated to bring the judicial process into disrepute".

[11] It follows that deliberate noncompliance with court orders and any conduct that has the effect of tarnishing the court's dignity and authority constitutes contempt of court. The Supreme Court of Appeal in Fakie[4] found that where an order for committal is sought, the appropriate standard of proof is proof beyond reasonable doubt. The test was set out as follows:

> "Once the prosecution has established (i) the existence of the order, (ii) its service on the accused, and (iii) non-compliance, if the accused fails to furnish evidence raising a reasonable doubt whether non-compliance was wilful and mala fide, the offence will be established beyond reasonable doubt".

[1] Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others (CCT 52/21) [2021] ZACC 28 at para 27.
[2] Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2) [2015] ZACC 10 at para 28.
[3] S v Mamabolo [2001] JOL 8222 (CC) at Page 17 (para 19).
[4] Fakie NO v CCII Systems (Pty) Ltd (653/04) [2006] ZASCA 52; 2006 (4) SA 326 (SCA) at para 22

Discussion

Contempt of court with Judge Langa's Order

[12] In a founding affidavit deposed to by Mr Botha, on behalf of the applicants, he stated that despite the earlier undertaking by the respondents to comply with the order pending appeal, the applicant received a letter from the respondents' attorneys, Antony Classen Attorneys dated 04 April 2024 stating that the spoliation order was suspended by the application for leave to appeal. On the 05 April 2024 the respondent through his new attorney of record, SMS attorneys, sent another letter demanding that the applicant should vacate the mining site by 12h00 noon on the same date or alternatively face criminal charges.

[13] It is alleged that pursuant to the letter dated 04 April 2024, Mr Bower accompanied by other armed unknown individuals with earth moving equipment forcefully gained access to the mining area. Mr Bower allegedly threatened the applicants' agents on the mine in contravention of the spoliation order. It is further alleged that Mr Bower opened the stockpile of 20 000 metric tons of coal with the use of earth-moving equipment which resulted in the said coal catching fire and burning.

[14] The applicants contended that the spoliation order was already executed in that the applicant's undisturbed possession was restored. The actions of Mr Bower, according to the applicants, constituted intentional contemptuous conduct in contravention of the court order. The applicants contended further that the application for leave to appeal was merely academic and that the respondent's actions constituted a second act of spoliation.

[15] Mr Bower did not oppose the urgent contempt proceedings. It was only after the rule nisi was issued calling upon him to show cause why the order should not be made final when he filed an affidavit opposing the granting

of a final order. In his affidavit he denied being in wilful default of the court order granted under case number 976/2024. The following appears in his affidavit in amplification of his denial: -

"The execution of the court order under case number 976/2024 was suspended for the period from an application for leave to appeal dated from 22 March 2024 to the granting of the order under case number 1528/2024 on 16 *April 2024.*

*"*What transpired was that a stockpile of coal caught alight, which is called spontaneous combustion. I accepted that I was permitted to go into the mining premises as a legalised individual under the mining rights and because the relevant order was suspended due to the application for leave to appeal.*"*[5]

[16] At the end of his affidavit, Mr Bower gave an undertaking that he will not act contrary to the provisions of the existing court orders in the future and tendered an apology.

[17] Counsel for the respondent submitted that the applicants failed to make a case for mala fide or disobedience with a court order considering the application for leave to appeal which suspended the operation of the order. He argued that Mr Bower's entry to the premises with earth moving equipment was to remove burning coal in order to put it in a safe distance and that removal of the burning coal was not mala fide.

[18] The issue to be determined is whether Mr Bower's defence advanced in his contempt affidavit established a reasonable doubt as to whether his conduct was wilful and mala fide. His defence is that the operation of the court order was suspended by his application for leave to appeal. Section 18(1) of the Superior Courts Act 10 of 2013 provides that the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal. It is common cause that Mr Bower entered the mining area albeit he denied allegations relating to what transpired at the

[5] First respondent's contempt affidavit para 6

mine. At the time it was approximately a week after the application for leave to appeal was launched and had not yet been adjudicated upon. Following the actions of Mr Bower, the applicants successfully applied for an order in terms of Section 18(3) on 15 April 2024 for the execution of the order pending appeal.

[19] It is common cause that the applicants succeeded in proving the first three elements of contempt which are (i) the existence of the order, (ii) service of the order, and (iii) noncompliance. The question that remains is whether the explanation given by Mr Bower raised a reasonable doubt as to whether his noncompliance was wilful and mala fide. I am satisfied that the explanation given by Mr Bower is enough to raise reasonable doubt that he acted wilfully and mala fide. I am of the view that in light of the provisions of section 18(1) it is reasonable that Mr Bower had a bona fide belief that the order was suspended, even if he was wrong in that belief. I therefore find that the applicants have failed to discharge their onus to prove contempt beyond reasonable doubt.

