



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION MIDDELBURG (LOCAL SEAT)

Case Number: 2025-126485

BEFORE THE HONOURABLE ACTING JUDGE: BAM
DATE: 08 SEPTEMBER 2025

Private Bag X1822, Middelburg 1850

In the matter between:



2025 -09- 09



CAPE FINANCE CORPORATION (PTY) LTD
MLD-MHD-001

APPLICANT

(Registration No. 1988/003863/01)

THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA LOCAL DIVISION,
MIDDELBURG

and

NQUBEKO INVESTMENTS (PTY) LTD

1ST RESPONDENT

(Registration No. 2017/526772/07)

HLENGIWE GLDANESS MBATHA

2ND RESPONDENT

(Identity No. 840823 0970 08 6)

COURT ORDER

The Judge heard the matter on 12 AUGUST 2025 and electronically circulated the judgment on 09 SEPTEMBER 2025 and gave an order in paragraph "36" as follows:

[36] In the premises, the following order is granted:

1. Noncompliance with the Rules pertaining to form, service and time periods is condoned and the application is heard as urgent in terms of Rule 6 (12) (a)
2. The application is dismissed.
3. The First and Second Respondents are ordered to commence proceedings in the Bellville Magistrate's Court regarding the impugned Special Covering Notarial Bond BN 2366/2023 within 30 days from date of this order.
4. Should the Respondents fail to comply with paragraph 3 above, the applicant may approach this court with the same papers, duly supplemented, for appropriate relief.
5. Each party is ordered to pay their own costs.



BY ORDER OF COURT

R. SITHOLE

REGISTRAR



IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)

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

CASELINES NO. 2025-126485

9/09/2025

SIGNATURE.

DATE

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CAPE FINANCE CORPORATION (PTY) LTD

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This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time of hand-down is deemed to be 9 September 2025 at 10:00

JUDGMENT

BAM, AJ

[1] The applicant has approached this court on an urgent basis seeking an order of contempt against the Respondents pertaining to two magistrate's court orders dated 27 February 2025 and 22 April 2025 respectively. The provisional order granted by the Bellville Magistrate's court on 27 February 2025 under case number 1125/2025, was made final on 22 April 2025. The application comes before this court in terms of the principle of process-in-aid since the Magistrate's court, being a creature of statute, cannot adjudicate over contempt of its own orders.

JURISDICTION

[2] Counsel for the applicant, Advocate Oosthuizen, stated in her address that this court has got jurisdiction to hear the application due to lack of jurisdiction on the part of the magistrate's court. The process-in-aid principle is an accepted concept and case law confirms that contempt of court is one of the issues that are covered under it. She referred specifically to paragraphs 14,15 and 17 of *Van den Bos N.O v Mohloki and Others and Van de Bos N.O v Ngcameva and Another 2022 (2) SA 616 (GJ)* where the court said:

"A consideration of the case law recognises that a court can enforce the judgement of another court by way of what is known as process-in-aid..... So, to put it at its most basic, the High court does have jurisdiction to enforce another court's judgement."

URGENCY

[3] It was also counsel's submission that contempt proceedings are inherently urgent as held by the court in *Victoria Park Ratepayers Association v Greyvenouw CC and Others* [2004] 3 ALL SA (SE) at paragraph 5, where the court stated that the element of public interest in each and every case where a person is alleged to be in contempt of court order clothes such a case with an element of urgency. (see also *MDM v SDM* [2020] ZAWCHC 157 at paragraph 6). Ms. Oosthuizen added that the very *locus classicus* on urgency, *East Rock Trading 7¹* relied upon by the Respondents, states that delay is not a ground for refusing to hear a matter as of urgency. Attempts to resolve the issue should be accommodated. Paragraph 27.3 of the founding affidavit refers to the attempts made by the applicant to secure the return of the assets from different locations. The applicant did not sit back and do nothing. Besides it would have been criticised for rushing to court immediately without trying to resolve the issue. The allegation by the respondents that the urgency was self-created is therefore unfounded. The respondents should have defended the granting of the final order.

