**IN THE HIGH COURT OF SOUTH AFRICA**
**(WESTERN CAPE DIVISION, CAPE TOWN)** **[REPORTABLE]**

Case no: CC50/2022

In the matter between:

**FARIED VAN DER SCHYFF** First applicant
**NAFIZ MODACK** Second applicant

and

**THE DIRECTOR OF PUBLIC PROSECUTIONS,**
**WESTERN CAPE** First respondent
**THE COMMISSIONER OF CORRECTIONAL SERVICES** Second respondent

**Summary:** Application by awaiting trial detainees to be allowed the use of e-readers to prepare for, and whilst on, trial. Right to a fair trial and to 'adequate facilities' to prepare a defence- sections 35(3) and 35(3)(b) of the Constitution.

---

**ORDER**

---

1. The Area Commissioners/Heads of the Pollsmoor and Goodwood Correctional Centres are directed to make available to the first applicant, Mr Faried Van der Schyff, a Kindle with serial no. G[...], and to the second applicant, Mr Nafiz Modack, a Kindle with serial no. G[...]2, together with their covers, charging cables and chargers, with effect from 12 February 2027 (or such alternative date as may be set by order of this court, which is to be no less than 8 weeks from the allocated trial date in the matter in this court under case no. CC 50/2022).
2. Whilst they are incarcerated in the Pollsmoor and Goodwood Correctional Centres and//or any other correctional centre or place of detention to which they may be transferred or held, including the High Court cells, the applicants shall be permitted to have access to the aforesaid Kindle devices, for the purpose of preparing for, and for the duration of, their trial in this court under case no. CC 50/2022, daily between the hours of 08h00 and 21h00, from Mondays to Fridays and from 08h00 to 13h00 on Saturdays.
3. On the days when the applicants are transported from their places of detention to the High Court by officials of the Department of Correctional Services, for trial appearances in the matter in this court under case no. CC 50/2022, the Kindles shall be transported in lockboxes.
4. The aforesaid devices must be handed over to the office of the DPP, Western Cape (for attention Adv B Hendry-Sidaki), within 5 days of the date of this order and shall be kept in safekeeping by the DDP, Western Cape until 11 February 2027 (or such alternative date as may be fixed which is to be no less than 8 weeks before the allocated trial date), when they shall be handed over by representatives of the DPP to the Area Commissioners/Heads of the correctional centres where the applicants are being detained at the time, for the purpose of giving effect to paras 1-3 of this order.

---

**JUDGMENT DELIVERED ON 29 MAY 2026**

**SHER J:**

1. The applicants are two of nine accused who are awaiting trial in this court on some 700 charges, which include VAT fraud, forgery and uttering, sundry contraventions of the VAT[1] and Tax Administration Acts,[2] and racketeering in terms of the Prevention of Organized Crime Act.[3]
2. It is alleged in the indictment that between 2011 and 2015 the accused participated in a criminal enterprise under the control of the 2nd applicant, Nafiz Modack, which set about fraudulently claiming VAT refunds from the SA Revenue Services (SARS), via 24 corporate entities and trusts, which resulted in a R 46 million plus loss to the fiscus. The 1st applicant, Faried van der Schyff, was allegedly responsible for administering the tax affairs of these entities and for submitting most of the VAT returns to SARS for the purpose of claiming the refunds.
3. The applicants are in custody in correctional centres in the Western Cape and have made application for an order directing the (Regional) Commissioner of the Department of Correctional Services (DCS) to allow them to use Kindle 'e-readers' for the purposes of their forthcoming trial. 'Kindles', as they are commonly known, are hand-held electronic devices which can be used for reading material which is loaded onto them, or which may be accessed by them, via the internet.
4. The application is supported by the 1st respondent, the Director of Public Prosecutions for the Western Cape (DPP), who originally proposed that the applicants be provided with e-readers. It is opposed by the Commissioner, who filed separate answering affidavits in respect of each of the applicants.