Contempt of court *ex facie curiae*

[20] It is common cause that on 3 April 2024, two weeks after the spoliation judgment, Mr Bower published a lengthy document entitled “Jurisdictional Challenge - Lawful Notice and Challenge” addressed to several recipients including: - the applicants, Judge Langa, Court manager of Mpumalanga High Court, the National Prosecuting Authority, the State Advocate and 5 other recipients. On 12 April 2024 Mr Bower filed an amended document of more than 26 pages in which he continued with his objection to the jurisdiction of the Court.

[21] The document which I will refer to as the “Notice” contained the following extracts: -

> “I write to you in response to the above cases 976/2024 and 1528/2024 and for clarification, I wish to confirm that there is NO CASE TO ANSWER.

> Notice of void judgment – where there is no jurisdiction there is no judge, the proceedings is as nothing…
>
> I do not require permission from another man or woman to run my life peacefully…
>
> The National Prosecuting Authority and Mpumalanga High Court, have been operating as a commercial enterprise, without full disclosure to men and women who were deceived into believing them to be a lawful company and a court… As MPUMALANGA HIGH COURT is operating as an administrative court, they are guilty of several crimes under common law and in relation to the recent decisions that you have made, they were clearly not lawful…you have intentionally committed fraud with menaces in order to make a financial gain. …"[6]

[22] Pursuant to these events, the applicants initiated urgent contempt proceedings. The Court, per Judge Mankge granted the relief sought and issued a rule nisi calling upon Mr Bower to show cause why the contempt orders should not be made final.

[23] The crime of contempt that Mr Bower is accused of, occurred outside of court. Contempt of court *ex facie curiae* refers to contempt committed 'outside the face of the court', in other words, not in the presence of the presiding officer in court.[7] The question before the Court is whether the "notice" issued by Mr Bower amounted to unlawfully and intentionally violating the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a matter pending before it.[8]

[24] In Mamabolo[9] the Constitutional Court held further that: -

> "The crucial point is that the crime of scandalising is a public injury. The reason behind it being a crime is not to protect the dignity of the individual judicial officer, but to protect the integrity of the administration of justice. Unless that is assailed, there can be no valid charge of scandalising the court."

[6] Lawful Notice and Challenge- the document it's a bulky and cannot be quoted as a whole. Citation of case law referred to, and further statements not directed to the Court are omitted in the quotation.
[7] S v Moila 2006 (1) SA 330 (TPD) at 346 C-D
[8] Mamabolo Page 12 of [2001] JOL 8222 (CC) at para 13
[9] Mamabolo Page 21 of [2001] JOL 8222 (CC) at para 25

[25] Counsel for the respondent submitted that this matter was not a defamation case, the fact that the respondent had distanced himself from the publication and issued an apology, it cannot be said that he was not in compliance with a court order. He is of the view that an argument on the defence of legal advice raised by the respondent is an irrelevant question before the Court. He submitted that the question that the Court should answer is whether there was unlawful disobedience with a lawful court order. This submission by the respondent's counsel fails to take into account that our courts recognise diverse types of contempt of court, including an offence of scandalising the court.

[26] It is trite that the purpose of a crime of scandalising the court is meant to protect the rule of law which is a cornerstone of our constitution. Section 165(5) of our Constitution provides that "an order or decision issued by a Court binds all persons to whom and organs of state to which it applies." It is clear from the title of the document that it is a challenge directed at the jurisdiction and authority of the Court. Mr Bower referred to the judgment as a 'void judgment'. He further stated that he "*does not require permission from another man or woman"* to run his life peacefully'. This showed that Mr Bower has no regard nor respect for the authority of the Court.

[27] A judgment can never be a nullity even if a party feels aggrieved by it. Although it is accepted that Judges are not immune to fair and reasonable criticism for their judgments or conduct in the interest of a public office which they occupy, however, when such criticism amounts to scurrilous attack of a judge or Court which is done with malice and intended at bringing the dignity of the Court into disrepute, such a party is guilty of contempt of court. Public trust in our Courts needs to be protected so that the courts can carry out their constitutional function. A party who feels aggrieved by the court's decision should follow the available avenues to challenge the judgment or conduct complained of.

