



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2022/10075

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

7 July 2022

DATE

In the matter between:

AQUA BULK (PTY) LTD

Applicant

and

THE MINISTER OF POLICE

First Respondent

**NATIONAL POLICE COMMISSIONER OF THE SOUTH
AFRICAN POLICE SERVICE**

Second Respondent

**GAUTENG PROVINCIAL POLICE COMMISSIONER OF
THE SOUTH AFRICAN POLICE SERVICE**

Third Respondent

**THE DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION**

Fourth Respondent

**THE STATION COMMANDER: SAPS AEROTON
VEHICLE IDENTIFICATION SERVICE UNIT**

Fifth Respondent

AQUA TRANSPORT AND PLANT HIRE (PTY) LTD

Sixth Respondent

JUDGMENT

CRUTCHFIELD J:

[1] The applicant, Aqua Bulk (Pty) Ltd, ('Aqua Bulk'), sought restoration of possession of two commercial industrial vehicles by way of the *mandament van spolie* from the first to fifth respondents (the 'main application').

[2] The main application came before me on the urgent roll of 22 March 2022, when the parties advanced introductory submissions. Counsel for Aqua Transport and Plant Hire (Pty) Ltd ('Aqua Transport'), appeared and submitted that Aqua Transport sought leave to intervene in the main application. Hence, the matter stood down until 24 March 2022 in order for the parties to deliver the necessary affidavits.

[3] Aqua Bulk opposed the intervention application ('the intervention') whilst the first, second, third, fourth and fifth respondents in the main application (referred to jointly as 'the respondents'), abided the Court's decision on the intervention.

[4] The respondents and Aqua Transport opposed the main application.

[5] I heard the intervention and the main application on 24 March 2022. I granted an order in respect of both applications on 28 March 2022, in the following terms:

- 5.1 Aqua Transport and Plant Hire (Pty) Ltd is granted leave to intervene as the sixth respondent in the application under case number 22/10075, ("the main application").

5.2 The costs of the sixth respondent's intervention application are costs in the cause of the main application.

5.3 The respondents shall, within 24 hours of presentation of a copy of the order on the respondents, restore to the applicant possession of the following vehicles:

5.3.1 The Mercedes-Benz rear loader waste compactor truck bearing vehicle identification number WDB96401660224363;

5.3.2 The Mercedes-Benz rear loader waste compactor truck bearing vehicle identification number ABJ96401660435977.

5.4 In the event of the respondents failing to restore possession of the vehicles in terms of paragraph 3 (paragraph 5.3) above, the Sheriff of this Court and/or his/her deputy is/are authorised to enter upon the premises of the fifth and/or sixth respondents to take possession of the vehicles wherever they may be found and to restore possession thereof to the applicant.

5.5 The first to sixth respondents shall pay the costs of this application.

[6] This judgment deals with the reasons for the order that I granted.

[7] I interpose to mention two errors in the typed order, date stamped 29 March 2022 ('the typed order'). Firstly, Aqua Transport was referred to erroneously in the typed order as the 'seventh respondent'. That reference was an obvious error and Aqua

Transport ought to be referred to and reflected as 'the sixth respondent' in the main application. Aqua Transport is referred to herein as 'the sixth respondent'.

[8] The second error is the reference in paragraph 3 of the typed order to "The respondent shall, within 24 hours of presentation ...". The reference to 'respondent' in the singular is also an obvious error as envisaged in rule 42 and should be corrected to read "The respondents shall, within 24 hours of presentation ..." as is reflected in paragraph 5.3 of this judgment.

[9] The first respondent is the Minister of Police, the political representative of the South African Police Service, responsible for the conduct of the members of the South African Police Service and cited in his official capacity in terms of the provisions of the State Liability Act, 20 of 1957.

[10] The second respondent is the National Commissioner of the South African Police Service, appointed in terms of the provisions of s 207(1) of the Constitution.

[11] The third respondent is the Gauteng Provincial Commissioner of the South African Police Service, appointed in terms of the provisions of s 207(4) of the Constitution.

[12] The fourth respondent is the Directorate for Priority Crime Investigation, an independent directorate within the South African Police Service ('SAPS') established in terms of Section 17B, 17C and 17D of the South African Police Service Act 68 of 1995. The fourth respondent is commonly known as 'The Hawks'.

