IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

NOT REPORTABLE

Case No: 20156/04
Date: 27/1/2006

In the matter between:

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| SOLOMON MOHALE | 1 st Applicant |
| GIDEON SEROTE | 2nd Applicant |
| And | |
| THE DIRECTORATE OF SPECIAL OPERATIONS | 1 stRespondent |
| THE DIRECTOR: DIRECTORATE OF SPECIAL OPERATIONS | 2nd Respondent |
| THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT | 3rd Respondent |

JUDGMENT

MAVUNDLA, J

[1] This is an application that was segmented into part A and part B in terms of which the following relief is sought:

1.1 PART A:

(a) That the First and or the Second Respondents be directed to deliver a copy of the affidavit/s, together with annexure ("the documents"), used in support of the application brought on or about the 26th May 2004, for the search and seizure warrants, copies of which were annexed to the notice of motion marked "A" "B" "C" and "D" ("the warrants")

(b) That the Applicants be granted leave to supplement their papers upon receipt of the documents for the purposes of the relief sought in part B of the notice of motion;

(c) That the respondents be ordered to pay the cost of the application on the scale between attorney and client.

1.2. PART B:

(a) That the search and seizure warrants granted by a Judge in Chambers on the or about the 26 May 2004, copies of which are annexed to the notice of motion marked "A", "B", *"C"* and "D", be set aside;

(b) That the First Respondent be directed to return all documents seized pursuant of the search warrants, as itemized in the receipts annexed to the notice of motion marked "E" "F" "G" and "H";

(c) That the Second and the Third Respondents be directed to ensure compliance with the direction in 1.2 (b) herein above;

(d) That the Respondents pay the cost of this application, jointly and severally, the one paying the other to be absolved.

[2] The relief sought in part A was initially opposed. However, the Respondents conceded this relief prior to the matter being heard on the 8th March 2005 and consequently on the said date I ordered the Respondents to pay the cost incurred in respect of the relief sought in part A on party and party scale. I further made it an order of this court the agreement between the parties that they be granted leave to

raise for consideration by this Court the following questions and to supplement their papers:

1.2 Whether the order of party and party costs made on the 8th May 2005 should be altered to be an order of attorney and client costs and if so;

1.3 Whether, if such cost should be ordered to be paid on attorney and client scale, the date up until which such attorney and client costs order should be found to be payable.

[3] The parties subsequently supplemented their papers and therefore, in respect of Part A the only issue to be considered is the costs aspect pertaining thereto. I shall therefore deal with the issues pertaining to the cost aspects at the end of this judgment.

2. In respect of Part B the matter remains opposed.

[4] The First applicant is an attorney and a businessman. The Second applicant is a businessman. Both the applicants are directors in the various entities referred to in the warrants.

**BACKGROUND** FACTS

[5] During October 2003, an article appeared in the Noseweek Magazine containing allegations of corruption made by one Mr. Habakuk Shikoane against both the applicants.

[6] Prior to the issue of the warrants the first applicant attended a meeting at the offices of the respondents on request during March 2004. On the 9 March 2004 he then received a summons in terms of section 28 (6) and (7) of the NPA Act to attend a meeting at the Magistrate Court Polokwane on the 15 April 2004 which meeting both he and the second applicant attended as the latter had also received similar summons. The said summons referred to allegations of corruption pertaining to the acquisition of a tender contract by CPS Northern (PTY) Ltd, the latter being one of the entities of the applicants.

[7] On the 26 May 2004 on the bases of on an affidavit on oath that there exist a reasonable suspicion that the specified offences, to wit contravention of the Corruption Act 94 of 1992, and the contravention of section 4-6 of the Prevention of Organized Crime Act, 121 of 1998 have been committed, or an attempt was made to commit these offences, and the need in regard to investigation for search and seizure of objects as per annexure attached to the respective warrants, search warrants were issued in terms of section 29(5) of the National Prosecuting Authority Act, No 32 of 1998, as amended, by a Judge in Chambers in respect of and against:

