



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

CASE NO: 2025-127853

- (1) REPORTABLE: **Yes.**
(2) OF INTEREST TO OTHER JUDGES: **NO.**
(3) JUDGMENT : **2 AUGUST 2025**

Frank Snyckers
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In the matter between –

EDMONDSON, TIM JOSEPH
and

Applicant

LETHLAKE, CAPTAIN GEORGE
MINISTER OF POLICE

First Respondent
Second Respondent

Heard: 1 August 2025

Judgment: 2 August 2025

SNYCKERS AJ

REASONS FOR ORDER

1. This matter came before me in urgent court on Friday 1 August 2025. The application was brought as a matter of urgency on Thursday 31 July 2025. I gave an order on 1 August 2025. I advised that I would furnish reasons. These are the reasons for the order given by me on 1 August 2025.
2. This matter concerns the seeking, and granting, of interdictory relief against a threatened arrest to secure attendance at court in relation to a Schedule 1 offence.
3. The relief sought was styled as a *rule nisi*, but the first prayer sought was for a declaration that a contemplated arrest would be unlawful. The notice of motion spoke in the present tense – that the arrest “*constitutes a violation of ... section 12(1) of the Constitution...*”. Such declaratory relief, if granted, would be final.¹
4. In substance what was sought was a *rule nisi* against a captain in the South African Police Services, the first respondent,² and the Minister of Police, the second respondent, to show cause why the declaratory relief ought not to be granted and they not be restrained from arresting the applicant pursuant to a

¹ See the discussion by Moultrie AJ in *K v T L* unreported Gauteng Division, Johannesburg Case Number 25-086657 (8 July 2025).

² The first respondent is cited in the notice of motion as George Lethlake, which seems to correspond with the name on the relevant WhatsApp profile, but the Caselines filing page reflects him as “LEHLAKE”.

criminal charge of fraud, instead of employing “*less harsh methods, other than arrest*” to secure his attendance at court, such relief to operate by way of interim interdict pending the return day.

5. The application was not brought on a true *ex parte* basis. Service on the Minister was effected on the State Attorney’s Johannesburg office stamped on 31 July 2025, as also confirmed in an attorney’s service affidavit. As for service on the first respondent, Captain Lethlake, a service affidavit was submitted deposed to by an administrator in the offices of the applicant’s attorneys of record. It relates how the officers at SAPS Germiston declined to accept service of the application, despite the deponent’s efforts to serve on various officers on various floors of the building to which he kept being directed by officers who declined to accept service. The papers were eventually affixed to the door of what was said to be the office of the Germiston Commercial Crime Unit Commander. Photographs were attached to show this. In addition, the papers were transmitted to the WhatsApp address of the first respondent, with whom the applicant’s attorney had been in telephonic and WhatsApp contact up to the day of the transmission of the papers – namely Thursday 31 July 2025. The WhatsApp shows two ticks reflecting delivery at 16:41 (it is not clear from the photograph whether these ticks are blue, reflecting that the message has been read, or grey, which would not necessarily mean unread, but which would not indicate the transmission was read). The applicant also says in his affidavit, in the context of service on the first respondent, that the first respondent “*informed me that he does not have an email address.*”

6. When the matter was called on Friday 1 August, there was no appearance for the respondents. It seems tolerably clear that the application came to the attention of the first respondent and was served on the state attorney the day before the application was to be heard. Nevertheless, in the special circumstances, it appeared appropriate to grant a returnable *rule nisi* and expressly to provide for anticipation by way of 24 hours' notice, as the first available return days in the urgent court were only from 1 September 2025 onwards. It was, I felt, necessary to provide expressly for anticipation on short notice given the extent to which my order interfered with the exercise of the powers of the first respondent under section 40 of the Criminal Procedure Act 1977, as considered further below.

7. The relevant facts set out in the founding papers may be captured thus:

7.1. The applicant was contacted by the Hawks in November 2024. They asked him to attend an interview in relation to “a SARS case against me”. The interview concerned allegations relating to a company of which the applicant had been a director, in relation to apparent concerns about VAT fraud. The applicant attended, answered questions and gave a statement at the time (not included in the papers). The gist of what he told the Hawks in November 2024 is not material to these reasons as no case was sought to be made out that the first respondent could not properly have formed a reasonable suspicion that the applicant was guilty of a Schedule 1 offence, as contemplated in section 40 of the Criminal Procedure Act. Suffice it to say that he indicated to the Hawks that his erstwhile employer had asked him to sign various documents,

including being appointed as a director to the company in question, but that he had no involvement in relation to the submission of VAT forms for the company in question.

