



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case number: 2925/2025

In the matter between:

RAUBEX CONSTRUCTION (PTY) LTD

APPLICANT

and

THE MINISTER OF POLICE

FIRST RESPONDENT

WARRANT OFFICER KHAUHELO JOSEPH TAU N.O.

SECOND RESPONDENT

MAGISTRATE A MNGUNI N.O.

THIRD RESPONDENT

Neutral citation: *Raubex Construction (Pty) Ltd v The Minister of Police and Others*
(2925/2025) [2025] ZAFSHC 348 (6 November 2025)

Coram: Loubser J

Heard: 24 July 2025

Delivered: 6 November 2025

Summary: Application enrolled on the urgent roll found not to be urgent – notwithstanding, matter not removed from the roll and the merits of the application decided.

ORDER

The application is dismissed with costs, including the costs of two counsel where so employed.

JUDGMENT

Loubser J

[1] This is an application for the setting aside of a search and seizure warrant and for ancillary relief. The notice of motion is styled as follows:

- a) That non-compliance with the Uniform Rules of Court relating to forms, service and time periods be condoned and that this matter be heard as an urgent application.
- b) That the Search and Seizure Warrant issued in terms of s 21 read with s 20 and chapter 2 of the Criminal Procedure Act 51 of 1977, under docket number: DPCI: SCI - P COMM FS OCI UNIT CAS: 01/07/2024 by the Third Respondent, with date stamp 2 May 2024, in the Welkom District Court jurisdiction, be set aside.
- c) That the items as listed in the Inventory be returned to the Applicant within 24 hours of date of this order.
- d) A retraction be published on the South African Police Services website, retracting the publications of 21 May 2025 within 24 hours of date of this order.
- e) That the First- and Second Respondents be ordered to pay the cost of the application, jointly and severally the one to pay the other to be absolved, on scale C.

[2] The application was set down for hearing on an urgent basis at 14h00 on Thursday, 3 July 2025 during recess. However, prior to that date the parties agreed that opposing papers would be filed by the respondent by 27 June 2025. This was confirmed by the applicant's attorneys in a letter to the State Attorney dated 17 June 2025. In the letter it is also informed that, 'in light of the above and without relinquishing any of our rights we deem it practical to remove the matter from the roll on 3 July 2025 and place it

on the roll for 24 July 2025. The matter will therefore be placed on the normal opposed motion roll . . .’ In its subsequent replying affidavit, the applicant referred to this agreement and contended that urgency was therefore no longer a point of contention.

[3] This submission in the replying affidavit was made in response to the stance taken by the respondents in their answering affidavit to the effect that the application was not urgent. They stated that the deviation from the prescribed time periods is not commensurate with the urgency of the matter.

[4] At the hearing of the application on 24 July 2025, the debate around the urgency of the matter arose again. It was submitted on behalf of the applicant that urgency is not an issue anymore because the matter was placed on the normal opposed roll following negotiations between the parties. On behalf of the respondents, it was submitted, on the other hand, that the issue of urgency is still relevant and alive and needs to be adjudicated by the court. It was further submitted that the applicant has failed to make out a case for urgency and that the application should therefore be struck from the roll with costs.

[5] Now, in the letter of 17 June 2025 alluded to above, the applicant’s attorneys stated that ‘without relinquishing any of our rights’, the matter will be placed on the normal opposed motion roll. This is a clear indication that the applicant elected to keep the door open to rely on the urgency of the matter should the need arise. After all, not a word is spoken in this letter or any of the other correspondence between the parties that the issue of urgency had been resolved.

[6] Furthermore, the application papers show that the respondents were not afforded the normal time periods to either file their notice of intention to oppose or their answering affidavit. The notice to oppose was required within five days from date of the issue of the application as opposed to the ten days that ordinarily applies. The answering affidavit was required by 20 June, that is four days after the notice to oppose, as opposed to the 15 court days that would ordinarily apply. After the agreement between the parties, the respondents still found themselves in a position where they had to consult and draw the answering affidavit on truncated time periods, since the answering affidavit then had to be filed by 27 June 2025. Put differently, they were still not afforded the prescribed time period to deliver the answering papers. This must have caused prejudice to the respondents.