7.1 Mr Solomon Mohale and his premises at 25 Melville Road, Hyde Park Sandton.

7.2 Premises 178 Cnr Rivonia & Empire Place, Sandton Johannesburg;

7.3. Mr. Gideon Serote, 28 De Villiers Street, Bendor Park, Polokwane;

7.4. Mr. Gideon Serote, 94 Market Street, Polokwane.

[8] According to the applicants on the 27 May 2004 officers of the first respondent effected a search at the respective premises in respect of which the warrants had been issued. Over and above the said premises, a search at the Nicoh premises situated at Suite 905, 9th floor Nedbank Building, 58 Schoeman Street Polokwane was made notwithstanding the fact that there was no warrant issued in respect of the said premises. The respondent says that the search at the last mentioned premises was conducted with the consent of the second applicant. I will revert to this point in due cause.

[9] On the 24 and 28 June 2004 the applicants caused their attorneys of record to seek from the first respondent access to the affidavits and documents that were used in support of the application for the search warrants. The first respondent per letter dated the 5 July 2004 advised that they were of the view that the release and publication of the requested information might potentially prejudice the ongoing criminal investigation and that unless ordered otherwise by a court of law, they are not in a position to accede to the request: On the 15 July 2004 the applicants directed another letter to the first respondent advising that as the law stands, they are entitled to the requested information and that the attitude of the first respondent compels them to approach the court for an order and they would seek punitive cost against the fist respondent. The first respondent, per letter "SM15" and erroneously dated the 5 July 2004, responded to the applicants' letter dated

the 15 July 2004 and advised that the decision not to accede to the request was one taken by the Investigating Director of the Director of Special Operations appointed in terms of section 7(4)(a)(i)(aa) of the NPA Act.

[10] This last mentioned response of the first respondent resulted in the applicants launching this two legged application. Although the application pertaining to Part A was opposed, the first respondent subsequently and without any court order furnished the applicants with copies and annexure thereto of the affidavit upon which the application for the search warrants was premised.

[11] It needs mention that in opposing part A, the first respondent filed an affidavit of Mr. M. G. Ledwaba, the Investigating Director of Special Operations. The reason for the refusal to furnish the relevant affidavit is that, so contends Mr. Ledwaba, the said affidavit makes reference to an affidavit of an informant from whom certain information pertaining to certain allegation of corruption has been obtained. The disclosure of the affidavit in support of the search warrants would reveal the identity of the source of information the bases of which an investigation is being conducted upon the applicants and Mr. Ngoako Ramatlodi, the former Premier of Limpopo Province, and Mr. Thaba Muamadi who is the Member of the Executive Committee of the Provincial Executive Committee of the Limpopo Province. The identity of the said source of information is confidential and the disclosure of such identity could reasonably be expected to prejudice the investigations. Once the investigations have been completed the first respondent

will make a decision whether to institute criminal proceedings or not, depending on outcome of the investigations and undertakes to furnish the relevant affidavit and annexure used in support of the investigation as soon as the investigation is completed. He further says that the investigation will be completed by the end of November 2004.

[12] The allegations being investigated against Mr. Ramatlodi and Mr. Mufamadi are that both have had undisclosed financial interest in a company called Northern Corporate Investment Holdings (Pty) Limited (Nicoh) which in turn holds 30% shares in a company called CPS Northern (Pty) Limited and was awarded the contract to distribute pension payouts in Limpopo Province at a time when Mr. Ramatlodi was a Premier in the Limpopo Province and Mr. Mufamadi was the MEC.

[13] Mr. Ledwaba further attached to his affidavit copies of a letter that was addressed to the National Director of Public Prosecutions dated the 20 November 2003, a letter of complaint from the Chairperson of AZAPO Limpopo dated the 04/11/2003 in terms of which a complaint was being registered by Azapo calling for an investigation of the truthfulness or otherwise of certain allegations of corruption that appeared in Noseweek , a copy of the Noseweek paper which contained an article regarding an interview with a Mr. Shikoane regarding alleged corruption by Mr. Ngoako Ramatlodi, the first applicant. He further referred to the affidavit of Mr. Rudolf Mastenbroek.

