

IN THE KWAZULU-NATAL HIGH COURT, DURBAN
REPUBLIC OF SOUTH AFRICA

CASE NO : 3551/2011

In the matter between:

WASTEMAN HOLDINGS (PTY) LTD

Applicant

and

FRANCOIS RYNO SERFONTEIN

First Respondent

**THE MINISTER OF ENVIRONMENTAL
AFFAIRS AND TOURISM**

Second Respondent

**THE MEMBER OF THE EXECUTIVE
COMMITTEE, DEPARTMENT OF
AGRICULTURE, ENVIRONMENTAL
AFFAIRS & RURAL DEVELOPMENT,
KWA-ZULU NATAL**

Third Respondent

**THE MUNICIPAL MANAGER :
ETHEKWINI MUNICIPALITY**

Fourth Respondent

**THE COMMISSIONER SOUTH
AFRICAN POLICE SERVICES**

Fifth Respondent

**THE MINISTER OF SAFETY &
SECURITY**

Sixth Respondent

MAGISTRATE P I SINGH N.O.

Seventh Respondent

**THE MEMBER OF THE EXECUTIVE
COMMITTEE, DEPARTMENT OF
WATER AFFAIRS, KWA-ZULU NATAL**

Eight Respondent

J U D G M E N T

K PILLAY J

The Applicant, Wasteman Holdings (Pty) Ltd, sought orders in two parts against the aforesaid Respondents.

Part A of the application required urgent relief in the following terms:

- 1) Dispensing with the forms of service and time periods stipulated in the Uniform Rules for the Conduct of proceedings in the above Honourable Court, and disposing of this part of the application as an urgent application in accordance with the rule of Rule 6 (12) of the Uniform Rules.*
- 2) Pending the finalisation of the relief sought in Part B of this Notice of Motion,*
 - 2.1 Ordering the first to sixth and eighth respondents and/or their servants and/or representatives forthwith to seal and preserve all the documents, objects and samples seized by the first to sixth and eighth respondents and/or their servants and/or representatives at the Bulbul landfill site Chatsworth, Durban on 10 February 2011, by:-*
 - 2.1.1 Sealing the aforementioned documents, objects and samples in the presence of the applicants duly authorised representatives in a manner so as to ensure that no further access is had or made to the documentation, objects and samples;*
 - 2.1.2 Storing the aforesaid documents, objects and samples with the Registrar of this Honourable Court in safekeeping at the discretion of the said Registrar;*
 - 2.2 Ordering that no party shall have access to the aforementioned documents, objects and samples unless by agreement between the parties or by Order of Court.*
- 3. Granting the applicants leave to supplement their papers within five days of the date of the Order in this part of the application.*
- 4. Ordering such respondents as oppose this part of the application to pay the costs thereof; otherwise ordering the first respondent to*

pay the costs of this part of the application.

5. *Granting the applicants further and/or alternative relief.*

Part B of the application related to setting aside of the search warrant, alternatively reviewing and setting aside the search warrant and/or the execution of the search warrant. The order sought was thus framed in the following terms:-

1. *Setting aside alternatively reviewing and setting aside the search warrant alternatively the decision to issue the search warrant issued by the seventh respondent on 9 February 2011 (“the search warrant”).*
2. *Setting aside, alternatively reviewing and setting aside the execution of the search warrant carried out at the Bulbul landfill site Chatsworth, Durban on 10 February 2011 (“the execution of the search warrant”).*
3. *Ordering the return of the documents and objects seized, and the samples taken pursuant to the execution of the search warrant, to the applicant forthwith; and in the event that this Order is not complied with within five days of service on the respondents of a copy thereof, authorising the Sheriff to remove the aforesaid documents, articles and samples from the custody of the respondents, wherever they may be found, and returning these to the applicant.*
4. *Interdicting the first, second, third, fourth, fifth, sixth and eight respondents and/or their servants and/or representatives from making use of any of the documents, articles and/or samples taken pursuant to the search warrant or the execution of the search warrant, or making use of any information obtained during or in consequence of the execution of the search warrant in any administrative, civil or criminal proceedings.*
5. *Ordering such respondents as oppose this application to pay the costs thereof, jointly and severally, the one paying the other to be absolved.*