[28] In the words of the respondent's counsel:

> "I'm not suggesting at all that this was not a scandalous notice; such a notice should have never seen the light of day".

[29] I also take into account the fact that the respondent now seeks to distance himself from the said notice. This means that he also recognises that he cannot justify the contents of the statements save to say that he is not the author of the notice. He further stated that he was advised by his attorneys that "*the notice is not worth the paper that it is written on"*, which caused him to issue an apology.

[30] I agree with the applicant's counsel that the conduct of Mr Bower in challenging the Court's jurisdiction and his allegations that the Mpumalanga High Court is running a commercial enterprise, having committed fraud in order to make a financial gain, were egregious and defamatory in nature. The statements were made while the application for leave to appeal was still pending before the Court. I accept that these statements constituted scandalising the Court.

[31] A sanction of committal is sought by the applicants. It is trite that the standard of proof for such contempt is higher than the standard of proof for civil contempt. The applicants need to establish the respondent's guilt beyond a reasonable doubt.

The defence of legal advice

[32] Having found that the statements were scandalous, the next enquiry is to consider the version proffered by Mr Bower in his defence to determine if it raises a reasonable doubt that his conduct in publishing the "Notice" was bona fide and not wilful or mala fide. Mr Bower distanced himself from the publication in question. In his affidavit filed in his defence he stated the following: -

"This document originates from advice received by a gentleman named Fanie Van Jaarsveld; This gentleman held himself out as a legal expert and persuaded me that there are different realms of law in the Republic of South Africa and that what is expected of me in an application such as the one appearing under case number 976/2024 and case number 1528/2024, is to deliver a lawful notice and challenge as encapsulated in the writing of the document that is referenced. At the time this lawful notice and challenge was prepared, I variably believed in the advice of the gentleman reference supra and he was very persuasive.

I relied on this gentleman's advice, and he prepared the lawful notice and challenge.

It was by no means wilful or disrespectful when I filed this notice of intention and challenge but I did so on the advice received supra. It should also be mentioned that at the time when this lawful notice and challenge was prepared, the respondents had a cash flow predicament and were not able to afford its normal attorney of record.[10]

Was Mr Bower entitled to act the way he did based on the legal advice?

[33] The respondents' counsel contended that argument on the defence of legal advice was not necessary as the respondent already distanced himself from the document and have tendered an apology.

[34] The applicants' counsel referred this court to several authorities including Samancor Chrome Limited v Bila Civil Contractors (Pty) Ltd, S v Abrahams, HEG Construction Enterprises (Pty) Ltd v Siegwart dealing with the defence of legal advice. He submitted that this defence is unsustainable on the facts of this matter in that Mr Bower failed to provide full details around the circumstances under which the legal advice was given including what the advice was and by whom it was given. He argued that the allegation that the document originated from Mr Fannie Van Jaarsveld is unsubstantiated, farfetched and lacking in detail. The applicant contended further that Mr Bower's failure to annex a confirmatory affidavit by Mr Van Jaarsveld and to provide any detail as to his whereabouts, when he was consulted, for what purpose, when and how

[10] First respondent's contempt affidavit para 12 -16

the offending publications were drafted or collected, gives rise to the ineluctable inference that the defense of legal advice raised is contrived and does not give rise to a reasonable doubt to rebut the inference of wilfulness and mala fide. He argued that this version does not bear scrutiny and should be rejected out of hand.

[35] The reason proffered by Mr Bower why he had to seek legal advice from Mr Van Jaarsveld is that at the time when the "notice" was prepared, he was unable to afford legal representation. This explanation however contradicts the following chronology of events which indicates that the respondents have, at all relevant times been legally represented: -

a) 15 March 2024, the court issued the judgment complained about in the publication.
b) 19 March 2024, Mr Bower's attorneys (Anton Classen Attorneys) gave an undertaking that Mr Bower would comply with the order pending the appeal.
c) 27 March 2024, the application for leave to appeal was served on the applicants.
d) 03 April 2024, the respondent published the "Lawful Notice and Challenge".
e) 04 April 2024, a day after the publication, his Attorneys (Anton Classen Attorneys) informed the applicants that the spoliation order was suspended by the application for leave to appeal.
f) 05 April 2024, a new attorney, SMS Attorneys, acting on behalf of the respondent sent a letter to the applicants demanding that they vacate the mining area or face criminal charges.