[14] .Mr. Ledwaba in his affidavit states that the allegations in the Noseweek magazine were referred to the Director of Public Prosecutions by the Public Protector round about the 20 November 2003 and that a preparatory investigation in terms of section 28(13) of the POCA authorizes on the 23 March 2004 was conducted, which investigations revealed that CPS held 70% of the shares in CPS Northern and the remaining shares are held by Nicoh. He further states that the first applicant is an attorney and therefore he could not have had difficulty in regard to identifying the documents sought by the first respondent. He further states that there was a reasonable ground for suspecting that the offence of corruption and or contravention of section 4 and 6 of POCA has been committed.

[15] He denies that the first respondent had undertaken a fishing expedition and that there existed justifiable grounds for refusing to disclose the affidavit and annexure there to that were made use of for the support of the application for the search warrants. He denies that there were no reasonable grounds for the granting of the search warrant. He further states that it is the practice of the respondent not to treat such an application as an ordinary motion court application but he does hot dispute that the applicants are entitled to challenge the validity of the search warrants. He further states that a case has been made that the disclosure of the affidavit and annexure sought would not be justifiable before the investigation has been completed. He then proceeded to reserve the rights of the respondents to deal with the averments pertaining to part B.

[16] The applicants subsequently filed a replying affidavit in response to Mr. Ledwa's answering affidavit. They further proceeded to file a supplementary affidavit consequent to the order of the 8thMarch 2005 and after having received from the respondents the copy of the affidavit and annexure thereto used in support of the application for the search warrants, which copy is attached to this supplementary affidavit as annexure "S4".

[17] Annexure "S4" is the affidavit of Mr. Rudolph Mastenbroek and it was only made available to the applicants on the 25 February 2005, according to the applicants, only 9 days before the hearing of the matter on the 8 March 2005.

ATTACK ON THE ISSUE OF THE WARRANTS

[ 18] The applicants in mounting an attack against the issue of the warrants, state that, although they cooperated with the officers of the first respondent as they felt obliged to, they considered the search and seizure warrants to be without good reason, and a substantial invasion of their privacy and that the warrants appeared to authorize the officers of the first respondent to 'draw a veritable "dragnet" through' their private and business documents and property for the period 1995 to date and that the first respondent does not seem to know exactly what he was looking for.

[19] The attack upon the issue of the search warrants is mounted on two points, namely:

19.1 vagueness and over broadness.

19.2 none disclosure

VAGUENESS AND OVER BREATH

[20] Mr Helens in buttressing his submission that the respondents did not make a full disclosure to the judge in chambers when the application for the issue of the warrants was granted, has referred to the following authorities, namely: Cometal-Mometal Corlana Enterprises 1981 (2) SA 412; MV Rizcun Trader (4) 2000 (3) SA 776; and Cooper NO v First National Bank of SA Ltd 2001 (3) SA 705 SCA.

[21] In the matter of Cooper NO v First National Bank of SA Ltd, supra, where the court dealt with Section 69(3) of the Insolvency Act 24 of 1936 which affords a magistrate a discretion to issue a warrant to search for and take possession of property, book or document, on an application and on a statement made on oath, that there are reasonable grounds for suspecting that any property, book or document belonging to an insolvent estate is concealed upon any person, or at any place or upon or in any vehicle or receptacle of whatever nature, or is otherwise unlawfully withheld from the trustee concerned, the Court set aside the warrant. The court was of the view that not all the facts which were material were brought

before the magistrate. Although it did not decide what impact such non-disclosure would have had to the issue of the warrant, the Court at page 717A cited De Jager v Heilbron and Others 1947 (2) SA 415 (W) at 419-420 where Roper J said:

> "It has been laid down, however, in numerous decisions of our Courts that the utmost good faith must be observed by litigants making *ex parte* applications, and that all material facts must be placed before the Court. See eg In re Leydsdorp and Pietersburg Estates Ltd. (1903, TS 245; Crowley v Crowley (1919, T.D.P. 426). If an order has been made upon an *ex parte* application, and it appears that material facts have been kept back which might have influenced the decision of the Court whether to make the order or not, the Court has a discretion to set aside the order on the ground of non-disclosure. (Venter v Van Graan (1929; TPD Van den Heuvel (1937, W.L.D.4). It is not necessary that the suppression of the material facts shall have been willful or *mala fide."*
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> The Court further went to say that the above quoted words are as valid today as they were then. (In re Leydsdorp and Pietersburg Estates Ltd. (supra); Barclays Bank v Giles (supra))

[22] In the MV Ritzcun Trader (4) matter, supra, the Court held, *inter alia,* that as by its very nature an *ex parte* application was decided on a one -sided version of events and, as the evidentiary criterion was *prima facie* proof, the *uberrima fides* rule placed a duty on a litigant who approached the Court to disclose every circumstance which might influence the Court's decision to grant or withhold the

relief sought. The same view is held in the Cometal-Mometal v Corlana Enterprises case supra.