- 7.2. In June 2025, the first respondent started telephoning the applicant and threatening to arrest him. This caused the applicant's attorneys of record to contact the first respondent and to tender his full co-operation with the police in relation to any further investigation relating to the alleged fraud.
- 7.3. A letter was also written by the attorneys, on 17 June 2025, addressed to the regional control prosecutor and senior public prosecutor of the Kempton Park Magistrates Court, delivered by hand, indicating that the first respondent had advised that he was investigating a fraud complaint against the applicant, that criminal charges had been laid against him in terms of which his erstwhile employer accused him of fraud, and that the first respondent had indicated that *"the matter will be seized in the Kempton Park Court"* without indicating whether in the District or Regional Court, and without supplying a case number. The letter continued to state that the applicant *"wishes to cooperate with your goodselfes and the police and has advised Captain Lethake³ accordingly"* and that the first respondent had informed the applicant that he (the first respondent) *"is attending court to apply for a warrant of arrest"*.

³ This incorrect spelling of the surname did not occur in the first paragraph of the letter where Captain Lethlake was referred to by name.

7.4. The letter then continued as follows:

“Please take note that the warrant of arrest is completely unnecessary. Mr Edmondson is willing to attend at court on reasonable notice given to him. We will accompany Mr Edmondson to court.

In view of the foregoing, please do not persist with the application for a warrant of arrest. Instead, a simply summons or notice given to our offices for our client to attend at court, will be an effective means of securing Mr Edmondson’s presence in court.”

7.5. The letter was WhatsApped to the first respondent by the applicant’s attorney, on 19 June 2025 with an explanation *“Hi Captain. The Prosecutor Mr Erasmus asked us to send this copy to you. Thanks. Yasmin Omar.”*

7.6. The first respondent responded about 40 minutes later *“I am doing what the Adv told me to do”*.

7.7. The affidavit (confirmed by the attorney who also appeared in court before me, Ms Omar), continues to indicate that Ms Omar had a telephonic conversation with the first respondent on 31 July 2025 in which Ms Omar sought to explain to the first respondent that arrest to

secure attendance at court was contrary to “*the SAPS Standing Orders as well as the Criminal Procedure Act, which provide for less harsh ways, than arrest, to secure an accused’s attendance at court.*” In this conversation, the first respondent is said to have insisted he would arrest the applicant, who could apply for bail in court.

- 7.8. Unfortunately, the affidavit is not replete with detail on exactly what the first respondent said, save that he conveyed in his WhatsApp message that he was simply doing what an advocate told him to do – he was not offering reasons for why he felt an arrest was appropriate.
- 7.9. I deal below with the disconcerting peculiar circumstances set out in the founding affidavit affecting the applicant in relation to his son.
- 7.10. The affidavit tells us that the average ‘turn-around time’ for an opposed bail application in the Kempton Park court is two months. It is not clear from the papers why it is thought that bail would be opposed if sought. One is told that the Kempton Park Magistrates Court is “*overwhelmed with bail applications*”. I cannot take judicial notice of any conditions or any practice of routinely detaining accused after first appearance without considering bail, but understand from the founding affidavit that the allegation is that the applicant will not be able to apply for and have a bail application heard immediately upon being presented to court and would likely be detained for “*a long period of time*” – reference being to the two month “turnaround” period for opposed bail applications and the fact that the court in question is overwhelmed with bail applications.

8. The “SAPS Standing Orders” referred to in the affidavit and in the conversation with the first respondent refer to Standing Order (G) 341. This has been referred to by courts as “internal regulations” issued by Consolidated Notice 15/1999 in terms of the Regulations under the South African Police Services Act 68 of 1995, and treated as if binding law on arresting officers.⁴ In *Calitz v Minister of Police*,⁵ van der Schyff J held that the Standing Order created “*statutory duties*” on the police.⁶
9. Standing Order (G) 341 in relevant part was attached to the papers. Paragraph 3 of the Standing Order is material. It is headed “*Securing the attendance of an accused at the trial by other means than arrest*” and reads as follows:
- (1) *There are various methods by which an accused’s attendance at a trial may be secured. Although arrest is one of these methods, it constitutes one of the most drastic infringements of the rights of an individual and a member should therefore regard it as a last resort.*
- (2) *It is impossible to lay down hard and fast rules regarding the manner in which the attendance of an accused at a trial should be secured. Each case must be dealt with according to its own merits. A member must always exercise his or her discretion in a proper manner when deciding whether a*

⁴ See for example *Le Roux v Minister of Safety and Security* 2009 (4) SA 491 (N) Madondo J, Msimang J para 14; *Domingo v Minister of Safety and Security* 2013 JDR 1162 (ECG) Chetty J, Malusi J, para 6; *Bonginhlanhla v Minister of Police* 2013 JDR 1995 (GSJ) Madima AJ.

