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**IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)**

CASE NO: 2026-066964

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: YES/NO

DATE: 15/04/2026

SIGNATURE: Naude-Odendaal J

In the matter between:

JOINA NHAMO

1st APPLICANT

JOINA ENTERPRISE

2nd APPLICANT

(Registration No: 2023/672946/07)

and

MINISTER OF POLICE

1st RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS

2nd RESPONDENT

JUDGMENT

NAUDE-ODENDAAL J:

INTRODUCTION:

[1] The 1st and 2nd Applicants brought an urgent application wherein they seek an order directing the Respondents to return the Applicants' truck and trailers being a Volvo Horse Truck with registration letters and numbers F[...] and two Tipper Trailers with Registration letters and numbers B[...] and B[...].

[2] The background facts are briefly that on the 10th of March 2026 at or near Marula Mine within the jurisdictional area of Mecklenburg Police Station, Limpopo Province, the members of the 1st Respondent seized the Volvo Horse Truck with two Tipper Trailers ("the truck and trailers").

[3] At the time of the seizure of the truck and trailers, the truck was driven by one of the Applicants employees, Mr. Innocent Chipari ("the driver"). The truck was found by Members of the 1st Respondent loaded with earth minerals, chrome suspected to have been stolen. The driver has since been arrested and detained in custody.

[4] On the 12th of March 2026, the 1st Applicant went to Mecklenburg to give a statement, where the 1st Applicant met the Investigating Officer who was handling the matter, Sergeant Ntsoane. The 1st Applicant furthermore interrogated the driver of the truck and trailers at the holding cells, who informed the 1st Applicant that he had colluded with one of the Applicants' other employees to make a quick buck in a cash deal by going to load chrome without the Applicants' knowledge and authorization.

[5] The 1st Applicant submitted that he became a regular at the Mecklenburg Police Station in an attempt to assist the police with the investigation and finalization of the matter. He was assured by the Investigating Officer that his truck and trailers would be returned to him, but despite the assurance, it was in fact not returned to him.

[6] The 1st Applicant submitted that on the 15th of March 2026, he went to Mecklenburg SAPS and found that the truck and trailers are getting vandalized, it is missing batteries, and the police could not provide answers as to what happened to the batteries. It was further submitted by the 1st Applicant that in addition to the trucks being vandalized, the Applicants are also suffering commercial harm as a

result of the seizure of the truck and trailers and if they are not released, the company will not be able to meet its monthly commitments.

[7] The Respondents raised in their opposition a *point in limine* of lack of urgency. In their opposition to the merits, they submitted that the Applicants' in their founding affidavit sought to rely upon the doctrine of spoliation (mandament van spolie) as a basis for the return of the impounded truck. The Respondents submitted that the requirements for spoliation are not satisfied in the present matter, and that the Applicants are not entitled to the relief sought.

[8] It was submitted by the Respondents that the doctrine of spoliation is a remedy designed to protect possession against unlawful interference. The remedy is available to a person who has been unlawfully deprived of possession of property. The Respondents submitted that the Applicants cannot satisfy these requirements because the truck was being used in connection with suspected criminal activity. The police had reasonable grounds to believe that the vehicle was concerned in the commission of an offence. It was submitted that under such circumstances, the dispossession of the truck cannot be characterised as "unlawful" for the purposes of the spoliation remedy.

[9] It was further submitted by the Respondents that the Applicants' possession was tainted by the suspected criminal use of the vehicle. A person who uses property for criminal purposes cannot claim that his dispossession is "unlawful" within the meaning of the spoliation doctrine.

[10] The Respondents submitted that the impounding of the truck and trailers was not unlawful. The seizure was authorized by Sections 22-23 of the Criminal Procedure Act, 51 of 1977 and was therefore lawful. The requirement of unlawfulness for spoliation purposes requires that the deprivation to be without legal authority. In the present matter, the police had clear statutory authority for their actions. The impounding was therefore not unlawful in the sense required by the spoliation doctrine.

[11] It was submitted by the Respondents that in the present matter, the deprivation of possession was lawful, and the impounding was justified as it is being authorized by the Criminal Procedure Act, 51 of 1977. It was further necessary to preserve the evidence for the pending investigations. The policing area in which the truck was seized is rife with illegal mining and transportation of illegal minerals, and therefore there are on-going investigations to check whether the truck has not been consistently linked to illegal mining and transportation of minerals. The deprivation was therefore not without just cause.

[12] It is common cause that the legal basis of the Applicants' case is akin to a remedy of *mandament van spolie*. To succeed the Applicants must show that it enjoyed possession, which is peaceful and undisturbed, of the truck and trailers and that the Respondents deprived it of such possession forcibly or wrongfully against its consent. See **Yeko v Qana 1973 (4) SA 735 (A) at 739**.