6. *Granting the applicant further and/or alternative relief.*

The urgent interim relief sought in Part A was settled by agreement between the parties on 25 March 2011 in the following terms:-

1. *That this matter is postponed to the 14th of June 2011 on the opposed roll;*
2. *That the applicant is given leave to supplement its founding papers, if it so wishes, by 8 April 2011;*
3. *That such respondent as are opposing the relief sought in part b of the notice of motion are to file affidavits by the 30th of April 2011;*
4. *That the applicant is to file its response to the affidavits of the respondents', if any, by 14 May 2011;*
5. *That the applicant is to file its heads of argument by 26 May 2011. Such respondents' as oppose the applicant's relief are to file their heads of argument by 3 June 2011;*
6. *That the costs of the hearing of today are reserved for consideration by the Court deciding part b of this application.*

IT IS RECORDED THAT THE FOLLOWING HAS BEEN AGREED BETWEEN THE PARTIES IN RESOLUTION OF THE ISSUE RAISE IN PART A OF THE NOTICE OF MOTION:

1. *All items seized in terms of the search warrant executed on 10 February 2011 under the search warrant referred to in the notice of motion will be sealed in a box or boxes such sealing to take place in the presence of the parties or their representatives within no later than 2 days of the Order;*
2. *The documents so sealed will be stored at the offices of Friedland Hart Solomon & Nicolson Attorneys, Pretoria until resolution by this Court of the dispute in part b of the notice of motion.*

3. *In respect of samples of any material taken on the 10th of February 2011 from the premises mentioned in the search warrant referred to in this application which samples are in the process of being put up for analysis at a laboratory, any result of such analysis will immediately upon production thereof without being read or considered by any party to these proceedings be placed in a sealed envelope to be sealed in the same manner as aforesaid within no later than 2 days of this Order and placed for safekeeping with Friedland Hart Solomon & Nicolson Attorneys, Pretoria until resolution of dispute in part b.*

BACKGROUND

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This matter concerns the validity or otherwise of a search and seizure warrant issued by Magistrate P I Singh N.O. (Seventh Respondent). On 10 February 2011 the search warrant was effected by the First Respondent and various employees of the other Respondents.

The Applicant is a waste disposal company which collects and disposes of medical waste for their respective clients. It is not in dispute that they have contracts with major private hospital groups in South Africa which include “Life Healthcare” and “Medicross” as well as tenders that were awarded to them by the Provincial Departments of Health, to dispose of medical waste generated at the relevant provincial hospitals. The Wasteman Group of companies consist of the following companies:

- Phambili Wasteman (Pty) Ltd
- Wastean KZN (Pty) Ltd
- Wasteman Group (Pty) Ltd
- Wasteman Holdings (Pty) Ltd
- Wasteman Healthcare (Pty) Ltd

The First Respondent is designated an Environment Management

Inspector under the Provisions of the National Environmental Management Act (hereinafter referred to as Act 107 of 1998). He is also the investigating officer in case file E 462/10/2009, where allegations of the illegal disposal of medical waste are being investigated.

On 4 February 2011 he applied for a search and seizure warrant in respect of the Applicant's premises. In paragraph 5 of his affidavit, in support of his application, he stated the following:-

“During the investigation it was established that the Wasteman Group owned and managed a landfill at 101 Bulbul Drive in Silverglen, Chatsworth. Further investigations were conducted into the operations undertaken at the Bulbul Drive Landfill and the following were established:

- The Wasteman Group do have a waste permit in terms of section 20 of the Environment Conservation Act, Act 73 of 1989*
- Various complaints were received from residents and community leaders in the Chatsworth area regarding the operations of the Wasteman Group at the Bulbul Drive Landfill*
- Site visits were conducted in the past by the Ethekeeni Municipality that found various non-compliance*
- Site visits were conducted by the KZN Department of Agriculture, Environment and Rural Development in the past and they found various non-compliance on the site*

Due to aforementioned investigation conducted it was found that the Wasteman Group are in non-compliance with various conditions of their section 20 waste permit and therefore are contravening the following legislation.

