



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: CCD6/2024

In the matter between:

ENQUIRY: MR SITHEMBISO NKATHA

In Re:

THE STATE

and

**SBONELO MADANON WISEMAN SHANGASE
THALENTE MKHIZE**

**ACCUSED 1
ACCUSED 2**

ORDER

The following orders are issued:

1. Mr Sithembiso Nkatha is sentenced to a term of 12 months imprisonment or alternatively to pay a fine of R10 000.00. Six months of the term of imprisonment and R5000.00 of the fine is suspended for a period of five years on condition that Mr Sithembiso Nkatha is not convicted of contempt of court during the period of suspension. The payment of the fine of R5000.00 is to be made as follows:

21 September 2026: R1000.00

20 October 2026: R1000.00

20 November 2026: R1000.00

21 December 2026: R1000.00

20 January 2027: R1000.00

2. The Registrar is directed to despatch a copy of the judgment of 30 January 2026 and this order to the Legal Practice Council and the Magistrates' Commission for their consideration and any further action should they deem appropriate.

JUDGMENT ON SENTENCE

Henriques J

Introduction

[1] I have throughout my career as a judicial officer found the imposition of sentence one of the most difficult tasks I have had to perform. I have said this on countless occasions in criminal matters serving before me and this matter is no different. The task is not made any easier in this matter given that the respondent, Mr Sithembiso Nkatha (Mr Nkatha) is a qualified legal practitioner of a number of years standing, who also from time to time, he indicates, presides as an Acting Magistrate in the lower courts.

[2] At the outset, I must mention that despite repeated requests for Mr Nkatha to appoint a legal representative to assist him throughout these proceedings, he has failed to do so. A further opportunity was given to him to secure legal representation prior to the sentencing stage of the proceedings by 1 April 2026. Mr Nkatha placed on record that he had elected not to do so and will continue to represent himself.

[3] From the written judgment in the *rule nisi* one of the aspects which Mr Nkatha was found to have been in flagrant disregard of related to him not attending at court for the various appearances on which the matter had been adjourned as well as the non-compliance with the directives issued. This disregard of court orders and directives appears to have continued despite the judgment in the *rule nisi* being awaited.

[4] Despite argument being heard in October 2025 and the date for the delivery of the judgment in open court being arranged with him for 30 January 2026 at 10h00, on 30 January 2026 Mr Nkatha was not present. The matter stood down to enable the State Advocate to try and locate him and to also give Mr Nkatha time to attend at

court given that he had previously placed on record that he was making use of public transport.

[5] The matter stood down until 10h30 but was recalled at 10h39 when the State Advocate placed on record he had received a WhatsApp exchange between Mr Shah and Mr Nkatha that morning. In response to Mr Shah's enquiries as to why he was not present at court, Mr Nkatha placed on record that he was not well but had misunderstood the order issued in October 2025 in his presence. He informed Mr Shah that he assumed the order would be handed down and the judgment forwarded to him by my secretary.

[6] This does not accord with what transpired at court October 2025 when the date for delivery of the judgment was arranged in consultation with him. It was adjourned to a date convenient to Mr Nkatha as well as the State Advocate and Mr Nkatha was specifically warned to be in attendance at court on 30 January 2026.

[7] Given his non-attendance on 30 January 2026 the matter was adjourned to 19 February 2026 for him to be in attendance. Regrettably too, on 19 February 2026 at 9h30 when the matter was called, Mr Nkatha had sent an email and a WhatsApp text message to Mr Shah for him to advise the court that he was running late as he was making use of public transport. The matter then stood down waiting for him to attend at court.

[8] At 10h00 when the matter reconvened Mr Nkatha was present and apologised to the court for being late. In addition, he had requested an indulgence to file further affidavits from his traditional healer and to apply for legal aid. The matter was then adjourned to 23 April 2026 at 9h30 for argument in mitigation of sentence and the following directives were issued based on Mr Nkatha's requests to file further affidavits, despite the previous deadlines not having been met.

- (a) serve and file the affidavit of his traditional healer by midday on 27 February 2026;
- (b) make his application for legal aid by Friday 6 March 2026;

- (c) advise the court by 13 March 2026 of the outcome of such application and if he was unsuccessful in his application for legal aid, he was directed to file an appeal by 20 March 2026 and to advise the court of the outcome of the appeal by 1 April 2026 and;
- (d) if he was unsuccessful in his appeal, to make alternative arrangements to be suitably represented by a legal representative on 23 April 2026.