[13] The fifth respondent is the Station Commander of the SAPS' Aeroton Vehicle Identification Service Unit.

[14] The sixth respondent is Aqua Transport and Plant Hire (Pty) Ltd.

[15] The relief sought by Aqua Bulk in the main application is apparent from the terms of the order granted by me, being restoration of the possession of the following two vehicles:

15.1 The Mercedes-Benz rear loader waste compactor truck bearing vehicle identification number WDB96401660224363;

15.2 The Mercedes-Benz rear loader waste compactor truck bearing vehicle identification number ABJ96401660435977;

(referred to jointly herein as 'the Mercedes vehicles').

[16] I granted the intervention with costs in the cause of the main application pursuant to Aqua Transport's allegations that it was allegedly in peaceful undisturbed possession of the Mercedes vehicles all along, that Aqua Transport disturbed Aqua Bulk's alleged possession of the Mercedes vehicles and that Aqua Transport was a necessary party in the event that I granted an order that the Mercedes vehicles be returned to Aqua Bulk's possession.

[17] I turn to deal with the main application.

[18] In order for Aqua Bulk to find success it had to demonstrate on a balance of probabilities, that Aqua Bulk was in peaceful and undisturbed possession of the Mercedes vehicles and that the respondents unlawfully deprived Aqua Bulk of that possession.¹

¹ *Nino Bonino v De Lange* 1906 TS 120 at 122.

[19] The merits of Aqua Bulk's possession of the Mercedes vehicles and the respondents' right to dispossess Aqua Bulk, if any, are not justiciable in spoliation proceedings.

[20] No person may take the law into his own hands and dispossess another without the authorisation of a court order. A court tasked with determining a spoliation will not enquire into the merits of the dispute but will grant the order restoring possession to the party in peaceful possession prior to the dispossession once the two requirements are proven, and without enquiring into the merits of the dispute.

[21] The source of this application lay in the separation by the Naicker brothers of the Aqua Group of Companies, into separate entities. The separation entailed the division *inter alia* of the assets of the Aqua Group of Companies, set out in a written commercial Memorandum of Agreement dated 23 September 2021 ('the Agreement'). The Agreement contained provisions for the arbitration and mediation of disputes arising from the Agreement.

[22] Pursuant to the conclusion of the Agreement, the Naicker brothers commenced implementing the division of assets. As from 1 October 2021, the Naicker brothers operated separately. Kevin Naicker operated under Aqua Transport and Donovan Naicker under Aqua Bulk.

[23] Aqua Bulk contended, and the averments were not denied by the respondents or Aqua Transport, that:

23.1 It was in possession of the Mercedes vehicles with effect from 31 December 2021.

- 23.2 The Mercedes vehicles comprised two of ten trucks ('the ten trucks'), transferred and delivered to Aqua Bulk by Aqua Transport in terms of the Agreement. Accordingly, reference in this judgment to the ten trucks includes the Mercedes vehicles that are the subject of this judgment.
- 23.3 The terms of the Agreement provided for and resulted in the transfer of the ten trucks to Aqua Bulk.
- 23.4 The ten trucks were delivered, together with their ignition keys, by Aqua Transport's employees to Aqua Bulk's general manager at Aqua Bulk's premises, 19 Van Dyk Road, Boksburg East Industrial, Gauteng, on 31 December 2021. (Aqua Bulk's general manager deposed to Aqua Bulk's founding and further affidavits in this matter.)
- 23.5 Notwithstanding delivery of the ten trucks to Aqua Bulk on 31 December 2021, the ten trucks were still licensed in Aqua Transport's name and the necessary transfer of registration forms to Aqua Bulk had not yet occurred.
- 23.6 Aqua Transport's general manager, one Mr A K Ismail ('Mr Ismail'), on 31 December 2021, registered a case under Brakpan CAS 374/12/2021 for the alleged unlawful use of vehicles without the consent of the owner, at the Brakpan Police Station.
- 23.7 The Alberton or Boksburg Police Stations would ordinarily retain jurisdiction in respect of the case, but the Brakpan Police Station was utilised.

23.8 Thereafter on 31 December 2021, members of the SAPS arrived at Aqua Bulk's premises demanding the return of the ten trucks without a warrant for search and seizure. The circumstances under which the ten trucks were delivered to Aqua Bulk's premises and the provisions of the Agreement were explained to the SAPS members. The latter left Aqua Bulk's premises apparently satisfied with the explanation, knowing that the Mercedes vehicles were based at Aqua Bulk's premises.