On 9 February 2011, the Seventh Respondent issued the warrant. I believe it is necessary to set out the entire impugned search warrant hereunder.

SEARCH WARRANT

(Section 20, 21 and 25 Criminal Procedure Act, 1977 (Act 51 of 1977))

AS PER ANNEXURE “A” in terms of section 13(4) of Act 68/1995 (Police Services Act)

Whereas it appears to me from information under oath that there are reasonable Grounds to believe that, within the Magisterial District of Chatsworth

There is an article to witAS PER ANNEXURE “B” which:

<i>(a)is concerned in the commission of an offence</i>	<i>x</i>
<i>(b)is concerned in the suspected commission of an offence</i>	<i>x</i>
<i>(c)is on reasonable grounds believed to be concerned in the commission of an offence</i>	<i>x</i>
<i>(d)is on reasonable grounds believed to be concerned in the suspected commission of an offence</i>	<i>x</i>
<i>(e)may afford evidence of the commission of an offence</i>	<i>x</i>
<i>(f)may afford evidence of the suspected commission of an offence</i>	<i>x</i>
<i>(g)is intended to be used in the commission of an offence</i>	<i>x</i>
<i>(a)is on reasonable grounds believed to be intended to be used in the commission of an offence</i>	<i>x</i>

And which is in the possession of / under the control of / upon or at a premises at / upon the person of 101 Bulbul Drive Silverglen, Chatsworth.

THESE ARE THEREFORE to authorize you to search in the daytime the identified person / to enter and search the identified premises and to search any person found on or at such premises and to direct you to seize the saidAS PER ANNEXURE “B”if found, and to deal with it according to section 30 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

Annexure ‘A’ to the warrant, in addition to the First Respondent, authorised 19 other persons to assist with the search. These persons

included members of the SAPS, the Department of Environmental Affairs, Ethekwini Municipality, the KZN Department of Agriculture, Environmental Affairs and Rural Development and the KZN Department of Water Affairs.

The warrant was then executed on the 11 February 2011 at the premises of Applicant by the First Respondent and various others, as set out in Annexure 'A'. A document, Annexure 'B' setting out a list of documents sought was handed to Mr Botts, the Regional General Manager for the Applicant. On completion of the search an inventory of the seized items was drawn up and furnished to Mr Botts.

At the search, and several times over the course of days following the search, the Applicant's attorneys made several attempts to determine the offence that the Applicant was suspected of having committed, without success. The affidavit deposed to by the First Respondent which accompanied the application for the warrant, and in which the suspected crimes were listed, was eventually provided to the Applicant on 7 March 2011.

These proceedings were then instituted. Various issues were raised. In the light of the conclusion I have reached, I believe it is necessary to deal only with the following essential issues.

- 1) Whether or not the Magistrate applied his mind before granting the search and seizure warrant;
- 2) Whether the warrant is invalid because it does not expressly state the offence which the applicant is suspected of having committed;

- 3) If the Court finds in favour of the Applicant on either (1) or (2) above, what the appropriate order should be.

It is well established that search and seizure operations by state officials are by their nature intrusive on an individual's constitutionally protected rights, particularly those of privacy and dignity. (See *Minister of Safety and Security v Van Der Merwe & Others*).¹ However, they serve a valuable purpose in enabling the State to carry out its constitutional mandate to prevent and detect criminal activities.