[9] In the intervening period, prior to the matter being enrolled for argument, Mr Nkatha despatched an email on 20 March 2026 at 19h36 indicating that he was unable to attend at legal aid and that by 1 April 2026 he will endeavour to have argument prepared. He also indicated that he required parties to be joined in the matter as they had an interest therein.

[10] When the matter was called on 23 April 2026, Mr Nkatha confirmed he was abandoning his application to join further parties in the proceedings and made brief submissions in mitigation of sentence. He also informed the court that he had not pursued any application for legal aid and further that he had filed all affidavits he intended to rely on in support of his submissions in mitigation of sentence and requested the matter to be adjourned to a suitably convenient date for argument.

[11] On 24 April 2026, argument in mitigation and aggravation of sentence were heard. Mr Shah made brief submissions and Mr Nkatha indicated that he had nothing further to add save that he was honest in all the submissions he had made. The matter was then adjourned to 19 August 2026 and paragraph 1.4 of the rule *nisi* extended to that date and Mr Nkatha was warned to attend court on 19 August 2026 at 9h30.

[12] In his written submissions in mitigation, Mr Nkatha filed an affidavit by Khayelihle Shabalala, an assistant to the main traditional healer. He confirmed that Mr Nkatha is one of the patients who received medical attention at a hospital and variations of 'traditional methodology'. Much of the contents of Mr Shabalala's affidavit is hearsay and is based on what was reported to him by Mr Nkatha. It thus carries very little evidential weight given that it records what Mr Nkatha informed him. The only meaningful contribution such affidavit makes is the fact that it confirms Mr

Nkatha's version that he was being seen by a traditional healer which was not ever placed in dispute and which the court accepted, occurred.

[13] The second affidavit was that of Nozipho S Ndlovu (Ndlovu), Mr Nkatha's office manager. Her affidavit confirms that he was issued with a hospital card and received hospital treatment and attended at hospital for various days for consultations with a psychologist and to obtain medication. She indicates that in all his dealings with the court he is respectful, and she found it difficult to believe that he would not attend at court on 24 July 2024 when he was required to do so.

[14] She also confirmed that he is receiving treatment from a traditional healer and that he was appointed as an Acting Magistrate in Pinetown. Her affidavit is a repetition of what she had deposed to earlier confirming instances that he reported to her of his life being threatened and his receiving medical treatment. What is noteworthy about these affidavits is that they were drafted by Mr Nkatha for them to sign. They contain many inaccuracies, especially regarding the date references in Ms Ndlovu's affidavit. Her affidavit is not an objective reflection of the true state of affairs.

[15] What follows is a summation of what Mr Nkatha submits both orally and in writing in mitigation of sentence. It is to a large extent a repetition and restatement of aspects already dealt with in his prior written and oral submissions and affidavits and introduces new material which he did not place before the court despite the opportunities given to him to do so stating that:

- 16.1 he only received the judgment on 17 February 2026, was ill and unable to access his office where his laptop was given the state of his financial affairs;
- 16.2 he was poisoned and attacked and this resulted in him experiencing trauma which persists to this day which "leads me to mitigate by stating that in future I shall fully assess cases before considering taking them ...";
- 16.3 despite the judgment, he is of the view that he is not in contempt of court and did not act mala fide and has always "held the honourable court and any others with absolute **Uberimma Fides**";

- 16.4 in support of his contention he is not in contempt of court he elects to revisit the court's finding on the facts and its conclusion in respect of him being in contempt;
- 16.5 he continues to receive both western and traditional treatment and he would not deliberately malign the dignity of the court;
- 16.6 his non-attendance at court on 24 July 2025 was 'that he was actioning other things';
- 16.7 he has suffered enough given that he has been sleeping at the office and "losing two sleeper beds" and pleads with the court to accept these explanations as mitigating as his illness and the criminal matter he withdrew from has affected his professional life;
- 16.8 he submits that 'he was overtaken by events and pleads with the court to see the bigger picture and see the situation for what it is'. In retrospect he ought to have reported the incidences of threats to his life, robbery and cellphone thefts to the authorities and the "officer manager who from the hindsight ought to have assisted in drawing up the withdrawal letters, to circumvent the delays, especially one being overwhelmed with the other areas of the office work";
- 16.9 he is of the view that despite the court confirming the orders he had discharged the required onus on a balance of probabilities to show he was not in contempt and this must not be overlooked when the court sentences him;
- 16.10 although the administration of justice was put into disrepute, it was not intentional nor with *mala fides* on his part. The circumstances were beyond his control and therefore the court must consider this when imposing a sentence;
- 16.11 he undertakes to ensure that all future matters entrusted to him would be properly assessed and properly dealt with going forward so that he does not find himself in a similar situation;
- 16.12 he "implores the court not to consider incarceration, as it will be **brutum in fulmen** in that the totality of what he went through before the matter, during the matter and after the matter has on its own being an experience that he would not wish for any legal practitioner";