[13] It is the Applicants' case that the search and seizure of the truck and trailers is unlawful to the extent that the police violated their possessory rights under the doctrine of *mandament van spolie*. A reference to the statement made by **Mhlantla JA** in the case of **Svetlov Ivancmec Ivanov v North West Gambling Board and 5 Others (312/2011) [2012] ZA SCA (31 May 2012)** will help in understanding the Applicants' cause of action. The learned Judge of Appeal said at page 12, para [19]:

"The historic background and the general principles underlying the mandament van spolie are well established. Spoliation is the wrongful deprivation of another's right of possession. The aim of spoliation is to prevent self-help. It seeks to prevent people from taking the law into their own hands. An applicant upon proof of two requirements is entitled to a mandament van spolie restoring the status quo ante. The first, is proof that the applicant was in possession of the spoliated thing. The cause for possession is irrelevant - that is why possession by a thief is protected. The second, is the wrongful deprivation of possession. The fact that possession is wrongful or illegal is irrelevant as that would go to the merits of the dispute."

See also: **Nino Bonino v De Lange 1906 TS 120 at 122**.

[14] The duty to prove *mandament van spolie* falls on the Applicants. See: ***Runsin Properties v Ferreira 1982 (1) SA 658 (SECLD) at 669***. It is not in dispute that the Applicants, alternatively the Applicants' driver were in possession of the truck and trailers, what is in issue are whether the Applicants were deprived of their possession lawfully.

[15] The 1st Respondent contends that the police actions are within the ambit of Section 20 of the Criminal Procedure Act, 51 of 1977, read with Section 22 of the Criminal Procedure Act. The main issue for consideration by this court is whether the truck and trailers were seized by the 1st Respondent in compliance with the Criminal Procedure Act. It is common cause that the truck and trailers were seized without a warrant and will the 1st Respondent have to satisfy the requirements of Section 22 of the Criminal Procedure Act, which reads as follows:-

"Circumstances in which article may be seized without search warrant

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** (own emphasis)*

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

[16] In terms of Section 22 of the Criminal Procedure Act, the police are entitled to seize property without a warrant. In the circumstances of this case, the truck and trailers were caught red handed loaded and /or transporting stolen property and/or in the act of theft within the mine premises. The Respondent's counsel argued that in terms of the provisions, in those circumstances, the police were entitled to take immediate action and seize the instrumentality used in the commission of crime.

[17] *In Magoda v Minister of Safety and Security and Another; Mxhego v Minister of Safety and Security and Another (380/12) [2013] ZAECHMHC 5 (28 February 2013)* the court held as follows at paragraph 15 and 16 thereof:-

"[15] The provisions of s 20 of the Act read:

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

- 1. 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;*
- 2. which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere; or*
- 3. which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence."*

In essence the law recognizes that balance should be maintained between the rights of the police to conduct searches and seizures unhindered by the cumbersome procedural requirements relating to obtaining a search warrant and the rights of possession accorded to citizens under s 14(b) and (c) of the Constitution of the Republic of South Africa, 1996. These subsections provide that everyone has a right to privacy, which includes the right not to have their property searched or their possessions seized. But the tension experienced in the exercise of maintaining balance of these rights makes the task of the courts a difficult one.

[16] The Legislature enjoins the respondents to prove by credible evidence that the seizure of the Toyota and Nissan complied with the provisions of s 20 of the Act. That is, the scheme of Chapter 2 to the Act is such that even if consent to search a vehicle is obtained the ultimate seizure (dispossession) thereof must comply with the provisions of s 20 strictly. Failure on the part of the police to show that the seizure was in compliance with s 20 will render the seizure unlawful, and the removal of the vehicles from Blackhill to the police pound an act of spoliation entitling the applicants to restoration ante omnia regardless of the fact that they would not, at the time of search and seizure,

have been entitled to possess them in terms of **s 68(6)(b)** of the **National Road Traffic Act 93 of 1996**, which provides:

"No person shall - without lawful cause be in possession of a motor vehicle of which the engine or chassis number has been falsified, replaced, altered, defaced, mutilated, or to which anything has been added, or from which anything has been removed, or has been tampered with in any other way."