23.9 On 3 March 2022, certain members of the SAPS, identified by name and rank by Aqua Bulk, seized the Mercedes vehicles from Aqua Bulk's employees during the course of their employment duties. Aqua Bulk did not consent to the seizure of the Mercedes vehicles. Nor did its employees.

23.10 The SAPS did not have a warrant of search and seizure ('warrant') authorising its members to seize the Mercedes vehicles. That much was conceded, correctly so, by the respondents' counsel during the proceedings on 22 March 2022.

[24] Various disputes arose between the Naicker brothers during December 2021, resulting in what Aqua Bulk contended were 'trumped up' criminal charges including the alleged unlawful utilisation of vehicles without the owner's consent. Aqua Bulk contended that Aqua Transport had inveigled and 'incentivised' certain SAPS members in a 'seemingly untoward manner including to unlawfully seize the vehicles in question'.

[25] On Saturday, 15 January 2022, Colonel Maluleka, allegedly the Pretoria Branch Commander of the fourth respondent, arrived at Aqua Bulk's premises without a

warrant, demanding possession of twelve trucks. Colonel Maluleka was accompanied by various SAPS members, Mr Ismail and various private individuals.

[26] Aqua Bulk's attorney, Mr Johan Boshoff ('Boshoff') of JJFB Incorporated ('JJFB'), met with Colonel Maluleka and Mr Ismail, on Monday, 17 January 2022, in respect of Aqua Bulk's possession of the ten trucks.

[27] On 18 January 2022, Boshoff dispatched correspondence to the South African Police Service: Legal Services Colonel D Grobler and on which Colonel Maluleka was copied, ('the 18 January 2022 correspondence'). Boshoff did not receive a reply.

[28] The 18 January 2022 correspondence was important as Colonel Grobler deposed to the respondents' answering affidavit and the 18 January 2022 correspondence dealt in detail *inter alia* with:

28.1 The background to the issues regarding the ten trucks, the circumstances under which Aqua Bulk came to be in possession of them on 31 December 2021, the conclusion of the Agreement and that it was registered against the docket.

28.2 That certain SAPS members appeared to be abusing their powers in matters that did not fall within their jurisdiction, and allowing themselves to become involved in a private and essentially commercial dispute. Colonel Grobler was requested to inform certain identified SAPS members not to involve themselves unlawfully in the dispute between the Naicker brothers.

[29] On 4 March 2022, Boshoff dispatched further correspondence to Colonel D Grobler, demanding the return to Aqua Bulk of the Mercedes vehicles. Boshoff did not receive a reply.

[30] Aqua Transport's counsel contended before me that Aqua Bulk acquired possession of the Mercedes vehicles by theft from Aqua Transport. Counsel conceded however that the lawfulness or otherwise of Aqua Bulk's possession, as long as that possession was peaceful and undisturbed, was not an issue that I could or should determine in proceedings for a *mandament van spolie* sitting in the urgent Court.

[31] The Agreement, together with the delivery of the ten trucks to Aqua Bulk's possession by Aqua Transport's employees, which Aqua Transport did not deny, cast significant doubt on Aqua Bulk's alleged theft of the vehicles. Moreover, Aqua Transport had not commenced proceedings for the vindication of the ten trucks or the Mercedes vehicles at the time that I heard this application.

[32] The respondents contended that the Mercedes vehicles were stolen on 31 December 2021 and seized by the SAPS upon positive identification thereof, on 3 March 2022. At the time that Sergeant Thilivhali Nengovhela identified and impounded the Mercedes vehicles, he had a reasonable suspicion that they were stolen and acted in terms of s 22(b) read with s 20 of the Criminal Procedure Act ('CPA').

[33] The respondents admitted that they were not in possession of a warrant on 3 March 2022 when their members seized the Mercedes vehicles.

[34] In argument before me, the respondents placed reliance on a warrant issued on 11 March 2022, in respect of Brakpan CAS 374/12/2021 for theft of certain trucks, to be executed at Aqua Bulk's premises. The warrant dated 11 March 2022, however, did not

authorise the seizure of the Mercedes vehicles. The VIN numbers of the Mercedes vehicles were not included on annexure B to the warrant of 11 March 2022.