[7] The respondents could not complain about this prejudice, because the applicant

was entitled to make his own rules where urgency was present. It means that a respondent can only complain of the lack of urgency once the application serves before a court eventually. This is precisely what happened in the present case.¹

[8] In the premises, I am constrained to find that the question of urgency is still relevant and alive at this point in time. This is so despite the fact that the parties have agreed that the matter would be set down on the ordinary opposed motion roll. The court must therefore now proceed to establish whether the applicant's deviation from the prescribed time periods is commensurate with the degree of urgency claimed by the applicant.²

[9] Uniform Court Rule 6(12)(a) provides as follows: 'In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit.' Rule 6(12)(b) then provides that: "In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which it is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.'

[10] In its founding affidavit the applicant provides the following reasons for the alleged urgency: Firstly, it says that the blatant unlawfulness of the actions by the police makes this matter inherently urgent. Then follows this sentence: 'If the Honourable Court decides that the warrant stands to be set aside the matter is urgent'. The urgency is therefore conditional and will only become established once the court has decided in favour of the applicant on the merits of the application. This approach by the applicant begs the question why the application was then placed on the urgent roll at all.

[11] Secondly, the applicant submits that it is a subsidiary of a JSE listed company and is therefore subject to higher scrutiny. The reputation of the applicant is suffering as a result of the allegations contained in a publication posted by the police on its website, it

¹ See in this respect *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (A) at 782 C-D.

² *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another t/a Makin's Furniture* 1977 (4) SA 135 (W) at 137 A-F

says. This is again followed by a condition: 'If the Honourable Court finds that the warrant is unlawful, the applicant will also pray that the police be ordered to print a retraction of the publication on its website.' It means that the retraction will only become urgent once the court has found in favour of the applicant on the merits. If this is so, one can again only wonder why the application was enrolled on the urgent roll in the first place, because it was apparently done prematurely.

[12] Thirdly, the applicant contends that, 'considering the nearing recess', it will continue to suffer irreparable harm, not only reputational but also in submission of new tenders, if it had to follow the normal rules in relation to time and form. Here the applicant is obviously referring to the police publication again. The publication itself must now be considered to find whether there is any merit in the applicant's submissions in this regard.

[13] The publication refers to a search and seizure operation at the applicant's site office between Sasolburg and Heilbron, which was prompted by allegations of fraud and corruption during the bidding and appointment of a sub-contractor appointed by the applicant. It then mentions that it was alleged that the successful bidder was not from Heilbron or Sasolburg, that one of the directors of the successful bidder only became a director after the company was appointed and that the company is not PSIRA compliant. The publication ends stating that the matter was reported to the Hawks for investigation, and that several documents were seized for further investigation after a search warrant was obtained.

[14] It is clear that this publication nowhere states that the applicant was alleged to have been complicit in the fraud and corruption. I have no doubt that any reasonable person who reads the publication will understand that the investigations were aimed at establishing whether the successful bidder had fraudulently misrepresented to the applicant the identity of its directors, the fact that it came from Heilbron or Sasolburg and that it was PSIRA compliant. The complaint of reputational damage suffered by the applicant, albeit conditional damage, must therefore fall away.

[15] Lastly, the applicant bluntly states that it will not get substantial redress in due course. In its replying affidavit the applicant reiterates that the application is urgent, but

that the urgency is no longer a point of contention due to the agreement to proceed on the normal opposed motion roll.

[16] I do not agree. As shown earlier herein, the applicant has failed to establish any urgency at all. Moreover, it has failed to show that the deviation from the prescribed time periods was commensurate with the degree of urgency claimed. The agreement to move the application to the normal opposed motion roll, also does not assist the applicant, since there is no indication that the issue of urgency became abandoned by the parties by agreeing as such. In addition, the answering affidavit still had to be drawn on truncated time periods.

[17] In the normal course, the application therefore stands to be removed from the roll with costs. Such a removal, however, will be contrary to the interests of justice, since the applicant will then have to enrol the application again in circumstances where there has already been a delay in the determination of the matter. In the matter of *Commissioner, South African Revenue Service v Hawker Air Services (Pty) Ltd*³ the Supreme Court of Appeal has stated in para 11 that 'lack of urgency will entitle a high court in the exercise of its discretion to refuse to enrol a matter where the ordinary forms and procedures have not been followed.' As indicated, in the present matter and in the exercise of my discretion, I prefer not to remove the matter but rather to proceed to decide the merits of the application so that finality can be reached.