These conflicting interests have to be counter poised and the traditional manner in which this is achieved is by requiring firstly that State officials who wish to intrude on the right to privacy do so by obtaining search and seizure warrants, unless they can justify not doing so for valid reasons, and secondly by insisting on strict compliance with the parameters of the search set out in the warrant.

As aptly stated by Van der Westhuizen J in *Magajane v Chairperson, NorthWest Gambling Board and Others*.²

'[A warrant] is the method tried and tested in our criminal procedure to defend the individual against the power of the state, ensuring that police cannot invade private homes and businesses upon a whim, or to terrorise. Open democratic societies elsewhere in the world have fashioned the warrant as the mechanism to balance the public interest in combating crime with the individual's right to privacy. The warrant guarantees that the State must justify any support intrusions upon individuals' privacy under oath before a neutral officer of the court prior

¹ [2011] ZACC 19 par 21

² 2006(5) SA 250

*to the intrusion. If furthermore governs the time, place and scope of the search, limiting the privacy intrusion, guiding the State in the conduct of the inspection and informing the subject of the legality and limits of the search.*³

In balancing the conflicting interests, two important points relevant to this matter must be mentioned. The first is that where the right to privacy is sought to be enforced by a juristic person, the Constitutional Court, in determining whether the right to privacy has been infringed, has said that a business generally has a lower expectation of privacy than an individual.⁴ Furthermore, a business that is public in nature, is involved in an industry that is regulated by legislation, or conducts activities that are potentially hazardous to the public will also possess an attenuated right to privacy.⁵

Secondly, if an invasion of privacy such as a search is primarily intended for criminal enforcement purposes, it will attract a far greater level of scrutiny than an invasion that is merely a regulatory inspection for the purpose of legal compliance. This would be so even if the invaded premises are commercial in nature.⁶

I turn now to deal with the issues as aforesaid.

- (1) *Whether or not the Magistrate applied his mind before granting the search and seizure warrant.*

3 Para 74

4 Bernstein and Others v Bester and Others NNO 1996(2) SA 751 (CC) para 85

5 Mistry v Interim Medical and Dental Council of South Africa and Others 1998(4) SA 1127 (CC) para 27

6 Magajane note 5 above para 70

Section 25 of Act 51 of 1977 is applicable to this application. I set out the relevant portions of the aforesaid section hereunder.

25 *Power of police to enter premises in connection with State Security or any offence*

(1) If it appears to a magistrate or justice from information on oath that there are reasonable grounds for believing-

(a) that the internal security of the Republic or the maintenance of law and order is likely to be endangered by or in consequence of any meeting which is being held or is to be held in or upon any premises within his area of jurisdiction; or

(b) that an offence has been or is likely to be committed or that preparations or arrangements for the commission of any offence are being or are likely to be made in or upon any premises within his area of jurisdiction, he may issue a warrant authorizing a police official to enter the premises in question at any reasonable time for the purpose-

(i) of carrying out such investigations and of taking such steps as such police official may consider necessary for the preservation of the internal security of the Republic or for the maintenance of law and order or for the prevention of an offence;

(ii) of searching the premises or any person in or upon the

premises for any article referred to in section 20 which such police official on reasonable grounds suspects to be in or upon or at the premises or upon such person; and

(iii) of seizing any such article.

This section permits a Magistrate to issue a search warrant if there exist reasonable grounds for believing that an offence has been or is likely to be committed. A Magistrate who is faced with such an application has to exercise a judicial discretion, which discretion is difficult to challenge.

Reasonable grounds, do not amount to a belief that a criminal case has been made out, but that reasonably seen, there are grounds for a belief that a person may have in his possession, or under his control, an article, which can be of use in proving a criminal case,⁷ and it must be clearly worded.

