South African Law Reform Commission

DISCUSSION PAPER 181

REVIEW OF THE LAW - CONTEMPT OF COURT

PROJECT 151: THE REVIEW OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 (A SUB-PROJECT OF THE REVIEW OF THE CRIMINAL JUSTICE SYSTEM)

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The Secretary to the SALRC is Mr Nelson Matibe. The Commissioner designated to this project is Dr Jacob Buti Skosana, and the researcher is Mr Simon Maphanga. Enquiries and correspondence about the discussion paper may be directed to and marked for the attention of Mr Simon Maphanga. Her contact information is as follows:

Correspondence relating to this investigation should be addressed to:

Mr Simon Maphanga
Telephone: (012) 622 6318

Email: SiMaphanga@justice.gov.za / CPAreform@justice.gov.za

REQUEST FOR COMMENTS

This discussion paper forms part of a series of discussion papers that have been developed to seek to address any perceived gaps in the Criminal Procedure Act 51 of 1977 (CPA). The investigation is intended to result in the enactment of new criminal procedure legislation that will address the extensive challenges facing the criminal justice system.

The Criminal Procedure Reform Investigation (the CPR Investigation) was borne out of the request by the then Minister of Justice and Correctional Services in 2020 that the South African Law Reform Commission (Commission) include, in its investigation programme, the Review of the Criminal Justice System, inclusive of the review of the CPA.

This discussion paper, along with other discussion papers, forms part of the comprehensive reform of the criminal procedure law that is envisaged to culminate in the extensive reform of the current law of criminal procedure.

The views, conclusions and recommendations in this paper are not the final views of the Commission. The paper is published in full to provide persons and bodies wishing to comment or to make suggestions for the reform of this particular area of the law with sufficient background information to enable them to place focussed submissions before the Commission.

The SALRC will assume that respondents agree to the SALRC quoting or referring to comments and attributing comments to respondents unless representations are marked “confidential”. Respondents should be aware that the SALRC may, in any event, be required, under the Promotion of Access to Information Act, 2000 (Act No.3 of 2000), to release information contained in representations.

Respondents are requested to submit written comments or representations on the discussion paper to the SALRC by no later than 02 October 2026. Comments can be sent by email or post. However, comments by email are preferred.

Table of Contents

SOUTH AFRICAN LAW REFORM COMMISSION **1**
REQUEST FOR COMMENTS **3**
EXECUTIVE SUMMARY **5**
A Introduction 1
1 Contempt of Court 1
B Distinction between civil contempt and criminal contempt 2
C The Constitutionality of motion court procedure 8
D Conclusion 11
E Issues for comment 12
LIST OF SOURCES **14**

EXECUTIVE SUMMARY

1 This paper is narrow in scope and focuses on whether the summary procedure for dealing with the common law contempt of court pass constitutional muster, as the procedure predates the advent of the Constitution[1] which guarantees the right to a fair trial. In terms of section 35 (3) of the Constitution, an accused person has a right to, among others, adduce and challenge evidence. In these summary procedure, an accused person is deprived of the right to challenge evidence. The presiding officer, although a witness and the complainant, may not be cross-examined in such proceedings.

2 The Paper further discusses the constitutionality of the motion court procedure to order committal to imprisonment for civil contempt of court. It enquires whether an order for committal to imprisonment flowing from the motion court procedure is consistent with the constitution.

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1 Constitution of the Republic of South Africa, 1996.

A Introduction

1 Contempt of Court

> *"*The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it. As the Constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts. It follows from this that disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced".[2]

1.1 Section 165 (5) of the Constitution is said to "lie at the heart of the rule of law" and enjoins all persons to whom a court order applies to obey the terms thereof on pain of sanction[3]. Contempt of court consists of unlawfully and intentionally:

> "(a) violating the dignity, repute or authority of a judicial body or a judicial officer in his judicial capacity; or
> (b) publishing information or comment concerning a pending judicial proceeding which is designed to influence the outcome of the proceeding or to interfere with the administration of justice in that proceeding".[4]

1.2 In our law, there is civil contempt and criminal contempt. Criminal contempt is constituted by any conduct that is disrespectful to the court or that violates or undermines the dignity or authority of the court or the administration of justice. It is not the self-esteem, feelings, or dignity of any judicial officer; or even the reputation, status, or standing of a particular court that is sought to be protected, but the moral authority of the judicial process.

