



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

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

DATE: 25 JULY 2022

SIGNATURE:.....

Case No. 19626/2022

In the matter between:

KAPEEL BECHAN

First Applicant

BECHAN CONSULTING (PTY) LTD

Second Applicant

And

SARS CUSTOMS INVESTIGATIONS UNIT

First Respondent

SARS TACTICAL INVESTIGATIONS UNIT

Second Respondent

TANYA POTGIETER – SARS ILLICIT ECONOMY UNIT

Third Respondent

LINDIWE SHIBINDI – TACTICAL INVESTIGATIONS UNIT

Fourth Respondent

MINISTER OF POLICE

Fifth Respondent

HAWKS SPECIAL INVESTIGATION UNIT

Sixth Respondent

JUDGMENT

MILLAR J

1. This is an application for leave to appeal against the dismissal of an application for an order granting the restoration of certain computer equipment seized by the respondents pursuant to the execution of a warrant issued by this Court. The basis upon which the application was brought was a *mandament van spolie*.
2. The facts and circumstances surrounding the execution of the warrant and the seizure of the property are dealt with in the judgment handed down on 28 April 2022.
3. The test for the granting of leave to appeal, applicable to the present application is set out in S 17(1)(a) of the Superior Courts Act ¹ as follows:

“Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

- (a) (i) *the appeal would have a reasonable prospect of success; or*
- (ii) *there is some other compelling reason why the appeal should be heard; including conflicting judgments on the matter under consideration;*

4. This application was brought *inter alia* on the basis that the court erred in adopting a restrictive interpretation of the warrant and the manner in which it was executed. It was stated in the application that the correct interpretation was one which encompassed 7 different rights set out in the Constitution of the

¹ Act 10 of 2013

Republic of South Africa 1996. The affected rights were said to include the right to human dignity (Section 10), freedom of security of persons (Section 12(a), (b) and (e)), privacy (Section 14(a) to (d)), freedom of movement (Section 21), the right not to be arbitrarily deprived of property (Section 25(1), the right of access to court (Section 34) and the right of a detained person to remain silent and against self-incrimination (Section 35(1)).

5. This argument was not advanced when the main case was heard. That case was confined within the ambit of the *mandament van spolie* and was predicated upon the applicant's possession of certain computer equipment and the alleged unlawful dispossession thereof by the respondents.
6. When the application for leave to appeal was first called on 30 May 2022, I was informed that a notice in terms of Rule 16A of the uniform rules of court had been placed on the notice board of the court informing interested parties of the constitutional issues that the applicants intended to raise.
7. Since the hearing of the application had been arranged by the parties for a date within the 20 day period, I deemed it prudent that the application not proceed and that the full period be allowed to elapse so that any party who may have had an interest in the matter could have expressed this. By the time this application was heard, no interest had been expressed by any party.
8. When the application was called, the applicants did not pursue the constitutional aspects raised by them but confined themselves to the finding that the warrant had been properly executed. This aspect was dealt with in the main judgment and I do not intend to repeat it here.

9. It was also argued that the evidence upon which the case for SARS had been based was hearsay. This was on the basis that the deponent to the affidavit of SARS had purportedly not been present at the specific time when the applicants' vehicle had been opened and searched and the computers and other property found there and taken into custody.
10. The deponent in fact stated in the answering affidavit pertinently that he was personally present at the time that the warrant was executed and the applicants, save for a bare denial, did not disturb his evidence in this regard. On the contrary, even on the version of the applicants, Mr. Bechan was not present when the vehicle was opened and the computers and other property removed from the vehicle and so on his version quite patently, he is unable to place in issue the assertion of the deponent on behalf of SARS, Mr. Klingenberg.
11. I have considered all the grounds upon which this application for leave to appeal has been brought, the reasons for granting the judgment of 28 April 2022 and the arguments advanced on behalf of the parties and I am of the view that there is neither a reasonable prospect that another court would come to a different conclusion nor any compelling reason for the granting of leave to appeal.
12. In the circumstances, I make the following order: -
 - 12.1 The application is dismissed.

- 12.2 The First and Second Applicants are ordered to pay the costs of the application jointly and severally which costs are to include the costs consequent upon the employment of two counsel. Such costs are to include the costs of 30 May 2022.

A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:	20 JULY 2022
JUDGMENT DELIVERED ON:	25 JULY 2022
COUNSEL FOR THE APPLICANTS:	ADV. I BREDENKAMP SC ADV. S DAVIES
INSTRUCTED BY:	FABER GOERTZ ELLIS AUSTEN INC.
REFERENCE:	MS. J FABER
COUNSEL FOR THE RESPONDENTS:	ADV. B SWART SC ADV. C NAUDE
INSTRUCTED BY:	VZLR INC.
REFERENCE:	MS. M LABUSCHAGNE