

**IN THE HIGH COURT OF LESOTHO
(COMMERCIAL DIVISION)**

HELD AT MASERU

CCA/0022/2017

In the matter between

HATA BUTLE (PTY) LTD

APPLICANT

And

METSING JEREMIAH KHOETE

1ST RESPONDENT

MAHLAHA MOEJANE M, GERARD

2ND RESPONDENT

MOTEA PHALA CASTON THAANYANE

3RD RESPONDENT

MOTEBELE PETER MABATHOANA

4TH RESPONDENT

CALRK MAFITOE

5TH RESPONDENT

KUTLO MOROJELE

6TH RESPONDENT

YU QUANG

7TH RESPONDENT

BAFANG (PTY) LTD

8TH RESPONDENT

THE COMMISSIONER OF POLICE

9TH RESPONDENT

THE COMMANDING OFFICER,

ROMA POLICE STATION

10TH RESPONDENT

THE REGISTRAR OF COMPANIES

11TH RESPONDENT

THE ATTORNEY GENERAL

12TH RESPONDENT

Neutral Citation: Hata Butle (Pty) Ltd v. Metsing Jeremiah Khoete & 11 others
[2023] LSHCComm. (7th March 2023)

CORAM: M. S. KOPO, J
HEARD: 11TH NOVEMBER 2022
DELIVERED: 7th MARCH 2023

SUMMARY

Contempt of Court – The law on contempt of court re-stated and discussed.

ANNOTATION

Cases

Lesotho

Afzal Abubaker v Magistrate Quthing (C of A (CIV) 19 of 2015) [2016] LSCA 5 (28 April 2016)

Bohloko v Monare (C of A (CIV) 30 of 2020) [2021] LSCA 14 (14 May 2021)

Bushman v Lesotho Development and Construction (Pty) Ltd and Others (C OF A (CIV) 3 of 2015) [2015] LSCA 4 (07 August 2015)

Lesotho Girl Guides Association v Unity English Medium School (CIV/APN/5/94) (CIV/APN/5/94) [1994] LSCA 25 (11 February 1994)

Lifoloane V Ntsooa and Others (C of A (CIV) 77 of 19) [2020] LSCA 13 (29 May 2020)

The Commissioner of Customs & Excise v Hippo Transport (C of A (CIV) 35 of 2016) [2016] LSCA 28 (28 October 2016)

South Africa

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

Nestlé (South Africa) (Pty) Ltd v Mars Inc 2001 (4) SA 542 (SCA)

Statutes

High Court Rules No. 9 of 1980

JUDGMENT

[A] BACKGROUND

[1] The number allocated this matter is telling of the year in which it was first instituted. This was way back in March 2017. From the papers and from my own experience, having presided over one of the cases concerning Applicant, I learn that the litigation concerning Applicant as a company and the property known as Hata-Butle Complex is a never-ending story. I hope there will be a better strategy of disposing of all the disputes surrounding the matter for the sake of justice and its administration.

[2] At the time of institution of these proceedings in 2017, the Applicant, a Company duly registered under the laws of this country (this is said well aware that ownership of Hata-Butle as a company is disputed but for the sake of this judgment, it is will be referred to as such) , instituted an urgent application against one Metsing Jeremiah Khoete as the only respondent then, for an order in the following terms:

- (a) Restoration of “*possession and control of the premises occupied by Pep Stores (Pty) Ltd situate at Roma known as Hata-Butle Complex to Mr. Steve Buys as the legal representative and agent of Applicant by releasing the keys to the shop*”¹.
- (b) Interdiction from occupation and letting out of the premises mentioned in (a) above.
- (c) Interdiction from “*entering into an agreement regarding the letting out and occupation of premises*”² mentioned in (a) above.
- (d) Interdiction from dealing with the tenants of Hata-Butle Complex who entered into agreement with Applicant as represented by Du Preez Liebetrau & Co.
- (e) Interdiction from negotiating sublease agreements of the mentioned premises.