[36] It is clear from the above chronology of events that the scandalous notice was published in a matter of a few days after his application for leave to appeal was launched. Even if I am to accept (thou highly improbable) that Mr Bower ran out of funds after service of his application for leave to appeal, however, the letter from his attorneys dated a day after the scandalous notice dispels that possibility. Further, the receipt of the letter of demand from a new attorney of record on 05 April 2024 flies on the face of this explanation for seeking legal advice from Mr Fannie Van Jaarsveld.

It is improbable that person who is having a financial predicament can be represented by two firms of attorneys in one matter. For these reasons, I reject his excuse of running out of funds.

[37] The Supreme Court of Appeal in Samancor Chrome Limited v Bila Civil Contractors (Pty)[11] referred to the appeal Court's decisions in S v Abrahams[12] and R v Meischke's (Pty) Ltd[13] and restated the following test for legal advice:

> "The question whether sufficient detail has been provided in support of a defence of legal advice, is a question of fact…
>
> if an accused wished the Court to have regard to this advice as a mitigating factor, then it could be expected of him to produce the advice if it was in writing. In addition the Court would require to be satisfied that the advice was given on a full and true statement of facts. In the absence of such safeguards the fact of the advice having been given was held to be of no avail as a mitigating factor.

[38] Even though Mr Bower avers that the "notice" was drawn by Mr Van Jaarsveld, he does not explain why he is the signatory to the notice (signed by use of his thumb print and written signature). The "notice" is also written in the first person.

> "I write to you in response to the above case 970/2024 and for clarification, I also wish to confirm that my position is that there is **NO CASE TO ANSWER".**

[39] It is clear on the face of the "notice" that he takes ownership of the publication. The details pertaining to the matter complained about were facts that were known to him personally. In the absence of any confirmation by the alleged author, the Court could not verify who is the alleged author, whether the alleged legal advice was given and, if so, on what facts. In the

[11] Samancor Chrome Limited v Bila Civil Contractors (Pty) Ltd (Case no 810/2021) [2022] ZASCA 163 at p58 - 60
[12] S v Abrahams 1983 (1) SA 137 (A) at 146F-H.
[13] R v Meischke's (Pty) Ltd and Another 1948 (3) SA 704 (A) at 711

absence of sufficient and full detail concerning the legal advice, the defence of legal advice will be liable to being abused.[14]

[40] Even if I were to accept that Mr Bower did not prepare the notice himself, I would still have difficulty accepting that he did not read the notice and reconciled himself with the contents. As it was well articulated by the applicant's counsel, it is improbable that a reasonable man would verily believe that it is accurate to accuse a Court and a sitting judge of crimes of fraud, running a commercial enterprise for commercial gain. It is not explained what purpose the offending publication would possibly serve, other than to scandalize the court.

[41] I take note of the submission by the applicant's counsel that it is common cause that Mr Bower is not a layman. He is senior citizen (66 years old), a businessman and is a director of the second respondent. He is capable of negotiating business deals worth millions of rands. His mental capacity based on the above factors cannot be faulted. In determining what was Mr Bower's animus, I also considered how he had conducted himself when the contempt proceedings were launched.

[42] The sheriff's return dated 11 April 2024 in "Annexure CC11" recorded that when the sheriff of the Court attempted to serve the application for contempt upon Mr Bower personally, he refused to accept service. He drew two lines across the face of the documents that the sheriff was trying to serve and wrote the following words on the front of the document in red ink: *"Void, no consent, No Contract, All rights reserved"*. He then appended his signature as well as his right thumb print on the documents and handed the document back to the sheriff[15]. He further instructed his attorneys not to accept service of documents on his behalf.[16] On 12 April 2024 he filed an amended 26 pages "Notice" in which he repeated his allegations of

[14] See R v Meischke's above.
[15] Front page of the application, annexure CC12
[16] Email dated 11 April 2024 from Anton Classen Attorneys declining service.

"fraud upon the court…" He did not attend the hearing, and judgment was granted against him in default. In his contempt affidavit filed for this hearing he stated that he thought it was unnecessary for him to attend Court as he thought that the "notice" would bring about the end to the application.

[43] When I consider his conduct holistically, Mr Bower appears as someone who does not respect the rule of law and the workings of our justice system. This is supported by his assertions in his notice that "*he demands a jury trial*". His counsel dismissed these assertions as just absurd but contended that they were not malafide as Mr Bower had distanced himself from the publication. I do not agree.

[44] I am of the view that an inference can be drawn from the nature of the publication versus Mr Bower's defence of legal advice that a conclusion that the publication of the "notice" was wilful and motivated by malice is justified. His defence does not give rise to any reasonable doubt. It is therefore rejected as improbable and farfetched. As such, a finding of contempt of Court *ex facie curiae* as found by Judge Mankge is hereby confirmed.

