

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 118313/2026

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

.....
SIGNATURE

.....
DATE

In the matter between:

MAJOR GENERAL EBRAHIM AHMED KADWA

Applicant

and

ACTING MINISTER OF POLICE

First Respondent

ACTING NATIONAL COMMISSIONER OF POLICE

Second Respondent

PROVINCIAL COMMISSIONER OF POLICE

DIVISIONAL COMMISSIONER: CRIME INTELLIGENCE

Third Respondent

GENERAL SD KHUMALO N.O.

Fourth Respondent

WARRANT OFFICER CALVIN KHOROMBI N.O.

Fifth Respondent

CHAIRPERSON OF THE MADLANGA COMMISSION N.O.

Sixth Respondent

SECRETARY OF THE MADLANGA COMMISSION N.O.

Seventh Respondent

JUDGMENT

LEECH, AJ:

- 1 On 25 May 2026, the applicant, Major General Kadwa, caused an urgent application to be issued forth out of this court, setting it down for hearing on the urgent court roll of 2 June 2026. That application cited the first to fifth respondents, being the Acting Minister of Police and various other officers in the service of the South African Police Service (collectively the *SAPS Respondents*).
- 2 The relief claimed by the applicant was directed principally at recovering possession from the SAPS Respondents of the applicant's mobile telephone. The applicant's telephone had been taken from him by the fifth respondent, Warrant Officer Calvin Khorombi, when arresting the applicant on suspicion of the commission of an offence (*Arresting Officer*).
- 3 The applicant later amended his Notice of Motion, joining the sixth and seventh respondents—thereby making the *Madlanga Commission of Inquiry*¹ a party to the application—and extending the relief he sought to recovering the telephone in the event that possession of it had been handed to the Madlanga Commission. In addition to a prayer for urgency and another seeking attorney and client costs, the relief sought by the applicant, in his amended Notice of Motion, was as follows:

¹ The Judicial Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System, commonly known as the Madlanga Commission of Inquiry after its Chairperson, retired Constitutional Court Justice Mbuyiseli Madlanga.

- 2 The Respondents are to forthwith, restore to the Applicant, the Applicant's Mobile Device, namely, an I - phone Cellular Phone, unlawfully taken from him during the course of his arrest, carried out on the 10th of May 2026 at 06h00, at his residence;
- 3 The Applicant is hereby declared to be the lawful owner . . . entitled to hold the abovementioned device, referred to in paragraph 2 of this Order;
- 4 The Respondents are hereby interdicted and restrained from confiscating and holding the Applicant's Mobile Device without his Consent, or an Order of Court authorising such holdership;
- 5 In the event of the Abovementioned Mobile Cellular Device referred in paragraph 2, above being in the possession of the Sixth Respondent And Seventh Respondents, the Sixth and Seventh Respondents are hereby directed to forthwith hand over the Abovementioned Mobile Cellular Device back to the Applicant; . . .²

4 The basis of the application lay in the *mandament van spolie*, with the applicant alleging that, as the seizure of his telephone was not authorised by warrant, his dispossession of it was unlawful. He asserts that he has a greater title to possess the mobile telephone than the respondents. And he alleges further that he reasonably requires it on an urgent basis for his personal and day to day use, including *inter alia* because he banks and transacts using the device—these allegations forming the foundation of the applicant's claims to the application being brought on an urgent basis. He also alleges that the device has information on it that is highly sensitive and should be viewed only by persons with the requisite security clearance. He thus also seeks the recovery of the device ostensibly to protect its contents from prying eyes.

² All quotations are rendered verbatim, except to the extent that square brackets or ellipses are used to indicate an omission or insertion. Footnotes have been omitted from quotations.

5 The SAPS Respondents oppose the application; the Madlanga Commission has elected to abide by its outcome. The basis of the SAPS Respondents opposition is threefold:

5.1 First, the SAPS Respondents oppose the applicant's entitlement to approach this court urgently and ask that the application be struck from the roll on that basis, without a determination of the merits.

5.2 Secondly, the SAPS Respondents rely on sections 20 and 23 of the Criminal Procedure Act, 51 of 1977 (*CPA*) as authorising the Arresting Officer to seize the telephone during the course of his effecting the applicant's arrest.

