



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 15 July 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

The Sheriff of The High Court: Giyani (Sydney Herbert Park, An Officer of Court) v Renky Thulani Makhubele (1270/2023) [2025] ZASCA 104 (15 July 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment, upholding an appeal with costs, against a contempt of court judgment and order granted in the Limpopo Division of the High Court, Thohoyandou (high court).

This matter concerned a public auction conducted under warrant of execution that realised R219 541.41 in favour of the respondent, Mr Renky Thulani Makhubele. On 26 July 2023, the high court directed the appellant, the Sheriff of the high court at Giyani, Mr Sydney Herbert Park, to transfer those funds to the respondent's attorneys within 48 hours (the July order). On the same day, the appellant filed a notice of appeal in terms of s 18(4)(ii) of the Superior Courts Act 10 of 2013 (the Act). The respondent, acting in terms of s 18(3) of the Act, sought an order executing the order pending appeal. The court did not dismiss or grant the order sought instead it granted an interim preservation order on 8 August 2023, directing that the appellant had 48 hours to transfer the funds into an interest bearing account (the preservation order). On 5 September 2023, the high court dismissed the appellant's application for leave to appeal with costs, rendering the July order immediately operative. Despite repeated demands, the appellant did not transfer the funds. He expressed a clear intention to petition the President of the SCA within one month as prescribed by s 17(2)(b) of the Act.

On 8 September 2023 the respondent launched contempt proceedings. The appellant opposed the contempt proceedings on grounds that the one-month period to petition the President of the SCA had not lapsed; and further sought a stay of both the July order and the preservation order pending the petition. On 24 October 2023, the high court found the appellant in contempt of court and imposed a wholly suspended fine of R50 000, with costs. The appeal is with the leave of the high court.

The core dispute was whether the requirements of contempt of court had been met, in particular whether *mala fides* had been shown where a party had not complied with a court order in circumstances where the party had made it clear that they intend on challenging the order and were still within the prescribed time period to challenge the order.

The minority judgment held that court orders bind all persons to whom they apply, in terms of s 165(5) of the Constitution. The minority judgment found that the July order was valid and remained operative upon refusal of leave to appeal on 5 September 2023, since no stay or suspension of the order was sought and granted. The minority reasoned that an intention to file a petition within one month does not suspend an order unless a court grants such suspension in terms of s 18(3) or Rule 45A of the Uniform Rules of Court. The minority found that the respondent discharged the onus to prove the existence of the order; service; and, non-compliance beyond reasonable doubt, and that the appellant failed to raise any reasonable doubt regarding wilfulness and mala fides once the respondent had met that threshold. The minority found that a deliberate refusal to comply, despite warnings and absent any application to suspend the order, demonstrated contempt. The minority found further that contempt proceedings were appropriate to vindicate judicial authority.

In contrast, the majority judgment found that the threshold required to prove wilfulness and mala fides on a criminal standard had not been met. The appellant had evinced an intention to appeal and the 30 day period permitted in terms of the Act had not expired. The majority held that contempt of court does not consist of mere disobedience of a court order, but of the contumacious disrespect for judicial authority and that the appellant's conduct is not indicative of a contumacious disrespect of the court. The majority held that the appellant was acting within his rights to appeal an order and then to petition a higher court, as the law allows.

As a result, the SCA replaced the high court's order and dismissed the contempt of court with costs.

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