**Relevant facts and circumstances**

[1] The Value-Added Tax Act 89 of 1991.
[2] Act 28 of 2011.
[3] Act 12 of 1998.

5. In prosecuting the charges which the accused are facing (which are detailed in a draft indictment which runs to over 300 pages excluding annexures), the State will present evidence from various SARS officials as to the operation of the VAT e-filing system and several investigations which were carried out, including search and cash flow analyses. As part of their testimony the State intends to present a vast quantity of documentary evidence, including corporate and VAT registration documents and returns, supplier invoices, and documents which were submitted electronically by the accused, and a trove of email correspondence. In hard form the documents the State intends to submit comprise some 20 300 pages odd and will take up more than 60 lever arch files. In digital form they take up some 2.3 gigabytes of data.

6. On 11 September 2023 the DPP addressed a letter to the Commissioner in which she pointed out that, given the large volume of documentation which was to be supplied to the applicants, it was not practical or feasible to do so in hard form, as 60+ lever arch files filled with documents could not reasonably be accommodated in their cells and was likely to constitute a potential security risk, at least in the form of a fire hazard. Consequently, the DPP proposed that the DCS consider acquiring two electronic readers, such as Kindles, which could be used for the trial by the applicants and subsequently by other awaiting trial detainees, when the need might arise in future criminal trials involving voluminous documentary evidence.

7. On 27 November 2023 the DPP addressed a similar request to the Director of Legal Aid SA, on the basis that if it acquired such devices, which she noted were relatively inexpensive, they could also be used in future matters where legal aid practitioners were appointed to represent the accused. In this regard both applicants are represented by practitioners who are funded or employed by legal aid. In his response the Head of Legal Aid SA's Cape Town office indicated that due to budgetary constraints which were informed by austerity measures, it could not fund the acquisition of these devices.

8. On 28 February 2024 the Director of Strategy Operations Compliance in the office of the DPP, Western Cape, indicated[4] that as the State was bound to provide the contents of police dockets to accused persons who were facing trial, and as the NPA did not have provision in its budget for supplying hard copies thereof and of the other documents which were to be used in evidence in the prosecution of its cases, it currently only provided electronic copies thereof to the accuseds' legal representatives, either by email or on a compact disc, memory stick, or other removable electronic storage device. As the NPA dealt with some 300 000 criminal trials nationally, on an annual basis, it could not shoulder the costs of supplying hard copies of the documentation to which accused were entitled. For the self-same reason it could not supply e-readers to accused persons.

9. On the same day the Head of the Remand Detention Facility at the Pollsmoor correctional centre indicated that the Department was 'favourably' disposed to the DPP's suggestion that the 1st applicant be permitted to 'study' a copy of the contents of the police docket on an e-reader. He suggested that as neither the NPA nor Legal Aid SA were able to supply such a device, the 1st applicant's family or friends should do so and then formally lodge a request with the DCS that he be permitted to use it, to consider the docket contents and other documentation to be supplied by the NPA. Alternatively, if the accused was able to have hard copies printed via friends or family, the cell adjacent to the one where he was being detained (which was being used as a storeroom), would be cleared, and the documentation would be placed in lockable cabinets which the DCS would install in it, together with a table and chair. The cell would be available for use by the 1st applicant for the purposes of trial, between the hours of 9h00 and 14h00 from Mondays to Thursdays and between 8h00 and 13h00 from Fridays to Sundays.

10. In his founding affidavit the 1st applicant revealed that he had previously been an awaiting trial detainee at Pollsmoor, whilst he stood trial on charges of corruption, fraud and contraventions of the Tax Administration Act, in another matter. After

[4] In response to an affidavit which was filed by the 1st applicant in an application for bail.

his request to be permitted to use an e-reader for the trial in this matter was favourably received by the DCS his family procured a Kindle which was handed over to representatives of the DPP, who loaded the contents of the docket on it together with the documentation that the State intended to present at trial. Once the Kindle had been 'secured' by the NPA's IT technicians, who disabled it from being able to connect to the internet, it was handed over to the Commissioner, who then made it available to the 1st applicant. The device was in his possession until he was convicted in the other matter and sentenced on 20 June 2025 to a term of imprisonment, whereupon DCS officials removed it from him.

