



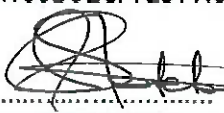
**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

CASE NO: LCC 145/2019

BEFORE THE HONOURABLE FLATELA J

Heard on: 09 September 2024

Delivered on 05 November 2024

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
05/11/2024	
DATE	SIGNATURE

In the matter between:

MOHAMMED HASSAN ALLIE	First Applicant
FARIEDA TAPE	Second Applicant
YUSUF ALLIE	Third Applicant
MOHAMMED SEDICK ALLIE	Fourth Applicant
MAGHIA OSMAN	Fifth Applicant
LAYLA BARRON	Sixth Applicant

And

THE DEPARTMENT OF RURAL DEVELOPMENT

AND LAND REFORM

First Respondent

GOZYN ALLIE (THE YOUNGER)

Second Respondent

REGIONAL LAND CLAIMS COMMISSIONER

Third Respondent

CHIEF LAND CLAIMS COMMISSIONER

Fourth Respondent

ORDER

1. The following order is made:

- a. The application for leave to appeal is refused with costs.

LEAVE TO APPEAL JUDGMENT

FLATELA, J

[1] This is an opposed application for leave to appeal against the whole judgment and order, including the cost order, granted by me on 08 May 2024.

[2] The issue in the main application was whether the First, Third and Fourth Respondents were guilty of criminal and civil contempt of court for failing to comply with the order that I granted on 14 June 2023.

[3] I dismissed the whole application on the basis that the Applicants failed to prove that the First, Third and Fourth Respondents were made aware of the court order against them.

[4] The Applicants now seek leave to appeal the whole judgment to the Supreme Court of Appeal. The Respondents oppose the application. My reasons for

dismissing the application are comprehensively captured in the main judgment. I do not intend to repeat them in this judgment.

The Grounds for leave to appeal

[5] The Applicants contend that the court erred in the following terms:

- a. In failing to deal with the civil contempt, an alternative relief was sought by the applicants in paragraph 7 of the Notice of Motion.
- b. In failing to give due weight to the undisputed concession made by the State Respondents that they knew the order they were bound to comply with, but notwithstanding such knowledge, neglected to take steps to comply with that order.
- c. The court erred in failing to comprehensively apply the self-same test required for contempt of court referred to in the judgment;
- d. The court failed to give due consideration and weight to the Applicants having complied with the requirement that the state respondents, as the contemnor, had knowledge of the order;
- e. In failing to apply the judgment of *Pheko and Others v Ekurhuleni Metropolitan Municipality and Others (no 2) [2015] ZACC 10*

The test for leave to appeal

[6] The test for the granting of leave to appeal pertinent to the present matter is set out in section 17(1) of the Superior Courts Act 10 of 2013 as follows:

“(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that:

(a) (i) the appeal would have a reasonable prospect of success or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.”

[7] I have considered the grounds of appeal, as well as my findings and judgment and order. I have also considered the submissions made by counsel for the granting of leave to appeal on behalf of the Applicants and those opposing the granting of leave to appeal on behalf of the state respondents. I am of the opinion that the appeal has no reasonable prospect of success.

[8] In their founding affidavit, the Applicants hinge the entire application on the following basis: 1) the order was by consent, 2) the State Respondents were represented by the State Attorney, 3) The Court's Registrar had sent the order to the State Attorney by email, 4) The Applicant's attorney had also emailed the order to the State Attorney and 4) the Applicants received no response from the Respondents regarding the undertaking the Applicant sought from the State Respondents that the order will be complied with.

[9] The Applicants contended that the above responses clearly illustrated the willful intention not to comply with the order. The Applicants contended further that on the final analysis and on a conspectus of all the evidence before the court, the Applicants had established beyond reasonable doubt alternatively on the balance of probabilities that, the State Respondents had:

- a. full knowledge of the terms of the order and duly served;
- b. no reasonable ground for disbelieving and or misunderstanding the terms of the order;
- c. in willful default and *mala fide* disobedience of the order;
- d. in material breach of the terms of the order, and
- e. consequently, they are in contempt of the order.

[10] I disagreed with the contentions of the Applicant that it had proven its case beyond a reasonable doubt, alternatively on the balance of probabilities that the contemnors had full knowledge of the terms of the order and were duly served.

[11] It should be noted that no responses were received from the State Attorneys after it received the correspondence from the Applicants seeking an undertaking from the State Respondents that they would adhere to the court order. Furthermore,

there was no evidence placed by the Applicants before me that the First, Third and Fourth Respondents were made aware of the court order. The Applicants relied on the fact that the State Respondents were represented in court and that the court order was made by consent.

[12] Ms. Charlene Van Tonder, a Senior Assistant State Attorney, deposed to an answering affidavit on behalf of the State Respondents in opposition to the contempt of court Application. Ms. Van Tonder explained that this matter was reallocated to her after Ms. Lombard, who dealt with it, took ill and could no longer handle it.

[13] Dealing with the background facts, Ms. Van Tonder averred in paragraph 21 of the answering affidavit that the State Respondent's officials were not in willful default as they were cooperative from the moment they were informed of the court order they had to follow. The Applicants denied this allegation and pleaded negligence on the part of the State Attorney's office.

[14] Ms. Van Tonder pleaded non-service of the order upon the Third and Fourth Respondents personally. The State Attorney denied that the Third and Fourth Respondents (the contemnors) were made aware of the court order and the contempt proceedings and averred that the Applicants presented no evidence to support their claim that the State Respondents were made aware of the court order.

[15] On willful default, Ms. Van Tonder denied that the Third and Fourth Respondents were in willful default and averred that the Applicants failed to prove that they were made aware of the order in the first place.

[16] The Applicants contended that the service of an order upon the State Attorneys, the legal representatives of the Third and Fourth Respondents, is *prima facie* evidence that the court order came to the attention of those respondents.

[17] In their heads of argument, the Applicants pinned their argument on the perceived concession by the state attorney that the state respondents 'officials

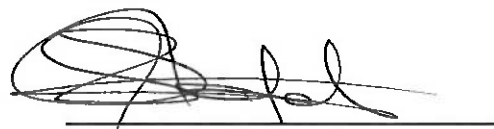
were informed of the court order and that they complied by following up on the order. The Respondents averred that the alleged concession is sufficient to dispense with the requirement that the order should have come to the State Respondent's attention. It was argued on behalf of the Applicants that there was no need to personally serve the order and the contempt application to the Respondents. I disagree.

[18] Having considered all the evidence before me, I found that the Applicants failed to prove the second requirement of contempt, which is that the State Respondents were served or were made aware of the court order against them. Consequently, I dismissed the entire application, which is the main relief and alternative relief sought.

[19] I am not persuaded that another court would come to a different conclusion or that there is some other compelling reason why leave to appeal should be granted.

[20] In the circumstances, I make the following order:

1. The application for leave to appeal is refused with cost.



L Flatela
Judge of the Land Court

APPEARANCES

Date Heard: 09 September 2024
Date Delivered: 05 November 2024

For the Applicant: JK Maxwell
Instructed by: Dewey Mclean Levy Inc. Attorneys

For the State Respondents: Adv P Magona-Dano
Instructed by: State Attorney, Western Cape

For the Second Respondent: Mr H Smith,
Instructed by Henk Smith & Associates