5.3 Thirdly, reliance is placed on a warrant, issued some time after the applicant's arrest, under section 29 of the Cybercrimes Act, 19 of 2020 (*Cybercrimes Warrant*). This Cybercrimes Warrant was obtained by the South African Police Services (*SAPS*) for purposes of facilitating a search of the contents of the telephone, after the applicant declined to afford unfettered access to his telephone.³ An attempt was made to serve it after the telephone had already been in the possession of the SAPS for more than two weeks.

6 As I indicated in argument, I am of the view that the matter is sufficiently urgent—and that the applicant appropriately balanced the time taken to bring the application with a curtailment of the usual the time periods afforded opposing respondents—so that the matter must be enrolled under Rule 6(12) and heard by me on its merits. This is so having regard to the grounds alleged in the founding affidavit concerning the applicant's prior

³ In a supplementary founding affidavit the applicant relied on the Cybercrimes Warrant as evidencing further grounds for urgency and in support of the merits insofar as it provided a further compelling reason why he should recover the telephone—he was at risk of being compelled to disclose the confidential information.

possession of and personal need of the telephone, the presumptive urgency applicable to spoliation applications more generally, and the other factors attendant upon the seizure of the telephone including the applicant's recourse to rights under the Constitution of the Republic of South Africa, 1996.

7 That brings me to the question of the merits.

8 As counsel for the applicant commendably acknowledged, the determinative issue in dispute is whether or not the Arresting Officer was entitled—at the time that he effected the arrest—to seize the telephone. That is the dispute foreshadowed in prayer 2 of the amended Notice of Motion and the balance of the relief hinges on the outcome of this central issue. A determination of this central issue is, in turn, dependent upon the interpretation and application of sections 20 and 23 of the CPA on the facts of this case and to the arrest of the applicant and seizure of his telephone. More pertinently, this turns on the facts contained in the SAPS Respondents' answering affidavit and the legality of the Arresting Officer's actions.

9 The applicant contended that the Cybercrime Warrant had not been served. Regardless of whether it had been served or not, once the determinative issue devolves onto the validity of the Arresting Officer's reliance on sections 20 and 23 of the CPA to justify the seizure of the telephone, the Cybercrime Warrant becomes irrelevant. That is because it cannot retroactively justify the seizure or retention of the telephone; nor can it have any bearing on the Arresting Officer's state of mind at the time of the arrest.

10 To determine the merits of the central issue, it is convenient to set out the relevant factual background. Those relevant facts are largely common cause and are as follows:

- 10.1 As is apparent from his title, the applicant is a senior ranking officer in the SAPS.
 - 10.2 Following from evidence given at the Madlanga Commission, the applicant was charged with the offence of defeating the ends of justice and a J50 warrant was issued for his arrest (*Arrest Warrant*). It was this Arrest Warrant that was executed early in the morning on 10 May 2026, during the course of which the Arresting Officer seized the applicant's telephone.
 - 10.3 The offence described in the Arrest Warrant is defeating the ends of justice. The Arrest Warrant does not mention the applicant's telephone or authorise its attachment or any other property belonging to the applicant.
 - 10.4 Subsequent to his arrest, the applicant has appeared in court and been released on bail. He complains that, despite his release on bail, his telephone has not been returned. His attorneys thereafter attempted to secure the release of his telephone, but when these proved unsuccessful this application was instituted.
 - 10.5 The applicant seeks a final interdict. The principal basis for this, as asserted in his founding affidavit, is that the telephone was seized without a warrant and the seizure was therefore unlawful. The applicant relies on various rights under the Constitution in support of this argument. He does not challenge the validity of the Arrest Warrant and does not impugn any aspect of the CPA.
- 11 Inasmuch as the applicant seeks a final interdict, his application must be determined by relying on the *Plascon Evans* Rule applicable to disputes of fact.

12 The answering affidavit was deposed to by the Arresting Officer, who confirmed that he had executed the Arrest Warrant, arresting the applicant, and in the process of doing so had seized the telephone.

