

REPUBLIC OF SOUTH AFRICA



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

Case Number:2026/035620

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

05 March 2026

DATE



SIGNATURE

In the matter between:

CASSIM NAADIR

APPLICANT

and

THE MAGISTRATE: RANDBURG

(the presiding judicial officer who issued the subpoena
dated 28 January 2026)

FIRST RESPONDENT

SERGEANT MEMELA, YVONNE NONGWEKAZI

(the investigating officer in Sandton cas 600/06/2024)

SECOND RESPONDENT

ZITHO, TERENCE

(the prosecutor who requested the Magistrate to
issue the subpoena)

THIRD RESPONDENT

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

FOURTH RESPONDENT

THE MINISTER OF POLICE

FIFTH RESPONDENT

**THE DIRECTOR OF PUBLIC PROSECUTIONS:
GAUTENG (JOHANNESBURG)**

SIXTH RESPONDENT

**THE NATIONAL PROSECUTING AUTHORITY
OF SOUTH AFRICA**

SEVENTH RESPONDENT

JUDGMENT

TWALA J

Introduction

- [1] This is an urgent application brought by the applicant, Mr Naadir Cassim. The application is brought in two parts. In Part A, the applicant seeks an interim interdict suspending the operation and enforcement of a subpoena issued on the 28 January 2026 by the Magistrate Court, Randburg; in terms of section 205 of the Criminal Procedure Act 51 of 1977 ("the CPA") pending the final determination of Part B. In Part B, the applicant seeks to review and set aside the magistrate's decision to issue the subpoena, as well as the subpoena itself.

- [2] The subpoena requires the applicant to appear before the Randburg Court on 9 March 2026 to testify in connection with an investigation into a fraud case which is recorded under (Sandton CAS 600/06/2024).
- [3] It is noteworthy that the application is only opposed by the sixth respondent, the first and fourth respondents having filed their notice to abide with the decision of this Court. Respondents two, three and five are not participating in these proceedings.

Submissions of the Parties

- [4] The applicant's primary complaint is that the subpoena is unintelligible. He argues that the description of the information required from him is vague, incomprehensible, and grammatically defective. He points to the list of documents requested, which includes items such as:

“a copy of application, online application (affidavit in terms of section 15(4) of South Africa’s ECT Act)” and “contra transactions on pdf and excel”

He submits that he cannot possibly know what is required of him.

- [5] The applicant also raises several procedural complaints. He argues that the second respondent, Sergeant Memela (the investigating officer), did not approach him for a statement before resorting to the drastic measure of a section 205 subpoena. He contends further that such a subpoena should be the last resort and not primary step. He further argues that the supporting affidavit deposed to by Sergeant Memela fails to establish the necessary jurisdictional facts for the issuing of the subpoena, specifically that he is likely to possess material information relating to the alleged offence.
- [6] Furthermore, the applicant contends that the matter is urgent because if the subpoena is not suspended before 9 March 2026, he will be compelled to appear in court and faces the threat of arrest and prosecution for non-compliance, as warned on the face of the subpoena. He explains the delay in bringing the application by outlining the steps he took after being served with the subpoena on 30 January 2026, which

included approaching Mr Mohamed to find out about the subpoena and consulting with an attorney and counsel.

- [7] As indicated above, the sixth respondent, the Director of Public Prosecutions, is opposing the application with its answering affidavit deposed to by Advocate Z Peck, an Acting Deputy Director of Public Prosecutions. The sixth respondent raises several points in limine and on the merits.
- [8] First, it is submitted that the applicant has failed to make out a case for urgency. It is contended by the sixth respondent that the applicant has an alternative remedy readily available to him: he can appear before the magistrate on 9 March 2026 and raise all his objections to the subpoena at that hearing. The magistrate's court, which issued the subpoena, is the proper forum to first challenge its validity.
- [9] Furthermore, the sixth respondent denies that the subpoena was issued improperly. It is averred that Sergeant Memela did in fact contact the applicant before obtaining the subpoena and explained to him what information was required and why. The applicant's professed ignorance of the nature of the investigation is therefore disingenuous.
- [10] The sixth respondent further clarifies in its answering affidavit the link between the applicant and the investigation. The supporting affidavit (annexure "NC3") which was deposed to by Sergeant Memela reveals that an amount of R4,550,000, alleged to be the proceeds of theft and fraud from the Industrial Development Corporation (IDC), was deposited into the applicant's business account, N2 Auto. The information sought in the subpoena is aimed at tracing these funds and understanding the transaction. The applicant, as the recipient of these funds, is clearly a person who is likely to be able to furnish material information.
- [11] It was submitted further by the sixth respondent that the magistrate was fully entitled to issue the subpoena as a legitimate investigative tool. The absence of the magistrate's full names on the subpoena is not a fatal defect since it is on the letterhead of the Magistrate Court and bears the official stamp of that court. The

respondent also raises a concern regarding the applicant's legal representatives, Shaheed Dollie Incorporated, noting that they also represent Mr Rafik Mohamed, one of the suspects in the very same investigation, which raises potential ethical issues.