[4] The attorney for the Respondents, Mr Justice Magayi, argued against urgency by pointing out that the judgement that is the subject of this contempt application was granted on 22 April 2025 and there is no explanation as to what prompted the urgency more than 2 months down the line in July 2025. He submitted that the urgency was self-created. The applicant, furthermore, has not satisfied the second leg of the urgency test. It does have a remedy in the form of a criminal complaint to which Mr.

¹ East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others [2011] ZAGPJHC 196 (23 September 2011)

Coetzee has also alluded. He has instead discounted the effectiveness of this remedy without producing any evidence to that effect.

[5] Mr Magayi, while agreeing that the contempt proceedings are inherently urgent, argued that it is not always the case. There is case law to the effect that urgency will depend on whether time is of the essence. In *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC [2023] ZAGPJHC846 Wilson J* said that: *'there must, in addition, be some other feature of the case that renders it essential that the court order be instantly enforced, such that the penalties associated with contempt require immediate imposition.'*

[6] Mr. Neil Coetzee, the deponent to the founding affidavit has acknowledged that there is an alternative remedy, that of laying criminal charges, but says it takes long to bear fruit and in the interim the equipment shall be exposed to wear and tear while the Respondent is not paying at all. By way of illustration, he says that the applicant has in fact laid a charge against one of its "recalcitrant respondents" in December 2023 and to date the matter has not been prosecuted.

THE APPLICATION

[7] In the founding affidavit, Mr. Coetzee, who is a director of the applicant, states the following:

7.1 On 27 February 2025, the applicant obtained an *ex parte* provisional order in the Wynberg Magistrate's court, directing the First Respondent ("Nqubeko") to stop using leased equipment and trucks and release these to the sheriff for handing over to the applicant. The order was made final on the return date of 22 April 2025.

7.2 Despite service upon them of the provisional order, the Respondents have failed and/or refused to comply therewith, neither did they defend the application.

[8] The causa was the breach by Nqubeko, of the Master Rental Agreements entered into between the parties during April 2023. As security for Nqubeko's indebtedness, the Second Respondent ("Ms Mbatha") had signed a special covering notarial bond in favour of the applicant over two 2018 Volvo Trucks, the subject of this application. The agreements were cancelled on 5 February 2025 due to alleged breach of payment terms.

[9] It is common cause that the Respondents have returned the movables they rented under the various lease agreements, all except for two. These are the Volvo trucks that are the subject of the notarial bond. It appears that on 11 March 2025, the Respondents' attorney offered the return of the trucks which were said to be on their trip back from Richards Bay. The communication indicated that they could be collected from Middelburg but when asked for a location on 19 March 2025, the attorney responded that the trucks were operating in Zimbabwe. In the same correspondence, it was alleged that sufficient money would be generated to settle the outstanding arrears. This was even though the contracts had already been terminated in February.

[10] The applicant says the court should hold Ms. Mbatha liable for Nqubeko's noncompliance with the court orders. She is the sole director and the brain behind all the decisions of the company. She has acted in contempt of the court orders by continuing to utilise the trucks and for taking them out of the country.

[11] Ms. Mbatha, in her capacity as sole director of Nqubeko has deposed to the answering affidavit. She admits the existence and subsequent cancellation of the

contracts but states that all the assets covered by these have since been returned to the applicant. The two Volvo trucks were part of a refinancing transaction proposed by the applicant's Mr. Reuben Gerber, and there is no proof provided by the applicant, despite several requests, that the notarial bond was ever registered. The document filed by the applicant as being the notarial deed is not dated or witnessed and has no registration reference number. Ms. Mbatha says further that the failure or refusal by the applicant's attorneys to produce the registered bond is aimed at frustrating the intention of the Respondents to have it cancelled and set aside on account of an alleged misrepresentation by Mr. Gerber.

