



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

Not reportable

Case no: 4404/2025

In the matter between

SA METAL GROUP (PTY) LTD

APPLICANT

(Registration number: 1948/030773/07)

and

THE STATION COMMANDER: HENNENMAN

FIRST RESPONDENT

THE STATION COMMANDER: WELKOM

SECOND RESPONDENT

MEMBER OF EXECUTIVE COUNCIL FOR

COMMUNITY SAFETY: FREE STATE PROVINCE

THIRD RESPONDENT

THE SOUTH AFRICA POLICE SERVICE

FOURTH RESPONDENT

THE MINISTER OF POLICE

FIFTH RESPONDENT

ISINYITHI TRADING 326 (PTY) LTD

SIXTH RESPONDENT

(Registration number: 2017/416366/07)

ALURITE SERVICES (PTY) LTD

SEVENTH RESPONDENT

(Registration number: 2022/875460/07)

Neutral citation: *SA Metal Group (Pty) Ltd v The Station Commander: Hennenman and Others* (4404/2025) [2026] ZAFSHC 33 (28 January 2026)

Coram: Mhlambi ADJP

Heard: 11 SEPTEMBER 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is

deemed to be 28 January 2026 on 9h30.

Summary: Criminal law and procedure – seizure of suspected stolen copper cables
– reasonable suspicion must be more than a hunch and not an unparticularized suspicion
– principles restated.

ORDER

The rule *nisi* is made final with the respondents to pay costs on an attorney-client scale, including counsel's costs.

JUDGMENT

Mhlambi ADJP

[1] On 22 August 2025, the applicant sought and was granted the following order by Daniso J in this Court:

- '1. The non-compliance with the Uniform Rules of Court is condoned, specifically in respect of service, filing and time periods and the matter is heard as one of urgency as contemplated in Rule 6(12);
 2. The first and second respondents, or any person acting through or under them, are ordered to release the 28.56 tonnes of copper to the applicant as confiscated by the first respondent or persons acting through or under him/her, immediately upon service of this order;
 3. A rule nisi is issued and marked returnable on 11 September 2025;
 4. Order 2 above acts as an interim order, with immediate effect, pending the outcome of the rule nisi;
 5. The applicant is to take control and possession of the truck and ensure the proper safekeeping of the load on Saturday, 23 August 2025 pending the finalisation of the application;
 6. The officials of the SAPS are directed to ensure that before the applicant take possession of the load for safekeeping, the truck and the entire load is duly photographed, weighed and the identifying markers or features including microdots are recorded and thereafter escort the applicant back to the applicant's premises on Saturday, 23 August 2025 in order for the load to be safekept at the premises of the applicant, pending the finalisation of the application.
 7. Leave is granted to the first to fifth respondents to file their opposing papers and in respect of the filing of affidavits, the following is ordered as agreed upon between the parties:
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- 7.1 The applicant is to file a supplementary founding affidavit on or before 26 August 2025;
- 7.2 The first to fifth respondents are to file their answering affidavits on or before 29 August 2025;
- 7.3 The applicant is to file its replying affidavit on or before 3 September 2025;
- 7.4 The applicant is to file heads of argument on or before 3 September 2025;
- 7.5 The opposing respondents are to file their heads of argument on or before 5 September 2025.

8. Service of this order may be affected by the applicant's attorneys of record, alternatively the applicant's correspondent attorneys or persons acting on the instructions of the applicant's attorneys of record on the office of the State Attorney, via electronic mail, in respect of the third, fourth and fifth respondents;

9. Service of this order may be affected on the first and second respondents, as well as the sixth and seventh respondents via the applicant's attorneys of record, alternatively the applicant's correspondent attorneys of record or any person acting through or under the direct instructions of the applicant's attorneys of record.

10. The opposing respondents (the first to fifth respondents) are to pay the costs of the application on a party-party scale including the costs of counsel on scale C, jointly and severally, the one paying the other to be absolved.'

[2] On 23 August 2025, the applicant took possession of the truck and its load, and returned them safely to its premises, where the load would be safeguarded and kept separate from other metals pending the finalization of the application. The applicant stated in its founding affidavit that it was the legal owner of the copper cable that had been illegally seized by members of the Henneman Police Station. The application was urgent, and it would not be afforded substantial redress by a hearing in due course, as there was a real and imminent risk that the seized copper cable would be stolen by members of the public. The copper cable was held in an unsecured location, namely a rugby field opposite the police station in Welkom, open to the public. The truck containing the illegally seized copper was not adequately protected, as it was not kept in a well-lit area, and the property was not covered by CCTV cameras.

