

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates	YES / NO
Circulate to Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA (Northern Cape High Court, Kimberley)

Saakno: / Case number: **1338 / 2011**
Datum verhoor: / Date heard: **27 / 09 / 2012**
Datum gelewer: / Date delivered: **12 / 10 / 2012**

In the matter between:

IMPERIAL CROWN TRADING 289 (PTY) LTD

Applicant

and

**THE ACTING SENIOR MAGISTRATE RICHARD
EDWARD BIRCH, KIMBERLEY, N.O.**

First Respondent

THE MINISTER OF POLICE, N.O.

Second Respondent

THE DIVISIONAL COMMISSIONER, DIRECTORATE FOR PRIORITY CRIME INVESTIGATION OF THE SOUTH AFRICAN POLICE SERVICE, N.O.

Third Respondent

**LIEUTENANT COLONEL SANDRA
VAN WYK N.O.**

Fourth Respondent

SISHEN IRON ORE COMPANY (PTY) LTD

Fifth Respondent

KUMBA IRON ORE LIMITED

Sixth Respondent

Coram: Lacock, J

JUDGMENT

LACOCK, J

- [1] This is a somewhat surprising application for leave to appeal by the fifth and sixth respondents (in the main application) whilst no similar applications had been filed by any one of the prosecution authorities (second to fourth respondents). No counter application was filed by the Applicant.
- [2] For purposes of this judgment, the parties are referred to as in convention.
- [3] At the outset, Adv Marcus SC, appearing for the fifth and sixth respondents (collectively referred to as Sishen) drew my attention to an obvious mistake in paragraph F2 of my order wherein reference is made to "the first respondent". The paragraph should have read "the second, and/or third and/or fourth respondents". The error has now been rectified, and the order amended accordingly.
- [4] The first line of attack against the order made is leveled against the wording of paragraphs F2 and 3 of the order. Mr Marcus argued that in the event of the issuing of an instruction to return the documents, etc., to the applicant or the eventuality referred to in paragraph F3 of the order, I should have made provision for a window period for the further preservation of the goods to allow Sishen to file an application within this period to further preserve the goods

pending a private prosecution to be instituted by Sishen against ICT.

4.1 The short answer hereto is to be found in, *inter alia*, the judgment in **Barclays Zimbabwe Nominees (Prt) Ltd v Black**, 1990 (4) SA 720 (AD), to the effect that a company has no *locus standi* to institute a private prosecution.

4.2 As conceded by Mr Marcus, a preservation order made in pursuance of a search and seizure warrant affords no vehicle to a litigant for an application for an Anton Pillar order.

[5] Secondly Mr Marcus, as was done in argument in the main application, relied on the Constitutional Court judgment in **Thint (Pty) Ltd v NDPP**, 2009 (1) SA 1 (CC) in criticizing paragraph C of my order. It was argued that a Court of Appeal may, when comparing the wording of the warrant issued by the first respondent in this matter with the wording of the warrant issued in **Thint (supra)**, and when regard is had to the warrant as a whole, such Court may find that I erred in striking down those portions of the warrant.

5.1 I have dealt with this submission in my judgment, and I once again carefully considered this argument. I am

however convinced that there are no reasonable prospects that a Court of Appeal may come to a different conclusion. The ambit of the alleged offences in **Thint (supra)** cannot be compared to the limited issues relevant in this matter and the limited timeframe within which the “offences” were allegedly committed. I remain convinced that the wording of the warrant was overbroad in respect of the paragraphs struck down.

[6] For these reasons the following order is made:

**THE APPLICATION FOR LEAVE TO APPEAL IS
DISMISSED WITH COSTS.**

**HJ LACOCK
JUDGE**

<u>For the Applicant:</u>	Adv. E. Wessels oio Van de Wall & Partners
<u>For the 2nd to 4th Respondents:</u>	Adv. M. Khoza SC oio The State Attorney
<u>For the 5th to 6th Respondents:</u>	Adv. Marcus SC oio Duncan & Rothman Inc.