



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case number: 172544-2025

Date: 14 October 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHER JUDGES: NO	
(3) REVISED	
14 October 2025 DATE	 SIGNATURE

In the *ex parte* application of:

LUKAS JURIE NIEMAND
JN WATERWORKS (PTY) LTD

First Applicant
 Second Applicant

In re:

LUKAS JURIE NIEMAND
JN WATERWORKS (PTY) LTD

First Applicant
 Second Applicant

and

ARESTECH (PTY) LTD

Respondent

JUDGMENT

MINNAAR AJ**Introduction:**

[1] On 30 September 2025, the applicants, *in camera*, obtained an urgent ex parte Anton Pillar order ('the order'). In terms of the order, the respondent and/or any person in charge of the respondent's premises in Benoni was to grant the Sheriff access to the premises to conduct a search and to secure specified documents. The order clearly stated that the following persons may accompany the Sheriff and that they would be entitled to conduct the search and to secure the documents:

- a. Mr E Beyers, the applicants' supervising attorney.
- b. Mr E.J. Burger and/or Me M Kok from the firm known as ED Ras, Burger and Partners.
- c. Mr G L Strydom, a computer operator nominated by the applicants and described as being an independent third party.

[2] In terms of the order, the documents are specified to be:

- a. Technical engineering drawings and/or designs and technical product information and/or specifications in relation to the following products: sluice gates, mechanical front rake screens, hydro and screw conveyors, compactors and washer compactors, classifiers and sludge thickeners, de-gritting systems, biofilters, wash water systems, Archimedes screw pumps, axial flow pumps, clarifiers, trickling filters, aeration systems, weir plates and fumes, pumping stations and dewatering equipment;

- b. Tender documents submitted by the respondent to any municipalities in respect of the aforesaid water and/or sewerage treatment products and/or equipment and contracts concluded with municipalities pursuant to such tenders, including any e-mail correspondence exchanged between the respondent and the aforesaid municipalities, purchase orders received from, and invoices issued to the aforesaid municipalities;
- c. Contracts concluded between the respondent and any of the following customers: Tecroveer, Waterskills (Pty) Ltd and Dawson & Dobson (Pty) Ltd, and/or any other customer in respect of the aforesaid water and/or sewerage treatment products and/or equipment, including any e-mail correspondence exchanged between the respondent and the aforesaid customers, purchase orders received from, and invoices issued to the aforesaid customers;
- d. Searching the premises for the purposes of finding any computer disc, hard drive and/or digital storage device containing any of the items referred to above.

[3] The order further dictated that the respondent must forthwith disclose passwords and procedures required for effective access to the respondent's computers and/or other electronic devices and/or software programs, for the purpose of searching on the computers and/or electronic devices and/or software programs for the items and making a disc copy, or if that is not possible, to print out documents containing

information of the nature which would be expected in a document mentioned in paragraph 2 above.

[4] In terms of the order, the respondent permits the Sheriff to attach and to remove any document and/or item pointed out by a person mentioned in paragraph 1 above as being an item covered by paragraph 2 above.

[5] The respondent or the person found in charge of the respondent's premises was further ordered to permit the persons mentioned in paragraph 1 above to remain on the premises until the search and seizure has been completed and, if necessary, to re-enter the premises on the same or following day to complete the search and seizure.

[6] The order further authorised the Sheriff to attach any document and/or item which is pointed out by any of the persons mentioned in paragraph 2 above, and is directed to remove any attached document and/or item in respect of which the applicants' attorney does not give a different instruction. The Sheriff is directed to keep each removed document and/or item in his/her custody until the applicants authorise its release to the respondent or this Court directs otherwise.

[7] The order further directed that, until completion of the search authorised in the preceding paragraphs the respondent may not access

any computer and/or electronic device and/or software program or any area where items of the nature mentioned in paragraph 2 above may be present except with the leave of the applicants' attorney or to make telephone calls or send an electronic message to obtain the attendance and advice mentioned in the notice which is handed over immediately before execution of this order.

[8] The order further provided that, before the order and the application are served or executed, the respondent's rights be explained to the respondent.