[12] She says that upon receipt of the approval for finance, she had indicated that she was not happy with the security clause relating to the two trucks and declined to sign both the agreement and the notarial bond documents. Gerber had assured her that security requirements would remain in place for only six months and she need not sign the bond document. An email from Gerber explaining how the refinancing would be structured is attached to her affidavit as annexure "E".

[13] Ms. Mbatha further states that Gerber eventually "*induced*" her into signing the bond documents by representing that the directors would not approve the R2 million without security in place. The application for finance was thereafter approved. She refutes allegations of breach due to nonpayment but acknowledges that payments were not always made on time and sometimes fell behind. She confirms that of the 6 trucks that were leased, four were returned to the applicant and the remaining two are not the applicant's property, hence they are legally operating in Zimbabwe.

[14] Regarding allegations of contempt, Ms. Mbatha says she could not be expected to comply with the court order in the absence of a valid notarial bond. No obligation to

comply has arisen and none will arise for as long as there is no valid bond document. The court order, in her view, relates only to the assets already in the applicant's possession; the two trucks on the other hand belong to Nqubeko.

[15] Insofar as the averment by the applicant that there is no effective alternative remedy, Ms. Mbatha dismisses it by pointing out that the applicant could have still laid a criminal charge with the police. The statement that a complaint was laid with the SAPS and nothing has happened so far cannot be accepted solely on Mr. Coetzee's say-so. Under the circumstances, the contempt allegations are unwarranted, and the matter is certainly not urgent as the order was obtained on 22 April 2025, and because the relevant assets have since been recovered. She concludes by requesting the court to strike the application from the roll due to lack of urgency and grant a costs order on an attorney and own client scale.

[16] In the replying affidavit, Mr. Coetzee conceded that he had inadvertently attached a draft of the notarial bond and not the registered document with reference number 2366/2023 which he has since attached to the affidavit. He argued that a simple deeds search by the Respondents would have revealed the existence of the bond. The Respondents' claim of ownership of the two trucks is not true since even their registration certificates refer to the applicant as the title holder. In paragraph 15 of the affidavit Mr. Coetzee states the following:

"I pause to mention that NaTis documents annexed to the Respondents' answering affidavit as "Annexure D" are outdated, as is apparent from their issue dates when compared with annexures RA3.1 and RA3.2. Since urgency is challenged on the basis that the applicant is not the owner of the trucks, in the face of proof to the contrary, that contention falls away."

[17] Regarding the alleged misrepresentation by Gerber, Mr. Coetzee states that when Ms Mbatha declined to sign the notarial bond, Gerber suggested that the applicant buys the trucks and then lease them back to Nqubeko. Ms Mbatha was still not happy with this proposal and when advised that the lease would not be approved without some form of security she agreed to sign the bond documents. The R 2 million is the amount of security required by the applicant and was never meant to be paid to the Respondent. It is the equivalent of the combined values of the trucks, of R 1 million each.

[18] In support of his assertion above Mr. Coetzee attached a company resolution by Nqubeko and an affidavit signed by Ms. Mbatha who was authorised to sign the documents. Besides, the trucks are clearly identified in the bond as the "security assets". He queries the lapse of 2 years within which the Respondents did not raise the issue of misrepresentation and alleged inducement since the bond document was signed. They did not even oppose the confirmation of the attachment application despite having been served with the provisional order.

[19] Coetzee points out that paragraph 12 of the Special Covering Notarial Bond spells out the mortgagee's rights and remedies in the event of breach which include, amongst others, acceleration of the outstanding balance and attachment and repossession of the security assets to perfect the security. The applicant also reserved its right to approach the high court for an *ex parte* application or on notice in a bid to enforce its rights under the bond.

