

REPUBLIC OF SOUTH AFRICA



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

Case Number: 051123/23

(1)	REPORTABLE: YES/ NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
DATE	_____
	SIGNATURE

In the matter between:

ZENADIN MOHAMMED BUCHURA

First Applicant

MAROTHI JOSIAS MASHASHANE

Second Applicant

And

THE STATION COMMANDER ORLANDO POLICE (SAPS) First Respondent

OFFICER GUMEDE (SAPS)

Second Respondent

NEUTRAL CITATION: *Zenadin Mohammed Buchura & Another v The Station Commander Orlando Police (SAPS) & Another* (Case No: 051123/23) [2023] ZAGPJHC 612 (01 June 2023)

ORDER

1. The Respondents be and hereby are ordered and directed to, to forthwith but by no later than 13:00 on Monday 5 June 2023, return to the First Applicant's possession the 1/6M Container IMM – 20' (6m) Standard General Freight Container seized and removed by or through the Second Respondent from the First Applicant's possession on 25 May 2023.
2. No order as to costs.

JUDGMENT

Thompson AJ:

- [1] On 25 May 2023 the first applicant's 1/6M CONTAINER IMM – 20' (6m) Standard General Freight Container ("the container") was seized and removed by or through the actions of the Second Respondent, one Mr Gumede, an officer of unknown designation in the employ of the South African Police Services and Stationed at the Orlando Police Station. The seizure of the container is premised thereon that the container was reported as stolen at the Orlando Police Station.
- [2] The applicants caused the application to be served on the Respondents by service thereof on the Provincial Office of the South African Police Services. During address on the matter, the second applicant informed me that they attempted to serve the application at the offices of the state attorney, however the state attorney advised them that they only deal with matters where the national minister is cited as a party and accordingly they must serve at the provincial office of the South African Police Services. I am satisfied that the application was served on the provincial offices of the

South African Police Services on 30 May 2023, as is evidenced by the Provincial Commissioner Legal Services date stamp affixed to the Notice of Motion.

[3] I was further informed during address that the container was, at the behest of Mr Gumede, purporting to act within the course and scope of his employment, removed from the possession of the first application by a private entity. According to what I was informed during the address, there is no entry in any occurrence book or SAP13 store entry of the seizure of the container. I expressed the concern to the applicants of granting an order whereby the respondents are to return that which is not in their possession. It was submitted by the second applicant, on behalf of the first applicant, that even if the container is not in the possession of the South African Police Services, it must be inferred that it is being held by a third party on the South African Police Services' behalf as the container was ostensibly seized in the course and scope of the second respondent's employment.

[4] The first applicant also alleges that he was not arrested for the alleged theft of the container nor was any docket opened at the Orlando Police Station when he queried same. The applicant also alleges that he is the owner of the container and annexed a cash invoice to this effect to the founding papers. There is no evidence to gainsay his ownership of the container.

[5] In light of the aforesaid, I am satisfied that a proper case has been made out for the return of the container to the first applicant and I grant an order in the following terms:

1. The Respondents be and hereby are ordered and directed to, to forthwith but by no later than 13:00 on Monday 5 June 2023, return to the First Applicant's possession the 1/6M Container IMM – 20' (6m) Standard General Freight

Container seized and removed by or through the Second Respondent from the First Applicant's possession on 25 May 2023.

2. No order as to costs.

C E THOMPSON AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

DATE OF HEARING: 01 June 2023

DATE OF JUDGMENT: 01 June 2023

APPEARANCES

For the Applicants: In person

For the Respondents: No appearance