

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A123/2025

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

DATE 16/03/2026 SIGNATURE [REDACTED]

In the matter between:

ANDISWA NOMFUNDO MTAKATI

Appellant

And

THE MINISTER OF POLICE FOR RSA

First
Respondent

STATION COMMANDER, BOSCHKOP POLICE STATION

Second
Respondent

Coram: **MOKOSE J, MUNZHELELE J AND KEKANA AJ**

Heard on: **21 JANUARY 2026**

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on Caselines. The date for hand down is deemed to be on 16 March 2026.

JUDGMENT

KEKANA AJ (MOKOSE J AND MUNZHELELE J CONCURRING)

Introduction and Background

- [1] This is an appeal against the judgment handed down by Bam J on 1 October 2024 in which the Appellant's application for an order for the immediate return of her motor vehicle, a VW Polo, which was allegedly unlawfully seized and impounded by the Respondents was dismissed. Aggrieved by the decision of the court a quo, the Appellant applied for leave to appeal against the judgment of court a quo. This appeal is with leave of the court a quo. The Respondents are opposing the appeal.

Respondent's application for lapsed appeal

- [2] The Applicant (the Respondent in the main appeal) seeks the declaratory relief that application for hearing date of the appeal dated 30 May 2025 by the Appellant has lapsed in terms of Rule 47(9)(d) of the Uniform Rules of Court. The Applicant submission can be summarised as follows:

- 2.1 that the Respondent has failed to file three copies with the Registrar of this Court and two copies to the Applicant within 40 days after

acceptance by the Registrar of the application for the date of the hearing in accordance with subrule 7(a) of Rule 47; and

2.2 non-compliance with clause 33.25 of the Revised Consolidated Practice Directive 1 of 2024.

[3] The Respondent (the Appellant in the main appeal) contends that Rule 47(9)(d) does not create an automatic lapse, it requires the Court's intervention and the exercise of discretion, having regard to all circumstances and the interest of justice. The Respondent's contention can be summarised as follows:

3.1 that the appeal could not be filed within 40-day period that followed, due the financial hardship and the high cost of transcription;

3.2 that the monthly income she generates is less far to cover her monthly expenses, she had to source funds from family and friends to cover costs, to the extent that she had to rely on an advance from her attorney to pursue this appeal;

3.3 that immediately after payment was made on 30 October 2025 and records received, same was filed on 7 November 2025; and

3.4 the delay was not deliberate, nor excessive and has been cured.

Condonation

[4] On 7 November 2025, the Appellant filed an application for condonation of the late filing of the appeal. In the condonation application the Applicant (Appellant) submits that the seizure and the continued detention of her vehicle was unlawful and defective and, that the Respondent failed to demonstrate compliance with section 22(b) of the Criminal Procedure Act 51 of 1977 (*the CPA*), it is for those reasons that she has prospects of success in the appeal.

[5] The Respondent's opposition of the application for condonation is based on same facts as contained in its application for lapsed appeal, I do not intend to

regurgitate those submissions here save to mention the issue of security not tendered. Evidence before this Court is that security has now been tendered.

- [6] It is trite that condonation cannot be for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default¹. In a condonation application, what is needed is an objective conspectus of all the facts. Thus, a slight delay and a good explanation may help to compensate prospects which are not strong.²
- [7] The delay by the Applicant was short and this Court is satisfied that there has been a satisfactory explanation by the Applicant for the delay. The court noted that the Respondent failed to allege any particular prejudice. The standard for considering an application for condonation is the interests of justice. What follows now is the interests of justice which is regarded as the standard for considering an application for condonation.³ Absent any prejudice shown on the part of the Respondent and with security now being tendered, I am of the view that it will be in the interests of justice for the condonation to be granted.

The main appeal

Submissions by the parties

- [8] Appellant's submission can be summarised as follows:

- 8.1 that no adequate facts were placed before the court a quo that the police had reasonable grounds to belief that the motor vehicle was an item liable to be searched or seized.

¹ *Von Abo v President of the Republic of South Africa* [2009] ZACC 15; 2009 (5) SA 345 (CC); 2009 (10) BCLR 1052 (CC) at para 20.

² *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A).

³ *Grootboom v National Prosecuting Authority and Another* (CCT 08/13) [2013] ZACC 37 at para 22.