In *Mandela v Minister of Safety and Security*⁸ the Court noted that, reasonable grounds for believing does not require grounds that measure up to an objective standard, but rather grounds which in the subjective opinion of the Magistrate are reasonable. Thus, the Court may not interfere with the Magistrate's decision merely because it views his/her conclusion as incorrect. To justify interference, the Court must be satisfied that the Magistrate did not apply his/her mind to the matter.⁹

In *Van der Merwe v Minister van Justisie en 'n Ander*¹⁰ The Court held that the Magistrate's decision as to whether or not the required reasonable

⁷ Cine Films (Pty) Ltd v Commissioner South African Police 1971(2) SA 553 (C)

⁸ 1995(2) SACR 397 (W) @ 404 G

⁹ At 404 1 – 405 9

¹⁰ 1995(2) SACR 471

grounds exists is decisive, and emphasised that it would only interfere where it is of the opinion that the Magistrate has not applied his or her mind. This would occur, for example, where the Magistrate acted *mala fide*, with an improper motive, arbitrarily or grossly unreasonable. It added that the onus would be on the person seeking to set the warrant aside to show that on a balance of probabilities the Magistrate did not apply his mind to the matter.

In this regard, the first argument raised by the Applicant is that the Magistrate did not apply his mind to the matter in as much as there were insufficient details in the First Respondent's affidavit to explain the circumstances under which he suspected that the offences had been committed. It is submitted that in respect of the alleged complaints received from the community the nature of these is not indicated, and neither is the nature of the non-compliance discovered at site visits nor any other details of these inspections disclosed.

He argues that in essence that affidavit merely sets out conclusions which the First Respondent has made but offers little by way of objective facts on which the Magistrate could form reasonable grounds to believe that an offence had been committed.

It is further contended that despite the general vagueness of the averments in the affidavit, the Magistrate issued the warrant by ticking off every box dealing with likely offences. The argument is that this came about as there were insufficient facts before the Magistrate.

An analysis of the affidavit reveals that it was made clear that the Applicant is involved in the disposal of medical waste, that it operates a

landfill, for which it has a waste permit in terms of Section 20 of Act 73 of 1989.

The First Respondent averred that he was investigating allegations of the illegal disposal of medical waste by the Applicant. He received various complaints from residents and community leaders in the Chatsworth area; that site visits were conducted in the past by the Ethekewini Municipality and KZN Department of Agriculture, Environments and Rural Development, where “*various non-compliance*” were found.

The allusion to “*non-compliance*” although not specified as to what the non compliance was in reference to must surely be seen as a reference to the permit. This is made clear in paragraph 6 of First Respondent’s affidavit, where he states:

“Due to above-mentioned investigation conducted it was found that the Wasteman Group are in non-compliance with various conditions of their Section 20 Permit and therefore are contravening the following legislation” He then specifies the legislation contravened.

I agree with Mr Kemp that the Magistrate was entitled in his discretion, to reasonably infer that the complaints of the public and reports of responsible State officials of non-compliance with permit conditions gave rise to a reasonable suspicion of contravention. I am therefore not persuaded that the Magistrate did not act within the prescripts of Section 25 Act 51 of 1977.

(2) *Whether the warrant is invalid because it does not expressly state*

the offence which the applicant is suspected of having committed.

The warrant in this matter does not clearly state the offence of which Applicant is suspected of having committed. Whilst these were contained in the First Respondent's affidavit, this affidavit was not attached to the warrant when it was served on the Applicant.

The affidavit was not, in fact, provided to the Applicant until three and a half weeks after the search and seizure operation was conducted, and despite the Applicant's attorney making several requests to be provided with it.

Powell NO and Others v Van der Merwe NO and Others,¹¹ emphasised the need for scrutinising search warrants with rigour and exactitude – “indeed, with sometimes technical rigour and exactitude”. Given that South Africa's history evidences a particular need for this approach,¹² and the fact that the common law rights which were sought to be protected are now part of the constitutional order,¹³ this approach is as apt today as it has been in the past.

Thus in *Powell supra*,¹⁴ the Supreme Court of Appeal arrived at the following conclusion after scrutinising earlier cases dealing with warrants.