[23] I sanguine myself with the above stated views, particular having regard to the fact that section 34 of the Constitution of SA Act 108 of 1996 state that: Everyone has the right to have any dispute that can be resolved by the application of the law decided in a fair public hearing before a court or, another independent and impartial tribunal or forum. Where this right is abridged by the very fact that a statute allows an order to be granted against another person prior to such person having been afforded the *audi alteram* rule, this might not be consonant with the spirit of a fair trial and.therefore the need to demand that there must be a strict adherence to the principle of *uberrima fides* becomes more demanding to ensure a measure of fairness and to ensure that the Court that is called upon to grant a relief in the absence of another party, exercise its discretion judicially and properly upon all material facts placed before it.

[24] It has been submitted by Mr. Helens that the first respondent, by slight of hand, through Mr. Mastenbroek, failed to disclose that the source of information upon which the warrants were sought, and referred to as an informant, is in fact the very person named Mr. Habakuk Shikoane, who Mr. Mastenbroek creates the impression that he could not complete his interview because he fell seriously ill during the course of the interview held in terms of section 28 (6) of POCA. In

response to this submission, Mr. Maritz for the respondents, contends that there is no proof that there was a "slight of hand" on the part of the respondents since the respondents did place before the judge in chambers the Noseweek magazine article in which the informant had made certain allegations of corruption and or fraud against the applicants and Mr. Ngoako Ramatlodi and Mr. Mufamadi. He further submits that there was an undertaking on the part of the respondents that they would protect the identity of the informant and that there was therefore nothing falls placed before the judge in chambers nor was there any deliberate "slight of hand" on the part of the respondents.

[25] The Noseweek magazine article relates to an interview that was held by an unidentified person with Mr. Habakuk Shikoane. There was no affidavit of the person who conducted the said interview with Mr. Shikoane, (annexure "B" pages 216-217 paginated pages) placed before the judge in chambers regarding the alleged interview with Mr. Shikoane. Therefore the trigger that resulted in the alleged suspicion being formed on the part of Mr. Ledwaba that there was a criminal or fraudulent conduct on the part of the applicants and Mr. Ramatlodi and Mr. Mufamadi warranting an investigation in terms of section 28(1) of the Act was premised on hearsay and speculative evidence. From the article itself, it is clear that there is prevarication on the part of Mr. Sikoane and what he states in his affidavit, which has been annexed in the papers as annexure "S6". In the article Mr. Shikoane is alleged to be denying having made certain statements he is supposed to have made earlier to the very same Noseweek magazine, in particular

that he ever said that he is holding shares in Nicoh for the benefit of and on behalf of Mr. Ramatlodi.

[26] There was no need to protect the identity of the informant, as the starting point, when regard is had to the fact that Mr. Shikoane was bold enough to hold interviews with Noseweek magazine. There was no need to create an impression that the informant was someone else but Mr. Shikoane himself. Mr. Mastenbroek, was duty bound in disclosing to the judge in chambers that the informant is Mr. Shikoane and that in the article referred to herein above he is prevaricating. It would then have to be left to the discretion of the judge in chambers as to whether he wants to grant the warrants sought. In this regard vide Khala v Minister of Safety and Security 1994(4) SA 218 (W) at 233B-H, Shabalala and Others v Attorney General, Transvaal and Another 1996 (1) SA 725 (CCO at 750 para 54-55 where it was stated inter alia that: "Sufficient evidence or circumstances ought to be placed before the judicial officer to enable the court its own mind in assessing the legitimacy of the claim. It is for the court to decide what evidence would be sufficient in a particular case and what weight must be attached thereto." It, may well be so that there was no *mala fides* on the part of Mr. Mastenbroek, however, that is immaterial since an important fact has not been disclosed so as to enable the judge in chambers to decide on that very fact that notwithstanding the prevarication of the informant Mr. Shikoane, there was nonetheless sufficient and reliable information on oath which the reasonable suspicion has been arrived at. It is correct, as submitted by Mr.Hellens that on