It is apposite to mention that the prayers against the Respondent were always couched in a way that they include his (Respondent’s) agents, representatives or “Hata-Butle” as his *alter ego*. Hata-Butle was always put in inverted comas whenever it preceded the words *alter ego*.

[3] The Respondent then (who is the 1st Respondent in the matter before me now) opposed the application. On the 27th day of March, 2017, Justice Chaka-Makhooane granted an interim order in the following terms:

1. *The rules prescribing the service and time limits are dispensed with and this application shall be treated as an urgent application.*
2. *Prayer 2 is referred for oral evidence.*
3. *The Respondent is directed, either personally or in his representative capacity or through his agents or persons*

¹ Prayer 2 of the Notice of motion filed on 13th March, 2017

² Prayer 3.2 of the Notice of Motion filed on the 13th March, 2017

acting under his authority or through “Hata-Butle” as his alter ego be interdicted and restrained from occupying and or letting out premises at the Hata-Butle Centre, Roma, Maseru, presently occupied by Pep Stores (Pty) Ltd to any third party in any manner whatsoever.

- 4. The Respondent is interdicted and restrained, either personally or in his representative capacity or through his agents or persons acting under his authority or through “Hata-Butle” as his alter ego from entering into any agreement regarding the letting out and occupation of the premises at Hata-Butle Centre, Roma, Maseru.*
- 5. The Respondent is interdicted and restrained either personally or in his representative capacity or through his principal or agent or persons acting under his authority or through “Hata-Butle” as his alter ego from contacting, communicating, or negotiating with any of the tenants and/or occupants of the shops of Hata Butle Complex who entered into agreements with the Applicant then and there being represented by Du Preez Liebatrau & Co and who paid rental to Du Preez Liebatrau & Co in terms of written agreements of sublease.*
- 6. The Respondent is interdicted and restrained, either personally or in his representative capacity or through his agents or persons acting under his authority or through “Hata Butle” as his alter ego from in any way negotiating, concluding or advertising agreements of sublease in respect of any premises of Hata Butle Centre, Roma, Maseru.*
- 7. That the above prayers are granted with immediate effect and operate as an Interim Court Order.*
- 8. Costs to be costs in the course.*

This order has been reproduced as is because it is the hub of the application that I am presently seized with. It is also apposite to mention that the prayer that had been ordered to be referred to oral evidence was one in which the Applicant was applying that the Respondent or his representatives should restore *omnia ante* possession and control of the premises in question.

[4] The above-mentioned Interim Order was never made final as Justice Chaka-Makhooane passed on before arguments could be heard. This is also the case with the prayer that was referred to oral evidence.

[5] In November 2019, the Applicant then instituted the present Application for contempt of court. The Applicant joined 11 other Respondents to the Respondent that was initially cited in the initial application. This application was also instituted on an urgent basis. The preliminary point of urgency was argued before Justice Molete, and he duly gave a ruling that the matter was indeed urgent and further ordered that 1st to 7th Respondents should appear and show cause why they could not be held in contempt. Justice Molete unfortunately passed on before the contempt application could be heard. This is the matter that has now landed on my lap.

[B] INTRODUCTION

[6] In this application, the Applicant seeks an order in following terms;

- (a) Directing the 1st to 7th Respondent (hereinafter called the Respondents) to appear before court and show why they cannot be

held in contempt of the order granted by Justice Chaka-Makhooane mentioned in paragraph [2] above;

- (b) Interdicting the Respondents from interfering with the tenants of Applicant at Hata-Butle Complex (the Complex);
- (c) Directing the Respondents to give a report of the accounts for the rentals taken from the tenants of the Complex after the 27th of March 2017;
- (d) Directing the Respondents to pay the said recovered rentals;
- (e) Issuance of a notice to all the tenants that the Respondents do not have the right to collect rentals from the Complex but to Applicants or its nominated agents;
- (f) Authorising the Applicants to place notices at the complex that Respondents do not have authority to collect rentals;
- (g) Interdict order to operate with immediate effect;
- (h) Directing 9th and 10th Respondents to support the enforcement of the order;
- (i) Further and/or alternative relief; and,
- (j) Costs of suit at attorney and client scale jointly and severally for 1st to 7th Respondents.