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2 *Pheko and Others v Ekurhuleni Metropolitan Municipality* (No 2) [2015] ZACC 10.

3 *MEC for the Department of Public Works and Another v Ikama Architects CC* 2023 (2) SA 514 (SCA) para 30

4 CR Snyman *Criminal Law* 4th Ed, 329.

B Distinction between civil contempt and criminal contempt

1.3 It is now axiomatic that disobeying a court order or failing to comply with it without a legitimate excuse constitutes an offence. It is also beyond controversy that criminal offences are adjudicated in criminal proceedings, and it cannot be disputed that the so-called civil contempt arises from disobedience or non-compliance with a court order. Therefore, the distinction between the civil and criminal contempt does not lie in the conduct constituting contempt but the difference is to be found in the nature of the proceedings instituted to determine whether indeed what has occurred amounted to contempt of court.

1.4 In civil contempt, the proceedings are civil in nature and are usually initiated by a party in whose favour the disobeyed order was granted.[5] The purpose of those proceedings is not to punish the contemnor for the crime of contempt, but it is the enforcement of the disobeyed order. This is why our courts dismiss applications where enforcement of the order is not sought but the relief sought is purely to convict the respondent of contempt and impose a criminal sanction. Ordinarily, this is the position where an order can no longer be complied with due to changed circumstances, even though the disobedience occurred at the time when compliance was still possible.

1.5 Therefore, our law requires that the determination of contempt in civil proceedings must always be likely to bring about compliance with the court order. This is so because the interest of the applicant in civil proceedings is limited to compliance with the relevant court order[6]. Such applicant cannot pursue the prosecution of the respondent for contempt in civil proceedings. He or she has simply no right or interest in the prosecution of crime. When an offence is committed, it is not only the victim whose interest is harmed, but also the interests of society at large. This is the reason why in our law the authority to prosecute is vested in the National Prosecuting Authority (NPA), which is a public body that exercises that power on behalf of the general public. However, this does not mean that the victims of crime cannot seek relief against the perpetrators of crime. Civil remedies are available to them and those can be pursued only in civil proceedings.

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5 *Fakie v CCII Systems* (Pty) Ltd 2006 (4) SA 326 (SCA)

6 *S v Beyers* 1968 (3) SA 70 (A)

1.6 In line with the principles outlined above, in civil contempt proceedings, a litigant can obtain civil remedies, which may include a declaratory order that the respondent is in contempt of a court order. Now a finding of this nature must not be conflated with a criminal conviction pertaining to the offence of contempt of court. It is not. Consequently, the standard of proof applicable to its determination is the civil standard of a balance of probabilities.

1.7 What muddies our law is the practice, now entrenched, of adjudicating the criminal aspect of contempt arising from a disobedience of a court order in the civil proceedings brought by a party seeking enforcement of that court order. It is this conflation of civil and criminal contempt which has caused serious ambiguity and confusion in the law[7]. The practice entangled the civil and the criminal contempt and this resulted in egregious uncertainty regarding the procedural rules to be applied. This is because in our law the rules which apply to a civil process differ strikingly from those that apply to a criminal process. For example, the standard of proof differs. A criminal process requires proof beyond reasonable doubt whereas a civil process requires proof on a balance of probabilities.