⁵ [2021] ZAGPPHC 733 (29 October 2021).

⁶ Para 30.

suspect should be arrested or rather be dealt with as provided for in subparagraph (3) below.

(3) A member, even though authorised by law, should normally refrain from making an arrest if —

(a) the attendance of an accused may be secured by means of a summons as provided for in section 54 of the Criminal Procedure Act; or

...

10. On the facts set out in the founding papers, there would appear to be a *prima facie* case made out for a violation of the provisions quoted above on the part of the first respondent, in his stated resolve to arrest the applicant to secure his attendance at court in relation to the fraud charge.

11. The question is whether this, coupled with the other elements for an interim interdict, should be sufficient to warrant granting interdictory relief such as sought in the instant case. The *rule nisi* would at first operate as an interim interdict pending any return day.

12. The courts creak with cases in which plaintiffs seek, and are awarded, damages for wrongful arrest. Interdictory relief against arrest is another matter altogether.

13. Even in the sphere of damages after the fact, a watershed in the attitude of the courts in respect of arrest for the purposes of securing attendance at court was

the seminal decision of Harms DP⁷ in *Minister of Safety and Security v Sekhoto and Another*.⁸ The case confirmed, in sobering but clear terms, that the “*fifth jurisdictional fact*” for an arrest to secure attendance, that had been introduced by courts before the decision in *Sekhoto*, was *not* in fact required by a constitutional reading of the provisions of section 40 of the Criminal Procedure Act. What Harms DP termed this “*fifth jurisdictional fact*” was worded thus by Bertelsmann J in *Louw*:⁹

“If there is no reasonable apprehension that the suspect will abscond, or fail to appear in court if a warrant is first obtained for his/her arrest, or a notice or summons to appear in court is obtained, then it is constitutionally untenable to exercise the power to arrest.”

14. What is clear from *Sekhoto* is that, once a person with the authority to arrest, like the first respondent, reasonably suspects that someone has committed any Schedule 1 offence, of which fraud is one, that officer may arrest such person to secure their attendance at court. It is not for a court to consider whether, in the view of the court, such an arrest is a necessary means, instead of a lesser means, such as a summons. There is accordingly no jurisdictional fact requiring arrest to be (objectively) necessary before it can be lawful.

15. Harms DP confirmed in *Sekhoto* that section 40 conferred a discretion, that was, both before and after the advent of the Constitution, reviewable by courts on the basis of so-called *Wednesbury* reasonableness and rationality.¹⁰

⁷ In a unanimous judgment.

⁸ 2011 (5) SA 367 (SCA)

⁹ *Louw & Another v Minister of Safety and Security & Others* 2006 (2) SACR 178 (T), at 187, as quoted in *Sekhoto* para 10.

¹⁰ *Sekhoto* paras 28 to 37.

16. *Sekhoto* says that the statute (the Criminal Procedure Act) is silent on what factors are to be taken into account in the exercise of the discretion:¹¹

“In this case the legislature has not expressed itself on the manner in which the discretion to arrest is to be exercised: that must be discovered by inference.”

17. *Sekhoto* does not refer to the Standing Order. The Standing Order does not introduce the fifth jurisdictional fact as an objective jurisdictional fact. It does, however, require police officers to consider whether lesser means are appropriate, to use arrest as a last resort, and *“normally to refrain from arrest”* if a summons would suffice. And it makes it a requirement for them to *“exercise a proper discretion”* in considering this question. It is binding on them.

18. It may be noted that Harms DP doubted whether an arrest under section 40 was administrative action, reviewable under PAJA.¹² There were anomalies that would arise in the sphere of claims for damages for unlawful arrest if arrests were treated as PAJA administrative action. Harms DP referred to the question of compensation as opposed to damages as being one of these, and in *Nkwahla v Minister of Police*¹³ Govindjee AJ expressed *“serious misgivings”* about the proposition that arrest constituted administrative action under PAJA, holding the issue not to have been definitely decided.¹⁴ An anomaly that would

¹¹ Para 40.

¹² The Promotion of Administrative Action Act 3 of 2000. See *Sekhoto* para 38.