- (a) Because of the great danger of misuse in the exercise of authority under search warrants, the Courts examine their validity with a jealous regard for the liberty of the subject

¹¹ 2005 (5) SA 62 (SCA) Para 50

¹² Magajane above para 278

¹³ Powell above para 50

¹⁴ Para 59

and his or her rights to privacy and property.

- (b) This applies to both the authority under which a warrant is issued, and the ambit of its terms.
- (c) The terms of a search warrant must be construed with reasonable strictness. Ordinarily there is no reason why it should be read otherwise than in the terms in which it is expressed.
- (d) A warrant must convey intelligibly to both searcher and searched the ambit of the search it authorises.
- (e) If a warrant is too general, or if its terms go beyond those the authorising statute permits, the Courts will refuse to recognise it as valid, and it will be set aside.
- (f) It is no cure for an overbroad warrant to say that the subject of the search knew or ought to have known what was being looked for and the warrant must itself specify its object, and must do so intelligibly and narrowly within the bounds of the empowering statute.

In *Thint v National Director of Public Prosecutions*,¹⁵ the Constitutional Court assessed the validity of a warrant issued in terms of the National Prosecuting Authority Act¹⁶ in light of the common law principles laid down in *Powell*.¹⁷ In dealing with the requirement of intelligibility (as

15 *Thint (Pty) Ltd v National Director of Public Prosecutions and Others; Zuma v National Director of Public Prosecutions and others* 2009(1) SA 1 (CC)

16 Act 32 of 1998

17 At para 152

set out in point d above), it said that this was determined objectively. A warrant must be ‘reasonably intelligible’ in the sense that it is reasonably capable of being understood by the reasonably well informed person who understands the relevant empowering legislation and the nature of the offences under investigation.¹⁸

The latest decision in this matter viz, in *Minister of Safety and Security v Van Der Merwe and Others*,¹⁹ places the issue beyond the pale. In this case the Constitutional Court said that the approach adopted in *Powell* and *Thint* indicated that the specification of the offence in the warrant furthered the warrants intelligibility.²⁰ Intelligibility itself has its roots in the rule of law, and has as some of its attributes, comprehensibility, accountability and predictability.²¹ This in turn means that it is essential that the person being searched knows why they are being searched.²² It was thus a requirement for intelligibility that a warrant issued in terms of the Criminal Procedure Act must state the offence.²³

The court concluded that in order to be valid, therefore, a warrant must in a reasonably intelligible manner.²⁴

- (a) state the statutory provision in terms of which it is issued;
- (b) identify the searcher;
- (c) clearly mention the authority it confers on the searcher;
- (d) identify the person, container or premises to be searched;
- (e) describe the article to be searched for and seized with sufficient

18 At para 154

19 Case CCT90/10 [2011] ZACC 19

20 At para 30

21 At para 52

22 Ibid

23 At para 53

24 At para 55

- particularity; and
- (f) specify the offence which triggered the criminal investigation and names the suspected offender.

Counsel for the Respondent argued that, although the offence was not specifically stated in the warrant, the nature of the offence could be gleaned and inferred from its contents. Furthermore, to require the offence to be stated in the warrant served no purpose, and he questioned what right the Applicant would be able to exercise, that it could not exercise if the warrant did not refer to the offence.

As correctly submitted, no crime or suspected crime is identified in the body of the search warrant. The tabulated list of offences which appears in the affidavit is not stated in the search warrant. It is so that the warrant itself makes no mention of a crime or a suspected crime, and as it stands makes no connection, between a crime, or a suspected crime, and the articles mentioned in the annexure to the affidavit.

Allowing a warrant devoid of an expressly stated offence to stand on the basis that the alleged offence can be inferred from what is being sought and the ambit of the search, would be to lean towards the vagueness and lack of precision which the South African Courts have up to this point sought to prevent.