11. The 1st applicant contended that since the NPA's securing of the device resulted in it only being capable of being used as a reader to peruse documents which had been loaded onto it by the NPA, it constituted a negligible security risk, if any, and were he to be denied access to it his constitutional right to a fair trial would be infringed. In this regard he pointed out that in terms of s 35(3) of the Constitution his right to a fair trial included the right to be informed of the charges he was facing with sufficient detail to answer them, and the right to have adequate time and facilities to prepare his defence.

12. In his affidavit the 2nd applicant similarly asserted his rights in terms of s 35(3) of the Constitution. Some 4 years ago a hard copy of the docket contents and the documentary evidence on which the State intended to rely, was provided by the DPP's Specialized Tax Unit to the 2nd applicant's erstwhile counsel, who later withdrew for wont of financial instructions. Although upon his withdrawal the hard copies of the docket contents and the documents which had been provided were then delivered to the correctional facility where the 2nd applicant was being detained, the sheer volume thereof made it wholly impractical for him to work with it 'in a meaningful sense', in the prison setting.

13. He too pointed out that he had originally been granted permission by the prison authorities to have the docket contents and other documents loaded onto a Kindle, on condition that it was to be a 'dumb device'. An older model second-hand Kindle, which was only suitable for storing and perusing documents and which, he claimed, had 'as much chance of connecting to the internet as does a

toaster' (sic), was acquired for him by his legal representative. He contended that there was 'zero risk' of it being able to contact the 'outside world'.

14. In an answering affidavit which was filed in response to the 1st applicant's application the Commissioner confirmed that whilst 1st applicant was standing trial on charges of fraud and contraventions of the VAT Act in another matter, he had been allowed to have access to a Kindle on which the docket contents and documents pertaining to the charges he was facing in this matter were loaded. He was allowed access to such a device because, as a remand detainee he was entitled to privileges and amenities, such as access to electronic devices, that were not afforded to sentenced prisoners. Following upon his conviction he was admitted to the Medium B section of the Pollsmoor correctional facility to serve out his sentence and, in accordance with correctional services regulations, was required to hand in the Kindle together with his personal effects.

15. The Commissioner said that 'the policy' in respect of sentenced prisoners did not allow them to have access to electronic devices. The only exceptions to this were inmates who were registered students with an educational institute, who required the use of a computer for their studies. As the 1st applicant was not a registered student and did not need to type or submit 'work' as students would, he was not eligible to possess an e-reader and would in any event not be able to type or submit documents on it. In addition, he was classified as a high-risk inmate due to his connection with the 2nd applicant, who was classified similarly, given the nature and extent of the charges he was currently standing trial on (which include several charges of running a criminal enterprise under POCA, the wrongful electronic cellphone tracking and surveillance of high-ranking police officers and a legal practitioner, and several charges of murder, including the assassination of a colonel in the Anti-Gang Unit), and his recent conviction and sentencing on corruption charges.

16. In addition, the Commissioner said there were 'security concerns' as the Kindle had Wi-Fi capability and was 'residually capable' of connecting to the internet, should the code for the parental lock which was placed on it by officials of the NPA, be obtained or hacked. If this happened the 1st applicant would be able to

access any book or publication which was available online, without supervision, and could potentially receive documents from outside the correctional facility. It was these concerns, together with an assessment of the risk to the security and good order of the correctional centre that led to the Commissioner refusing the request for permission to use a Kindle.

17. According to the Commissioner the 1st applicant did not need access to an e-reader because, as had been done for his co-accused, a nearby cell could be made available for him to store and peruse hard copies of the documents. Consequently, the Commissioner requested that an order be made directing the NPA to make a hard copy of the documents to which he was entitled and to cause same to be delivered to the head of the Medium B facility.