1.8 A further distinction between the two processes pertains to the rights of the parties. In a criminal process, there is a body of rights which attaches to an accused person which are not available to a respondent or defendant in a civil process. The difficulty that arises when the civil and criminal processes are scrambled is that one cannot tell which rules should apply to the scramble. For example, which standard of proof is applicable? Before 1994, the courts routinely applied the civil standard of proof even when a respondent is convicted of criminal contempt of court and a term of imprisonment is imposed. Ordinarily, a court would convict a respondent whose non-compliance with a court order is found to have been wilful and *mala fide* (in bad faith), but suspend the sentence imposed pending compliance with the order in question. If compliance occurs during the period of suspension, the sentence would not come into operation.

1.9 After the coming into operation of the interim Constitution in 1994, the uncertainty in the law relating to contempt of court was compounded by the introduction of the Bill of Rights which guaranteed certain rights for accused persons. With regard to the standard of proof

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7 *Burchell v Burchell* (ECJ 010/2006) [2005] ZAECHC 35 (3 November 2005) and *Matjabeng Local Municipality v ESKOM Holdings Limited* [2017] ZACC 35 at par 51-55.

applicable to contempt of court, the pendulum shifted. The courts applied the standard of proof beyond reasonable doubt in contrast to proof on a balance of probabilities[8]. Furthermore, the common law before 1994 imposed an onus on the person accused of not complying with a court order to show on a balance of probabilities that the failure to comply was not wilful and *mala fide.*[9] This too was changed after 1994. It was reasoned that a reverse onus which the common law placed on the respondent was not consistent with the Constitution[10]. It was now said that the respondent has an evidentiary burden to show that the non-compliance was not wilful and *mala fide*.

1.10 Notably, both these changes were requirements which applied to criminal proceedings where the person against whom proceedings are brought would be an accused person. They were now extended to a respondent in the hybrid contempt proceedings. Some court decisions went further and held that the fair trial rights afforded to an accused person in terms of section 35(3) of the Constitution apply to a respondent in the contempt proceedings. But the extension of section 35(3) rights to respondents in contempt proceedings was short-lived. It was reversed by the Supreme Court of Appeal (SCA) in *Fakie No*. The majority held:

> On the contrary, with respect to the careful reasoning in the Eastern Cape decisions, it does not seem correct to me to insist that such a respondent falls or fits within s 35. Section 12 of the Bill of Rights grants those who are not accused of any offence the right to freedom and security of the person, which includes the right not only 'not to be detained without trial', but 'not to be deprived of freedom arbitrarily or without just cause'. This provision affords both substantive and procedural protection, and an application for committal for contempt must avoid infringing it.[11]

1.11 In that matter the SCA acknowledged that the position of a respondent in contempt proceedings is "closely analogous to that of an accused person" and, consequently, the criminal standard of proof was applicable**.** However, despite this analogy, the SCA held that because of the hybrid nature of contempt proceedings, section 35 of the Constitution does not apply because that provision was designed for a criminal accused. It was therefore

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8 *UncedoTaxi Service Association v Maninjwa* 1998 (3) SA 417 (E)

9 *Putco Ltd v TV & Radio Guarantee Co (Pty) Ltd* 1985 (4) SA 809 at 836.

10 *Fakie* above at par 22

11 *Fakie* at par 24

undesirable to strait-jacket contempt proceedings into protections in Section 35, the SCA concluded.

1.12 The reasoning in *Fakie No* appears to be unpersuasive for the following reasons: First, it is difficult to appreciate why section 35 is inappropriate if one accepts that contempt proceedings are a hybrid of civil and criminal proceedings and, as a result, the position of a respondent is analogous to that of an accused person. It is true that the respondent of those proceedings is an accused of committing the crime of contempt of court. If this is so, it is unclear then why the protections in Section 35(3) of the Constitution are not available to him or her. Secondly, on the SCA's reasoning, the applicability of Section 35(3) of the Constitution depends on the nature of the proceedings, which are to be purely criminal in nature. A combination of civil and criminal proceedings takes the matter beyond the purview of Section 35. Unfortunately, the SCA does not tell us why this should be so. Contempt of court proceedings result in the conviction of a respondent and the imposition of a sentence on him or her, just as this is the position in a criminal trial.