[20] Mr Magayi argued that the applicant was made aware of the intention by the Respondents to have the notarial bond cancelled and set aside. A copy thereof was requested from the applicant who failed to produce same even as this application was

being launched. The registered document only came to light as an attachment to the Replying affidavit, with Mr. Coetzee citing an unfortunate oversight on his part. His clients still intend to challenge the validity of the bond.

CONTEMPT

[21] Ms. Oosthuizen, in asking the court to grant the application submitted that:

21.1 The respondents do not deny awareness of the order.

21.2 The two trucks are described in the order.

21.3 There is no application to rescind or appeal the order.

[22] She said that it is trite that parties must comply with an order of court until it is otherwise rescinded or set aside. This was clearly stated by the court in *Culverwell v Beira 1992 (4) SA 490 (W)*, where the court said that "*All orders of this court, whether correctly or incorrectly granted, have to be obeyed until they are properly set aside.*"

[23] She added that the Respondents were served with the provisional order and could have attended court on the return date to oppose its confirmation. The dispute about the validity of the Notarial Bond does not have a bearing on this application, it can be used to challenge the order itself and so far, this hasn't been done. Even if the bond wasn't registered, it would still give the applicant personal rights of enforcement against the respondents.

[24] Mr Magayi confirmed that his clients are aware of the court order. Their noncompliance therewith is however not willful or *mala fide*. They have always questioned the Notarial Bond due to the assurance given by the applicant's employee that the trucks would not be bonded. He added that the applicant's urgency is self-

created because they failed to deliver the registered deed until the day before this application was heard. The respondents would have launched their application long ago and its outcome could have pointed the way forward and perhaps even obviated the necessity of this contempt application. He reiterated that all the trucks and equipment that belong to the applicant have been returned except the two Volvo trucks that were part of the refinancing transaction.

[25] He concluded by requesting the court to dismiss the application with costs.

ANALYSIS

[26] The applicant obtained an order in terms of which the Respondents were directed to hand over the assets which were the subject of a number of lease agreements between the parties and which had since been cancelled. The Respondents returned all but two Volvo Trucks which they claim belong to the First Respondent by virtue of some refinancing agreement. In her answering affidavit, Ms. Mbatha refers to a misrepresentation that induced her to sign the Special Covering Notarial Bond. In the founding affidavit, Mr Coetzee avers that as of the date of signing thereof, Nqubeko was indebted to the applicant in the amount of R4 707 862.91. The fact that Mr Manganyi wrote in an email that the trucks would generate sufficient revenue in Zimbabwe to cover the arrears is an admission that payments were owed to the applicant.

[27] What appears from the papers is that Mr Gerber informed the Respondents that the directors of the applicant would not approve of the R2 million in the absence of security. She had agreed to a proposal where the R 2 million would be allocated evenly over the 5 main finance agreements. She then agreed to sign the bond documents but

then according to her, the refinancing deal fell through. The First Respondent did not receive the R2 million despite the bond having been signed – and as it now turns out, also been registered.

[28] Refinancing is usually done when a credit consumer is struggling with repayments. It is some form of restructuring which eases the financial burden facing the debtor and often involves additional financing of the relevant item (house, vehicle, machinery, equipment, etc.). It appears to the court that refinancing might have taken place because without it, the bond would be an anomaly.

CONTEMPT

[29] It is common cause between the parties that the first three elements of contempt proceedings are not in dispute. These are:

- 29.1 The Bellville Magistrate's Court order of 22 April 2025.
- 29.2 The knowledge of the order by the Respondents
- 29.3 Noncompliance with order by the Respondents

[30] The fourth element of willfulness and *mala fides* is in dispute, with the Respondents advancing arguments about ownership of the trucks as well as questioning the validity of the covering Notarial Bond. In *Fakie N.O v CCI Systems (Pty) Ltd, 2006 (4) SA 326 (SCA)*, the court described the nature and purpose of contempt proceedings as follows:

- 30.1 The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders and survives constitutional

scrutiny in the form of Motion Court application adapted to constitutional requirements.