[7] 1st to 5th Respondents have opposed the application. It is apposite to mention that the 1st Respondent is an advocate of this court and appeared in person. He also appeared for the other respondents who opposed the application.

[C] APPLICANT'S CASE

[8] It is applicant's case that 2nd to 6th Respondents are the agents of the 1st Respondent or are acting or have acted under his authority. It is apposite to mention at this stage that since the ownership of Applicant as a company is also disputed, Applicant has included in its prayers that the order should include even situations in which the 1st Respondent has used the names of "Hata-Butle" as his alter ego.

[9] The Applicant further avers that the 1st to 6th Respondents have continued to interfere with its affairs and business despite the order mentioned in paragraph 3 above. This they did by entering into a sublease contract with the 7th Respondent, using the name of Hata-butle (Pty) Ltd and as a result subletting a portion of the complex on the 9th day of July 2019. It is also the Applicant's case that the sublease agreement, that was attached to its Founding Affidavit as Annexure "A3", was signed by the 2nd Respondent.

[10] Another proof that the Applicant tenders is a sub- lease agreement attached as Annexure "A4" that alleges an agreement between the 3rd Respondent and the 7th Respondent to rent a portion of the complex. This agreement was counter signed by one Advocate Tšabeha.

[11] The Applicant further implicates the 2nd Respondent and connects the 3rd Respondent to the contempt by alleging that the 7th Respondent said they threatened him that if he would pay his rent to the deponent to the Founding Affidavit (One Mr. Monethi) and not to them, he would not trade again.

[12] Furthermore, the Applicant, implicates the 5th Respondent by showing that he testified in another case in the Magistrate Court in which the 1st Respondent had held himself out as Hata-Butle. In the appeal against judgment of the Magistrate Court, Justice Moilola found the 5th Respondent herein to have given false evidence therein.

[13] Finally, it is the Applicant's case that the 1st to 7th Respondents are aware of the court order in question but have deliberately and wilfully undermined and disobeyed it.

[14] It is advocate Mpaka's argument that the order by Justice Makhooane still exists. He argues that once it is proved that the order still exists, it must be obeyed.

[D] THE 1st to 5th RESPONDENTS CASE

[15] The 1st to 5th Respondents were all represented by the 1st Respondent who is an officer of this court. They all raised similar preliminary points. Firstly, they challenged the urgency of the matter. However, when the arguments commenced, both counsel agreed that urgency was overtaken by events and it is therefore, no longer in issue.

[16] The second point in *limine* is misjoinder on the ground that the order in issue was against the 1st Respondent only and not the other respondents. It is therefore the 1st to 5th Respondents' case that 2nd to 5th Respondents should not have been joined to the proceedings.

[17] Thirdly, the said respondents raised a preliminary point of *lis pendens*. Their case is that this is the third time that they are being brought to court

for contempt under the same order by Justice Chaka-Makhooane dated the 27th day of March 2017. Firstly, it is their case that there is a pending contempt matter in the magistrate court under case number **CC/0397/16**. The second Contempt Application was set down for hearing before Justice Molete based on the same order by Justice Chaka-Makhooane.

[18] Another preliminary point raised by the respondents is that the Applicant failed to establish requirements for an interdict. The Respondents are saying there is nowhere that the Applicant is showing the rights it has in the property.

[19] Further to the grounds mentioned above, the respondents also argue that there is a dispute of fact. It is their case that the Applicant should have foreseen that rent was not paid to 1st Respondent as it has even attached the receipt showing that it was paid into Hata-Butle Account. Furthermore, the Respondents argue that the Applicant has no legal standing as Hata-Butle is not registered in terms of the Companies Act.

