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**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 2025-145551

(1) REPORTABLE:NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES/NO

DATE: 12/09/2025

SIGNATURE

In the matter between:

BOOMTOWN INTERNET CAFÈ

APPLICANT

And

MINISTER OF SAPS N.O.,

1st RESPONDENT

**THE STATION COMMANDER LYDENBURG
POLICE STATION N.O.**

2nd RESPONDENT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 12 September 2025 at 15:00.

JUDGMENT

Mangena AJ

[1] On the 15 August 2025 members of the South African police services conducted a search and seizure operation at the premises of the applicant. The operation followed receipt of information that there were illegal gambling operations taking place in the premises. They seized various items believed to be the instruments of the crime and recorded them in the SAP 13 for safe keeping.

[2] The applicant instituted proceedings for the return of the seized items on the basis that the search and seizure was not authorised and that there was no illegal gambling operations taking place at the property.

[3] The Minister is opposing the application and has raised 3 preliminary points relating to lack of urgency, pending criminal investigations and non-joinder of the Mpumalanga Gambling Authority. In relation to the merits, the minister says that there was a valid search and seizure warrant issued by the magistrate and the police acted on the strength of that warrant. They further contend that same was presented to the people they found at the premises. Mr Ngomane arguing on behalf of the minister urged me to dismiss the application and award costs in favour of the respondents.

[4] I indicated to the parties that mandament van spolie proceedings are urgent and as I see it the applicant was not dilatory in coming to court and will therefore allow them to make submissions on non-joinder and pending investigations.

[5] Mr Vardokos, for the applicant urged me to dismiss the preliminary points as lacking in merit. With regard to non-joinder he submitted that Mpumalanga Gambling Authority will not be affected by the order regarding the legality or otherwise of the search. He found support in *Selona v Minister of Police and Others* (case number

2023- 064414) a judgment of the Gauteng Division which he said carries persuasive value. I agree that the Gambling Authority will not be directly affected by whatever I make.

[6] With regard to the pending criminal investigations I do not think courts should allow an unlawful conduct to continue in perpetuity simply because police are investigating an offence. The police represent the state in the performance of their duties and they are required to comply with the law and follow prescribed procedures. If they do not follow procedure prescribed by legislation, their conduct becomes unlawful. I therefore dismiss this point as well.

[7] On the merits of the application, Mr Vardakos submitted that the search and seizure warrant attached to the respondent's answering affidavit does not help the respondents as it is defective in that it fails to clearly state the "common law or statutory offence with applicable Act name and number as well as the relevant offence section." The warrant attached to the answering affidavit simply states "illegal gambling" without indicating the essential facts.

[8] The supreme court of appeal discouraged this manner of issuing the warrants and said that a search warrant carries "awesome powers as well as formidable consequences. It must be issued with care, after careful scrutiny by a magistrate or justice, and not reflexively upon a mere ' checklist approach". Gambling is not a common law offence and it was incumbent upon the magistrate "who is trained and experienced in law" to know that and ensure that essential facts are inserted in the warrant. The magistrate failed to do this. See *Goqwana v Minister of Safety NO and Others*, 2016 (1) SACR 384 (SCA) para 30.

[9] The failure by the magistrate to heed the guidance of the supreme court of appeal is a cause for concern both to the police and the people affected by "illegal gambling". Police work very hard to combat crime and ensure that they follow the rules whenever search and seizure warrants are needed. They rely on the magistrates and designated judges to ensure that the warrants they sign authorising them to perform their duties are compliant in all material respects. Failure to do so has serious consequences to the morale of the police and ultimately undermine the

administration of justice. It is therefore incumbent upon magistrate issuing warrants to do so with care and support police in combating crime that is spiralling out of control.

[10] I am aware of authorities that say courts should be slow to set aside search warrants on technical grounds. I however do not read these authorities to be saying that a court of law should give a stamp of approval to an unlawful conduct on the part of the police. The guideline emerging from authorities is that each case must be decided on its own merits.

[11] In this case constable Mulaudzi was acting on the basis of a tip off by an informer that there were illegal activities taking place in the applicant's premises. He knew that they (police) were going to conduct an operation relating to the contravention of a gambling legislation. He should have prepared an affidavit with sufficient particulars regarding the nature of the offence being committed so that the magistrate could insert those particulars in the warrant. Failure to set out the nature of the offence renders the warrant defective.

[12] Guided by the authority of the supreme court of appeal which is binding on me, I find that the search and seizure warrant used by the police on the 15 August 2025 authorising them to enter the premises of the applicant and seize the enlisted items was defective, of no legal force and effect. It stands to be set aside.

[13] The following orders are made

1. The matter is urgent and deviation from the normal rules of service is condoned.
2. The preliminary points raised by the respondents are dismissed.
3. The search and seizure warrant issued by the magistrate Lydenburg on 14 August 2025 authorising the respondents to enter applicant's premises and seize items is set aside
4. The second respondent and any other person in possession or control of the applicant's movable goods listed on annexure A to the applicant's

notice of motion is ordered to forthwith return them to the applicant's premises at 8[...] V[...] Street, Lydenburg.

5. The respondents are ordered to pay costs on a party and party scale A of the High Court tariffs.

MANGENA AJ

ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances

For the plaintiff: VARDAKOS ATORNEYS

Counsel for plaintiff: Mr. Vasilios Vardakos

For the respondent: STATE ATTORNEY MBOMBELA

Counsel for respondent: Adv. Ngomane

Date heard: 11 September 2025

Judgment delivered: **12 September 2025**