



Reportable:	Yes/No
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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

**CASE NO.: 1471/2025
Date heard: 11-06-2025
Date delivered: 13-06-2025**

In the matter between:

KM

Applicant

and

THE MINISTER OF POLICE

1st Respondent

THE NATIONAL COMMISSIONER OF SAPS

2nd Respondent

THE STATION COMMANDER, SAPS KURUMAN

3rd Respondent

THE INDEPENDENT POLICE INVESTIGATOR

4th Respondent

CORAM: WILLIAMS J

JUDGMENT

WILLIAMS J:

1. The applicant Mr KM has brought an urgent application in which he seeks the following relief:
 - 1.1 Dispensing with the forms, time limits and such further requirements as may be applicable and prescribed by the Rules of this Honourable Court, condoning the Applicants non-compliance therewith and

directing that this matter be heard as a matter of urgency as contemplated in terms of Rule 6(12) of the Uniform Rules of Court.

- 1.2 Declaring the conduct of the state to be unlawful and unjust by leaking personal information of the applicant to the media outlets and to find the State to be in contravention of the constitutional rights of the applicant
 - 1.3 An order directing the respondents, jointly and severally, to:
 - a) Pay to the applicant a once-off amount of R2 000 000 (Two Million Rand) within 7 days of this order;
 - b) Such payments to be used solely for the applicant's relocation, rental, security and living expenses at a location of the applicant's choice, without being subjected to the Witness Protection Programme as the applicant does not trust the state anymore;
 - c) Such amount to be paid into an account nominated by the applicant.
 - 2.4 Leave to lead *viva voce* evidence at the hearing of this matter.
 - 2.5 An order allowing the applicant to only communicate with whoever that is handling the murder case through Teams or Zoom as he fears that his location might be leaked.
 - 2.6 Cost of this application not to be granted to any party.
2. The application was initially brought *ex parte* on Monday 9 June 2025. On that day I ordered that the matter be removed from the roll and that the applicant serve the application on the respondents, which he duly did.
 3. The matter was placed back on the roll on 11 June 2025 after the 1st to 3rd respondents had filed an answering affidavit to which the applicant had replied.
 4. The background to this application can be summarised as follows:
 - 4.1 On 1 June 2025 the applicant witnessed the murder of his employer in Kuruman. It appears that he is the sole eye witness to the incident.

- 4.2 The applicant made statements to the police investigating the incident expecting that his personal details would be kept confidential.
- 4.3 He however subsequently discovered, on his family group whatsapp, that a confidential internal police communication which contains his name and the address where the incident occurred, which is the address of the applicant, had been leaked.
- 4.4 The above communication appears to have found its way to other social media platforms as well.
- 4.5 As a result of the above and the subsequent reports of the killing of an alleged gangster, using the same *modus operandi*, just a few days after the fatal shooting of his employer, which killings appear to have been connected on the social media platform, the applicant now fears for his life.
- 4.6 The applicant alleges that he had confronted both junior and senior police officers involved in the investigation with the publication of his details. Although they expressed shock at the disclosure, nothing has been done to protect him or to investigate the source of such disclosure.
- 4.7 As a result of the above events the applicant has been shocked and traumatised and had been booked off sick for a week. He has also decided to temporarily move to a nearby town in an attempt to safeguard himself.
- 4.8 The applicant states that the police are aware of the address he has moved to and that he does not trust that they will keep this address confidential in light of the previous leakage of information.