1.13 What compounds the uncertainty arising from *Fakie No* is the fact that the SCA there acknowledged the fact that, if the applicant chooses to lay a criminal complaint against the person who fails to comply with an order issued in a civil matter, Section 35(3) would apply to those proceedings and the contemnor would be entitled to all protections afforded by that Section. In this regard, the SCA said:

> "The decisions deal with statutory presumptions and reverse onuses. But they undoubtedly entail that where the state prosecutes an alleged contemnor at common law for noncompliance with a civil order, the requisite elements must be established beyond reasonable doubt. In such a prosecution the contemnor is plainly an 'accused person' in terms of s 35(3) of the Bill of Rights, and enjoys the inter-related rights that s 35(3)(h) confers: to be presumed innocent, to remain silent in the face of the charges and not to testify during the proceedings".[12]

1.14 But if a litigant in whose favour the order was issued decides to institute contempt of court proceedings on papers, seeking enforcement of the order and committal for the contemnor, Section 35(3) does not apply, according to the SCA. Effectively, the application of the Bill of Rights is subjected, on the decision of the SCA, to the whims of the applicant. This is constitutionally intolerable.

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12 *Fakie No* at par 22

1.15 In this regard, the decision of the SCA is at variance with the decision of the Constitutional Court in *Mhlungu*[13]. There, the issue the Constitutional Court was called upon to determine was whether the Bill of Rights in the interim Constitution applied to criminal trials which were pending at the time that the Constitution came into force. It was accepted by members of the court that a criminal trial becomes pending if a charge is put to an accused and he or she has pleaded to it, even if no evidence has been led in prosecuting the charge in question. Various members of the court also accepted that, if the provision that excluded the extension of the Bill of Rights to pending cases were to be given a literal meaning, thousands of accused persons would be denied protections in the Bill of Rights. Therefore, the majority preferred a purposive interpretation of the provision which would prevent the exclusion of those thousands of accused from protections afforded by the Bill of Rights. In *Fakie No* it was open to the SCA to construe the common law purposefully and prefer a meaning which would have permitted the application of Section 35(3) of the Constitution to contempt of court proceedings, as was done in the decisions of the High Courts in the Eastern Cape, which the SCA overturned.

1.16 The uncertainty relating to the common law in relation to contempt of court is further compounded by the fact that some orders may be disobeyed deliberately and no committal proceedings may be instituted against the contemnors and the court would not intervene despite the disregard of its orders. This occurs where the order is *ad solvendam pecuniam* (orders for the payment of money). Orders for payment of money do not give rise to contempt of court. The contemnor in those circumstances does not commit an offence, even if the disregard of the order is wilful and *mala fide*. The matter is left entirely in the hands of the person in whose favour the order was issued. The only avenue open to such a person is to pursue the execution of the order by seeking attachment of the assets of the contemnor and sell them, through the Sheriff of the court, to satisfy the orders.

1.17 Disobedience of an order of court becomes an offence only if it is *ad factum praestandum* (an order that directs a person to do something). Under the common law, the litigant in whose favour the order was made may choose to lay a criminal complaint or institute contempt of court proceedings in which he or she would seek enforcement of the

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13 *S v Mhlungu and Others* 1995(2) SACR 277 (CC).

disobeyed order and the committal of the contemnor. In these circumstances, the disobedience becomes an offence punishable in law only because the person in whose favour the order was made cannot levy execution on it. This is an unsatisfactory feature of the common law pertaining to the distinction between orders sounding in money from those which require something else to be done.