- 8.1.1 Lethuba, who is not an investigating officer, his affidavit was all hearsay, relying mainly on what was in the docket and what Smith and Mdlunya had to say.
- 8.1.2 Smith's evidence is that he looked at the police computer system and observed that the motor vehicle was wanted.
- 8.1.3 Mdlunya, the investigating officer whose affidavit requires closer scrutiny especially paras 2 & 3 thereof where he says, "*upon investigation two suspects were arrested whom they were alleged driving a Polo Silver Grey...the Polo was used as a subject matter in the commission of an offence*".
- 8.1.4 Mdlunya does not allege that he personally saw that the motor vehicle was used in the commission of the offence, nor does he state how and from where he obtained the information.
- 8.2 that the belief referred to in terms of section 20 must exist before the police decide to act in terms of section 22.
- 8.3 that the court a quo had to look at the facts given by the police to see whether objectively it can be said that the police had reasonable grounds to belief that the vehicle was an item liable to be searched or seized.

[9] The Respondent's contentions are that:

- 9.1 Captain Smith proceeded further to verify the particulars of the record with the investigating officer mentioned in the circulation system record and same were confirmed by the investigating officer to be both true and correct.
- 9.2 the existence of pending criminal proceedings triggered an urgent need, on the part of Captain Smith, to impound the said motor vehicle without a warrant.
- 9.3 the appellant has in her heads of argument raised new issues, attacking the admissibility of the evidence of which was not raise in both the Appellant's founding papers, and the legal submissions made on her behalf during the main proceedings.

9.4 that the seized motor is required as evidence for criminal proceedings. It is only the criminal court that can order the return of the seized motor vehicle to the Appellant.

Legal principle and analysis.

[10] Section 20 of the CPA states that:

"The State may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article)-

(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere;

(b) which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere; or

(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence."

[11] Section 21(1) of the CPA states that:

"Subject to the provisions of sections 22, 24 and 25, an article referred to in section 20 shall be seized only by virtue of a search warrant issued-

(a) by a magistrate or justice, if it appears to such magistrate or justice from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or upon any person or upon or at any premises within his area of jurisdiction; or

(b) by a judge or judicial officer presiding at criminal proceedings, if it appears to such judge or judicial officer that any such article in the possession or under the control of any person or upon or at any premises is required in evidence at such proceedings".

[12] Section 22 of the CPA states that:

"A police official may without a search warrant search any person or container or premises for the purpose of seizing any article referred to in section 20-

(a) if the person concerned consents to the search for and the seizure of the article in question, or if the person who may consent to the search of the container or premises consents to such search and the seizure of the article in question; or

(b) if he on reasonable grounds believes-

(i) that a search warrant will be issued to him under paragraph (a) of section 21 (1) if he applies for such warrant; and

(ii) that the delay in obtaining such warrant would defeat the object of the search".

[13] For a warrantless seizure to be lawful in terms of section 22(b), the police officer's belief must be based on objective, verifiable facts available at the time of the seizure. The crisp issue before this Court is whether the court a quo erred in finding that the impounding and seizure of the appellant's motor vehicle is lawful. The subservient aspect for determination is whether based on the evidence before this Court, there existed facts upon which it can be said that the Appellant's vehicle was an item liable to be searched and seized in terms of section 22(b).

[14] The Appellant's argument that Smith's reliance on the circulation system is not enough to create the reasonable belief required in terms of section 22(b) cannot be sustained. The SAPS national circulation system is a tool that helps police officers across the country to share information about wanted persons, vehicles, or items connected to crimes. A listing confirms the item is officially wanted in connection with a crime, directly linking it to seizable articles in terms of section 20.