[3] The applicant and the sixth respondent purchased scrap material, in the form of covered copper electrical cable, on a regular basis from various mines, including

Harmony Gold Mine, and transported it, amongst others, to the seventh respondent in Port Elizabeth. This scrap material was used nationwide by thousands of users to generate electricity.

[4] On 18 August 2025, a truck, contracted by the seventh respondent and driven by a Mr Tumelo Jeremia Montsi, was loaded with this scrap material from the applicant's two yards in Germiston for transportation to the seventh respondent for further processing. The truck was stopped by members of the Hennenman police station on Tuesday, 19 August 2025, at about 08h15 on the N1 highway near Ventersburg, en route to Port Elizabeth. It was escorted to Hennenman Police Station.

[5] The police were dissatisfied with the paperwork Mr. Montsi presented, which showed that his company had been contracted to transfer the load from SA Metal to the 6th respondent. He was then instructed to follow the police to the Welkom police station. The applicant sent its Gauteng security manager, Mr. Jansen van Vuuren, to a Welkom police station with proof of the copper's origin. The police remained dissatisfied and impounded the scrap material and the truck.

[6] A Harmony Gold investigator, Mr. Seabata, confirmed to Warrant Officer Lenyora of the Hennenman police that the paperwork was legitimate and in order, and that the copper cable was lawfully purchased from Harmony Gold. It was lawfully owned by the applicant. Despite this explanation, Warrant Officer Lenyora was not persuaded. The driver, Mr. Montsi, was placed in custody. The truck and the scrap material were seized by the police.

[7] Captain Sello Lawrence Mopthekhe, the Detective Services commander at the Hennenman police station, deposed in the 4th respondent's answering affidavit, stating that, by virtue of his position, he was entitled to depose to the affidavit on behalf of the first, second, fourth, and fifth respondents. He was also the investigating officer in this criminal case.

[8] On 19 August 2025, at around 08h00, Warrant Officer Lenyora and Sergeant Molefi stopped a truck driven by Mr. Tumelo Johannes Montsi. The driver could not produce any documentation for the copper cables he was transporting. They suspected the truck was carrying stolen copper cables. Mr. Montsi, the driver, was arrested and

charged with tampering with, damaging, or destroying essential infrastructure under the Criminal Matters Amendment Act 18 of 2015.

[9] The truck was detained at the Welkom police station, SAPS 13, because there was no parking space available at SAPS 13 in Henneman. The truck was stored in the yard of the Welkom Police Station, SAPS 13, and CCTV cameras covered the area around the police station. Members of the public could not access the truck or any vehicle stored in the Welkom SAPS 13 yard. The copper cables were attached as evidence in a criminal investigation.

[10] After the copper cables were detained at SAPS 13, various stakeholders involved in copper cables were summoned to determine whether any of their cables were among the detained cables. Each stakeholder has a unique identifying mark on their copper cables, which they use to identify them. The stakeholders who came to identify their cables were Eskom, Telkom, Transnet, City Power, and Matjhabeng Municipality.

[11] Mr. Christo Joubert from Transnet identified a possible Transnet trapper cable among the detained copper cables. He stated that the trapper cable was not for sale and, therefore, should not have been in the applicant's possession or in the truck that was detained. An official from City Power also identified a City Power copper cable among the copper cables. He indicated that City Power cables were not allowed to leave the City of Johannesburg Metropolitan Municipality and were not for sale. That cable was not supposed to have been in the truck traveling to Gqeberha.

[12] On 19 August 2025, the same day the copper cable was detained, these stakeholders identified it. Other stakeholders had not yet arrived to determine whether any of their copper cables were among the detained cables. All the stakeholders were also waiting for the truck to be offloaded so they could determine whether there were more of their copper cables in the truck.

[13] The applicant's representatives arrived at the Welkom Police Station on 19 August 2025 with documents proving they had purchased the copper cables from Harmony Gold Mine and demanded the release of the truck and the cables. However, such a release was not possible because some stakeholders had not yet identified their cables, and the matter was under criminal investigation. The proof of payment did not negate the

possibility that the copper cables were stolen, and there was a prima facie case that at least some of them were.