This approach would make it more difficult for an individual being searched to determine why they are being searched, as it would require of them to 'connect the dots' that may or may not be contained in the warrant. It would remove clarity from the very thing intended to protect the individual from unlawful state intrusion, and would be a step away

from the rigour and exactitude that is required of warrants both in terms of the common law and the constitution.

This approach is also in conflict with some of the points laid down in *Powell* (supra) namely that there is ordinarily no reason why a warrant should be read otherwise than in the terms in which it is expressed. In the same way that an overbroad warrant is not cured if the person being searched ought to have known what is being searched for, it is no cure for a warrant that does not expressly state the offence to argue that the offence can be inferred from the terms thereof. For these reasons, this Court cannot uphold the validity of the warrant.

(3) Appropriate Remedy

Counsel for Applicant no longer seeks an order in terms of paragraph 4 of Part 'B' of the Notice of Motion.

Counsel for the Respondents asks that the items seized be preserved notwithstanding that there is no counter application for a preservation order.

In *Thint*, (supra) *Langa CJ* said that it is highly desirable that the trial court be the one that is primarily concerned with ensuring trial fairness²⁵ and that the ordinary rules should be that when a trial court finds a warrant issued in terms of section 29 of the National Prosecution Authority Act unlawful, it will preserve the evidence so that the trial court can apply its own discretion in terms of section 35(5).²⁶

²⁵ At para 222

²⁶ At para 223

In this case, unlike in *Thint (supra)* no criminal prosecution has yet been instituted.

On this issue Ponnan JA's comments in *National Director of Public Prosecution and Another v Mahomed* ²⁷ are in my view apposite:

“It is this: Out of a remedy available to someone wronged by a rights violation, the wrongdoer seeks to fashion for itself a right that it otherwise would not have had. That can hardly be authorised by our Constitution. Moreover, the preservation order is being sought in this case in anticipation of possible criminal proceedings, not against the Respondent, but against her erstwhile client, Mr Zuma. How, it must be asked, can the State resist a claim for restoration where the items were illegally seized and where, even at the date of the hearing of this appeal, there has been no firm commitment by it that fresh charges will as a fact be preferred against Mr Zuma in regard to which the seized items might be used by it as evidence?”

.....In order to restore both parties to the position they would have occupied had the unconstitutional search not have occurred, it is necessary that the seized items be restored to the possession of the respondent. This finding is of course no bar to the State proceeding duly and regularly when and if so advised.”

The Applicant has been substantially successful in his application.

Therefore, the following order is made:

²⁷ 2008(1) SACR 309

- (1) This application is granted to the extent that the search warrant issued by the Seventh Respondent on 9 February 2011 is hereby set aside.
- (2) All documents and objects seized, and the samples taken pursuant to the execution of the search warrant, are ordered to be returned to the Applicant forthwith; and in the event that this Order is not complied with within five days of service on the Respondents of a copy thereof, authorising the Sheriff to remove the aforesaid documents, articles and samples from the custody of the Respondents, wherever they may be found, and returning these to the Applicant.
- (3) Only such Respondents as opposed this application are ordered to pay the costs hereof, jointly and severally, the one paying the other to be absolved, including the reserved costs of 25 March 2011.

K PILLAY J

Date of Judgment	:	20 December 2011
Applicant's Counsel	:	Advocate Michael R Hellens SC
Instructed by	:	Edward Nathan Sonnenbergs Applicant's attorneys c/o Edward Nathan Sonnenbergs 23 rd Floor, Durban Bay House

333 Anton Lembede Street
Durban
Ref : Janine Lee

Respondent's Counsel : Advocate J Kemp SC

Instructed by : The State Attorney
KwaZulu-Natal
1st, 2nd, 3rd, 5, 6th & 8th
Respondents' Attorneys
6th Floor, Medlife Building
391 Anton Lembede Street
Durban
Ms M T Hlope/cet