[20] Finally, the 1st to 5th respondents raise misjoinder on the ground that the Applicant should have joined a company called Blinx Operations as there is an allegation that it purchased the shares of Hata-Butle that were owned by one E. E Hattingh.

[21] On the merits, the 1st to 5th respondents only averred that they have answered the “allegations pertaining to the contempt allegation” previously in the record and incorporate same herein.

[E] ANALYSIS OF THE MATTER.

[22] The order in issue is an order *ad factum praestandum* (i.e. orders to do or abstain from doing a particular thing)³. The court ordered the 1st Respondent or anyone acting under his authority to desist from doing a specific act or acts pending the finalisation of the matter.

[23] It has been held in this jurisdiction in **Lifoloane V Ntsooa and Others**⁴ that, in an application of this kind, for an applicant to succeed, the following must be proved;

1. *That there is a valid court order in force requiring the person to whom it is directed to act on it.*
2. *That the person to whom the order is directed is aware of the court order in question (service of the court order on the person).*
3. *That there is evidence that upon being served with the court order the person to whom it is directed has deliberately refused to obey it.*

Contempt is therefore a criminal offence for which the above elements must be proved by the applicant. However, as was outlined further in the South African case of **Fakie NO v CCII Systems (Pty) Ltd**⁵;

(a) ...

(b) ...

(c) *In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-*

³ Lesotho Girl Guides Association v Unity English Medium School (CIV/APN/5/94) (CIV/APN/5/94) [1994] LSCA 25 (11 February 1994)

⁴ (C of A (CIV) 77/19) [2020] LSCA 13 (29 May 2020)

⁵ [2006] SCA 54 (RSA)

compliance; and wilfulness and mala fides) beyond reasonable doubt.

- (d) But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.*
- (e) A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.*

[24] The above case has been cited with approval in this jurisdiction in the Court of Appeal case of **Bohloko v Monare**⁶. One can therefore safely conclude that the law is settled even in our jurisdiction that in civil contempt proceedings where there is no order as to the committal of the contemnor, the standard is that of the preponderance of probabilities. However, where there is a committal order sought, the standard is the same as in criminal proceedings. The applicant must prove wilfulness beyond a reasonable doubt.

[25] It is common cause that there is a valid Order issued by Justice Chaka-Makhooane as depicted in paragraph [3] above. It is further common cause that the 1st Respondent was the only party in the proceedings which bore the said Order. Moreover, there is no dispute that the 1st Respondent knew about order.

⁶ (C of A (CIV) 30/2020) [2021] LSCA 14 (14 May 2021)

[26] Another evidence that is not in dispute is that 2nd and 3rd respondents were signatories or represented Hata-Butle (Pty) Ltd 11980/70 in the sublease agreements entered into with the 7th Respondent on 09th day of July, 21st day of August and 26th day of September, 2019 respectively. It will be realised that this was after the order of the 27th March, 2017 by Justice Chaka-Makhooane.

[27] There was no evidence advanced against the 4th, 5th, 6th and 8th Respondents and in fairness to Advocate Mpaka, he did not exert much energy in proving or arguing their involvement in the matter.

[28] The issues that stand for determination therefore are as follows;

- (a) Is there misjoinder of parties?
- (b) Is the matter pending before this court to the effect that the Respondents can plead *lis pendens*?
- (c) Is there a dispute of fact that can prevent this court from disposing of this matter on papers?
- (d) Should Applicant have joined Blinx?
- (e) Were the 2nd and 3rd Respondents acting as agents of the 1st Respondent whom the order was clearly against and did they know about the order?
- (f) Did the 7th respondent know about the order and was the order also affecting him?

[I] MIS JOINDER

[29] As is procedural, the respondents who defended the matter raised the issue of misjoinder in *initio litis* (at the beginning of the proceedings).