[9] The order was issued as an interim order with a return date of 21 November 2025, on which date the respondent is called to show cause why the order should not be made final and why the documents and/or items in the possession of the Sheriff pursuant to the execution of the order should not be handed over to the applicant.

Rule 6(12)(c) reconsideration:

[10] Rule 6(12)(c) of the Uniform Rules of Court provides that a person against whom an order was granted in such person's absence in an urgent application may, by notice, set down the matter for reconsideration of the order.

[11] *"The Rule has been widely formulated. It permits an aggrieved person against whom an order was granted in an urgent application to have that order reconsidered, provided only that it was granted in his absence. The underlying pivot to which the exercise of the power is coupled is the absence of the aggrieved party at the time of the grant of the order.*

Given this, the dominant purpose of the Rule seems relatively plain. It affords to an aggrieved party a mechanism designed to redress imbalances in, and injustices and oppression flowing from, an order granted as a matter of urgency in his absence. In circumstances of urgency where an affected party is not present, factors which might conceivably impact on the content and form of an order may not be known to either the applicant for urgent relief or the Judge required to determine it. The order in question may be either interim or final in its operation. Reconsideration may involve a deletion of the order, either in whole or in part, or the engraftment of additions thereto.

The framers of the Rule have not sought to delineate the factors which might legitimately be taken into reckoning in determining whether any particular order falls to be reconsidered. What is plain is that a wide discretion is intended. Factors relating to the reasons for the absence, the nature of the order granted and the period during which it has remained operative will invariably fall to be considered in determining whether a discretion should be exercised in favour of the aggrieved party. So, too, will questions relating to whether an imbalance, oppression or injustice has resulted and, if so, the nature and extent thereof, and whether redress is open to attainment by virtue of the

existence of other or alternative remedies. The convenience of the protagonists must inevitably enter the equation. These factors are by no means exhaustive. Each case will turn on its facts and the peculiarities inherent therein.”¹

[12] In terms of the Rule 6(12)(c) procedure, no affidavit is required as the notice suffices. If, however, the aggrieved party does file an affidavit, then the other party has an opportunity to file a replying affidavit, which is subject to the general rules and practice about not introducing new matter illegitimately.²

[13] The respondent exercised its Rule 6(12)(c) rights and lodged an urgent reconsideration of the order. In amplification of the notice for reconsideration, the respondent delivered an affidavit in support. The applicants, as they are entitled to, delivered an affidavit in response. This affidavit must be regarded as a replying affidavit and may not contain new evidence to justify the granting of the order.

[14] In essence, it is the respondent’s case that the order should be reconsidered and set aside, on the following grounds:

- a. The applicants failed to comply with the safeguards expressly contained in the order. The order had authorised only certain

¹ *ISDN Solutions (PTY) LTD v CSDN Solutions CC and Others* 1996 (4) SA 484 (W) at 486 and 487

² *Industrial Development Corporation of South Africa v Sooliman and Others* 2013 (5) SA 603 (GSJ) at par 9 and 12; *Farmers Trust v Competition Commission* 2020 (4) SA 541 (GP) at par 15 to 20; *The Fonarun Naree: Afgri Grain Marketing (PTY) LTD v Trustees, Copenship Bulklers A/S (in liquidation) and Others* 2024 (1) SA 373 (SCA) at par 12 to 14

identified persons (as set out in paragraph 1 above) to enter the respondent's premises. Despite this, the first applicant, along with Patrick, who was believed to be an employee of the second applicant, also accessed the respondent's premises when the order was executed and accessed the respondent's computer systems. From the replying affidavit, it became evident that this person was, in fact, Mr Patrick Gerber. This conduct violated the clear terms of the order, exposed the respondent's confidential and proprietary information, and demonstrated flagrant disregard for the order and the rule of law, a breach which, on its own, justifies setting the order aside.

- b. The applicants failed to disclose all material facts and misled the court in the *ex parte* application. The first applicant falsely claimed to be the sole director and shareholder of the second applicant, even though company records show he had resigned as a director and that another individual was the only registered director. Moreover, the first applicant claimed that his former entities, Shosalowe Investments (Pty) Ltd ('Shosalowe') and Wamechsi CC ('Wamechsi'), were dormant when, in fact, both remained active businesses.
- c. The application lacked genuine urgency. The applicants knew about the alleged 'published works' (i.e. the drawings in question) as early as 3 September 2025, but only launched the application on 22 September 2025 and then delayed execution until 8 October 2025. These delays contradicted the claim of urgency

and showed that the applicants did not treat the matter as genuinely urgent.