18. In the answering affidavit which the Commissioner filed in response to the 2nd applicant's affidavit she reiterated what she had said in her answering affidavit to the 1st applicant. She contended that in seeking a *mandamus* compelling the Department to provide him with access to an e-reader the 2nd applicant had likewise adopted an incorrect procedure. As the applicant's challenge was directed at a policy-based administrative decision, it should have been brought as a review of the applicable policy, which was contained in Security Circular no. 4 of 2023/24, which was issued by the National Commissioner and came into effect on 3 November 2023.

19. In her view the 2nd applicant's request was a stratagem to delay the start of his trial and in the event it succeeded he would, in due course, no doubt complain that he was unable to properly prepare his defence on a device that was so small, and which required constant scrolling between various documents.

20. The Commissioner pointed out that the Kindle which had been obtained for the 2nd applicant had been handed over to the IT Network Controller for the DCS in the Western Cape, for assessment. In his report the Network Controller noted that the device had an integrated Wi-Fi module and could connect to any nearby Wi-Fi network, including open or password-protected ones. However, access to the internet had been disabled via a parental control lock which was activated on the device by IT officials from the NPA. However, in the event the code for the

parental lock was compromised the device's restricted functionalities could potentially be reactivated, thereby violating the department's 'communication policies'. The Network Controller proposed that the parental control code should be generated and held by officials of the Department, a suggestion to which the NPA representatives were not amenable, as they were of the view that this would constitute a security risk.

**The law**

(a) The general principles

21. In *Kwakwa* [5] the SCA noted that whilst prison authorities must be accorded 'latitude and understanding' in the administration of prison affairs and prisoners must necessarily be subject to appropriate rules and regulations, it remains the continuing responsibility of courts to enforce the constitutional rights of persons who are detained in prisons.

22. The rules and regulations by which prisons i.e. correctional centres are regulated in SA are those set out in the Correctional Services Act[6] ('the CSA') and the regulations promulgated thereunder.[7] The CSA records that the purpose of the correctional system is to contribute to the maintenance and protection of a just, peaceful and safe society by enforcing sentences which are imposed by the courts[8] and detaining inmates in safe custody, whilst ensuring their human dignity.[9]

(b) The rights in issue

23. As far as the constitutional rights of detainees are concerned, these are set out in s 35 of the Bill of Rights, which contains a compendium of fundamental rights which the State is enjoined to respect, protect, promote and fulfil.[10] When interpreting the Bill of Rights a court must promote the values that underlie an

---

[5] *Minister of Correctional Services & Ors v KwaKwa & Ano* [2002] ZASCA 17; 2002 (1) SACR 705 (SCA); 2002 (4) SA 455 (SCA).
[6] Act 111 of 1998.
[7] In terms of s 134 of the CSA. The current iteration is the Correctional Services Regulations of 2012.
[8] Section 2(a).
[9] Section 2(b).
[10] Section 7(2) of the Constitution.

open and democratic society based on human dignity, equality and freedom,[11] and must consider international law.[12]

24. In this regard, in *Ntuli* [13] the CC held that in cases which involve the conditions under which detainees are kept, courts may have regard to the UN's Basic Principles for the Treatment of Prisoners[14] and its Standard Minimum Rules for the Treatment of Prisoners (also known as the Nelson Mandela Rules),[15] international instruments which provide guiding principles in relation to the treatment of prisoners by the governments of member states.

