



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

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
DATE	SIGNATURE

CASE NO: 104577/2024

In the matter between:

AUBREY MAXWELL GOLDMAN

Applicant

and

**MAGISTRATE D THALATSE MAGISTRATE FOR THE
DISTRICT OF JOHANNESBURG NORTH HELD AT
RANDBURG**

First Respondent

THE MINISTER OF POLICE

Second Respondent

**THE NATIONAL COMMISSIONER OF THE SOUTH
AFRICAN POLICE SERVICES**

Third Respondent

**LIEUTENANT COLONEL KGOMOTSO GALETIOLE
OF VAAL RAND THE DIRECTORATE FOR PRIORITY
CRIMES INVESTIGATION**

Fourth Respondent

**WARRANT OFFICER JOHN RIKHOTSO GAUTENG
ORGANISED CRIME**

Fifth Respondent

**WARRANT OFFICER ALBERT MASHANGOANE
GAUTENG ORGANISED CRIME**

Sixth Respondent

SENIOR PUBLIC PROSECUTOR WYNBERG

Seventh Respondent

JUDGMENT

KLOEK, AJ

INTRODUCTION

1. On 18 June 2025, this Court was sitting as a Court assigned to deal with unopposed applications. Mundanely, if a matter becomes opposed, it loses its place on the unopposed roll. As the name of the roll suggests, an unopposed Court is designed for unopposed cases. At the hearing, Advocate E Dreyer appeared on behalf of the Applicant and Advocate O Mokoka appeared on behalf of the Second to Seventh Respondents. The Applicant indicated to me that the "*dispute*" between the Applicant and the Second to Seventh Respondents was in essence an examination of the interpretation of Uniform Rule of Court, 53(4) and therefore the dispute before the Court was very limited in that sense. However, the Second to Seventh Respondent beseeched this Court to simply refuse to hear the application based on the grounds that it was opposed, however no answering affidavit has been presented. I return to this aspect more fully hereinbelow.
2. For expediency and in the interest of justice, this Court exercised its discretion and indicated to the parties that short heads of argument should be filed by the parties, which both parties timeously did by 19

June 2025, and the Court heard the submissions by the parties on 20 June 2025.

BACKGROUND FACTS

3. Owing to the limited nature of the issues appertaining this judgment, it is unnecessary to narrate all the facts in the present application. It suffices to mention that the Applicant approached this Court and sought an order *inter alia* setting aside the search and seizure warrant issued by the First Respondent, Magistrate Thalatse, on 1 February 2025 together with a declarator order that the search undertaken under the auspices of the Fourth and Fifth Respondents by the Fifth and Sixth Respondents be declared invalid and of no force and effect. The Applicant therefore seeks to review the issuing of the search and seizure warrant issued on 1 February 2025 and approached this Court pursuant to Uniform Rule of Court 53. Further relief was sought in the notice of motion dated 2 September 2024, however the Applicant did not persist with the relief, save for an order for costs, which was sought in the notice of motion on an attorney and client scale. However, at the hearing Advocate E Dreyer on behalf of the Applicant indicated that she no longer persisted with costs on an attorney and client scale, but rather sought costs of the application on a party and party scale, scale B.

RELEVANT TIMELINE

4. The present application was initiated on or about 2 September 2024. Pursuant to service of the application on the First Respondent on 3 October 2024 (the return of service indicating that the correct spelling of the First Respondent is in fact "Phalatse" and not "Thalatse"), however no amendment to the notice of motion was brought or sought at the hearing.
5. The First Respondent indicated, and being represented by the State Attorney, on 12 June 2025 that the First Respondent would abide by the decision of this Court. Hereafter proper service was affected on the Second, Third, Fourth, Fifth and Sixth Respondents during the period 25 September 2024 to 1 October 2024 respectively and notwithstanding non-service on the Seventh Respondent, the State Attorney on 9 October 2024 indicated that they also act on behalf of the Seventh Respondent. The notice of intention to oppose dated 9 October 2024 was served on the Applicant's attorney on 16 October 2024.
6. As expected, in review applications and due to the need to have access to the full record, which is fundamental to the proper ventilation of a judicial review, the Office of the State Attorney on 13 November 2024 served the record on the Applicant's attorney.
7. Hereafter, the Second to Seventh Respondents failed to file an answering affidavit. There was no dispute between the parties that the

record was presented on 13 November 2024 and that the Second to Seventh Respondent chose not to file an answering affidavit, in fact this was common cause between the parties. The Second to Seventh Respondents stated that the obligation to do so had as yet not arisen, and that was the reason so provided that the answering affidavit was not filed.