[35] The respondents relied on s 22(b) read with s 20 of the CPA for the seizure of the Mercedes vehicles.

[36] Section 20, entitled 'State may seize certain articles', provides that:

'The state may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article)-

- (a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence whether within the Republic or elsewhere;
- (b) which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere; or
- (c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.'

[37] In terms of s 20 of the CPA, the SAPS may seize any item that falls within one of the three categories referred to the section. The SAPS' belief or suspicion in terms of s 20 of the CPA must, objectively tested, be reasonable.

[38] Section 22(b) of the CPA provides that:

'A police official may without a search warrant search any person or container or premises for the purpose of seizing any article referred to in section 20 –

...

- (b) if he on reasonable grounds believes –
 - (i) that a search warrant will be issued to him under paragraph (a) of section 21(1) if he applies for such warrant; and
 - (ii) that the delay in obtaining such warrant would defeat the object of the search.

[39] The test for the existence of reasonable grounds is objective,² based on the entirety of facts before this Court. Sergeants Nengovhela and Phungo needed reasonable grounds upon which to justifiably act when they seized the Mercedes vehicles without a warrant.³

[40] The SAPS are obliged to exercise their powers in terms of chapter 2 of the CPA restrictively and with caution given that the powers afforded to the SAPS under the chapter allow state interference with fundamental constitutional rights. Thus, conduct in terms of chapter 2 of the CPA must be both reasonable and justifiable in the prevailing circumstances. Regrettably, the respondents failed to conduct themselves in the required manner in this matter.

[41] I mention that the spelling of the one SAPS member who conducted the seizure varied in the papers. I accept however that Sergeant Nkubela and Sergeant Nengovhela are the same person and I refer to him hereunder as Sergeant Nengovhela.

[42] As to compliance or otherwise with s 22 of the CPA, the factors set out hereunder, were material in reaching my determination in this matter.

[43] Mr Ismail's statement on 31 December 2021, relied upon by the SAPS for the Brakpan docket, demonstrated that the Aqua Transport drivers who delivered the ten trucks, together with their ignition keys to Aqua Bulk, acted on the instructions of their site supervisor, alternatively fleet manager.

[44] In those circumstances, Mr Ismail's statement did not reasonably sustain a charge of use of a vehicle without the owner's consent or a charge of theft. Nor did it

² *Ndabeni v Minister of Law and Order & another* 1984 (3) SA 500 (D).

³ *Alex Cartage (Pty) Ltd & another v Minister of Transport & others* 1986 (2) SA 838 (E); *S v Mayekiso en andere* 1966 (2) SACR 298 (C).

serve as a reasonable and justifiable basis for the seizure of the Mercedes Vehicles, some two months later, on 3 March 2022, in circumstances where the SAPS knew where the Mercedes vehicles were located from 31 December 2021.

[45] Sergeant Nengovhela admitted to Aqua Bulk's manager, Mr Pretorius, on 3 March 2022, that he knew where the Mercedes vehicles were located. Also on 3 March 2022, Sergeant Phungo advised Mr Pretorius that the Mercedes vehicles were seized pursuant to Brakpan case number 374/12/2021 on the charge of using a motor vehicle without the owner's consent. The Mercedes vehicles were not listed as stolen but were vehicles of interest.

[46] The SAPS knew of the conclusion of the Agreement. Sergeant Nengovhela confirmed to Mr Pretorius, on 3 March 2022, that he was aware of the Agreement. It was registered against the docket.

[47] On 15 January 2022, Colonel Maluleka and others attended at Aqua Bulk's premises without a warrant. On 17 January 2022, Boshoff met with Colonel Maluleka in respect of Aqua Bulk's possession of the ten trucks. The 18 January 2022 correspondence addressed to Colonel Grobler and copied to Colonel Maluleka, set out in detail, the background to the Mercedes vehicles coming into Aqua Bulk's possession and the basis for that possession, including the Agreement and the provisions thereof.

[48] Notwithstanding, the respondents did not explain why, in the event that they believed that the vehicles were being used without the owner's consent or stolen, no further investigation appears to have been carried out by the SAPS from 31 December 2021 and Aqua Bulk remained in possession of the Mercedes vehicles, until their seizure on 3 March 2022.