- 4.9 He states in his founding affidavit that the Witness Protection Programme is not a viable option for him as it would remove his autonomy, restrict his freedom and place him under the control of the very people (the police) whom he does not trust and have already failed to protect him.
- 4.10 He therefore seeks monetary relief to enable him to relocate to a place of his choice and provide for his living expenses, security and safety measures, therapeutic and medical support as well as loss of earnings, for 5 years. It needs mentioning that the breakdown of his expenses is a mere estimate and does not conform to the rules relating to the proof of quantum.
5. In its opposing affidavit the 1st to 3rd respondents, the Commander in charge of the incident, Colonel Kanakang who deposed to the affidavit, takes issue with the urgency with which the application was brought, he seems to infer that the urgency is of the applicant's own making. I must interject at this stage to mention that the application was brought at the earliest opportunity after the applicant had been booked off sick by his medical practitioner. There is no merit to this allegation. He also denies that any private information about the applicant was disclosed by SAPS to the media or social media platform. He questions how the applicant came to be in possession of an internal police communication.
6. Colonel Kanakang confirmed that he had an interview with the applicant on 4 June 2025 to obtain information regarding the deceased's business and possible enemies. During this interview the Colonel states that he had enquired about the applicant's safety and had offered him witness protection. The applicant declined as he did not want his freedom of movement restricted, and informed that he will temporarily make his own arrangements. They also agreed, if necessary, to meet at pre-arranged venues. This apparent dispute of fact does not take the matter any further.

7. The Colonel states that the option of placing the applicant in the Witness Protection Programme is still available.
8. The 1st to 3rd respondents deny that the applicant has made out a case for the relief sought.
9. In his replying affidavit the applicant denies that the Colonel or any of the police involved had offered him witness protection. He states that he does not trust the police and does not want them to know of his location. That they have violated his constitutional rights and put his life at risk without displaying any interest in investigating who within their ranks was responsible for the leak of confidential information.
10. In their answering affidavit the 1st to 3rd respondents referred to the official media statement released by the police in this instance, but attached the incorrect media statement. I allowed Mr Visagie who appeared for the respondents an opportunity to file a supplementary affidavit attaching the proper media statement, to which the applicant would have an opportunity to respond. The respondents' supplementary affidavit was filed and the attached media statement of 2 June 2025 makes no mention of the applicant's name, it does not even name the deceased. Whether this was the only media statement released is however not clear. The applicant states in his replying affidavit that he has scoured the police media statements on their Facebook pages from 1 to 3 June 2025, but that none of the posts reported on the shooting *in casu*.
11. Be that as it may, in my view, the only reasonable inference to be made from the disclosure of the private police communication, is that the leak came from within the police. How it spread to other social media platforms can at this stage only be speculated upon. The police have in my view failed in their duty to serve and protect the applicant and at the very least have to investigate whom amongst their ranks is/are responsible for such a violation and deal with it effectively.

12. With regard to the merits of the application, the applicant has confirmed that he has not received any threats from the police. Though I have no doubt that the applicant's fear is real, there is no real basis laid for the relief claimed.
13. Mr Visagie has informed that the Witness Protection Programme is not under the control of the SAPS but of the National Prosecuting Authority and that the applicant's fear and distrust of the police, whether founded or unfounded, is misplaced as far as the Witness Protection Programme is concerned. These submissions made from the bar appear to be confirmed by the provisions of the Witness Protection Act 112 of 1998 (the Act).
14. In terms of the s 3(1) of the Act, the Minister of Justice, not the Minister of Police, appoints the Director: Office for Witness Protection, who exercises the powers, perform the functions and carry out the duties conferred upon him/her under the Act subject to the control and directions of the Minister (s3(2)) – in effect the NPA.
15. In terms of s7(1) (a) (iv) and (v) of the Act, an application for witness protection can be made to the Public Prosecutor or to any member of the Office for Witness Protection (without involving the police).
16. In terms of s17 of the Act, the Director of the Office for Witness Protection and every member of the Office must, upon taking office, take an oath or make an affirmation to honour the obligation of confidentiality imposed under the provisions of the Act.
17. It is clear from the above that SAPS is not in control of the Witness Protection Programme and that the applicant's fears in this regard are unfounded.
18. There being a statutory remedy available to the applicant, which does not involve SAPS, the applicant has failed to make out a case for the extraordinary relief sought. That being the case, the application must fail.

19. As far as costs are concerned, this is not a case where costs should follow the result. The application was brought by a layperson who has been failed by SAPS. Their leaking of confidential information has been the cause of this application. The applicant should not be saddled with the costs of this application.

The following order is made:

- a) The application is dismissed.**
- b) There is no order as to costs.**



CC WILLIAMS
JUDGE

For Applicant:	In Person
For Plaintiff:	Mr Visagie Office of the State Attorney