Sanction

[45] The applicants contended that once it is found that they have proved Mr Bower's contempt beyond reasonable doubt, the Court has no other option but to commit him to jail for a period to be determined by the court. I do not agree with this contention. I am of the view that the Court retains discretion to determine appropriate relief taking into account the circumstances of each case and the interest of justice.

[46] Mr Bower in his contempt affidavit contended that contempt of court proceedings does not have retrospective punishment and are not of a criminal nature, to enforce pending noncompliance with court orders. This

contention is incorrect as it is now settled in our law as per the following finding made by Constitutional Court in Matjhabeng[17] that: -

"all contempt of court, even civil contempt, may be punishable as a crime. The clarification is important because it dispels any notion that the distinction between civil and criminal contempt of court is that the latter is a crime, and the former is not."

[47] The respondents' counsel submitted that although he conceded that the "Notice" contained statements that should never have seen the light of day, however, after the respondent was informed that the notice was not worth the paper it was written on, he issued an apology and undertook to comply with future court orders. Based on these grounds, he submitted that committal would not be a justified sanction and proposed that a fine would be a justifiable sanction. The apology referred to read as follows: -

"I am distancing myself from this document and apologising, unreservedly for its conduct where it seems to be offensive and disrespectful…I equivocally state that I know better and I will not do something of the like in the future."[18]

[48] It is trite that whilst the Courts enjoy wide remedial discretion to determine appropriate relief, in determining appropriate relief in contempt proceedings, this Court should be guided by the approach adopted by other Courts.[19] In deciding what sanction to impose, I am guided by the following principle found in Matjhabeng, where the Court made the following remarks regarding the appropriateness of a sanction:

"Summing up, on a reading of *Fakie*, *Pheko II*, and *Burchell*, I am of the view that the standard of proof must be applied in accordance with the purpose sought to be achieved, differently put, the consequences of the various remedies. As I understand it, the maintenance of a distinction does have a practical significance: the civil contempt remedies of committal or a fine have material consequences on an individual's freedom and security of the person".[20]

[17] Matjhabeng Local Municipality v Eskom Holdings Limited and Others 2018(1) SA 1 (CC) at para 50.
[18] First Respondent's contempt affidavit para 41 - 42
[19] Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others (CCT 52/21) [2021] ZACC 28 para 54
[20] Matjhabeng at para 67.

[49] I am of the view that the purpose of the sanction imposed should serve to punish the past conduct of Mr Bower as well as deterring repetition of such conduct. Even though I have found that the publication amounted to scandalising the court and that it was wilful and malafide, I accept that Mr Bower realizes the magnitude of his conduct and have undertaken to refrain from such conduct in the future.

Conclusion

[50] Taking the above factors into account, I am of the view that an order for direct imprisonment without an option of a fine would not achieve the purpose that the Court seeks to achieve, which is to vindicate the Court's authority and to deter repetition of the impugned conduct without restricting Mr Bower's personal liberty. I restate that the statements made by Mr Bower in the said "notice" contained reprehensible remarks that undermined the authority of the Court, the integrity of the judicial process and the dignity of this Court and that it should not go unpunished. I am of the view that a fine and a suspended sentence will serve to vindicate judicial authority and to deter repeated conduct.

Costs

[51] It is trite that costs should follow results. The applicants argued that the first respondent should pay the costs on a punitive scale, as between attorney and client. I agree that the conduct of Mr Bower justifies the award of costs on a punitive scale.

[52] In the result, I make the following order: -

1. The first respondent, Mr Bower is declared to be in contempt of court pursuant to a declaration by him dated 03 April 2024 addressed *inter alia* to the Honourable Justice Langa and this Honourable Court titled "LAWFUL NOTICE AND CHALLENGE".

2. The first respondent, Mr Bower, is ordered to pay a fine of R10,000.00, payable by not later than 30 days from the date of this order; and

3. The first respondent, Mr Bower is ordered to undergo three (3) months imprisonment suspended for a period of three (3) years on condition that he is not found guilty of contempt of court within the period of suspension.

4. The first respondent, Mr Bower, is ordered to pay the applicants' costs on an attorney client scale.

[redacted]

JL BHENGU AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, (MIDDELBURG)

Appearances:

For the Applicants:	Adv JG Smit briefed by Chris Coetzee Inc
For the Respondents:	Adv RA De Villiers briefed by Anton Claassen Attorneys C/O Karien Schutte Attorneys
Date of Judgment:	04 March 2025