25. Section 35(2)(e) of the Constitution provides that everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity. These conditions include not only the provision, at State expense, of adequate accommodation, nutrition, and medical treatment, but also exercise and 'reading material'.[16] In terms of the correctional regulations a properly organised library containing literature of 'constructive' and educational value must, as far as reasonably practicable, he established and maintained at every correctional centre,[17] and an inmate may receive reading material from outside the centre, in the manner as may be prescribed in orders issued by the National Commissioner.[18]

26. The right on which the applicants seek to rely is the right to a fair trial, which is embodied in s 35(3). It was described in *Jaipal* [19] as a universal right [20] which is central to any civilized criminal justice system. In its formulation, s 35(3) is an

---

[11] Section 39(1)(a) of the Constitution.
[12] Section 39(1)(b).
[13] *Minister of Justice & Correctional Services & Ors v Ntuli* 2025 (2) SACR 125 (CC).
[14] Adopted by the General Assembly on 14 December 1990, by A/Res/45/111.
[15] Adopted on 17 December 2015 by A/Res/70/115.
[16] included amongst the 'amenities' and privileges which may be granted to inmates is the provision of 'reading material'- *vide* s 1(c) of the CSA.
[17] Regulation 13(1) of the Correctional Services Regulations, 2012.
[18] Regulation 13(2). Orders issued by the Commissioner in terms of s 134(2) of the CSA are a species of delegated legislation, which impose a duty of compliance- vide *Ntul*i n 13 para 57.
[19] *S v Jaipal* 2005 (4) SA 581 (CC) para 26.
[20] It is recognized in several key international instruments, such as the Universal Declaration of Human Rights (article 10), the International Covenant on Civil and Political Rights (article 14(1)), the European Convention for the Protection of Human Rights and Fundamental Freedoms (article 6(1)) and the African Charter on Human and People's Rights (article 7(1)).

omnibus right [21] which includes a subset of listed rights, enumerated in s 35(3)(a)-(o). In *Zuma* [22] the CC held that the subset is not a finite, closed list of prerequisites necessary for a trial to be fair, and the right is a broad one which embodies a concept of substantive fairness in criminal proceedings that requires courts to conduct trials in accordance with 'basic notions of fairness'.

27. There are a cluster of interrelated sub-s 35(3) rights which are applicable in this matter, to wit the right to be informed of the charges with 'sufficient detail' to enable an accused to 'answer' them (s 35(3)(a)), the right to have 'adequate time and facilities to prepare a defence' (s 35(3)(b)), and the right to adduce and challenge evidence (s 35(3)(i)).

28. The right to be informed of the charges with sufficient detail extends not only to disclosure of the charge-sheet or indictment which particularizes the charges on which an accused must stand trial. Pursuant to the decision in *Shabalala,* [23] where it was held that the right to a fair trial must give effect to the notion of equality of arms, the State is required to provide an accused with access to such of the contents of the police docket as may be relevant for their defence, which is ordinarily understood to include at least the statements of witnesses.[24] In practice, this has led to the prior disclosure of other material which the State intends to submit in evidence against an accused such as fingerprint, cellphone, DNA, and ballistic analyses, and post mortem and forensic audit reports (evidence which is often incorporated in statements which are admissible *per se* in terms of s 212 of the Criminal Procedure Act[25]), or other documents, such as those in regard to the holding of identity parades, as well as video and photographic material.

---

[21] In S *v Dzukuda; S v Tshilo* 2000 (2) SACR 443 (CC); 2000 (4) SA 1078 (CC) paras 10-11 it was described as a 'comprehensive and integrated' right.
[22] *S v Zuma* 1995 (2) SACR 568 (CC); 1995 (2) SA 642 (CC) para 16.
[23] *Shabalala v Attorney-General of Transvaal* 1995 (2) SACR 761 (CC); 1996 (1) SA 725 (CC); [1996] 1 All SA 64 (CC).
[24] This is not an absolute principle and access to material or statements may be refused where it would lead to a disclosure of the identity of informers or the intimidation of witnesses or otherwise impede the 'proper ends of justice'.
[25] Act 51 of 1977.

29. Without the prior disclosure of such documents and evidentiary material an accused may well not be able to exercise their rights to answer the charges by challenging the evidence which is submitted by the State and adducing evidence in rebuttal thereof.