¹³ 2021 JDR 1702 (ECP)

¹⁴ Para 10.

attend such a proposition was the contention unsuccessfully advanced in *Nkwahla* that, on the *Oudekraal* principle,¹⁵ a cause of action for wrongful arrest might be said to arise only once the arrest were “set aside” by a court of law, something that strikes one as anomalous indeed. Although I believe an arrest is not PAJA administrative action, but merely a coercive act that may be authorised by statute, as would be, say, a lawful shooting, it is unnecessary for me to make a final decision on this point, as Harms DP in *Sekhoto* held that, whether an arrest was administrative action or not, it remained a general requirement that the discretion had to be exercised in good faith, rationally and not arbitrarily,¹⁶ and was accordingly subject to judicial interference.

19. The following important observations were made by Harms DP in relation to judicial interference in the exercise of this discretion:

“This would mean that peace officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of rationality. The standard is not breached because an officer exercises the discretion in a manner other than that deemed optimal by the court. A number of choices may be open to him, all of which may fall within the range of rationality. The standard is not perfection or even the optimum, judged from the vantage of hindsight — so long as the discretion is exercised within this range, the standard is not breached.”

¹⁵ From *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA).

¹⁶ Para 38.

20. In addition, Harms DP stressed the importance deferring to the court of first appearance with respect to the question whether the suspect should or should not be detained – that was not something the arresting officer considered; it was something the court considered when the suspect was brought before it (assuming the suspect was entertained on a bail application).¹⁷

21. Furthermore, Harms DP said the following about arrests for Schedule 1 offences:¹⁸

“it is clear that in cases of serious crime — and those listed in Schedule 1 are serious, not only because the legislature thought so — a peace officer could seldom be criticised for arresting a suspect for that purpose”.

22. Fraud is a Schedule 1 offence.

23. These are weighty considerations that militate strongly against interference in the instant case.

24. But the judgment in *Sekhoto* does endorse the applicability of the common law requirement that the relevant exercise of discretion must entail the application of mind:¹⁹

¹⁷ At paras 42 to 44.

¹⁸ Para 44.

¹⁹ From *Shidiack v Union Government* 1912 AD 642 at 651-2.

“if he had not applied his mind to the matter or exercised his discretion at all, or if he had disregarded the express provisions of a statute — in such cases the Court might grant relief.”

25. This is after all exactly what the Standing Order requires, as a matter of binding law, from police officers contemplating arrest – a proper application of mind to the question, including considering the question whether a summons might not be effective, and normally refraining from arresting if a summons were thought to be effective.

26. *Domingo*²⁰ is a decision that held an arrest to have been unlawful precisely because the arresting officer failed to apply his mind to the discretion he had whether to arrest or not, believing a warrant required him to arrest, contrary to the terms of the Standing Order. This was in circumstances where the plaintiff in that case had asked the arresting officer whether he (the plaintiff) could not *“go to court on the Monday morning to solve the problem”*. The arresting officer’s response was that it was his duty to arrest, given the warrant. This was held to have been a fatal failure to apply his mind, as required by the Standing Order.²¹

27. I do not regard *Sekhoto* as precluding the ability of a court to interfere with an arresting decision on the basis that it entailed the failure to apply the mind to the question posed in the Standing Order. It is, on the contrary, authority for

²⁰ *Domingo v Minister of Safety and Security* 2013 JDR 1162 (ECG) Chetty J, Malusi J.

²¹ Paras 5 and 6.

such an ability. And cases like *Domingo* and *Calitz* that invoke the Standing Order as law with statutory *imprimatur* are strong support for such an ability.

28. But that leaves the question, posed above, whether *ex ante* interference by way of interdict is appropriate.

29. I confronted Ms Omar with the judgment of Potterill J in *Mapisa-Nqakula v NDPP*.²² That judgment contains *dicta* that suggest a court does not have the power to interdict an arrest.²³ These include the following observations:

“It is most certainly not within the power of this Court to instruct the Minister and his officials to summons the applicant versus to arrest her.”

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...

The respondents argued that it would not be competent for this Court to interdict an arrest. I am in full agreement with this submission. Not on the facts presented, but more importantly, a Court has to take cognisance of the fact that if the Court grants such an order the floodgates will be opened. Every suspect will be in a position to approach a Court, on an urgent basis, setting out on speculation that there is a weak case against it and interdict an arrest. Any suspect would merely have to set out in a founding affidavit that the arrest in future will be

²² 2024 JDR 1749 (GP).

²³ Paragraphs 20, 22 and 24.

²⁴ Paragraph 20.

*unlawful. The whole criminal justice system will fail and will be controlled by suspects.”*²⁵

30. Ms Omar pointed out that in that case, the authorities had made it clear that they would not oppose bail and there was no danger of detention.²⁶

“It is common cause that even before this application before me was brought, it was indicated to the applicant that the respondents would not oppose bail. An arrest, on its own, cannot create urgency; especially when there is no apprehension of detention.”