- d. The applicants lacked *locus standi* and failed to join necessary parties. The alleged drawings relied upon by the applicants were not their property but rather belonged to Wamechsi and Shosalowe. These entities are indicated as being the owners of the drawings. Despite this, and their substantial and direct interest in the outcome, they were not joined to the proceedings. This failure renders the application fatally defective.
- e. The application amounted to a “fishing expedition”. The applicants sought the Anton Piller order not to preserve specific, identifiable evidence, but to search broadly for unspecified documents and information. The respondent contends that there was no evidence or reasonable belief that any material would be hidden, destroyed, or removed. In fact, the relevant drawings were already publicly available online and even attached to the applicants’ own papers.
- f. The respondent asserts that the drawings were not proprietary or confidential, but were freely available in the public domain and widely used within the industry. Similar or identical drawings appeared on the websites of other companies. Even if copyrights did subsist, the respondent maintains that it was unaware of such rights and therefore cannot be held liable under section 24(2) of the Copyright Act, 98 of 1978.

[15] In the replying affidavit, the applicants raised a point *in limine* stating that the relief sought in the reconsideration application has become moot. In this regard, the applicants contend that the order was already executed, and the respondent, according to the applicants, provided full cooperation during the execution. To now set aside the order would be futile as the proverbial horse has bolted, and it is too late for the respondent, at this late stage, to attempt to shut the stable door.

[16] The procedure of a *rule nisi* is usually resorted to in matters of urgency and where the applicant seeks interim relief to protect an immediate interest adequately.³ It follows that once a party has such an order, it will be executed as a matter of urgency; otherwise, it might defeat the purpose for which the order was obtained.

[17] For the applicants to now contend that the order was already executed and therefore the manner in which the order was obtained and executed has become irrelevant is misplaced. It is thus irrelevant whether the horse has bolted. The applicants' approach to mootness flies in the face of the provision of Rule 6(12)(c). If their approach is indeed correct, it would result in an *ex parte* application being considered, with an order granted and executed without any possibility to approach the court for reconsideration. This would create an untenable situation.

[18] In light of the above, the applicants' point *in limine* is dismissed.

³ *ISDN Solutions (PTY) LTD v CSDN Solutions CC and Others* 1996 (4) SA 484 (W) at 486H

Safeguards in the order:

[19] Anton Piller relief is of a Draconian nature, which relief should only be granted under exceptional circumstances.⁴ The application of Anton Piller relief has been described as an example of the outer extreme of judicial power.⁵ The execution of the order must be meticulous and adhere to its letter.

[20] The respondent complains about the presence of the first applicant and Mr Gerber when the order was executed, as they were not included in the list of persons allowed to be present.

[21] According to the applicants, when the order was executed on 8 October 2025, both directors of the respondent (Mr Pretorius and Mr De Swardt) invited the Sheriff and the persons ordered into the boardroom. The respondent's directors were advised of the respondent's rights and informed that the respondent's attorney may be contacted. The respective attorneys had a discussion at around 11h00 on the day of execution, and the respondent's attorney did not raise any objection to the execution of the order. According to the applicants, the respondent gave full cooperation and at no stage objected to their presence, nor did they object to the presence of the first applicant and Mr Gerber. The execution of the order proceeded on the next day, 9 October 2025, with

⁴ *Rath v Rees* 2007 (1) SA 99 (C) at 107H; *Mathias International Ltd and Another v Baillache and Others* 2015 (2) SA 357 (WCC) at 362E to 363D

⁵ *Mathias International Ltd and Another v Baillache and Others* 2015 (2) SA 357 (WCC) at 363D and 363H to I

the respondent's directors providing their unequivocal support throughout. The respondent even took down its website, which is still in maintenance mode.

[22] The respondent's version is in complete contradiction of the applicant's version. In the respondent's affidavit, details are provided as to the expedited manner in which they approached their attorneys to lodge the urgent reconsideration after they've been 'released' at around 17h30 on 8 October 2025. These actions clearly do not indicate that the respondent acquiesced to the validity of the order. The contrary is true.