**An assessment**

30. The constitutional right which a detained accused has, in our law, to 'adequate facilities to prepare a defence' is a replica of the right which is afforded in terms of the European Convention on Human Rights to persons who are charged with a criminal offence.[26] In its formulation it is wider than the standard right which is afforded to prisoners in terms of the Standard Minimum Rules, which provides[27] only that they must be provided with adequate opportunity, time and facilities 'to be visited by and to consult' with a legal adviser. Notably, whilst in its application it will be constrained by the terms of s 35(3)(b) of the Constitution, in terms of its formulation in the CSA[28] it is a right which is extended to remand detainees without the qualification of adequacy: the relevant section simply provides that they must be provided with the 'opportunities and facilities' to prepare their defence.

31. It is trite that interpreting a constitutional provision such as s 35(3)(b) is a unitary exercise which requires one to have simultaneous regard for its text, in the broader context of the instrument in which it appears, and its purpose.[29] in addition, in terms of the Constitution[30] the interpretation must promote the spirit, purport and object of the Bill of Rights.

32. Insofar as the text is concerned, the right to adequate 'facilities' to prepare a defence has been understood to refer, as per its ordinary dictionary meaning, to adequate infrastructure, such as buildings, rooms or spaces. Thus, in *Van Rooyen*[31] it was held that in order to put the accused in a position to challenge

---

[26] Article 6.3 (b).
[27] Rule 61.
[28] Section 17(4).
[29] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18.
[30] Section 39(2).
[31] *Van Rooyen & Ors v Department of Correctional Services: In re S v Du Toit & Ors* 2005 (1) SACR 77 (T).

the extensive evidence which was presented by the State and to put forward their defence, the DCS was to make available a consulting room in a section of the prison in which they were being separately detained as a group, till 22h00 each day that their trial was running, so that they could consult their legal representatives and provide them with the necessary instructions.

33. The word 'facility' is derived from the Latin verb '*facere*' which means 'to do', and its old French ('*facilite'*) and Latin ('*facilis*') derivatives, which mean 'ease, easiness' or 'easy to do'. Its English usage was extended to include an 'opportunity' to do something and then to mean a 'place for doing something'.[32] In current dictionary definitions it is understood to refer not only to infrastructure, such as a building or premises which have been designed or which are utilized for a specific purpose,[33] but also to a piece of equipment or a 'contrivance' i.e. a mechanical device which is used to perform a task, or a 'physical means to make something possible',[34] or an 'arrangement, service or feature' that enables a person to do something. [35]

34. in my view, in order to give effect to the spirit, purport and object of the interrelated rights referred to, as set out in s 35(3) i.e. the rights to be informed sufficiently of the charges to be able to answer them and to prepare and put forward a defence and challenge the State's evidence, the reference to adequate 'facilities' in s 35(3)(b) is to be understood to include not only its traditional meaning of the necessary physical infrastructure, but also its extended meaning of a contrivance or piece of equipment, such as the Kindles in this matter, or an 'arrangement' for their use, which will make it possible for the accused to exercise these interrelated rights. Such an interpretation would give proper effect to the accuseds' right to have both the necessary physical infrastructure (i.e. premises) in which to prepare their defence, as well as the use of the necessary physical equipment to enable them to do so.

---

[32] *Vide* the etymological origin of the word at https://www.etymonline.com.
[33] Concise Oxford English Dictionary (10th ed).
[34] See the definition at https://en.wiktionary.org/wiki/facility.
[35] Chambers Concise Dictionary (2004).

35. In a time characterised by exponential advances in information technology and the use of artificial intelligence, the demise of paper-based legal proceedings looms large. Civil proceedings in the High Courts are currently in the process of being digitised and, to this end, since December 2025 parties are required to file ‘papers’ in new matters in this division electronically, and judges and litigators are increasingly using personal computers and handheld mobile and other devices to discharge their duties in the adjudication of disputes. It is only a matter of time before criminal matters will also be dealt with in this way.