12.1 He explains that underlying the charge of defeating the ends of justice that has been brought against applicant are allegations that he—together with Major General Kahn of the SAPS—gave unlawful instructions to a Warrant Officer to release one Mr Tariq Downes who was arrested at OR Tambo International Airport on 5 May 2021 for possession of unwrought gold.⁴

12.2 He explains that, when the applicant was arrested, the applicant had the telephone in his possession. The Arresting Officer said that, as a peace officer, he is authorised, by section 23 of the CPA, to search any person arrested and to seize any article found in his possession, custody or under his control, which the Arresting Officer on reasonable grounds believed to have been used in the commission of an offence or the suspected commission of an offence or may afford evidence of the commission or suspected commission of an offence.

12.3 The telephone, the Arresting Officer said, fell into that category. He believed that the telephone concerned was used in the commission of the offence or suspected commission of the offence and further believed that it might afford evidence of the commission or suspected commission of the offence. In his affidavit he describes the beliefs that he formed as being reasonable.

⁴ In his replying affidavit, the applicant admits this description of the charge and its underlying factual basis, but denies that the SAPS Respondents can rely on it for purposes of these proceedings as it has yet to be proved in any court of law. He therefore denies its relevance. These are plainly not good arguments in fact or law.

12.4 On that basis, the Arresting Officer asserts that the seizure of the telephone was lawful and that it can therefore be retained by the SAPS Respondents.

13 I have read the replying affidavit carefully. In it the applicant takes issue with much of what the Arresting Officer alleges, especially in relation to the Cybercrimes Warrant and the manner of its execution. But, in respect of the central issue of the belief that the Arresting Officer formed, he offers nothing much more than a bare denial and the promise of legal argument.

14 The applicant also raises a number of arguments which he describes as “points in limine”.⁵ Although I don’t deal with each one in turn, this judgment having been prepared with some degree of urgency, I have considered all of these. Leaving aside for now the doubtful underpinnings to a number of these arguments, the applicant’s points in limine do not assist me in determining the central issue before me. I am of the view that they do not assist the applicant either, in that they don’t advance a sufficient reason for why the SAPS Respondents should be non-suited and the applicant afforded the relief he seeks.

15 Returning to the central issue in this case, the SAPS Respondents rely on sections 20 and 23 of the CPA, which read as follows:

20 State may seize certain articles

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

⁵ There are four in total: the answering affidavit is not properly before the Court due to the absence of an application to condone its late filing; the SAPS Respondents’ alleged perjury in terms of section 9 of the Justices of the Peace and Commissioner of Oaths Act, 16 of 1963; the SAPS Respondents’ alleged contempt of court; and the SAPS Respondents’ failure to comply with the *Plascon Evans* Rule.

- (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.

...

23 Search of arrested person and seizure of article

- (1) On the arrest of any person, the person making the arrest may-
 - (a) if he is a peace officer, search the person arrested and seize any article referred to in section 20 which is found in the possession of or in the custody or under the control of the person arrested, and where such peace officer is not a police official, he shall forthwith deliver any such article to a police official; or
 - (b) if he is not a peace officer, seize any article referred to in section 20 which is in the possession of or in the custody or under the control of the person arrested and shall forthwith deliver any such article to a police official.
- (2) On the arrest of any person, the person making the arrest may place in safe custody any object found on the person arrested and which may be used to cause bodily harm to himself or others.

16 It seems to me that the meaning of these provisions—read together sensibly having regard to their purposes and the language used in context⁶—are unambiguous and clearly permitted the Arresting Officer to seize the telephone provided he had formed the requisite belief as to their evidential value or potential value. The forming of the requisite belief/s constitutes the jurisdictional fact/s on which the application of the sections hinge.

17 In this regard, the applicant's contentions that

⁶ As the relevant legal principles enjoin me to do—see, by way of example, the recent decision of *Thistle Trust v Commissioner of South African Revenue Services* 2025 (1) SA 70 (CC) at [96] – [98], where these principles are succinctly drawn together in the context of statutory interpretation.