[23] The fact of the matter is that neither the first applicant nor Mr Gerber was authorised to attend the execution of the order. Their presence was in direct contradiction of the terms of the order.

[24] It is settled law that serious irregularities in the execution of an Anton Piller order can render it susceptible to being discharged on a reconsideration thereof.⁶

[25] Although I am not encouraging non-compliance with the terms of an Anton Piller order, I do not, for this application, regard the presence of the first applicant and Mr Gerber as a serious irregularity that would justify the discharge of the order. It will, however, have an impact on the scale of costs I intend to grant.

⁶ *Audio Vehicle Systems v Whitfield* 2007 (1) SA 434 (C) at 444G – 445B and 453F – G; *Friedshelf 1509 (Pty) Ltd t/a RTT Group v Kallanji* 2015 (4) SA 163 (G) at 167H - I

[26] On the attachment, removal, and safeguarding of the documents, the order is clear: all of this will vest with the Sheriff. In this regard, the order explicitly provides:

- a. The Sheriff is permitted to attach and to remove any document and/or item mentioned in paragraph 3 of the order.
- b. The Sheriff is directed to keep each removed document and/or item in his/her custody until the applicants authorise its release to the respondent or this court directs otherwise.
- c. It is only on the return date that the interim order will be made final. If so, it is only then that the documents and/or items in the possession of the Sheriff pursuant to the execution of the order may be handed to the applicants.

[27] On a reading of the replying affidavit, the second applicant makes the following startling remarks:

- a. Paragraph 3.14: *"In the premises the order has already been executed and **the items I required access to have already been retrieved.**"*
- b. Paragraph 3.15: *"If the order is set aside, the Respondent could claim that **I now have unlawfull access to their confidential information** which whould then make me potentially liable to pay damages to the Respondent."*
- c. Paragraph 3.17: *"... This reconsideration, which is brought after the fact, is nothing but a mala fide attempt at impeding upon **my***

right to use the information that I now have as I see fit.” (my emphasis)

[28] From the replying affidavit, it is clear that the first applicant has access to all the documents, which are now in his possession. He asserts that it is his right to use the information as he sees fit. This is in total disregard of the safeguards as provided for in the order. This approach also negates the whole purpose of Anton Piller proceedings: to preserve evidence pending proceedings.

[29] It is clear, on the first applicant’s version, that there is a clear deviation from the provision that it is the Sheriff who has to preserve the documents.

[30] The manner in which the applicants now have access to the documents and information is in complete disregard of the order and the purpose of the Anton Piller process. This constitutes a grave irregularity.

[31] On this point alone, the application for reconsideration must succeed, and the order granted must be set aside.

Failure to disclose all material facts:

[32] An *ex parte* application by its nature requires the utmost good faith on the part of the applicant. The court has a discretion to set the order aside

with costs on the ground of non-disclosure. It should, however, be noted that the court has a discretion and is not compelled, even if the non-disclosure was material, to dismiss the application or to set aside the proceedings.⁷

[33] In the founding affidavit, the first applicant pertinently stated that he is the sole director and shareholder of the second applicant. If regard is had to Annexure “JN1” to the founding affidavit, dated 3 September 2025, Mr Gerber and the first applicant are both active directors of the second applicant.

[34] Mr Gerber’s involvement in the second applicant is a bit of a mystery. In terms of the certificate issued by the CIPC, dated 3 September 2025 and annexed to the founding affidavit, Mr Gerber and the first applicant are both active directors of the second applicant. Attached to the respondent’s affidavit is a Lexis WinDeed search, dated 8 October 2025, indicating that Mr Gerber is the active director of the second applicant. He was appointed as such on 12 August 2025. According to this document, the second applicant’s status indicates that he had resigned. This same document then states that the first applicant resigned on 30 August 2025, but was then appointed on 19 September 2025. The applicants, in their replying affidavit, attached an updated CIPC certificate, dated 9 October 2025. In terms thereof, the first applicant is the sole director of the second applicant, and he was appointed as such

⁷ *Schlesinger v Schlesinger* 1979 (4) SA 342 (W) at 348E to 350B; *National Director of Public Prosecutions v Basson* 2002 (1) SA 419 (SCA) at par 21

on 19 September 2025. This document indicates that Mr Gerber resigned as a director on this date.