36. In matters such as this one where a vast quantity of documentary evidence will be referred to and the presiding judge, legal representatives, and State witnesses will be making use of laptops and a courtroom monitor for the presentation of evidence, it makes no practical sense for the accused to be handicapped by compelling them to trawl their way through thousands of pages of paper, to prepare for trial, and to find hard copy documents in order to provide proper instructions to their legal representatives, who will be able to refer to and search for them instantly, on their laptops and other devices. The prosecutor Adv Hendry-Sidaki, who is the Head of the DPP’s Specialist Tax Unit, indicated that the State intends to present its documentary evidence wholly via digital and electronic means, and it is thus envisaged that the presiding judge and legal representatives will be engaged in the proceedings via their laptops and/or other devices (such as smartphones or tablets) and the courtroom monitor. It makes sense, and fairness dictates, that where electronic means are readily available to the accused, they should also be able to use them.

37. In my view this matter is pre-eminently one where the interests of justice require that for their preparation and attendance on trial the accused should be allowed to have access to the docket contents and the documentary evidence which the State intends to submit, via the Kindles which they personally acquired, at their cost. Affording them the use of such a ‘facility’ will improve the efficiency of the process and avoid unnecessary delays, thereby expediting the trial.

38. Insofar as the Commissioner’s contention that the application was misconceived as it should have been brought in the form of a review of the policy on which the

Commissioner seeks to rely is concerned, the following. The policy in question, as set out in Security Circular no.4 of 2023/24, appears to have been adopted in response to the decision in *Ntuli* [36] where the CC confirmed that an earlier policy, the Policy Procedures Directorate Formal Education of February 2007, which prohibited the use of computers by prisoners in their cells, even in the case of registered students, was constitutionally invalid, in that it infringed their constitutional right to pursue education in terms of s 29(1)(b ) of the Constitution.

39. From a perusal of the contents of Security Circular no.4 it is patently clear that it has nothing to do with the use of electronic devices other than computers. Thus, in its subject heading and in paragraph 1.1 it states that its purpose is to provide guidance on the management of computers used by offenders who are studying through tertiary institutions. In paragraph 3.1 it stipulates that only registered student offenders who have a need for a computer as supportive to their studies, or those whose course of study requires the compulsory use of a computer, may be allowed to have access to one within a correctional centre. In paragraph 3.4 (the paragraph on which the Commissioner seeks to rely), which is poorly worded, it is stated that 'no access to Internet or any other hardware device that may impact negatively in the good order, administration and security' (sic) of a correctional centre is allowed, unless authorised by the Head of the centre.

40. Paragraph 3.4 is a subparagraph of paragraph 3 which, according to its subject heading seeks to deal expressly with the 'utilisation of personal computers (laptops/desktop computers only) by offenders studying through tertiary institutions (my emphasis). It is evident that the terms of paragraph 3 cannot be read as being applicable to anything other than such forms of computers as are referred to in the paragraph as a whole, and it clearly does not apply to other electronic devices such as cellphones, or Kindles. This much is also evident if one performs a contextual reading of the other sub-paragraphs such as paras 3.6-3.8, 3.13-3.19 and 3.23-3.26, where reference is repeatedly made only to personal computers or laptops, and 'computer' equipment.

---

[36] Note 13.

41. In the circumstances, there was clearly no need for the applicants to seek to review the policy which is contained in Security Circular no.4 as it does not apply to their request to use Kindles.

42. As for the security concerns which were raised by the Commissioner, the following remarks are apposite. As is apparent from what is set out above, IT technicians who were engaged by the NPA activated parental locks on both Kindles, which rendered them unable to access the internet or to connect to any Wi-Fi network. Even if the applicants were to obtain a cellphone which has Wi-Fi capability (in this regard it appears that on random searches of their cells both applicants were previously found in possession of illicit cellphones at some stage, which were confiscated from them), without the deactivation of the parental lock the Kindles will, in the applicants' parlance, remain 'dumb devices' and will not be able to access the internet or any Wi-Fi networks.