Discussion

- [12] The principles regarding interim interdicts are well-established. An applicant must show a *prima facie* right, a well-grounded apprehension of irreparable harm, a balance of convenience in his favour, and the absence of any other satisfactory remedy. Even if one were to assume the applicant has a *prima facie* right, his application stumbles fatally on the last requirement.
- [13] I am not persuaded that the applicant has made out a proper case for the urgent interim relief he seeks in Part A. The application must fail on the grounds of lack of urgency and the existence of a plain and adequate alternative remedy.
- [14] The applicant's proper course of action is to appear before the Randburg Magistrate's Court on 9 March 2026. At that hearing, he will have a full and fair opportunity to place all his objections before the presiding magistrate. He can argue that the subpoena is vague, that the jurisdictional facts for its issue were not met, and that it constitutes an abuse of process. The magistrate is fully competent to hear these arguments and to set aside the subpoena if he or she finds them to have merit. This is the very purpose of the return date specified in the subpoena.
- [15] The applicant's claim that he cannot understand the subpoena rings hollow in the face of the sixth respondent's answering affidavit, which clearly and concisely explains its purpose: the investigation into the deposit of R4.55 million, allegedly stolen from the IDC, into the applicant's company's account. The applicant himself admits in his founding affidavit that he knows Mr Rafik Mohamed and his son, and that he was informed of a criminal investigation involving them. The connection between himself, the Mohamed family, and the disputed funds is therefore apparent. He cannot now claim to be a bewildered outsider with no knowledge of the matter.

Moreover, the applicant does not deny that a sum of R4.55million was deposited into his business account.

- [16] The facts of this case are distinguishable from those where a witness is genuinely unaware of the subject matter of the inquiry. The applicant's real complaint appears to be that he has been drawn into a dispute he considers civil in nature, and that the criminal justice system is being used improperly. These are precisely the kind of submissions he can and should make before the magistrate on 9 March 2026. This court is not the correct first port of call for such a challenge.
- [17] Additionally, the applicant's delay in bringing the matter also undermines his claim of urgency. While he explains the steps he took, the fact remains that the alleged defects in the subpoena were apparent on its face on 30 January 2026. The matter could and should have been enrolled in the ordinary course. The urgency in this matter is self-created.
- [18] A litigant cannot bypass established legal processes and create urgency by waiting until the eve of a court date, especially when the lower court seized with the matter is perfectly capable of providing the necessary relief. To hold otherwise would open the floodgates for every recipient of a subpoena to bypass the magistrate's court and seek urgent relief directly in the High Court, paralysing criminal investigations.
- [19] Regarding the condonation application for the late filing of the sixth respondent's answering affidavit, I am satisfied that it is in the interests of justice to grant it. The explanation that counsel was engaged in a High Court trial is reasonable, and the respondents have raised substantive points on the merits.

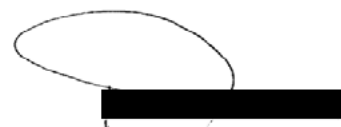
Conclusion

- [20] The ineluctable conclusion is therefore that this application constitutes an abuse of the court's process. The applicant has a clear and effective remedy before the magistrate's court. There is no reason why this court should be approached to grant interim relief in these circumstances.

[21] Consequently, the applicant has failed to establish a case against the respondents and therefore the application for interim relief in Part A falls to be dismissed. Given this finding, it is not necessary to consider Part B of the notice of motion at this stage. The applicant is at liberty to pursue his remedies in the appropriate forum.

[22] In the result, I make the following order:

1. The late filing of the sixth respondent's answering affidavit is condoned, and the affidavit is accepted as filed.
2. The application is struck from the urgent roll for lack of urgency.
3. The applicant is ordered to pay the costs of this application, including the costs of the sixth respondent.



TWALA M L
JUDGE OF THE HIGH COURT,
SOUTH AFRICA
GAUTENG LOCAL DIVISION

Date of Hearing: 3 March 2026

Date of Judgment: 5 March 2026

Appearances

For the Applicant: **Advocate D. Vetten**

Instructed by: **Shaheed Dollie Inc**

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For the Respondent:

Advocate M Molefe

Instructed by:

Office of the State Attorney

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This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the order is deemed to be the 5 March 2026.