- 16.13 he is experiencing severe financial hardship and is unable to pay a fine as he has to pay the arrear rental to his landlord and had to surrender his vehicle to Nedbank, and requests a lenient sentence or a caution and discharge;
- 16.14 “Although I have scathingly hereinabove made mitigating submissions, dealing with the finding either et al and/or selectively and proffered brevity, clarity and provided explanations, as I had to deal with others the previous Affidavits, exchanged between prosecution and myself, as I appeared in person due to the unavailability of funds, nor could possibly get Legal Aid. In respect of the hospital, had to pay the lesser amounts and hospital is still being owed as well. Furthermore, the Honourable Madam Justice Henriques, has stated or it has been noted in the judgment into the enquiry, I may not have stated in full all the other circumstances, and in this mitigation have tried to traversed others.”

[16] In considering an appropriate sentence I have to have regard to the recognised objectives of sentencing being prevention, deterrence, retribution and rehabilitation. I am mindful also and I have to consider that any sentence I impose must serve as a deterrent to any like-minded individuals as Mr Nkatha. If one has regard to his written and oral submissions at the hearing, it is clear that despite the judgment and despite the interactions with the court, Mr Nkatha maintains his innocence and, moreover, does not accept the court's finding that he is in contempt of court.

[17] This is demonstrated not only by his oral submissions, but also in the written submissions which he filed in mitigation which he maintains that he was not “purporting to be some sort of an appeal” to indicate that the court’s findings are not correct and therefore he is not in contempt of court. This demonstrates to this court that throughout Mr Nkatha does not accept any responsibility nor accept that he did anything wrong. This is indicative that he shows no remorse for his conduct and his behaviour to date.

[18] The fact that he in mitigation, deemed it necessary to place further matters before the court dealing with the correctness or otherwise of the court's judgment demonstrates this. He, a seasoned legal practitioner and acting magistrate, conflates

two issues, namely submissions in mitigation of sentence which the court must consider in deciding on an appropriate sentence, and secondly his right of appeal.

[19] I must place on record that I have considered all the written and oral submissions of Mr Nkatha, even those raised now for the first time and never dealt with initially when he filed his several sets of affidavits and submissions and when he made his oral submissions. I have considered the new material which he never placed before the court.

[20] Regrettably, these are all indicative of his failure to appreciate the obligations which were on him as a legal practitioner and do not in any way detract from the court's finding of contempt. They once again demonstrate a retrospective attempt by him to deal with issues which he was given several opportunities to deal with, the record demonstrating the matter adjourned to accommodate his request to file further affidavits and submissions. The repetition and regurgitation of aspects in his affidavits now at the sentencing phase of proceedings demonstrates his defiant attitude to the orders issued and confirmed by this court. They are, in my view at attempt to undermine public confidence in the integrity of this court.

[21] In determining an appropriate sentence, I have considered the judgment of *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others*,¹ the Constitutional Court held that:

'[37] As set out by the Supreme Court of Appeal in *Fakie*, and approved by this court in *Pheko II*, it is trite that an applicant who alleges contempt of court must establish that (a) an order was granted against the alleged contemnor; (b) the alleged contemnor was served with the order or had knowledge of it; and (c) the alleged contemnor failed to comply with the order. Once these elements are established, wilfulness and mala fides are presumed and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established.

...

[59] It cannot be gainsaid that orders of court bind all to whom they apply. In fact, all orders of court, whether correctly or incorrectly granted, have to be obeyed unless they are properly set aside. This, in addition to typifying common sense, the Constitution itself enjoins. Section

¹ *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* [2021] ZACC 18; 2021 (5) SA 327 (CC) (*Zuma*).

