



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

CASE NO. 2025-046253

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED.
- (4) Date: 12 February 2026

Signature: _

In the matter between:

MARTHINUS GERT FERREIRA

Applicant

And

AFISWITCH (PTY) LTD

First Respondent

IDEMIA IDENTITY & SECURITY FRANCE SAS

Second Respondent

ADVENT INTERNATIONAL CORPORATION (USA)

Third Respondent

HURU TECHNOLOGIES (PTY) LTD

Fourth Respondent

JUDGMENT

NYATHI J

A. Introduction

- [1] This is an urgent application in which the self-represented applicant seeks far-reaching relief against the respondents in relation to the processing of his personal information within the criminal-record verification ecosystem. The relief includes broad interdicts and R40 million in constitutional and general damages.
- [2] The fourth respondent (HURU) filed heads opposing the application and contends, in summary, that it is a reseller for Afiswitch, that only SAPS can amend official criminal-record source data, that applicant's information was processed with consent, and that the urgent relief sought is incompetent on motion.
- [3] The applicant's filings and oral submissions allege, among others, contradictory verification outputs (simultaneous "HIT/CLEAR"), racial misclassification as "ASIAN", ongoing dissemination, arrests, and economic harm. He also sought condonation for late filing of his heads and ancillary material.

B. Issues for determination

- [4] On the urgent roll, the determinative questions are:

- 4.1 whether urgency has been established;
- 4.2 whether the application is fatally defective for non-joinder of the source custodian of criminal-record data;
- 4.3 whether the applicant has shown a *prima facie* right warranting interim relief; and
- 4.4 whether damages can be awarded on the current papers.

C. Urgency

- [5] The applicant attributes urgency to continuing dissemination of inaccurate personal information, the ripple effects on employability, and the risk of further arrests. He relies in part on recent professional correspondence and the asserted pattern of verification contradictions.
- [6] The opposing case is that the application is founded on self-created urgency: the underlying complaints have persisted for years; any immediate risk is not established; and suitable statutory channels exist, notably with the Information Regulator and the SAPS source custodian. HURU further points out that the most recent “Illicit Activity Check” reflects “clear”, undermining the proposition of ongoing imminent prejudice. [emphasis added].
- [7] The applicant’s own materials show that his grievances span approximately thirteen years, reflecting a long-running dispute rather than a freshly precipitated crisis. In circumstances where no new, objectively verifiable inflection point compels peremptory intervention, urgency is not established.

- [8] On this basis alone, the matter falls to be struck from the roll for lack of urgency. However, given the extent of the submissions, I deal briefly with the further dispositive defects.

D. Non-joinder of the source custodian (fatal)

- [9] It is common cause on the papers that SAPS is the holder of the criminal-record database and that only SAPS can amend or correct source data. That is precisely the information whose accuracy the applicant ultimately seeks to impugn and correct. Any effective order compelling alteration of the impugned records would operate upon the source custodian.
- [10] The non-joinder of the Minister of Police/SAPS is accordingly fatal to the application in the form presently advanced. The urgent court is not the forum to grant structural relief against entities not before it, particularly where the respondents' pleaded role is downstream processing and disclosure rather than custodial authorship or authority to correct.

E. Interim interdict test: *prima facie* right and balance of convenience

- [11] Even if urgency and joinder were overcome, the applicant does not, on these motion papers, establish a protectable *prima facie* right requiring an urgent restraining order. The record reveals material disputes concerning:

- 11.1 who is responsible for data creation vs. downstream processing;
- 11.2 the meaning and provenance of “HIT/CLEAR” inconsistencies;
and
- 11.3 the existence and accuracy of the alleged racial misclassification.

[12] On the **balance of convenience**, the broad orders sought would effectively enjoin actors in a multi-layered system from processing or disclosing data used daily for identity and criminal-record verification, with systemic implications inadequately canvassed on affidavit. The record does not justify that intrusion on an urgent, contested footing.

F. Alternative remedies

[13] The Applicant’s own papers and stance of the fourth respondent confirm the existence of statutory and administrative pathways—notably recourse to the **Information Regulator** and engagement with **SAPS** for source-level correction. In urgent motion, the availability of such pathways, coupled with disputed facts, militates against the grant of final or near-final relief.

G. Damages on the urgent motion Court roll

[14] The applicant seeks R40 million in constitutional and general damages. The quantification, causation, and responsibility for any proven harm are disputed and cannot be fairly resolved on affidavit. Such a claim (if pursued) belongs in

the ordinary course, on properly ventilated papers or at trial, not in urgent motion with contested facts and a non-joined source custodian.

H. Condonation

[15] The applicant also sought condonation for the late filing of his heads and related material, attributing the delay to respondents' late filings and to his status as a lay litigant. In view of the conclusions on urgency and non-joinder, it is unnecessary to determine condonation; nothing turns on it. If required, I would, without deciding, assume in his favour that condonation be granted.

I. Costs

[16] The respondents have been put to the expense of opposing a non-urgent application, seeking structurally defective relief. The ordinary rule must apply. The fourth respondent sought a costs order and flagged the costs of two counsel for certain respondents should the matter proceed. On the record and complexity, a costs order on the party-and-party scale, including the costs of two counsel, including Senior Counsel where so employed, is warranted.

Order

[17] The application is struck from the roll for lack of urgency.

[18] Alternatively, and independently, the application is dismissed for non-joinder of the source custodian (SAPS/Minister of Police).

[19] The applicant is to pay the costs of the application, including the costs of two counsel, including Senior Counsel where so employed.



J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 16 April 2025

Date of Judgment: 12 February 2026

On behalf of the Applicant: In person

On behalf of the First Respondent: Adv. P Daniels SC

With him: Adv. A Kohler

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