They argued that only the 1st Respondent was party to the proceedings that bore the court order in question and as a result 2nd to 5th Respondents were wrongly joined.

[30] It is the case of the Applicant that 2nd to 5th Respondents act for the 1st Respondents as his agents or under his authority. It is therefore a matter of evidence if indeed they do. It would be premature to conclude that they are wrongly joined before delving into the merits and investigating if indeed there is evidence or not. The order that the Applicant got was directed to the 1st Respondents, his agents, those acting under his authority and using Hata- Butle as their alter ego. It is therefore the Applicant's case that the 2nd to 6th Respondents are agents of the 1st Respondent. This is what the court must find out, and therefore it cannot rule that they have been mis joined before looking at the evidence and considering if it does prove that they were acting as the agents, or under the authority of 1st Respondent or using the name of Hata-Butle as their alter ego.

[III] *LIS PENDENS*

[31] It is the 1st to 6th Respondents' case that the same contempt application is pending before court in three (3) other matters. The argument that the respondents make is that based on the same court order, there is an application for contempt in CCT/0397/16 and others are under this very matter (CCA /0022/17). It became apparent upon a simple perusal of the record that *lis pendens* cannot stand under the circumstances that the respondent base themselves on. Advocate Mpaka argues that CCT/0397/16 concerned different parties and therefore the respondents cannot say that the matter is pending. I agree. If the said CCT/0397/16 alleged contempt against a completely different party from the parties that are now before

court, the respondents cannot rely on *lis pendens*. Whatever decision is made under that case cannot in any way have a bearing on the present matter nor can this present matter have a bearing on that other matter. The law is settled on the requirements that must be met for the special plea of *lis pendens* to succeed. The Court of Appeal case of **Bushman v Lesotho Development and Construction (Pty) Ltd and Others**⁷ is authoritative on the matter. Over and above the grounds of this special plea having been clarified, of further importance is the reason behind the plea that must cause this plea not to succeed in this case. Mosito P quoted with approval the following quotation from the South African case of **Nestlé (South Africa) (Pty) Ltd v Mars Inc**⁸

“The defence of lis alibi pendens shares features in common with the defence of res judicata because they have a common underlying principle, which is that there should be finality in litigation. Once a suit has been commenced before a tribunal that is competent to adjudicate upon it, the suit must generally be brought to its conclusion before that tribunal and should not be replicated (lis alibi pendens). By the same token the suit will not be permitted to revive once it has been brought to its proper conclusion (res judicata). The same suit between the same parties, should be brought once and finally.”

[32] As for the matters that are said to be pending before the late judges, this is clearly an untenable argument by the respondents that does not even do their entire case any favours. I am clearly seized with the matter because the late Justice Chaka-Makhoane recused herself from this matter and Justice Molete passed on.

⁷ (C OF A (CIV) NO.3 OF 2015) [2015] LSCA 4 (07 August 2015)

⁸ 2001 (4) SA 542 (SCA)

[III] DISPUTE OF FACT.

[33] The basis of this ground is that it is disputed that the rent for the complex is paid to the 1st Respondent. Moreover, the 1st to 5th respondents argue that the “Applicant as represented by either Monethi, Thabo Mpaka, E.E. Hattingh and or Stephan Buys and or Du Preez is not a legal entity”⁹.

[34] For a dispute of fact to succeed as a ground for dismissing an application or at the least directing that such a dispute be referred to *viva voce* evidence, it must be such that it will prevent the court from resolving the matter on papers. In other words, it must be a material dispute on a material point. A superficial dispute that does not go to the root of the point in issue will not suffice for the ground to succeed. This is trite law. (See **Afzal Abubaker v Magistrate Quthing**¹⁰ and **The Commissioner of Customs & Excise v Hippo Transport**¹¹)

[35] In *casu* the ownership of Hata-Butle (Pty) ltd as a company is indeed disputed. However, this is not necessarily the issue before this court. The issue is the non-compliance or not of the interim order by Justice Chaka-Makhooane. She had ordered, in the interim as shown in paragraph 3 above. The other leg of the ground of dispute relied on by the 1st to 5th respondents, especially the 1st Respondent, is more technical than factual. 1st Respondent disputes that the payment is made to him personally. The crux of the said argument is that it is made to Hata-Butle. However, the Applicant herein got the order to the effect that even anyone using the

⁹ Para 1 of the Answering Affidavit (2nd to 5th Respondent) under heading Dispute of Facts.

