

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG DIVISION, JOHANNESBURGCASE NO: 049662/2023DATE: 25.08.2026

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES : NO

(3) REVISED



SIGNATURE

DATE: 25 August 2026

In the matter between

10 PALM INTERNET LOUNGE

Applicant

and

THE MINSTER OF POLICE AND OTHERS

Respondents

J U D G M E N T E X T E M P O R E

WILSON, J: On 24 March 2022, an acting magistrate in Johannesburg issued a search warrant authorising officers of the first respondent, acting under the supervision of the second respondent, to search the applicant's premises.

The search was executed on 29 March 2022. Various
 20 articles were seized. The applicant approaches me now to set aside the search warrant and to order the return of certain of the seized articles. Those articles are listed at ANNEXURE A to the applicant's notice of motion.

They are: 80 computer boxes with monitors, 80 power supplies for computers, various books, registers and

documents, 80 mouses and cash in the amount of R3 770. The applicant says that it was running an internet cafe at the premises and that these items were used in the course and scope of that business.

The first and second respondents say that certain illegal drugs were seized during the operation, but since the return of those items is not sought, and it is not suggested that those items belong to the applicant, I need not say anything more about them.

10 The basis for the applicant's claim lies in the assertion that the acting magistrate failed to apply his mind to the material placed before him. Alternatively, it is contended that the material placed before him was insufficient to justify the issuing of a search warrant.

Section 14 of the Constitution, 1996 provides a right not to have one's person or property searched. That right is limited by section 36 of the Constitution which states that any of the rights in the Bill of Rights may be limited in terms of a law of general application.

20 The effect of these provisions is that searches and seizures of persons or property are unlawful unless justified in terms of a law of general application. In this case, the relevant law is to be found in sections 20 and 21 of the Criminal Procedure Act 51 of 1977, in terms of which a search warrant may be issued to a police officer who

establishes a reasonable belief that an offence has been, is being, or is intended to be committed at particular premises, and that items affording evidence of, or that are being used to commit the offence, might be seized.

The basis on which the warrant in this case was applied for, was that the applicant's premises, at 33 Main Road, Newlands was being used for the purposes of illegal gambling. The application for the warrant was placed before the acting magistrate and was supported by an
10 affidavit deposed to by the second respondent, Detective Sergeant Rennie.

The question in this case is really whether that affidavit was sufficient to justify the issuing of the warrant. It does not matter in my view whether one draws the inference from the affidavit that the magistrate failed to apply his mind, or simply whether the magistrate could not reasonably have issued the warrant on the basis of the information contained in the affidavit. The result is the same.

20 Detective Sergeant Rennie's affidavit is threadbare. It merely asserts that on four occasions, two, or perhaps more, people went to the premises and saw illegal gambling taking place there. Only one of the individuals, an enforcement officer at the Gauteng Gambling Board, is named, and he went to the applicant's premises on one

occasion.

Undercover agents, who are not named, are said to have visited the premises on three other occasions. That is the substance of the allegations contained in the affidavit supporting the warrant. The question is whether the mere assertion that illegal gambling was taking place at the premises, albeit on four occasions, was sufficient to satisfy the acting magistrate that Detective Sergeant Rennie had a reasonable suspicion that this was happening and that
10 articles being put to illegal use or constituting evidence of an offence might be seized.

A reasonable suspicion is, of course, a fairly low bar, but it seems to me that it necessarily implies that facts have been brought to the applying officer's attention, from which a suspicion that an offence is being committed may reasonably be inferred. Those facts, it seems to me, cannot merely be the bald assertion that the offence is being committed in a particular place or at a particular time.

There must be primary facts that constitute, *prima*
20 *facie*, the commission of the offence. It was not enough for Detective Sergeant Rennie or the Magistrate to be informed that certain other persons thought they saw illegal gambling. Nor was it enough for Detective Sergeant Rennie to say to the magistrate that his suspicion was based on another person's subjective conclusion that illegal gambling

was taking place.

What Detective Sergeant Rennie was required to do was to acquaint himself with what exactly his informers said was happening on the occasions that they visited the premises. Once he was in possession of those primary facts, he could then make a judgment about whether the activity described to him might reasonably constitute the offence of illegal gambling.

It was then incumbent upon him to set those primary
10 facts out in his application for the warrant, and to state that it was on the basis of those primary facts, the actual occurrences witnessed at the property, that he suspected that the offence was being committed. None of this was done.

This means either that the acting magistrate could not reasonably have issued the warrant, or that the acting magistrate issued the warrant without applying his mind to whether the suspicion alleged was in fact reasonable. In those circumstances, there can be no basis for the warrant,
20 and it must be set aside.

It was argued that both the failure to delete certain phrases in the application for the warrant and the failure to correctly quote the statute that creates the offence that the applying officer suspected was being committed rendered the warrant defective. I do not accept that proposition.

Those defects may be evidence that the magistrate who issued the warrant did not properly apply his mind to the application for it. But without the obvious paucity of the affidavit underpinning the warrant, those technical defects in themselves could not invalidate it.

Ms Sithole, who appeared for the Minister of Police, accepted that upon the warrant being set aside all items seized listed in ANNEXURE A must be returned to the applicant.

10 For all those reasons, it seems to me that the warrant ought to be set aside and the articles listed in ANNEXURE A ought to be returned. A draft order on these terms was handed up to me by counsel for the applicant. I have corrected and edited it in various respects and initialled those amendments. Counsel for the applicant asks that costs be ordered and that counsel's costs be taxed on scale B. In a case like this, I think such a cost order is entirely reasonable.

20 For all those reasons, there will be an order in terms of the draft handed up by counsel, which I have amended, signed, dated and marked X. I hand down the order.



WILSON, J
JUDGE OF THE HIGH COURT
25 August 2026