[18] In the circumstances it is for the Respondents to show that the decision taken by the police to seize the truck and trailers falls within the ambit of Section 20 of the Act. The proper approach to be adopted in applying the section was considered by **Didcott J** in the case of ***Ndabeni v Minister of Law and Order and Another 1984 (3) SA 500 (D and C.L.D.) at 511D-E***. The Learned Judge said:

*"The second respondent, (that is the policeman concerned) no doubt thought that there were reasonable grounds for the belief he held. That, however, was by the way. **Section 20 of the Criminal Procedure Act** calls for the existence in fact of reasonable grounds. And whether these exist in a given case must be determined objectively. Milne J once said "(T)here can only be reasonable cause to believe ... where, considered objectively, there are reasonable grounds for the belief... It cannot be said that an officer has reasonable cause to believe ... merely because he believes he has reasonable cause to believe."*

[19] The law on warrantless searches and seizures is trite. Since the Police did not have a warrant they must prove that they had reasonable grounds to believe that a search warrant would be issued to them if they had applied for it to the magistrate or judge. Unfortunately the Respondents made no submissions in regards to their belief that a search warrant would be issued to them, on the papers before court. This court is however satisfied from a reading of the papers as a whole, that the Police did indeed have reasonable cause to believe based on reasonable grounds that the trucks and trailers in question was concerned in the commission or suspected commission of an offence and/or was intended to be used in the commissioning of an offence on the 10th of March 2026. See the case of ***Hiya v The Minister of***

Safety and Security and Another Case No 506/99 TK. Unfortunately, this court is not satisfied that the police had reasonable grounds to believe that a search warrant would be issued to them if they had applied for it on 10 March 2026. The 1st Respondent has therefore, due to an omission of addressing the issue of a search warrant and that they had the belief that a search warrant would have been issued to them had they applied, failed to satisfy the first requirement as laid down in Section 22(b)(i) of the Criminal Procedure Act. The further issue still remaining is the second requirement in terms of Section 22(b)(ii) of the Criminal Procedure Act, which must also be satisfied. Both Section 22(b)(i) and Section 22(b)(ii) must be satisfied and not just the one or the other as the act clearly states "and" and not "or" in order for the search and seizure without a warrant to be lawful.

[20] In light of the facts, as already stated here above, the truck and trailers were searched and seized on the 10th of March 2026. There is in my view no reason why the 1st Respondent could not between the period from 10 March 2026 to 7 April 2026 obtain the necessary legal process from a judge or magistrate for the retention of the truck and trailers. No explanation was given by the 1st Respondent either, why the necessary legal process could not be obtained. The continued dispossession, in absence of any satisfactory explanation by the Respondents is therefore unlawful.

[21] The Full Bench in the case of **Sitonga v Minister of Safety and Security and 2 Others 2008 (1) SACR 376 (Tk)** at paragraph [37] held as follows:

"Whilst it may result in the applicant in spoliation proceedings being placed in possession of an article he or she may otherwise not lawfully possess, it should be borne in mind that the mandament van spolie affords no more than temporary relief. The respondent can, subsequent to the applicant having been restored in his or her possession, seek judicial dispossession, ejectment or other appropriate relief. Applied to the facts of the present matter, it is always open to the respondents to seek lawful dispossession of the vehicles in terms of the provisions of section 21 read with section 20 of the Criminal Procedure Act."

[22] Having regard to the fact to what was held in the ***Sitonga case supra*** the Respondents can, subsequent to the Applicants having been restored in his/her or its possession, seek judicial dispossession or other appropriate relief. Having said that, in my view the same should apply to the fact that the 1st Respondent, knowing that the search and seizure was done without a warrant, could have sought judicial dispossession or other appropriate relief during the period from 10 March 2026 to 7 April 2026 in order to ensure that the 1st Respondent acted lawfully.

[23] I therefore find that the First Respondent failed to prove the first requirement due to their failure to address same or make submissions thereof, as well as the second requirement in that the delay in obtaining a warrant would defeat the object of the search (and seizure) and consequently the Respondents have failed to justify the seizure of the trucks and trailers on legal grounds. The mere fact that the 1st Respondent had reason to belief that the truck and trailers were utilized in the commission of a crime is simply not enough, more is required from the 1st Respondent to prove that the dispossession was lawful under the circumstances. In essence the 1st Respondent failed to make all the necessary averments required. The act of spoliation is therefore proved and there is further no reason to allow the continued detention of the truck and trailers by the 1st Respondent.

[24] There is no reason why costs should not be ordered to follow the event.

[25] I therefore make the following order:-

1. The Applicants' non-compliance with the rules of this Honourable Court relating to notice and service and time limits be condoned and that the matter be heard as urgent in terms of Rule 6(12)(a);
2. The Respondents are ordered to release to the Applicants, the truck and trailers, the relevant particulars of the trucks and trailers being as per prayers 2 and 3 of the Notice of Motion.

3. The Respondents are ordered to restore to the Applicants possession of the truck and trailers with the relevant particulars of the trucks and trailers being as per prayers 2 and 3 of the Notice of Motion.

4. The First Respondent to pay the costs of the application on a party and party scale - which costs are to be taxed on High Court Scale A.

M. NAUDE-ODENDAAL
JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

HEARD ON : 7 APRIL 2026

JUDGMENT DELIVERED ON: 15 APRIL 2026.

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be **15 APRIL 2026 at 12h30**

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