[35] On the papers presented to the Court when the order was granted, it is evident that the first applicant made a misstatement in his founding affidavit in declaring that he was the sole director and shareholder of the second applicant. No resolution was presented to confirm the first applicant's authority to have instituted the proceedings on behalf of the second applicant. As such, I am not satisfied that the second applicant had the requisite *locus standi* to have obtained the Anton Piller relief.

[36] The following aspect is the status of Shosalowe and Wameschi. According to the first applicant, these entities were dormant. The evidence, however, indicates that both of them remained in active business. It would, however, appear that neither of these entities was trading at the time of the alleged infringement and when the Anton Piller was obtained.

[37] On the failure to adequately disclose all material facts, it follows that the order must be set aside.

Lack of urgency:

[38] According to the first applicant, he became aware of the alleged infringement on 3 September 2025. It is baffling that the applicants then waited until 30 September 2025 to protect their rights.

[39] Urgency is, however, an aspect that is highly dependent on judicial discretion and, as such, I do not deem it appropriate to involve myself in the finding by the previous Court to have treated the application sufficiently urgent to warrant the order being granted.

[40] Of concern is the execution of the order, which execution only took place on 8 October 2025.

[41] The purpose of the Anton Piller procedure is to secure the preservation of evidence in proceedings already instituted or to be instituted by the applicant. In *Shoba v Officer Commanding, Temporary Police Camp, Wagendrift Dam, and Another; Maphanga v Officer Commanding, South African Police Murder and Robbery Unit, Pietermaritzburg, and Others* 1995 (4) SA 1 (A) ([1995] 2 All SA 300; [1995] ZASCA 49) at 15H – I the Appellate Division set out the essential requirements for the establishment of Anton Piller relief. These requirements were stated by Corbett CJ as follows:

'(W)hat an applicant for such an order, obtained in camera and without notice to the respondent, must prima facie establish, is the following:

(1) That he, the applicant, has a cause of action against the respondent, which he intends to pursue;

(2) that the respondent has in his possession specific (and specified) documents or things which constitute vital evidence in substantiation of the applicant's cause of action (but in respect of

which the applicant cannot claim a real or personal right); and

(3) that there is a real and well-founded apprehension that this evidence may be hidden or destroyed or in some manner be spirited away by the time the case comes to trial or to the stage of discovery.'

[42] It is generally accepted that Anton Piller proceedings are of an inherently urgent nature. One of the cornerstones of Anton Piller is a 'real and well-founded apprehension that evidence may be hidden or destroyed or in some manner be spirited away by the time the case comes to trial or to the stage of discovery.' This, in my view, speaks unequivocally that the relief claimed and the execution of such an order were intended to provide for urgent intervention.

[43] The applicants' explanation that, from 1 October 2025 (when they were placed in possession of the endorsed order) until 8 October 2025, they were bound by the Sheriff's availability to execute the order does not pass muster.

[44] This court has a serious concern about accepting the applicants' assertion that there was a real and well-founded apprehension that the evidence might be hidden or destroyed. Yet, they failed to enforce their 'urgent order' and waited some time. The applicants' failure to ensure that the purported evidence is protected as a matter of extreme urgency

also touches on the nerve as to why the applicants waited from 5 September 2025 until 30 September 2025 to obtain the urgent relief.

[45] The applicants' failure to act promptly to preserve the documents and protect their perceived rights is another reason to set aside the order.

The applicants' locus standi:

[46] The respondent's attack on *locus standi* centres on the applicants' failure to join Wameschi and Shosalowe to these proceedings, despite them having a substantial and direct interest in the outcome hereof.

[47] As pointed out by the respondent, some of the drawings clearly indicate that they are the sole property of Shosalowe or Wameschi. This aspect was not appropriately addressed in the founding affidavit.

[48] Shosalowe and Wameschi are both independent legal entities, with a direct and substantial interest herein. Yet, they were not joined to these proceedings to protect their interest against any alleged infringement by the respondent.