30.2 The respondent in such proceedings is not an "*accused person*" but is entitled to analogous protections as are appropriate to motion proceedings.

30.3 In particular, the applicant must prove the requirements of contempt beyond reasonable doubt.

30.4 But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears the evidentiary burden in relation to willfulness and *mala fides*: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether noncompliance was willful or *mala fides*, contempt would have been established beyond reasonable doubt.

[31] Earlier on in the judgement, the court had indicated that unreasonable noncompliance, provided it is *bona fide*, does not constitute contempt.² Thus, an honest belief that noncompliance is justified or proper is incompatible with intentional violation of the court's authority.

[32] In the case of *M.H.T v T.M.H-T [2024] ZAGPJHC 1176 (4 November 2024)* the court stated the dictionary meaning of "willful" as conduct, which is intentional, deliberate, having or showing a stubborn and determined intention to do as one wants, regardless of the consequences. "*Mala fides*" on the other hand comprises of conduct which is carried out in bad faith or with intent to deceive.

² Paragraph 10

CONCLUSION

[33] Having listened to arguments from both sides; it is my considered view that the applicant has satisfied the grounds for urgency. It is so that urgency is not just about counting days but can also be established through the relief sought. The applicant cannot be penalised for attempting to enforce the court order and securing the return of its property, and for the most part it succeeded. Regarding the two trucks, the applicant was given the run-around by the respondent who availed the trucks for collection and when requested to give location, whisked them away to Zimbabwe. It is not clear what prompted this change of mind save to observe that Ms Mbatha appears to believe that Nqubeko is entitled to keep the trucks as already explained. Up until the 5th of May 2025, the applicant was held back from taking any action by empty promises and requests for indulgence on the part of the respondents and their attorney.

[34] A vehicle's registration certificate has been held to constitute *prima facie* proof of ownership, but not conclusive proof. In *Mmore v Makhetha (2018) ZAGPJHC 134 (26 April 2018)*, cited by the applicant, the court held in paragraph 6:

"It is trite that in terms of our law registration of a vehicle in a person's name is not sufficient to establish ownership. In terms of our abstract system of transfer of ownership, it is necessary to interrogate the real agreement between all the parties involved in the transaction to determine who acquired legal ownership to the object in question. Registration in the name of a particular party may be a relevant factor in this inquiry, but if challenged, it must be weighed against all other relevant evidence in order to determine who actually acquired ownership in the eyes of the law. It may be that, on the facts, despite the registration in a person's name, there was no intention that he or she will de facto and de lege become the owner of the vehicle"

[35] Regarding the elements of contempt, the court is not satisfied that the conduct of the respondents, though deliberate, can be described as *mala fide*. Perhaps it will

be prudent at this juncture to allow the respondents the opportunity to prove their claim to ownership of the trucks, since Ms. Mbatha asserts that all the assets belonging to the applicant in terms of the lease agreements have been returned to it. It is unfortunate that the applicant did not furnish the respondents with the registered notarial deed up until the contempt proceedings came before this court. It is also not fair for the applicant to expect the respondents to have searched for the document which was in fact in their exclusive possession. Deeds searches may not always contain all the information required for purposes of litigation, and their accuracy is always subject to a disclaimer.

[36] In the premises, the following order is granted:

1. Noncompliance with the Rules pertaining to form, service and time periods is condoned and the application is heard as urgent in terms of Rule 6 (12) (a)
2. The application is dismissed.
3. The First and Second Respondents are ordered to commence proceedings in the Bellville Magistrate's Court regarding the impugned Special Covering Notarial Bond BN 2366/2023 within 30 days from date of this order.
4. Should the Respondents fail to comply with paragraph 3 above, the applicant may approach this court with the same papers, duly supplemented, for appropriate relief.
5. Each party is ordered to pay their own costs.



ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

APPEARANCES

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Date of hearing: 12 August 2025
Date of judgment: 9 September 2025