

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2024-008691

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

Date: 6 February 2024 E van der
Schvff

In the matter between:

JOSEPH JACOBUS VAN HEERDEN APPLICANT

and

MINISTER OF POLICE RESPONDENT

JUDGMENT

Van der Schvff J

[1] The applicant approached the court on the basis of extreme urgency for the relief set out below. The notice of motion is dated 29 January 2024. The founding affidavit was signed and commissioned on the same date. The application was initially emailed to the respondent and the offices of the State Attorney on 29

January 2024 and served by Sheriff on the respondent's offices only, on 31 January 2024. The respondent was called on to file a notice of intention to defend before 16h00 on 30 January 2024, and an answering affidavit by 31 January 2024.

- [2] In the notice of motion, the applicant sought an order interdicting the Respondent from seizing and confiscating nine firearms, of which he is the registered and licensed owner, pending the finalisation of a criminal case against him and a court finding on his competency to possess firearms.
- [3] When the matter was heard, the applicant's counsel presented the court with a different draft order, essentially seeking an order that the applicant's weapons may only be seized in terms of a warrant issued by a judge or magistrate. Counsel appearing on behalf of the respondent indicated that the respondent will not have a problem with an order to the effect that a warrant must be obtained before any weapons are seized.
- [4] Applicant's counsel submitted that if the relief as sought in the draft order prepared by him is granted, the applicant achieved substantial success and that costs should follow the event.
- [5] I entertained this application on the urgent court roll since I already read the papers, and I am alive to the turbulent effect the incident that occurred on 30 December 2023 must have had on the applicant and his family. I am also aware of the need for the investigation to proceed in the interest of all the affected parties and for justice to be done. If no order is granted, the applicant may feel the need to approach the urgent court at a later stage, and that will impact the duration of the investigation. To strike the matter for lack of urgency in the specific factual context of this matter will not be in the interest of justice. The granting of an order will regularise the parties' respective positions. I am, however, not inclined to prescribe the manner in which the South African Police Services or the courts involved in the criminal matter are to fulfill their respective roles. The requirements for search and

seizure are statutorily determined and need not be captured in the order granted by this court.

[6] I am also not inclined to grant a costs order in the applicant's favor. In considering the appropriate costs order, I had regard to a number of factors. I am of the view that both the applicant and the respondent could either have prevented the necessity of approaching the court for relief or curtailed the proceedings. As a result, I am of the view that it is just and fair for each party to carry their own costs.

[7] The factors that I considered in granting the costs order are, amongst others,

- i. the State respondent's failure to act on the correspondence received from the applicant's attorney of record. If the communication had been responded to the applicant might not have felt the need to approach the Court;
- ii. the applicant's belated realisation that the relief sought in the notice of motion is very wide. If the relief, which the counsel for the state indicated her client does not have a problem with, was requested from the onset the matter might not have been opposed;
- iii. the extremely short timeframes under which opposing papers had to be filed;
- iv. the respondent's duty to fully investigate the charges against the applicant; and
- v. the applicant's right to due process.
- vi. The court was, in addition, only informed from the bar that the Warrant-Officer initially searched for the weapons listed in the notice of motion without a warrant. Since this detail was not stated in the founding affidavit, the respondent cannot be faulted for not setting out the reasons why the Warrant-Officer deemed it necessary to conduct a search without having obtained a warrant.

ORDER

In the result, the following order is granted:

- 1. The application is dealt with as an urgent application, and non-compliance with the Rules of Court is condoned;**
- 2. The applicant's licensed firearms may only be seized in terms of a warrant issued by a Judge or Magistrate;**
- 3. Each party is to pay their own costs.**

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicant:	Adv. A. Vorster
Instructed by:	Tiaan Joubert Attorneys
For the respondent:	Adv. P. Nkosi
Instructed by:	The State Attorney
Date of the hearing:	6 February 2024
Date of judgment:	6 February 2024