[49] No arrests were made. Neither Aqua Transport's site manager, fleet manager or the drivers who delivered the ten trucks and keys to Aqua Bulk were arrested. Nor was Mr Pretorius, Aqua Bulk's manager, to whom the ten trucks were delivered.

[50] Nor did the respondents explain why, if they believed that the Mercedes vehicles were being used without the owner's consent or were stolen. they did not approach a magistrate in order to obtain a warrant for search and seizure between 31 December 2021 and 3 March 2022.

[51] The respondent's contention that the Mercedes vehicles were seized whilst travelling on open roads and thus without a warrant, was without merit given that the SAPS knew where the Mercedes vehicles were based from 31 December 2021.

[52] Moreover, in the light of the time lapse from 31 December 2021 to 3 March 2022 and Sergeant Nengovhela's knowledge of the location of the ten trucks, Sergeant Nengovhela could not reasonably have believed, at the time of the seizure, that waiting to obtain a warrant from a magistrate would defeat the purpose of the seizure.

[53] This is particularly so given that the SAPS did not in fact obtain a warrant in respect of the seizure of the Mercedes vehicles, and, Sergeant Phungo's advice on 3 March 2022 to Mr Pretorius that the Mercedes vehicles were seized based on the charge of use of a motor vehicle without the owner's consent, were not listed as stolen and were vehicles of interest only.

[54] Sergeant Phungo was supported in this regard by Colonel Grobler's allegation, made in the answering affidavit deposed to by her on behalf of the respondents, that the case evolved from 25 March 2022, from the use of a motor vehicle(s) without the

consent of the owner to theft. Accordingly, as at 3 March 2022, the Mercedes vehicles were vehicles were not the subject of alleged theft.

[55] Colonel Grobler denied that Sergeant Nengovhela contacted Pretorius on 3 March 2022. Notably, Sergeant Nengovhela did not depose to a confirmatory affidavit in support of Colonel Grobler's denial. Moreover, the screenshot reflecting the telephone calls between Pretorius and Sergeant Nengovhela on 3 March 2022 placed before the Court by Aqua Bulk, contradicted Colonel Grobler's assertion.

[56] Accordingly, I accept Mr Pretorius's averments in respect of his interaction with Sergeants Nengovhela and Phungo on 3 March 2022.

[57] In addition, Colonel Grobler declined to deal with both the 18 January 2022 correspondence and that of 4 March 2022 and did not dispute Boshoff's attendance at the meeting with Colonel Maluleka on 17 January 2022.

[58] In the light of the factors set out hereinabove, objectively considered in their entirety, I find that the jurisdictional factors necessary to trigger s 22(b) of the CPA did not exist at the time of the seizure or at any time relevant to this matter.

[59] Based on an objective consideration of the factors abovementioned, reasonable grounds did not exist at the time that Sergeants Nengovhela and Phungo seized the Mercedes vehicles.

[60] Sergeants Nengovhela and Phungo did not have reasonable grounds on which to believe that a warrant would be issued to them in respect of the Mercedes vehicles if they applied for a warrant.

[61] Furthermore, Sergeants Nengovhela and Phungo did not have reasonable grounds upon which to believe, objectively, that a delay in obtaining a warrant would defeat the object of the search as required by s 22(b) of the CPA. Not only was a warrant not issued in respect of the Mercedes vehicles but the SAPS did not apply for a warrant in respect of the Mercedes vehicles.

[62] The entirety of factors set out hereinabove is sufficient for me to find as I do, that the respondents seized the Mercedes vehicles on 3 March 2022 without a warrant and absent justification in terms of s 22(b) read with s 20 of the CPA.

[63] It emerged at the hearing on 22 March 2022, that the respondents, on an undisclosed date between 3 March 2022 and 22 March 2022, unbeknown to Aqua Bulk, handed the Mercedes vehicles to Aqua Transport.

[64] Aqua Bulk justifiably contended that the SAPS' conduct in handing the seized Mercedes vehicles to Aqua Transport amounted to an unlawful abuse of the SAPS' constitutional duties and powers to uphold and apply the law of the Republic.

[65] The CPA provides that a seized asset must be returned to the person / entity from whom / which it was seized, alternatively to the lawful owner of the asset in the event that the person / entity from whom / which it was seized, consents thereto.