- [15] The circulation system has been used by law enforcement officers when conducting random searches at roadblocks, relying on it to seize vehicles listed thereon without a warrant. The listing of a vehicle on the circulation system is evidence enough for purposes of police officers to reasonably believe that it is wanted, linked or an item used in the commission of an offence. This is not a hunch but reliable information available at the time. It cannot be expected for law enforcement officers at such roadblocks to have additional facts or information for them to be said to have established the required belief in terms of section 22(b). The standard of reasonableness required in terms of section 22(b) should not be raised to unduly thwart effective policing.
- [16] The "reasonableness" of the belief is judged by the court based on the information available to the officer at the time of the seizure. If the information relied upon by the law enforcement officer is that which is captured on the circulation system, such information will be considered objective, grounded in facts that would convince a reasonable person in the officer's position. Unless and until the authenticity of the information or the veracity of the circulation system is successfully challenged, a police officer relying on the circulation system will be justified and regarded as having facts and credible information sufficient to establish reasonable grounds for a search in terms of section 22(b).
- [17] Smith's reliance on the circulation system remains acceptable unless and until the authenticity or the veracity of the system is successfully challenged. The veracity of the SAPS circulation system has so far not been disputed by the Appellant.
- [18] Again, the argument by the Appellant that Mdlunya does not allege that he personally saw that the motor vehicle was used in the commission of the offence, nor does he state how and from where he obtained the information is found wanting. It cannot be correct that police officers must personally see that the vehicle was used in the commission of the offence to satisfy the reasonable belief in terms of section 22(b). Nor will it be expected for police officers to disclose their informants at this stage. To the extent that they are able to rely on the information so provided will at this stage be enough to satisfy the

reasonableness in terms of section 22(b). Afterall, there is a pending trial where all the evidence will be tested.

- [19] It is at a criminal trial where the evidence collected will be tested with conclusions on the relevance and admissibility thereof will be pronounced. At any stage, before trial, all that is needed is a reasonable suspicion, which includes a reasonable suspicion that the said vehicle is an item used in the commission of the offence in terms of section 22(b). It would not be proper to assert that the police must provide adequate facts or more facts beyond the description given. The description given of the colour, make, model and registration number are sufficient especially where the Appellant does not deny that the said vehicle was used in the commission of an offence.
- [20] In terms of section 22(b)(ii), the officer must prove that they believed, on reasonable grounds, that any delay caused by the process of applying for a warrant would defeat the object of the search. In the case of a motor vehicle, the inherent ease and speed with which it can be moved often provides the reasonable basis for this belief. If the police have reasonable grounds to believe the vehicle is linked to a crime, the fact that it is a mobile object can itself justify the conclusion that a delay in obtaining a warrant would defeat the object of the search.⁴
- [21] The contention by the Respondent that only the criminal court can order the return of the seized motor vehicle to the Appellant is incorrect. The High Court in South Africa has the authority to rule on a *mandament van spolie* application for the return of a motor vehicle, even when the vehicle was seized by the police in terms of section 22(b). This is a fundamental part of its role in upholding the rule of law and preventing self-help. The High Court's role is to adjudicate on the lawfulness of the police actions. A seizure in terms of section 22(b) is only a valid defence if it meets the criteria of that section. If it does not, the High Court will use its spoliation powers to restore the status quo *ante* and return the vehicle to the person from whom it was taken.⁵

⁴ *S v Murphy and Others* 2024 (1) SACR 138 (WCC).

⁵ *Ngqukumba v Minister of Safety and Security and Others* (CCT 87/13) [2014] ZACC 14.

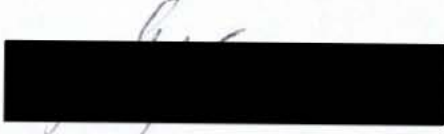
Conclusion

[22] The critical question for this Court is whether the seizure was lawful in terms of section 22(b). Before this Court there existed evidence and facts upon which I am of the view that the police had a reasonable belief that the vehicle was an item used in the commission of an offence. The circulation system and the information that the investigating officer sourced from its informants is enough for the police officers to seize the vehicle in terms of section 22(b). It therefore follows that the requirements of section 22(b) of the CPA were met, and that the seizure was accordingly lawful. The court a quo was correct in its conclusion that the vehicle was lawfully seized.

Order

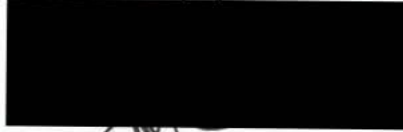
[23] In the premises, the following order is made:

1. The appeal is accordingly dismissed with costs.



KEKANA AJ

Acting Judge of the High Court



MOKOSE J

Judge of the High Court



MUNZHELELE J

Judge of the High Court