1.18 However, what is clear from recent case law is that the courts themselves are aware of the need to draw a distinction between civil contempt and criminal contempt and that the proof on a balance of probabilities should apply to the former and proof beyond a reasonable doubt should apply to the latter. In *Matjabeng Local Municipality*, the Constitutional Court stated:

> "I am of the view that the standard of proof must be applied in accordance with the purpose sought to be achieved, differently put, the consequences of the various remedies. As I understand it, the maintenance of a distinction does have a practical significance: the civil contempt remedies of committal or a fine have material consequences on an individual's freedom and security of the person.. There, the criminal standard of proof – beyond reasonable doubt – applies always..
>
> On the other hand, there are civil contempt remedies − for example, declaratory relief, mandamus, or a structural interdict − that do not have the consequence of depriving an individual of their right to freedom and security of the person. Here, and I stress, the civil standard of proof – a balance of probabilities – applies".[14]

1.19 However, in *Matjabeng Local Municipality*, the Constitutional Court did not expressly overrule *Fakie NO* on the issue that Section 35(3) of the Constitution does not apply to contempt of court proceedings. Instead, the Constitutional Court construed *Fakie NO* as not suggesting "*that the rights of the respondent where civil contempt resulting in committal is sought cannot be grounded in Section 35(3)*". On the reading of *Fakie NO* by the Constitutional Court in *Matjabeng Local Municipality*, the question whether section 35(3) of the Constitution applies to contempt of court proceedings was still to be determined. This conclusion has added to the uncertainty which exists in our law. This uncertainty persists despite the court's attempt to clarify the law. In addition, *Matjabeng Local Municipality* does

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14 *Matjabeng Local Municipality* at par 67

not determine whether the motion court procedure which is followed in contempt of court proceedings is in line with the Constitution.

C The Constitutionality of motion court procedure

1.20 The question whether the procedure followed in contempt of court proceedings is addressed here on the assumption that our Constitution tolerates criminalising disobedience of court orders. In other words, this enquiry proceeds from the premise that this form of contempt of court is constitutionally compliant. Therefore, the focus of the enquiry is limited to the use of the motion procedure to enforce the crime of contempt of court. There can be no doubt that the procedure is an unusual one and that it implicates the rights guaranteed in the Bill of Rights in sections 12 and 35(3).

1.21 Section 12 of the Bill of Rights affords everyone the right to freedom and security of the person as a general basket of rights. Within that basket, and of significance for present purposes, is the right to be afforded a trial before being incarcerated and deprived of personal freedom. It goes without saying that a motion procedure does not constitute a trial. In addition, this procedure departs fundamentally and extensively from the procedure contemplated in section 35(3) of the Constitution. The process is initiated by the litigant in whose favour the order was made instead of an independent prosecutor with authority to determine whether the prosecution is warranted; there is no formal charge on which a plea is required; no witnesses are called to testify and be cross-examined to challenge their evidence. The bottom-line is that the motion court procedure is wholly unsuitable and incompatible with the enjoyment of the rights in section 35(3). That is why the SCA in *Fakie NO c*oncluded that the section does not apply to contempt of court proceedings.

1.22 It can hardly be denied, therefore, that the motion court procedure is inconsistent with both sections 12 and 35(3). Accordingly, it can only be saved from invalidity by section 36(1) of the Constitution. For this to succeed, the motion court procedure must satisfy the requirements of that section. Whilst it should be accepted that the common law that authorises the initiation of contempt of court proceedings by way of application on papers constitutes a law of general application, it does not appear that the use of that procedure in the context of punishing a person for disobeying a court order is reasonable and justifiable.

1.23 The purpose for which the procedure is used is to establish to the court that the contemnor has disobeyed its order and that he or she should be punished for doing so. There can be no doubt that this is a legitimate government purpose. The authority of courts and their effectiveness would be seriously compromised if litigants and persons on who the orders apply can ignore or disregard those orders with impunity. There is therefore a rational connection between the purpose for which the procedure is used and the procedure itself. However, this procedure does not appear to be the only means by which the purpose can be achieved. There are less restrictive means which can be deployed to realise the same purpose of punishing those who deliberately disobey court orders.