ANALYSIS

8. This application calls for the interpretation of Uniform Rule 53(4), which reads as follows:

“(4) The applicant may within 10 days after the registrar has made the record available to the applicant, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of such applicant’s notice of motion and supplement the supporting affidavit.”

9. Advocate O Mokoka, appeared on behalf of the Second to the Seventh Respondent, indicated to the Court that he sought a removal of the matter from the roll on the basis that the matter is opposed. In essence, the Second to Seventh Respondents say that they were awaiting the Applicant to amend, to add or to vary its notice of motion and once the

Applicant had done so, the Applicant "*should have and could have notified the Respondents either that they had done so or if they had no intention to amend and/or vary the notice of motion they could or should have notified the Respondents that they had no intention to do so.*"

10. In turn, the Advocate E Dreyer on behalf of the Applicant, submitted that there was no duty on the Applicant to inform the Second to Seventh Respondents that they did not wish to amend the notice of motion. As the Applicant had elected not to amend, add to or vary the terms of the notice of motion or supplement the founding affidavit there was "*no obligation*" in terms of the Uniform Rules of Court, Rule 53, to inform the Second to Seventh Respondents of same and the Second to Seventh Respondent should have filed there answering affidavit which they had not done.
11. Advocate E Dreyer therefore argued that Uniform Rule of Court 53(4) was discretionary in nature and the word "may" suggests that it is the Applicant which can decide, in the Applicant's discretion, either to amend and/or vary the terms of the Applicant's notice of motion and upon a proper interpretation of Uniform Rule of Court 53(4), that discretion remains with the Applicant and there exists no duty to notify the Second to Seventh Respondents accordingly, should the Applicant not wish to amend, vary or add.

12. Furthermore, during the oral argument, Advocate O Mokoka indicated that the obligation to file a notice of intention to oppose only arises after the filing of the record and submitted, correctly so, that the Second to Seventh Respondents were not obliged to take any steps to oppose the application for review until a copy of the Record had been furnished.
13. The Court understood Advocate E Dreyer not to quarrel with the submission that the Second to Seventh Respondents were not obliged to take any steps to oppose the application for review until a copy of the record was so presented on 13 November 2024. However, and what is of import, thereafter the Second to Seventh Respondents failed to file an answering affidavit.
14. Both counsels agreed that the meaning of the word "*may*" in Uniform Rule 53(4) stood to be interpreted by the Court.
15. The Court now turns to meanings of the words "*shall*" and "*may*" in statutes is the subject of constant and conflicting interpretation. In **Northwest Townships (Pty) Limited v The Administrator, Transvaal** 1975 (4) SA 1 T at 12 F, Colman J adverted to the long line of authorities stating at least as far back as **Julius v The Bishop of Oxford** (1880) 5 AC 214, and extending into the present decade, in which the Courts have debated the question whether, and if so when, the word "*may*" in a statute means "*must*" or "*shall*".