[14] On 20 August 2025, the applicant brought their private security to guard the truck parked inside the police station. They parked their blue-marked pickup vehicle inside the SAPS 13 yard. There was no risk of the copper cable being stolen by members of the public because the truck was parked inside the Welkom SAPS 13 yard, which is properly fenced. CCTV cameras around the precinct, including the SAPS 13 yard, covered the area where the detained truck with copper cables was parked, and the applicant's security personnel guarded the truck.

[15] On 20 August 2025, the deponent took the docket to court because Mr. Montsi appeared in the Hennenman Magistrates Court and was released on bail. The docket was returned from court only on Friday, 22 August 2025. During the period when the docket was at the court, no investigation could be conducted in the case. On Friday, 22 August 2025, he went to Clocolan to verify Mr. Montsi's address, as instructed by the public prosecutor.

[16] On that afternoon, he received a call from the state attorney and South African Police Services (SAPS) legal services informing him of the urgent application the applicant had filed. It was practically impossible for him to go to Bloemfontein to consult and to depose to the affidavit in that very short space of time. It was also impossible for him to attend court to give oral evidence by the time the court sat. The rule *nisi* side should be dismissed for these reasons.

[17] The deponent denied that the documents presented to the police dispelled any suspicion that the copper cables were stolen. At the time the documents were presented, some stakeholders had already identified the copper cables as theirs and as not belonging to the applicant. The mere fact that the documents purported to be legitimate did not establish that all the copper cables loaded onto the truck were legally purchased and owned by the applicant.

[18] In reply, the applicant stated that it was clear the application was opposed on only one basis, namely that Transnet and City Power representatives allegedly identified some of the copper as theirs by pointing to the unique identifying marks on the copper cables.

That was the only reason the respondents sought dismissal of the application. No confirmatory affidavits from either Transnet or City Power stakeholders were attached to the answering affidavit, despite an opportunity being provided and more than enough time available to the opposing respondents to obtain them. No photos of the alleged unique identifying marks were attached to the answering affidavit.

[19] Between 19 August 2025 and 23 August 2025, when the copper load was in the respondents' possession, none of the applicants' representatives were informed that other stakeholders had already identified stolen copper cables on the loaded truck. When the load was offloaded from the truck onto the applicants' premises, no police officials who escorted the load indicated that they recognized any specific stolen copper cable in the seized load. The applicant knows of no Transnet technician who attended its premises without an appointment on 23 August 2025 to inspect the load. Such a person would not have been allowed entry, as he was not a member of the SAPS. Because no CCTV cameras were visible at the premises, the applicant's legal representatives, during the court appearance on Friday, August 22, 2025, requested access to the CCTV footage from the respondents' legal representatives in court and repeated the request in its replying affidavit.

[20] The applicant argued that a more than satisfactory account of its possession of the copper cables was provided to the police, not only by its members but also by Harmony Gold Mines' representatives, as early as 19 August 2025. The respondents failed to offer a bona fide opposition to the factual statements and documentation provided by the applicant in the founding and supplementary founding affidavits. The applicant has not only established a prima facie right but also a clear right to the relief claimed in the notice of motion on a final basis.

[21] The respondents argued that the applicant failed to make out a case for either the interim or the final relief sought. They contended that the relief sought is final because the police will be unable to conduct their investigation while the applicant is in possession of the copper cables or after they have been disposed of. The applicant failed to demonstrate a clear right. Secondly, there is no injury committed or reasonably apprehended, and the applicant may avail themselves of alternative remedies. Even if the court were to find that the relief sought is interim, the applicant has demonstrated a weak

prima facie case on the grounds upon which it relies. The grounds upon which the applicant relies to show a risk of irreparable harm are outweighed by the balance of convenience, which favors the respondents.

[22] According to the respondents, the present application was set down for Friday, 22 August 2025, at 16h30. The application was served on the state attorney at 12h40, and the respondents were required to file their answering affidavits by 15h30 on the same day. The state attorney needed to procure counsel to represent the respondents, and counsel could only be briefed after 14h00. At that time, witnesses were unavailable for consultation. The applicant made it impossible for the respondents to present the correct facts to the court. The applicant's conduct was in contravention of s 35 of the General Law Amendment Act 62 of 1955.