1.24 A less intrusive means which readily comes to mind is the referral of such matters to the National Prosecuting Authority (NPA) for a criminal prosecution to be initiated. But what if the NPA declines to prosecute? For now, we are aware that the Criminal Procedure Act permits a private prosecution if the NPA declines to prosecute. Such prosecution takes place in a criminal trial, even though it is pursued by a private person. The majority of cases, if not all of them, relating to contempt of court pertain to a failure to comply with a court order. There is no urgency that warrants that the case be adjudicated forthwith. In the circumstances, a trial in the ordinary course cannot frustrate the purpose served by punishing those who disobey court orders.

1.25 In any event, legislation suggests that even in cases of urgency there are alternative means for intervention by courts. The Criminal Procedure Act[15] deals with similar matters in section 178 which provides:

> "(1) Where an offence is committed in the presence of the court, the presiding judge or judicial officer may order the arrest of the offender.
> (2) If any person, other than an accused, who is present at criminal proceedings, disturbs the peace or order of the court, the court may order that such person be removed from the court and that he be detained in custody until the rising of the court".

1.26 While the section is silent on what should happen to the offender upon being arrested on the order of the court, it can be assumed that such offender should ordinarily be taken to

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15 Act 51 of 1977

a police station and be detained until released on bail or by order of the court which ordered his or her arrest in the first place. The same may also happen to a person removed from the proceedings under section 178(2). But under this provision, if the disturbance or disruption did not constitute a criminal offence, the court may order detention of the offending person until it rises.

1.27 The Superior Courts Act 10 of 2013 has a more comprehensive provision which empowers superior courts and prescribes how they should react to contempt of court committed while proceedings are carried on. Section 41 of this Act provides as follows:

> "(1) Any person who, during the sitting of any Superior Court—
>
> (a) wilfully insults any member of the court or any officer of the court present at the sitting, or who wilfully hinders or obstructs any member of any Superior Court or any officer thereof in the exercise of his or her powers or the performance of his or her duties;
>
> (b) wilfully interrupts the proceedings of the court or otherwise misbehaves himself or herself in the place where the sitting of the court is held; or
>
> (c) does anything calculated improperly to influence any court in respect of any matter being or to be considered by the court, may, by order of the court, be removed and detained in custody until the court adjourns.
>
> (2) Removal and detention in terms of subsection (1) does not preclude the prosecution in a court of law of the person concerned on a charge of contempt of court".

1.28 In this Act the term "Superior Court" includes the Constitutional Court, the Supreme Court of Appeal, the High Court and any court of a status similar to the High Court. Section 41 obliges the courts to deal with contempt of court in *facie curiae* (contempt committed during the sitting of the court) in a particular manner. Most importantly, this section requires the court to respond by ordering the removal and detention of the contemnor, but for a short while until the court adjourns. The section does not mandate any superior court to summarily enquire into the contemptuous conduct, convict and sentence the contemnor on the spot.

1.29 However, section 41(2) tells us that the removal and detention of the contemnor does not exclude his or her prosecution in an ordinary criminal trial. But what is important is that the section provides for an alternative to the so-called summary procedure, which entails an

enquiry into the contemnor's conduct – which is conducted inquisitorially without the intervention of a prosecutor. Such enquiry may culminate in a conviction and a sentence being imposed.

1.30 The question that arises in this regard is whether the superior courts are not permitted to depart from the course provided in section 41 and decide to follow the summary procedure in dealing with contempt committed during the proceedings. The decision of the Constitutional Court in *Mamabolo* left this question open in respect of a contempt committed during a court sitting. Dealing with the impact of the summary procedure on the rights of the contemnor, the Constitutional Court stated:

> "There can be no doubt that a procedure by which an individual can be hauled before a judge for the sole purpose of enquiring into the possible commission of a crime, there to be questioned and, depending on the judge=s view of the responses to the questioning, possibly to be punished by a fine or imprisonment, constitutes a major inroad into his fair trial rights. Nor can it be denied that such an individual enjoys little protection or benefit of the law and its processes".[16]