16. When the words "*the Court may*" are used in a statute, they *prima facie* suggest that a power is conferred upon the Court, which it can decide, in its discretion, either to use or not to use. See **Grosvenor Motors (Cape) Limited v Samson** 1956 (3) SA 169 C at 173A and furthermore **Wallace NO v Commercial Union Insurance Company of SA** 1999 (3) SA 804 C at 808 B-C, where it was stated that while the word "*may*" does on occasion signify a power amounting in law to a discretion, that is by no means necessarily so. In **Shepstone & Wylie v Geyser NO** 1998 (3) SA 1036 SCA at 1045 D, it was pointed out that the word, standing on its own, is not particularly informative.
17. However, it is sometimes said that the word "*may*", occurring in a statute, often means "*must*", but that is inaccurate. See **Noble & Barbour v SAR&H** 1922 AD 527 at 540.
18. The Second to Seventh Respondents in support of their submission that there was a duty upon the Applicant to provide the Second to Seventh Respondents with a notification where they opted to waive their rights in terms of Rule 53(4), relied on the process of interpretation, which it submits is objective, not subjective. In support of their submission, they relied upon the principles as formulated by the Supreme Court of Appeal in **Natal Joint Municipal Pension Fund v Endumeni Municipality** 2012 (4) SA 593 SCA. They furthermore relied upon the principles as set out in **Deputy Minister of Tribal Authorities and Another v**

Kekana 1983 (3) SA 492 at p497 and Cape Town City v South African National Roads Authority 2015 (4) SA 386 SCA at para 36.

19. Both these judgments, when considered are not authority for the proposition or supports their submission as contended for by the Second to Seventh Respondents.
20. Also, the word "*may*" in the context in which it is used was unambiguous and had to be given its ordinary meaning which implied a discretionary power.

CONCLUSION

21. For all the above reasons, I find that there was no duty or obligation on the Applicant to have notified the Second to Seventh Respondents that they did not intend to vary or add or to amend the notice of motion or to supplement the founding affidavit. It was for the Applicant to elect whether to amend and/or to vary the terms of the notice of motion and supplement the supporting affidavit.
22. I find that there was no duty on the Applicant to notify the Second to Seventh Respondents of their election whether they intended or not to amend or vary or add to the notice of motion or founding affidavit. Upon

a proper interpretation of Rule 53(4), it grants a discretion to the Applicant to do what the rule in itself allows to be done.

23. The Second to Seventh Respondents did not to ask for a postponement of the hearing and neither did they request an opportunity to file an answering affidavit. In fact they persisted with the notion that their answering affidavit is not due, which of course is incorrect for the reasons as dealt with hereinabove.
24. I therefore find that there is no merit in the contention of Advocate O Mokoka acting on behalf of the Second to Seventh Respondents that their answering affidavit is not due or that the Applicant has an obligation to notify the Second to Seventh Respondents that they do not intend to amend or vary or add to the notice of motion or founding affidavit. He furthermore did not join issue with the merits of the application.
25. The ordinary rule that costs should follow the result must apply and there are no grounds before the Court to deviate from this principle and all relevant circumstances justifies a cost order in favour of the Applicant.
26. With regard to costs as indicated hereinabove, initially in the notice of motion costs were sought on an attorney and client scale against the Second to Seventh Respondent, however at the hearing the Applicant did not persist with such an order and the Court indicated to Advocate E

Dreyer acting on behalf of the Applicant, that the application was not served on the Seventh Respondent and therefore I did not believe that it was proper that costs were to be granted against the Seventh Respondent. Against this background, Advocate E Dreyer indicated that she was not persisting with a cost order against the Seventh Respondent and would be content with cost in favour of the Applicant, granted on a party and party scale, scale B. Taking into account the principles as set out in **Mashavha v Enaex Africa (Pty) Limited and others** case number 18404/ 2022 by Wilson J, the Court is satisfied that the scale on which costs are to be awarded should be on scale B.

ORDER

27. In the result I make the following order:

1. The search and seizure warrant issued by the First Respondent, Magistrate Thalitse on 1 February 2024 is hereby set aside;
2. The search undertaken under the auspices of the Fourth and Fifth Respondents by the Fifth and Sixth Respondents is declared invalid and of no force and effect;
3. The Second to Six Respondents are to pay the costs of the application jointly and severally, the one to pay the other to be

absolved on a party and party scale, scale B.


JW-KLOEK
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: this judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 24 November 2025.

Heard on 20 June 2025 decided on 24 November 2025

Counsel for the Applicant:

Adv E Dreyer

Attorneys for the Applicant:

M J Hood & Associates

Counsel for the Second to:
Seventh Respondents:

Adv O Mokoka

Attorneys for the Second to:
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