[18] In its founding affidavit the applicant relies on a number of grounds for the relief it seeks. The first ground is that the affidavit submitted by the second respondent to the third respondent in support for the issue of a search and seizure warrant, is dated 2025 while the date stamp of the warrant shows that the warrant was already issued by the third respondent in 2024. This ground has no merit. Although the date of the stamp is indeed 2024, it is equally clear that the third respondent had changed the date in his own handwriting to what appears to be 02/05/2025. The year 2024 on the stamp was obviously an error.

³ *Commissioner, South African Revenue Service v Hawker Air Services (Pty) Ltd* [2006] ZASCA 51; 2006 (4) SA 292 (SCA)

[19] Secondly, it is alleged that crucial information was omitted by the second respondent in his affidavit to the magistrate. The omitted information relates to the fact that the applicant had already provided the police with documentary proof of the location of the successful tenderer and its PSIRA registration. The applicant avers that, had the third respondent known of these facts, he would possibly have denied the request for a warrant. The irony is that these documents were not listed in the warrant for search, nor were they seized by the police. The omission of these documents in the affidavit therefore played no role whatsoever.

[20] Thirdly, the applicant laments the fact that the documents actually seized are not listed in the warrant for seizure. Now, the warrant specifically provides that it is issued in terms of s 21, read with s 20 and Chapter 2 of the Criminal Procedure Act. While s 21 provides that there always has to be a search warrant before an object may be seized, the section is subject to the provisions of s 22, 24 and 25. In terms of s 22, a police official may, without a search warrant search any person or container or premises for the purpose of seizing any article that is on reasonable grounds believed to be concerned in the commission of an offence. Section 22 forms part of Chapter 2 of the Criminal Procedure Act. The warrant in the present matter leaves no doubt that the third respondent had included the provisions of s 22 in the powers he had conferred on the police officials in terms of Chapter 2. It is stipulated in the warrant that they are authorized and required to seize the articles listed and to 'exercise any further powers and perform any further duties in relation to such seized articles as are set out in Chapter 2 of the Criminal Procedure Act'. The police officials were therefore duly authorized to seize articles and documentation outside the ambit of the articles specifically listed in the warrant.

[21] In the fourth place, the applicant avers that the warrant is overly broad. In the preceding paragraph the court has already dealt with the question whether the police officials were authorized to seize that were not specifically listed in the warrant. Nothing therefore turns on this fourth ground for the relief sought.

[22] Lastly, the applicant alleges that the commissioning of the second respondent's affidavit in support of the warrant was done by a person with an interest in the matter. It is stated by the applicant that the affidavit was commissioned by Warrant Officer J S Ndweni, who is one of the members who took part in the search and seizure operation at

the premises of the applicant. This is obviously a reference to regulation 7(4) of the Regulations Governing the Administering of an Oath or Affirmation, published in terms of s 10 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963. Regulation 7(1) provides that a Commissioner of Oaths shall not administer an oath or affirmation relating to a matter in which he has an interest.

[23] It seems that the applicant has overlooked regulation 7(2) of the Regulations, which provides that regulation 7(1) shall not apply to an affidavit or declaration mentioned in the Schedule. In terms of the Schedule a declaration taken by a Commissioner of Oaths who is not an attorney and whose only interest therein arises out of his employment and in the course of his duty is exempt from the provisions of regulation 7(1). It appears that W/O Ndweni's interest in the matter arose from his employment and in the course of his duty.

[24] It then follows that there is no merit in any of the grounds advanced by the applicant for the relief it seeks in the notice of motion. The application must therefore fail. As for costs, I can find no reason why costs should not follow the result.

[25] The following order is made:

The application is dismissed with costs, including the costs of two counsel where so employed.



P J LOUBSER
JUDGE OF THE HIGH COURT

Appearances

For the Applicant:

J J Buys

Instructed by:

York Attorneys Inc, Noordhoek
Bloemfontein

For the Respondents:

N Snellenburg SC

Assisted by:

K Motholo

Instructed by:

State Attorney
Bloemfontein