¹⁰ [2016] LSCA 5 (28 April 2016)

¹¹ (C of A (CIV) 35 of 2016) [2016] LSCA 28 (28 October 2016).

name Hata-Butle as his alter-ego is ordered not to receive the rent in question or interfere with the tenants of the complex.

[IV] NON-JOINDER

[36] The 1st to 5th respondents raised this point on the ground that there is another party called Blinx who is contesting the ownership of Hata-butle. It has to be understood that the issue before this Court is the contempt or none thereof of the Interim Order by Justice Chaka-Makhooane mentioned in paragraph 3 above. It is not necessarily the contestation of the ownership of Hata-Butle nor the spoliation that was referred for *viva voce* evidence by Justice Makhooane. It is the case of Applicant that the Respondents implicated herein are the ones who are in contempt. The applicant does not implicate Blinx in this matter. Once a party is not necessary for the proceedings at hand, then there is no need to have that party joined.

[37] As has been shown in paragraph 2 above, the ownership of Applicant as a company is contested. Be that as it may, this is not the issue before this court in these proceedings.

[V] EVIDENCE ON CONTEMPT

[38] The 1st to 5th respondents have taken an unusual approach in defending this matter. In attempting to plead over, they just averred that they have answered the contempt allegations previously as the record will show. This says the respondents (1st to 5th Respondents) are asking this court to look into the previous proceedings and take the averments therein and incorporate same in these proceedings. This is untenable. Be that as it may,

the question is, is there evidence showing that they have been contemptuous as alleged by the applicant?

[39] There is a sub-lease agreement between Hata-Butle represented by the 2nd Respondent and the 7th Respondent dated 09th day of July 2019. There is another one in which Hata-Butle is represented by the 3rd Respondent signed with the 7th Respondent and signed on the 21st day of August 2019. In as far as these respondents are concerned, they have done what is contrary to the order in question. There is no doubt about that. The question is, did they know about the order?

[40] It is the Applicant's case that the mentioned respondents are acting on the authority of the 1st Respondent. Is there evidence to that effect? The first ground for the Applicant to say this is that all the mentioned respondents have joined issue with the 1st Respondent. I don't see why that can be prove that the 2nd and 3rd Respondents or all the other respondents are acting under the authority of the 1st Respondent. They are jointly defending this matter and that should not necessarily be taken as prove that they are acting in concert.

[41] The other ground that the Applicant puts forth to connect 2nd to 5th Respondents with the 1st Respondent is that in **CCT/0346/2016** it had instituted proceedings against some of these Respondents. Such a case is still pending. While there may be such a case, it is not clear how and why this court should conclude that their being sued jointly in those proceedings should have a bearing in this case. Even if a decision had been made in that case, its admissibility in the present case would still not be automatic or be conclusive prove that 2nd to 6th Respondents are acting

under the authority or are agents of the 1st Respondent. The **Rule in Hollington v Hewthorn** is applicable in a scenario such as this one.

[42] As shown above, the 1st to 5th respondents did not plead over. Be that as it may, the bare assertion by the Applicant that the 2nd to 5th respondents are acting as the agents or under the authority of the 1st Respondent, is not enough. There must be evidence supporting such averment and it is not present in the case in question. The 2nd and 3rd Respondents have clearly signed the agreements post the order in question. However, they were not parties to the proceedings that bore the order. Except that they have been sued together in CCT/0346/2016, there is nothing that shows that they are agents of the 1st Respondent or are acting under his authority. Moreover, there is nowhere that the 1st Respondent appears to have acted against the order in question personally.

