

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

Case Number: 2022/060800

DELETE WHICHEVER IS NOT APPLICABLE

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

Date: 11 June 2025 Signature: 

In the matter between:

JUSCAR METALE (PTY) LTD

Applicant

and

NATIONAL COMMISSIONER OF POLICE

First Respondent

**THE STATION COMMANDER OF
ETWATWA POLICE STATION**

Second Respondent

DATE OF JUDGMENT: This judgment was authored and issued by the Judge whose name is reflected herein and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines.

The date for hand-down is deemed to be 11 June 2025.

JUDGMENT

STYLIANOU, AJ

1. The applicant is Juscar Metale (Pty) Ltd, a scrap metal purveyor carrying on business in Limpopo.
2. On the 9th of March 2022, a truck transporting 5509 kilograms of scrap copper belonging to the applicant was stopped by members of the South African Police who, suspecting that the load of scrap copper was stolen property, arrested the driver and took the truck to the Etwatwa local police station.
3. The applicant alleges that once at the police station, the truck was unloaded, and non-uniformed men arrived, supposedly representatives of Telkom, Transnet and Eskom.
4. The applicant says that the majority of the copper was then packed into eight full bags and taken away for storage to “SAP13” by non-uniformed men, in an unmarked vehicle.
5. The applicant sought the return of the copper that was seized and launched a spoliation application on 4 October 2022 wherein it cited the National Commissioner of Police and the Station Commander of Etwatwa Police Station.
6. It is common cause between the parties that the Director of Public Prosecutions declined to prosecute the applicant and on 31 July 2023, the applicant was informed that the scrap copper was to be returned to it.

7. Mr Juan Claude Du Toit, on behalf of the applicant, says that when he attended at the Etwatwa Police Station to retrieve the scrap copper on 31 July 2023, instead of finding the original 8 full bags of copper that were seized, he discovered only 6 half-full bags of “wire” and that upon close inspection, he noticed that the wire in three of the bags consisted of other elements, specifically aluminium and steel wire, not copper wires.
8. Mr. Du Toit says that when he sought to take three of the half-full bags containing copper away with him, he was told that he had to take all 6 bags tendered to the applicant, or none at all.
9. Du Toit declined to take any of the bags and left.
10. This prompted the Applicant to seek alternative relief which it says is, *“in the form of damages for the monetary and business losses that have been occasioned by the unlawful conduct of the agents of the Respondents, and a punitive costs order, in solatium to the Applicant, and in censure of the conduct of the Respondents in their halfhearted and flimsy, and demonstrably dilatory opposition to this present process.”*
11. No amendment to the notice of motion was effected, but even if there had been, motion proceedings are inappropriate for a claim for damages. This notwithstanding, the applicant still seeks the main relief for the return of the metal seized, which it can seek by way of motion proceedings. If, the applicant is eventually successful in its spoliation application but finds that less is eventually

returned to it than was initially seized, then it could always seek redress by issuing summons for the damages it allegedly suffered.

12. The respondents, represented by the State Attorney, raise a point *in limine* i.e. that the Minister of Police should have been cited and joined as the respondent in accordance with section 2(1) of the State Liability Act, 20 of 1957 and not the National Commissioner of Police and the Station Commander for Etwatwa local police station.

13. At the hearing of the matter, applicant brought an application from the Bar for a postponement in order to afford it an opportunity to bring an application to join the Minister of Police.

14. The court has a discretion whether to grant or refuse a postponement.

15. I accept that the point *in limine* was raised in the answering affidavit by the respondents and that there was ample time for the applicant to seek the joinder of the Minister of Police, however, where fundamental fairness and justice justify a postponement, a Court may in an appropriate case allow such an application for postponement even if the application was not so timeously made.¹

16. The respondents argue that the application should be dismissed with costs for the failure to cite the Minister of Police.

¹ ***Myburgh Transport v Botha t/a SA Truck Bodies*** 1991 (3) SA 310 (NmS) at 315C-D

17. In the present instance, it is clear that no charges have been brought and that the seized copper was tendered back to the applicant. It would therefore be unjust to nonsuit the applicant because of this oversight.
18. Counsel for the respondents opposed the postponement on the basis that the respondents would suffer prejudice if the matter was not brought to finality. To my mind, this does not seem to be prejudice which could not be remedied with a costs order.
19. I am mindful that the respondents raised the point *in limine* upfront in their answering affidavit and yet the applicant did nothing to join the Minister of Police until the day of the opposed motion hearing.
20. From the manner in which the applicant dealt with this issue in its replying affidavit it appears as if the applicant misunderstood the point *in limine* believing it to relate to the Institution of Legal Proceedings against certain Organs of State Act 40 of 2002 and not the State Liability Act.
21. In considering the application for postponement, I am mindful that there was no prosecution of the applicant and that the applicant is entitled to return of whatever was seized (whatever that may be) and I accept that the application for postponement is *bona fide*.
22. For these reasons I am inclined to accede to the request for a postponement, however, I believe that the Court should convey its displeasure of the manner in

which the applicant has conducted this litigation by ordering the applicant to pay the costs of the postponement on Scale C.

23. I accordingly make the following order:

1. The matter is postponed *sine die*.
2. The applicant is ordered to pay the wasted costs of the respondents occasioned by the postponement on scale C.



X STYLIANOU, AJ
Acting Judge of the Hight Court

Heard: 10 March 2025

Judgment delivered: 11 June 2025

Appearances:

For Applicant: Adv D. Snyman

Instructed by: BDK Attorneys

For Respondents: Adv H Ngomane

Instructed by: Office of the State Attorney