[23] The respondents argued that they were given less than four hours to defend an interim interdict and were unable to present relevant facts to the court because the timelines were unreasonably truncated. Some of the facts within the applicant's knowledge that it failed to disclose to the court were: the seized truck and the copper cables were detained inside the police station yard, not in an unsecured rugby field across the police station and open to the general public; that the applicant deployed the private security company to look after the truck inside the police station; and that the truck and the copper cables were detained in the SAPS 13. The rule nisi should not be made final, as it was granted on the wrong facts.

[24] Section 35 of the General Law Amendment Act 62 of 1955 addresses interim interdicts against the state and provides that:

'Notwithstanding anything to the contrary contained in any law, no court shall issue any rule nisi operating as an interim interdict against the Government of the Union including the South African Railways and Harbours Administration or the Administration of any Province, or any Minister, Premier or other officer of the said Government or Administration in his capacity as such, unless notice of the intention to apply for such a rule, accompanied by copies of the petition and of the affidavits which are intended to be used in support of the application, was served upon the said Government, Administration, Minister, Premier or officer at least seventy-two hours, or such lesser period as the court may in all the circumstances of the case consider reasonable, before the time mentioned in the notice for the hearing of the application.'

[25] In *Breukel and Another v Department of Home Affairs and Another*,¹ Francis J stated that:

'[48.2] While section 35 of the General Law Amendment Act is peremptory, a court is given the discretion to allow a lesser period of notice depending on the circumstances. In this case, the papers in the main application were served on the respondents on the afternoon at around 14h35 which provided the respondents with about 4 hours' notice. The applicants were also forewarned at around midday, when the section 8 review application was filed, that this application would be launched. Ms Serrano was held in a holding cell under guard and, as it subsequently transpired, the conditions were extremely unpleasant. Given the urgency which I found to have existed, I consider the period of notice given to the respondents to have been reasonable in the circumstances.'

[26] Daniso J was satisfied that the matter was indeed urgent given the circumstances at the time. Given the risk and exposure to the truck and its cargo, which were also guarded by the applicant's security personnel, she ordered their immediate release. The applicant, in its written demand of 19 August 2025 to the fourth respondent, threatened that unless the truck and its consignment were released on or before 15h00 on Thursday, 21 August 2025, the Free State High Court would be approached urgently for the appropriate relief.

[27] The respondents argue that the rule *nisi* should not be made final because it was granted on the wrong facts. They failed to show that this was indeed the case. They contended that the driver failed to account for the copper cables and that, in the circumstances, the police were empowered under s 36 of the General Law Amendment Act to seize the copper cables, reasonably suspected of having been stolen, since Transnet and City Power identified some of the copper cables as belonging to them.

[28] However, the respondents failed to present the two affidavits and the evidence showing that the copper cable belonged to these institutions. The respondents ignored the evidence presented to them by Harmony Gold Mine on the same day, when the truck was stopped and impounded, that the copper cable had been lawfully acquired by the applicant from Harmony. The respondents, therefore, failed to establish the factual basis for the police's reasonable suspicion, and that failure leads to a finding that the seizure

¹ In *Breukel and Another v Department of Home Affairs and Another* [2022] ZAWCHC 43; [2022] 2 All SA 787 (WCC).

was unlawful.

[29] In *Biyela v Minister of Police*,² it was stated that the standard for reasonable suspicion is very low. The reasonable suspicion must be more than a hunch; it should not be an unparticularized suspicion. It must be based on specific and articulable facts or information. Whether the suspicion was reasonable under the prevailing circumstances is determined objectively. The reasonable suspicion must be based on credible and trustworthy information.³

[30] In the premises, I find that the applicant's conclusion that the seizure was unlawful cannot be faulted. The respondents failed to show, as they alleged, that the documents presented to them were illegitimate or that the copper cables were neither legally purchased nor owned by the applicant. The applicant has therefore established a clear right and satisfied the requirements for final relief as claimed in the notice of motion. For these reasons, the rule *nisi* must be made final.

Order

[31] I, therefore, make the following order:

The rule *nisi* is made final with the respondents to pay costs on an attorney-client scale, including counsel's costs.


J MHLAMBI
JUDGE OF THE HIGH COURT

² *Biyela v Minister of Police* [2022] ZASCA 36; 2023 (1) SACR 235 (SCA).

³ *Ibid* paras 34 and 35.

Appearances

For the applicant:

A Van Der Merwe

Instructed by:

McIntyre Van Der Post Attorneys

For the respondent:

E B Yawa

Instructed by:

State Attorney