[43] The other question to ponder is whether the fact that the 2nd and 3rd Respondents who signed the contracts in question in the names of Hata-Butle should be taken to have been acting under the authority of the 1st Respondent. 2nd and 3rd Respondent do not appear anywhere as members of Hata-butle. However, in his Answering Affidavit to the main Application (the Spoliation Application), 1st Respondent contends that he is a shareholder of Hata-Butle11890/70. He further went on to attach Company Extract as Annexure “F” showing that he is one of the shareholders therein. If the mentioned sub-lease agreements were signed in the name of Hata-butle 11890/70 and the present Applicant is saying it does not know about the said sublease agreement, it is safe to therefore infer that whoever signed them was acting on the authority of members of the said Hata-butle that 1st respondents has admitted to being a shareholder. If they were not, it

is only logical for the 1st Respondent and/or the company he represents to have taken issue against the said sub-leases as the present Applicant has.

[44] It must be recalled that the Applicant is required to prove the case on the balance of probabilities. In other words, the Applicant must prove that there is an order of court and that such order is still operational, that the respondents are aware of the order in question and that the said order has not been complied with. The said order has been proved and it has not been set aside by any court. The preceding paragraph clearly shows that on a balance of probabilities, the 1st Respondent authorised the 2nd and 3rd Respondent to represent his Hata-butle company to enter into the mentioned sub-lease agreement.

[VI] DID THE 7TH RESPONDENT KNOW ABOUT THE ORDER AND WAS THE ORDER ALSO AFFECTING HIM?

[45] The 7th respondent has not defended the matter. What this court has is the case against him as put forward by the Applicant and nothing to counter it. The 7th respondent was therefore notified about the order in question but chose not to comply. Contempt, therefore, has been proven against the 7th Respondent.

[VI] INTERDICT

[46] Besides the prayer that the 1st to 7th respondents be held in contempt, the Applicant is seeking an interdict as shown in paragraph 2 above. The order granted against the 1st Respondent by Justice Chaka-Makhooane was interim and the proceedings in that matter were spoliation proceedings.

The prayers in this matter asks of this court to grant an interdict that will have a permanent effect. Taking into consideration that there is an order that has already referred the spoliation proceedings to *viva voce* evidence due to a dispute of fact therein identified, an order interdicting the 1st to 6th Respondents herein will be on a collision course with the order by Justice Makhoane.

[F] CONCLUSION AND ORDER

[47] In conclusion therefore, it is my considered view that, contempt has been proven against 1st, 2nd and 3rd respondents. The 1st respondent was party to the proceedings that birthed the order in question and clearly knew about it. The 2nd and 3rd respondents are the ones who entered into agreements with other tenants and there is no other reasonable and possible conclusion than that they were acting under the authority of the 1st Respondent. The 7th Respondent was notified about the order but chose not to obey.

[48] The action of the 1st Respondent seems to be stratagem to eschew the courts order. If this can be allowed that anarchy can reign supreme. Orders of the court have to be obeyed without questioning them until they are lawfully set aside. It is for this reason therefore that this court must also show displeasure by awarding punitive costs. Wherefore the following order is made:

- a) The application is dismissed against 4th to 6th respondents.
- b) 7th respondent is held in contempt and is ordered to report to the Applicant all rentals not paid to the Applicant from the time of

taking occupancy at the complex and pay said accounted moneys to those who were receiving them.

- c) 1st, 2nd and 3rd Respondents to pay costs of suit at attorney and client scale.
- d) 7th Respondent to pay costs on a normal scale.

Kopo J.
Judge of the High Court

For Applicant: **Adv. Thabo Mpaka**

For 1st to 5th Respondents: **Adv. Metsing**