43. In *Ntuli* [37]a similar argument which was raised by the DCS, in an attempt to prevent the use of computers in prisoners' cells, was rejected by the CC. It pointed out that it was hardly likely that a prisoner who came into possession of, or in proximity to, a 'smart' cellphone which had Wi-Fi and Bluetooth connectivity, would need their computer to achieve access to the internet. Whilst one can understand the risk that a prisoner who comes into possession of a smartphone which has such features, could conceivably use it as a modem to provide internet access for a computer, without the restoration of the necessary functionalities on the Kindles, by deactivating their parental locks, they are not able or likely to be used as devices to download reading material. It is the illicit access to smartphones which poses the security risk, not the possession of neutered Kindles. In this regard, in terms of the relevant provisions of the Act and the regulations, the Heads of the correctional facilities where the applicants are being detained are empowered to conduct random searches of the cells of detainees, and their persons.

44. In the result, in my view the applicants are entitled to the relief which they seek. As their trial is only scheduled to commence at the start of the 2nd term next year

[37] Id, para 70.

(12 April 2027), and with a view to reducing any potential risk that may exist and any chance for abuse, I propose directing that the applicants only be given access to the Kindles 2 months (8 weeks) before the date when the trial is to start i.e. not sooner than 12 February 2027, or such other trial date as may be fixed. That will give them ample time to go through the documentation which has been loaded onto them and to provide instructions to their legal representatives.

45. In the meantime, the Kindles should be handed over to and be kept by the prosecutor, Adv Hendry-Sidaki, in safekeeping, on behalf of the NPA. This will allow the DPP/NPA to run a check on the condition of both devices and the status of the parental locks before they are handed over. It will also provide the State with the time and opportunity to load any further documents onto the devices to which the applicants may be entitled, such as the final draft of the indictment, the list of witnesses and the summary of substantial facts, before they are handed over to the applicants.

46. I make the following order:

1. The Area Commissioners/Heads of the Pollsmoor and Goodwood Correctional Centres are directed to make available to the first applicant, Mr Faried Van der Schyff, a Kindle with serial no. G[...], and to the second applicant, Mr Nafiz Modack, a Kindle with serial no. G[...]2, together with their covers, charging cables and chargers, with effect from 12 February 2027 (or such alternative date as may be set by order of this court, which is to be no less than 8 weeks from the allocated trial date in the matter in this court under case no. CC 50/2022).
2. Whilst they are incarcerated in the Pollsmoor and Goodwood Correctional Centres and//or any other correctional centre or place of detention to which they may be transferred or held, including the High Court cells, the applicants shall be permitted to have access to the aforesaid Kindle devices, for the purpose of preparing for, and for the duration of, their trial in this court under case no. CC 50/2022, daily between the hours of 08h00 and 21h00, from Mondays to Fridays and from 08h00 to 13h00 on Saturdays.

3. On the days when the applicants are transported from their places of detention to the High Court by officials of the Department of Correctional Services, for trial appearances in the matter in this court under case no. CC 50/2022, the Kindles shall be transported in lockboxes.

4. The aforesaid devices must be handed over to the office of the DPP, Western Cape (for attention Adv B Hendry-Sidaki), within 5 days of the date of this order and shall be kept in safekeeping by the DDP, Western Cape until 11 February 2027 (or such alternative date as may be fixed which is to be no less than 8 weeks before the allocated trial date), when they shall be handed over by representatives of the DPP to the Area Commissioners/Heads of the correctional centres where the applicants are being detained at the time, for the purpose of giving effect to paras 1-3 of this order.

**M SHER**

**Judge of the High Court**

**Appearances:**

First applicant's attorney: B Brand (Legal Aid SA)
Second applicant's counsel: B Sibda (Instructed by Legal Aid SA)

First respondent’s counsel: B Hendry-Sidaki (DPP Cape Town)
Second respondent’s counsel: M Ipser
Second respondent’s attorney: State Attorney (Cape Town)