

Unpacking the 'contempt of court' process

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Many litigants often find that getting recourse at Court only partially resolves all issues between them. It usually calls for referring the matter back even after it was concluded and is typically where a contempt of court application would follow.



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"Contempt of court is any behavior or wrongdoing that conflicts with or challenges the authority, integrity, and superiority of the Court. These acts might include failure to comply with requests, witness tampering, withholding evidence, interruption of proceedings, or defying a court order. These wrongful acts may be committed by attorneys, officers of the Court, court personnel, jurors, witnesses, protestors, or any party involved in a court proceeding."

How does it work?

In a recent Supreme Court of Appeal case, that of *Samancor Chrome Limited v Bila Civil Contractors (Pty) Ltd and Others [2022]* (7 November 2022), the mechanism was explored.

The appellant, Samancor Chrome Limited (Samancor), is the co-owner of specific properties.

Accordingly, it has the sole and exclusive right to mine. In terms of these rights, it is obliged to take all necessary steps to safeguard and protect the environment and the mining area from any possible damage. It also has to protect any persons using or entitled to use the surface mining area from injury associated with any activities in the mining area.

On 12 June 2019, Samancor lodged an urgent application before the Gauteng Division of the High Court, Pretoria (High Court), seeking an order interdicting Bila, its employees and contractors from conducting unlawful mining operations. The High Court dismissed the application.

Requirements for contempt application

- a. the existence of the order;
- b. service or notice of that order to the respondent;
- c. non-compliance with the order by the respondent; and
- d. willfulness and *mala fides*.

The onus is on the applicant to prove all these requirements beyond a reasonable doubt. However, once the applicant has established the existence of the order, service or notice and non-compliance, the respondent bears the evidential burden concerning willfulness and *mala fides*.

Damages

The next issue to determine is the penalty imposed against the respondents. Samancor sought an order directing each of the respondents to pay a fine of R100,000 or any other sum the Court would deem appropriate. The Court ordered the first respondent to pay a fine of R100,000, while the second to fifth respondents were to pay a fine of R50,000 each. There was no order on imprisonment.

Conclusion

If the requirements are met, the contempt of court application will succeed, and the Court may be approached to impose a fine or compensation as a penalty. However, imprisonment is not always the result.

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