

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 7954/2021

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC

APPLICANT

And

SOUTH AFRICAN NATIONAL ROADS AGENCY LTD

FIRST RESPONDENT

SKHUMBUZO MACOZOMA N.O

SECOND RESPONDENT

APPLICANTS HEADS OF ARGUMENT TO CONTEMPT OF COURT APPLICATION

INTRODUCTION

1. The natural progression in concluding the litigation between the parties, I submit as set out in OUTAs attorneys replying affidavit to the contempt of court proceedings that once the Court adjudicates upon the rescission application, if so dismissed, the contempt application, then finds relevance. The majority of the contentions raised by both parties would have been resolved, specifically as it relates to wilful default, the defences raised by the respondents, as well as the correspondence. I stand by the submissions made in the heads of argument as it relates to the rescission application.

2. Should the court find that the SANRAL was in wilful default there would be no need to duplicate that argument in these heads. I only wish to set out the legal principals and point out where SANRAL has fallen short and falls squarely within the legal principal. On an evaluation of its conduct it must be held in contempt of court.
3. The relevant timeline reflects that the respondents were served with the court order on 19 November 2021, the respondents appointed its attorneys on record on 29 November 2021. On 2 December 2021, OUTAs attorney confirmed to the respondent's attorney telephonically that the applicants would not consent to a rescission of the order, the respondents were aware of the PAIA application since 22nd February 2021, when it was served by sheriff personally, the respondents failed to oppose the application. The order was duly served and in line with the court order, the expiry for the providing of the information was 10 December 2021.
4. The fact remains that the respondents did not provide the requested information by 10 December 2021 and thus are in disobedience of the court order.
5. The Court should so be satisfied that the first three requirements for contempt of court have been satisfied from the admitted facts in the respondent's answering affidavit.
6. The hurdle the respondents are to overcome relates to the fact that their rescission rests as a counter application which clearly reflects there wilful and mala fide conduct, but for the present application there would be no rescission application.

7. It must be highlighted that the respondent's intention to bring a rescission application does not invalidate a court order or negates the respondents from conducting themselves in a mala fide manner in respect of being in contempt of the order.
8. The correspondence reflects that the first deadline for SANRAL to file its promised rescission application was 5 January 2022, failing this deadline it was extended by the applicant to 14 January 2022 but by the respondents to 21 January 2022. The rescission application was not issued on 21 January 2022 based on the respondents own deadline. The mala fide conduct of SANRAL forced the hand of the applicant.
9. From the expiry of the 15 days as set out in the court order being 10 December 2021, from 11 December 2021 the respondents were in wilful disobedience of the order by not providing the applicant with the requested information as ordered. Further, despite both indulgences provided there was no rescission application forthcoming, and thus the applicant was fully entitled to serve its contempt of court papers as the respondents were in clear contempt. Any argument to the contrary is incorrect and misplaced.
10. Going forward, the manner in which the applicants conducted the matter was improper, evident in its rescission application being a counter application to a contempt of court application and not an application on its own.

11. SANRAL relies on the correspondence between the parties as a reason why it cannot be in wilful default, for emphasises I repeat paragraphs 24 – 30 of OUTAs answering affidavit which sets out the correspondence between the parties and reflects that SANRALs conduct was purely a delay tactic, further solidifying its mala fide conduct.

CONTEMPT OF COURT PROCEEDINGS

12. It is trite that compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The unique role occupied by the judiciary since the dawn of democracy is entrenched in section 165 (1) of the Constitution. In addition section 165 (5) states:

“An order or decision issued by a court binds all persons to whom and organs of state to which it applies”. This section must be read together with the supremacy clause of the Constitution.¹
13. It provides that courts are vested with judicial authority, and that no person or organ of state may interfere with the functioning of the courts. The Constitution enjoins organs of state to assist and protect the courts to ensure, among other things, their dignity and effectiveness.²

¹ Section 2 of the Constitution

² Matjhabeng Local Municipality V Eskom Holdings Limited and others 2018 (1) SA 1(CC) at para 47

14. The Constitutional Court in *S V Mamobolo*³ held that the purpose of a finding of contempt of court is to protect the fount of justice by preventing unlawful distain for judicial authority. Discernibly continual non-compliance with court orders imperils judicial authority.⁴ Where the Judiciary cannot function properly, the rule of law will die.
15. The law on contempt proceedings in civil matters have become settled⁵. The principal issue in these contempt proceedings is whether the respondents are in contempt of the Court order. For this type of relief OUTA must prove
- a) The existence of a court order;
 - b) Service or notice thereof;
 - c) Non-compliance with the terms of the Court Order; and
 - d) Wilfulness and mala fides beyond reasonable doubt.
16. A presumption exists that when the first three elements of the test for contempt have been established, mala fides and wilfulness are presumed unless the contemnor is able to lead evidence sufficient to create reasonable doubt as to their existence. Should the contemnor prove unsuccessful in discharging this evidential burden, contempt will be established.⁶

³ 2001 ZACC 17; 2001 (3) SA 409 (CC) at para 24

⁴ Matjhabeng Supra n. 30 at para 48

⁵ Fakie NO v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA) at 332

⁶ Fakie NO v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA) at para 22

17. The existence of the Court order and service or notice thereof is common cause between the parties. SANRAL confirms that it did not intend to ignore the order or act in wanton disobedience of the Order.⁷ Whether or not it was intentional there remains non-compliance with the court order. SANRAL has failed to deduce sufficient evidence to create a reasonable doubt on whether its conduct was wilful and mala fide. In succeeding in the dismissal of the rescission application, wilfulness would have been proven thus satisfying the test in finding the applicants to be in contempt of court.
18. In terms of the Court order it is stated that the first respondent is directed to provide the requested records to the applicant within 15 days of the order being served on it. It is only in the respondents answering affidavit that its perpetual human error was presented.
19. OUTA strongly disagrees with the respondents averments that this application is an abuse of the court process and should be dismissed. Such submission is misplaced in light of the respondents having met the first three requirements for contempt proceedings, mala fides and wilfulness is then presumed and further SANRAL has failed to adduce sufficient evidence to the contrary. The dismissal of its rescission application makes SANRAL'S contempt clear.

⁷ SANRAL'S answering affidavit, Caselines 014-15 para 21

CONCLUSION

20. In the premises, I submit that the applicants made out a case for the relief it seeks and that this application must therefore be granted with costs.

DATED AT PRETORIA ON 3 MAY 2022

ADV E PROPHY (COUNSEL FOR THE APPLICANT)

GROENKLOOF CHAMBERS