31. In the instant case, there has been no such assurance, and the evidence in the founding papers is that the likelihood is of detention by default as a pure incident of the degree to which the system is overwhelmed – rendering the decision to arrest in a sense a decision to subject the applicant to the strong likelihood of prolonged detention before he has any opportunity to seek bail.²⁷

32. Potterill J specifically emphasised the fact that the authorities had allowed the applicant to present herself to the court without arrest, a situation the contrary to the one faced by the applicant in this case:

²⁵ Para 22.

²⁶ Para 9.

²⁷ It is interesting in this regard to consider the situation and majority finding in the Constitutional Court case of *De Klerk v Minister of Police* 2021 (4) SA 585 (CC) in which it was held that a peace officer who had effected an unlawful arrest foreseeing that there would be detention arising at court, due to routine remand instead of hearing a bail application, was liable also for the foreseen detention damages, despite the fact that the detention arose from the magistrate’s failure to afford the applicant an opportunity to seek bail by way of a new decision.

*“This applicant has been ensured that section 40 will only be utilised if she does not present herself to the police station. The applicant has failed to do for two weeks. The fact that section 40 will only be utilised if she does not present her to the police station, is in complete compliance with the standing orders, which sets out that arrest should be a last resort.”*²⁸

33. This does suggest that the decision in *Mapisa-Nqakula* might well have been different had the court held there to have been a threatened violation of the Standing Order.

34. I confess to being greatly troubled in the instant case by the admonitions in *Mapisa-Nqakula* concerning interdictory relief against an arrest. Not only does this dance on the boundaries of the separation of powers, but it dangerously risks stultifying the ability of the police officers to exercise their discretionary powers under section 40 and the Standing Order – as an interdict is aimed at future decisions to arrest and cannot anticipate all the circumstances that may attend to any such decision. The *OUTA* principle would appear to be of strong application in this case. A court should not interfere in advance with the exercise of statutory powers save in the clearest of cases.²⁹

35. But I do not read the decision in *Mapisa-Nqakula* as laying down a principle that a court lacks the power in appropriate cases to interdict what would be an unlawful arrest. If it does, then I respectfully differ from it in this respect. I am in

²⁸ Para 23.

²⁹ *National Treasury and Others v Opposition to Urban Tolling Alliance and others* 2012 (6) SA 223 (CC)

full respectful agreement with the salutary proposition that a court should not purport to legislate in advance whether someone ought or ought not to be arrested. But there may be cases where, on the facts as they present themselves, a case is made out that there would *prima facie* be a violation of the Standing Order if an arrest, which is imminently threatened, were to be effected, and where interim interdictory relief could be appropriate – at least putting the arresting officer to the task of justifying the arrest at the return day or on anticipation of the return day if deemed necessary, as in this case. After all, since long before our Constitution, the onus to prove the lawfulness of an arrest rested upon the arrestor. Personal liberty is truly an ancient human right, the unlawful interference with which has a claim to the attention of the law at least as weighty as that asserted in the case of the interference by the courts with statutory powers.

36. I was not amenable to declaring any potential arrest to be unlawful.

37. That brings me to the other elements of interim interdictory relief and an aspect of this case that rendered it rather exceptional, and ended up tilting the scales despite the weight put on them by *Sekhoto* and in particular *Mapisa-Nqakula*.

38. The applicant says his child is a special needs child with severe autism. Since the beginning of July, the child has had a complete mental breakdown and is currently on suicide watch. The applicant says he is the only person to whom the child responds. The applicant needs to be at home for this. Should he suddenly be arrested and the child not see him present, the child will “*fall apart mentally*”. The applicant says he is petrified that he will lose his son. His son might commit suicide.

39. These are the allegations in the founding papers. If they are true, this threatened arrest, that appears *prima facie* to violate the Standing Order, might precipitate the suicide of a child. The extent to which this is truly the situation may be further revealed on the return day, whether as scheduled or anticipated. As may be reasons the first respondent has to exercise an arresting decision.

40. The applicant is tendering his attendance at court whenever required – in his affidavit too. He says he has lived at the same address for three years, has always lived in South Africa and all his family and friends live here. He says he has neither the means nor any wish to flee the country. It is not for this court to decide whether this means he should or should not be arrested. That is for the arresting authority to decide. And it will then be relevant to a court if and when the applicant is heard on bail. But the arresting authority must make this decision exercising a proper discretion applying the Standing Order. *Prima facie* the first respondent is not doing this – he is saying the arrest will be effected as others are telling him to do so.

41. In the circumstances, I issued the rule.

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For the Applicant: Ms Y Omar

Omar Attorneys Boksburg

No appearance for Respondents