17.1 the sections apply only to offences that are committed or being are committed at the time of the arrest, and

17.2 because the telephone was not mentioned in the J50 Arrest Warrant its seizure was as a matter of course unlawful

cannot be sustained. There is no textual, let alone sensible or purposive support, for either of these contentions. The applicant, when asked, could not refer me to any authority supporting same. Furthermore and in relation to the second argument, section 21 of the CPA expressly (and equally unambiguously) caters for the seizure of articles with a warrant; if the article is mentioned in a warrant then there would be no need for the arresting officer to form any belief under section 23 at all; section 23 is plainly intended to cater for the situation where the seizure of an article is *not* mentioned in a warrant and its purpose would be defeated if that resulted without more in the seizure of the article being unlawful because the arrest warrant makes no mention of it.

18 On the basis of the bare denial put up in the replying affidavit, I must accept the factual version advanced by the Arresting Officer that, when executing the Arrest Warrant, he formed the twin beliefs that the telephone was or might have been used in the commission of a crime or suspected crime and that the telephone might provide evidence of a crime or a suspected crime. The jurisdictional facts on which section 23 read with section 20 of the CPA hinges has therefore been satisfied on the evidence before me.

19 Reasonableness is, of course, not a question of fact, but is rather a valuation to be undertaken by a judge on the strength of the facts. Hence, it is for me to assess, on the admitted facts advanced by the applicant together with those facts relied on by the SAPS

Respondents that the applicant has not adequately challenged, whether or not the Arresting Officer's belief was reasonable such that he brings himself within the ambit of section 23 read with section 20 of the CPA.

20 The inquiry as to reasonableness must obviously be undertaken with reference to the offence with which the applicant is charged. I have shown above how the nature of that offence and the details underpinning it are common cause before me: the applicant is charged with defeating the ends of justice in that he, together with Major-General Kahn, gave unlawful instructions to a Warrant Officer to release Mr Downes from arrest.

21 Clearly this instruction entails a communication or communications, between the applicant and the Warrant Officer, or between the applicant and Major General Kahn, or both. Was the Arresting Officer's belief—that one or other of these communications might have been effected using the telephone or that the telephone might otherwise provide evidence of those communications—reasonable? I think that it must be. Unless the applicant, Major General Kahn, and the Warrant Officer were all present at the same place at the same time in person, the use of a telephonic device to effect a communication seems to me to be inevitable. The belief that the telephone was used for those purposes or might show evidence of it is therefore a reasonable one.

22 It follows that I am satisfied that the SAPS Respondents have brought themselves within sections 20 and 23 of the CPA and that the seizure of the applicant's telephone by the Arresting Officer was lawful. The applicant's possession of the telephone was therefore not unlawfully spoliated; he cannot rely on the *mandament* to secure its return.

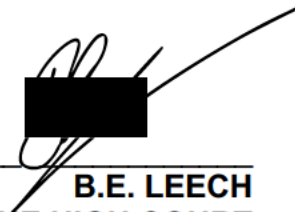
23 Should the applicant be entitled to the return of the telephone so as to safeguard its secrets from other members of the SAPS not authorised to know them? Counsel for the applicant did not refer me to any authority in support of this claim to vindicate possession in the face of section 23 of the CPA and I know of none. The applicant has—through statements made at various times, in correspondence from his attorney, and on oath before this Court—repeatedly drawn these concerns to the attention of the SAPS Respondents, but they persist in retaining the telephone and seeking access to its contents. I am unable to conclude that I should, as a matter of law, go further and overturn the SAPS Respondents’ lawful seizure of the telephone as an evidentiary article on the strength of the applicant’s concerns about unauthorised persons in SAPS gaining access to its contents.

24 In the circumstances, the application brought by the applicant falls to be dismissed.

25 What remains is the question of costs. The applicant was seeking before me to vindicate his rights *inter alia* under the Constitution. I am of the view that he remained within the bounds of and is accordingly safeguarded against a costs order by the *Biowatch* principle.

26 I accordingly make the following order:

- 1 The application is enrolled as one of urgency under Rule 6(12).
- 2 The application is dismissed.
- 3 The parties are each to bear their own costs.



B.E. LEECH
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

For the applicant:

Mr PW Makhambeni

Mr R Baloyi

Instructed by:

HSP Patel Attorneys

For the 1st to 5th respondents:

Mr TN Mlambo

Ms BV Potsane

(Heads of argument drawn by VS
Notshe, SC and TN Mlambo)

Instructed by:

The State Attorney

Date of hearing:

18 June 2026

Date of judgment:

22 June 2026