[49] Without Shosalowe and Wameschi being joined, their rights could not have been implicated or protected. The first applicant's assertion that the drawings belong to him and/or the second applicant and/or Shosalowe and/or Wameschi (as the case may be) does not assist in this regard.

[50] This is a further ground on which the order must be set aside.

“Fishing expedition”:

[51] The essential purpose of an Anton Piller order is to preserve evidence in proceedings already instituted or about to be instituted, and it is not to enable a prospective litigant to ‘see’ his adversary’s documents.⁸

[52] An Anton Piller order is not to be used as a fishing expedition to obtain evidence that may found a cause of action or as a blanket search for unspecified documents or evidence that may or may not exist.⁹

[53] According to the respondent, the documents the applicants intended to preserve were already publicly available online and even attached to their own papers.

[54] The first applicant’s flippant remark in paragraph 3.17 of the replying affidavit, that he may now use the information that he has as he sees fit, is a summary of the motivation behind the application: fish for what you can get to know whether you have a case against your adversary. This approach is a flagrant abuse of the Anton Piller purpose and process.

⁸ *Hall and Another v Heyns and Others* 1991 (1) SA 381 (C) at C 389H—I; *Shoba v Officer Commanding, Temporary Police Camp, Wagendrift Dam, and Another; Maphanga v Officer Commanding, South African Police Murder and Robbery F Unit, Pietermaritzburg, and Others* 1995 (4) SA 1 (A) at 15G--171

⁹ *Roamer Watch Co SA and Another c African Textile Distributors also t/a M K Patel Wholesale Merchants and Direct Importers* 1980 (2) SA 254 (W) at 272 to 273

[55] If regard is had to prayer 3 of the granted order, no specifics are presented on exactly what time frames are applicable. The documents sought to be preserved deal with this specific industry in which the parties trade, yet the net cast by the applicants is extensive. The relief obtained was apparently devised to identify the documents the respondent possesses, enabling the applicants to tailor a claim against the respondent.

[56] The applicant has failed to meet the requirement that the respondent has in its possession specific (and specified) documents or things which constitute vital evidence in substantiation of the applicant's cause of action. On this point, the application for reconsideration must succeed, and the order must be set aside.

Nature of the drawings:

[57] According to the respondent, the applicable drawings are either identical or nearly identical to those used by other companies in the industry, and they are all available online.

[58] This contention by the respondent raises the question whether there was a real and well-founded apprehension that the evidence, allegedly held by the respondent but which is also available in the public domain, may be hidden or destroyed or, in some manner, be spirited away by the time the case comes to trial or to the stage of discovery.

[59] In the premises, and on a reconsideration of all the evidence, it follows that the application for reconsideration must succeed, and the Anton Piller order must be set aside.

Costs:

[60] There is no basis to deviate from the normal approach that costs should follow the outcome.

[61] The respondent is seeking costs on an attorney and client scale.

I consider that the following would justify punitive costs:

- a. The presence of the first applicant and Mr Gerber on 8 October 2025, when they had no authority under the Anton Piller order to be present during its execution.
- b. The first applicant's approach, indicating that he has now found what he needed and that the documents and information are in his possession.

Order:

Consequently, I make the following order:

1. The Anton Piller order issued on 30 September 2025 is set aside.
2. Within 48 hours of the granting of this order, the Sheriff shall return to the respondent all documents taken into its possession during the execution of the order.
3. Within 24 hours of the granting of this order, the first- and/or second

applicant is to deliver to the respondent's attorney:

- 3.1 All documents relating to the respondent and which came into the possession of the applicants during the execution of the order, whether in hard copy or electronic format.
 - 3.2 A sworn statement to confirm that all documents stored by the applicants in an electronic format, relating to the respondent, which came into the possession of the applicants during the execution of the order, have been destroyed and that the applicants do not have any electronic record of the respondent's documents.
4. The applicants, jointly and severally, the one paying the other to be absolved, are ordered to pay the costs of the application on the scale as between attorney and client.



Minnaar AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

Heard on	: 10 October 2025
For the Applicants	: Adv N Breitenbach
Instructed by	: E Beyers Attorneys
For the First Respondent	: Adv B C Bester
Instructed by	: Warrener De Agrela and Associates Inc.
Date of Judgment	: 14 October 2025