165(5) of the Constitution itself provides that an order or decision binds all persons to whom it applies ... [T]his has been confirmed in multiple cases, including *Mjeni*, in which the court stated that “there is no doubt, I venture to say, that [complying with court orders] constitutes the most important and fundamental duty imposed upon the state by the Constitution ...”

[60] As this court held in *Tasima I*, “the obligation to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system . . . and is the stanchion around which a State founded on the supremacy of the Constitution and the rule of law is built”. It is perspicuous that the constitutional right of access to courts will be rendered an illusion unless orders made by courts are capable of being enforced by those in whose favour the orders were made. In *SALC* it was said that “if the state, an organ of state or State official does not abide by court orders, the democratic edifice will crumble stone by stone until it collapses and chaos ensues”. A complete denial of judicial mechanisms “would render meaningless the whole process of taking disputes to courts for adjudication and that is a recipe for chaos and disorder”. Accordingly, it is necessary for this court to send, by virtue of a punitive sanction, an unequivocal message that its orders must be obeyed.

...

[124] Since it is necessary and relevant to take account of these aggravating factors, I must acknowledge that a court's consideration of aggravating factors is ordinarily paired with due regard to mitigating factors.’ (Footnotes omitted.)

[22] Before the *Zuma* judgment, no South African court had ordered direct imprisonment for civil contempt. Courts used suspended imprisonment as a means to ensure that convicted contemnors obey the order that they originally disobeyed.

[23] The *Zuma* contempt judgment exposed the difference in the nature of contempt proceedings in civil applications as being decidedly different from contempt prosecutions in criminal proceedings. Although these orders emanate from criminal proceedings, they are civil contempt proceedings. Courts have the power to suspend sentences on condition or without condition. If a person fails to pay a specified fine or suspension be deferred for a period. A court can discharge a person with a caution which has the effect of an acquittal for sentencing purposes. In *Zuma*, the Constitutional Court held that:

‘[47] I should start by explaining how the purposes of contempt of court proceedings should be understood. As helpfully set out by the minority in *Fakie*, there is a distinction between

coercive and punitive orders, which differences are 'marked and important'. A coercive order gives the respondent the opportunity to avoid imprisonment by complying with the original order and desisting from the offensive conduct. Such an order is made primarily to ensure the effectiveness of the original order by bringing about compliance. A final characteristic is that it only incidentally vindicates the authority of the court that has been disobeyed. Conversely, the following are the characteristics of a punitive order: a sentence of imprisonment cannot be avoided by any action on the part of the respondent to comply with the original order; the sentence is unsuspended; it is related both to the seriousness of the default and the contumacy of the respondent; and the order is influenced by the need to assert the authority and dignity of the court, to set an example for others.' (Footnotes omitted.)

[24] Such an approach cannot apply in this particular matter. The reasons advanced by Mr Nkatha for a suspended sentence are, in my view, inappropriate. Although he seems to indicate that he cannot afford a fine, this is not due to inability on his part, but due to the fact that he would rather use those monies to pay his arrear rental owing to his landlord and settle the balance owing to Nedbank.

[25] In addition, a caution and discharge is also not an appropriate option given his continued failure to comply with court orders.

[26] Following the declaration that Mr Nkatha is guilty of the crime of contempt of court for reasons set out in the written judgment of 30 January 2026, I am of the view that the most appropriate sentence is one of imprisonment with the option of a fine.

[27] The following orders are made:

1. Mr Sithembiso Nkatha is sentenced to a term of 12 months imprisonment or alternatively to pay a fine of R10 000.00. Six months of the term of imprisonment and R5000.00 of the fine is suspended for a period of five years on condition that Mr Sithembiso Nkatha is not convicted of contempt of court during the period of suspension.
2. The Registrar is directed to despatch a copy of the judgment of 30 January 2026 and this order to the Legal Practice Council and the Magistrates'

Commission for their consideration and any further action should they deem appropriate.

HENRIQUES J

CASE INFORMATION

Appearances

Counsel for the State	:	Mr K Shah, Ms K Essack
Instructed by	:	The National Prosecuting Authority Durban
For Mr Sithembiso Nkatha	:	In person
Dates matter heard	:	24 July 2025, 13 & 21 August 2025, 15 & 31 October 2025, 30 January 2026, 19 February 2026, 23 April 2026, 24 April 2026, 13 May 2026, 19 August 2026.
Date of Judgment	:	19 August 2026