1.31 The Constitutional Court concluded that the use of the summary procedure for a contempt of court ex facie curiae (outside of a court sitting) was inconsistent with the Constitution, because the purpose could be achieved through less restrictive means such as an ordinary trial. If the same reasoning is employed with regard to a contempt in *facie curiae*, in view of section 41 of the Superior Courts Act, one must come to the conclusion that the summary procedure is inconsistent with the Constitution owing to the available alternative means which are less restrictive. Similarly, that outcome may be reached with regard to the application of the motion court procedure to determine the offence of contempt of court.

D Conclusion

1.32 It seems that it is not constitutionally objectionable for the common law to criminalise conduct which undermines the authority, dignity or effectiveness of the courts or erodes public confidence in the administration of justice. However, the difficulty arises when the

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16 *Mamabolo* at par 56

criminalisation is selective and is made dependent upon the advancement of the interests of some and not all litigants. With regard to disobedience of court orders, the common law chooses to criminalise non-compliance with orders *ad factum praestandum* only. Non-compliance with orders sounding in money does not amount to a criminal offence, even if such disobedience may have an impact similar to non-compliance with an order *ad factum praestandum*. The rationale for this distinction is that in a judgment sounding in money, the judgment creditor has other means to enforce the judgment. Effectively, this subordinates the authority and dignity of the courts, their effectiveness and the administration of justice to the interests of the judgment creditors.

1.33 It means that, if the judgment can be enforced by execution, the offending conduct should be overlooked. But if it cannot be so enforced, the conduct must be regarded as constituting a crime that attracts criminal punishment. This distinction and its legal consequences appear to be constitutionally suspect. A contemnor of an order sounding in money enjoys more benefit and protection of the law. His or her conduct does not constitute a crime even though it is similar to the conduct of a contemnor of an order *ad factum praestandum*. The focus shifts from the objectionable conduct itself to the availability of a mechanism to enforce the order.

1.34 With regard to the employment of both the motion court procedure and the summary procedure in prosecuting the crime of contempt of court, it seems that these procedures are not consistent with the Constitution, especially the fair trial rights it guarantees.

E Issues for comment

1.35 The Commission invites commentators and other persons interested to respond to this paper to address the following issues:

(a) Whether the distinction between orders *ad factum praestandum* and ad *solvendam pecuniam* and the legal consequences flowing from each distinction, in the creation of the offence of contempt of court is in line with the Constitution;

(b) Whether the law relating to civil contempt and criminal contempt needs to be clearly demarcated by way of legislation, and if so, whether that demarcation should be reflected in the new Criminal Procedure Act;

(c) Whether the motion court procedure and the summary procedure applied to contempt of court proceedings pass constitutional muster and are in compliance with the Constitution;

(d) Whether in view of section 41 of the Superior Courts Act 10 of 2013, superior courts may still apply the motion court procedure and the summary procedure to determine whether if a person was guilty of contempt of court and impose a criminal penalty; and

(e) In view of the fact that an applicant in a civil contempt application has a number of civil remedies, whether is necessary to use criminal contempt to enforce a civil order.

LIST OF SOURCES

CR Snyman, Criminal Law 4th Ed

Table of cases

Burchell v Burchell [2205] ZAECHC 35

Fakie NO v CCII Systems (Pty) Ltd (2006) SCA 54 (SA)

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Putco Ltd v TV & Radio Guarantee Co (Pty) Ltd 1985 (4) SA 809

S v Beyers 1963 (3) SA 70 (A)

S v Mhlungu and Others 1995 (2) SACR 277 (CC)

Uncedo Taxi Service Association V Maninjwa 1998 (3) SA 417 (E)

Legislation

The Constitution of the Republic of South Africa, 1996

Criminal Procedure Act 51 of 1977

The Superior Courts Act 10 of 2013