[66] Aqua Bulk did not consent to the SAPS handing the Mercedes vehicles to Aqua Transport. Aqua Bulk did not know that the respondents handed the Mercedes vehicles to Aqua Transport, prior to the matter being heard on 22 March 2022.

[67] The SAPS' conduct in handing the Mercedes vehicles to Aqua Transport is unacceptable, particularly in the light of Boshoff's correspondence of 4 March 2022 demanding the return of the Mercedes vehicles to Aqua Bulk.

[68] It is evident that the respondents, in both seizing the Mercedes vehicles, and / or handing the Mercedes vehicles to Aqua Transport, acted outside of the law. Nothing justified the SAPS's unlawful non-compliance with the CPA.

[69] Aqua Bulk's assertion that the respondents seized the Mercedes vehicles only to return them to Aqua Transport, in the circumstances, was not unjustified.

[70] A spoliation order is available against government entities.⁴

[71] Moreover, it is evident that the respondents did not act 'properly ... within the law. After all, the principle of legality requires of state organs always to act in terms of the law. ...',⁵ in seizing the Mercedes vehicles from Aqua Bulk, and, in handing the Mercedes vehicles to Aqua Transport.

[72] In the light of the facts set out above, Aqua Bulk proved that it was in peaceful undisturbed possession of the Mercedes vehicles from 31 December 2021 to 3 March 2022.

[73] Furthermore, Aqua Bulk demonstrated that the respondents unlawfully deprived Aqua Bulk of possession of the Mercedes vehicles on 3 March 2022.⁶

⁴ *Ngukumba v Minister of Safety and Security* (087/13) [2014] ZACC14 par [10]; 2014 (5) SA 112 (CC) at para [12]-[14].

⁵ *Id* at para [13].

⁶ *Boomporet Investments (Pty) Ltd v Paardekraal Concession Store* 1990 (1) SA 387 (AD) at para [16]

[74] No explanation was placed before this Court as to why the respondents considered it appropriate to involve themselves in what was clearly a private commercial dispute between two entities, that fell outside of the respondents' purview.

[75] That involvement did not constitute compliance by the respondents with their constitutional mandate.

[76] Nor was it permissible for Aqua Transport to unlawfully obtain possession of the Mercedes vehicles by way of the intervention of the SAPS. The failure by the respondents and Aqua Transport to disclose the date on which the SAPS handed the Mercedes vehicles to Aqua Transport in the light of Boshoff's correspondence of 4 March 2022, aggravates the respondents and Aqua Transport misconduct.

[77] As a result, I ordered the respondents and Aqua Transport to pay the costs of the main application.

[78] In the circumstances set out herein, I granted the order set out above, which I reiterate hereunder:

78.1 Aqua Transport and Plant Hire (Pty) Ltd is granted leave to intervene as the sixth respondent in the application under case number 22/10075, ("the main application").

78.2 The costs of the sixth respondent's intervention application are costs in the cause of the main application.

78.3 The first to sixth respondents shall, within 24 hours of presentation of a copy of the order on the respondents, restore to the applicant possession of the following vehicles:

78.3.1 The Mercedes-Benz rear loader waste compactor truck bearing vehicle identification number WDB96401660224363;

78.3.2 The Mercedes-Benz rear loader waste compactor truck bearing vehicle identification number ABJ96401660435977.

78.4 In the event of the respondents failing to restore possession of the vehicles in terms of paragraph 3 (paragraph 5.3) above to the applicant, the Sheriff of this Court and/or his/her deputy is/are authorised to enter upon the premises of the fifth and/or sixth respondents to take possession of the vehicles wherever they may be found and to restore possession thereof to the applicant.

78.5 The first to sixth respondents shall pay the costs of this application.

CRUTCHFIELD J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of this judgment is deemed to be 7 July 2022.

COUNSEL FOR THE APPLICANT: Mr D J Joubert SC
and Ms M Mostert.

INSTRUCTED BY: JJFB Inc.

COUNSEL FOR THE FIRST TO FIFTH RESPONDENTS: Mr T Mhlanga.

INSTRUCTED BY: State Attorney, Johannesburg.

COUNSEL FOR SIXTH RESPONDENT Mr Sekwakweng.

INSTRUCTED BY: Forbay Attorneys.

DATE OF THE HEARING: 22 and 24 March 2022.

DATE OF ORDER: 28 March 2022 & 7 July 2022