reading the affidavit of Mr. Mastenbroek that Mr. Shikoane subsequently fell ill during the interview, an impression is created that he did not complete the interview and that another person subsequently supplied further information which the former could not supply as the result of having fallen ill. This impression is misleading and it is in fact this misstatement that becomes the slight of hand, rightly complained of. I am of the view that there was indeed a material fact that was not disclosed and therefore there was no adherence to the *uberrima fides* principle *in casu.* In Powell No v Van Der Merwe and Others 2005 (7) BCLR 675 (SCA) Southwood AJA, in a minority judgment held the view that the application for the search warrant was flawed by the misstatement of material facts in that particular case and that this justified the setting aside of the warrants and the return of the documents and other things that had been seized in terms of such warrants. I am of the view that the same applies *in casu* and the warrants stand to be set aside for this reason only'

[27] I have taken note of the submissions made by Mr. Maritz in regard to the noble purpose of section 29(4) and (5) of the NPAA and the dictum in the authorities he has referred me to, namely, Investigating Directorate: SEO v Hyundai Motors Distributors 2001 (1) SA 545 AT 566, National Director of Public Prosecutions v Rautenbach 2005 (4) SA 603 (SAC) and the authorities therein cited, in particular at par 27 page 614. It may well be so that the Court is not required to satisfy itself that the defendant is probably guilty of an offence or benefited from other unlawful activity. However, the court must be appraised of

the nature and tenor of the evidence relied upon by the office of the National Director of the Public Prosecution. Although the Court is not required to determine whether the evidence is probably true or not, such evidence placed before the Court must be placed with its strength and weakness, unselectively, untruncated, and with candour so as to enable the Court to exercise its own discretion. Once there is subversion on the evidence, be it overtly or otherwise, the exercise of the discretion of the Court is impacted upon. This is what, in my view distinguishes the present case from what is said in the Rautenbach case and other similar cases.

VAGUENESS AND OVERBREATH

Mr. Helens in support of his further submission that the warrants were too vague, lacked particularity and the reasons for the suspicion on the affidavit are at odds with what is stated in the warrants, relied on the following cases: Powell NO v Van Der Merwe and Others, supra, Pretoria Portland Cement Co. Ltd v Competion Commission 2003 (2) SA 381.

[28] The documents sought, as reflected on annexure A of the warrants, relate to specified offences of fraud, and or theft and or corruption and or money laundering. However, on the face of the warrants it is stated that there is the existence of a reasonable suspicion that the specified offences, namely contravention of the Corruption Act and contraventions of sections 4-6 of the Prevention of Organized Crime Act of 1998 has been committed or an attempt

was made to commit these offences. The warrants say nothing of the commission of or attempt to commit offences of fraud and or theft. Accordingly the documents that were removed as per annexure A of the warrants had not been authorized because there is no base laid that there is a suspicion that such offences, i.e. fraud or theft, have been committed. There is therefore no authorization for the removal of documents as described in annexure A of the warrants. The removal of those documents was therefore unlawful. The position would have been different had annexure A of the warrants described the relevant documents as those relating to the commission or attempt to commit specified offence, namely contravention of the Corruption Act 94 of 1992 and contravention of section 4-6 of the Prevention of Organized Crime Act, 121 of 1998, as described on the warrants. Therefore, I am of the view that there is merit in the submission made by Mr. Helens that the warrants were *ultra vires* and unlawful. In this regard vide Powell No case supra where the Court found that the reference by the investigation director to "alleged irregularities" was overbroad and that the effect thereof was to arrogate to the director the power to investigate irregularities which constituted neither specified offences nor offences and that such was *ultra vires* the Act.

[29] In respect of the documents that were removed without a warrant at suite 905, 9th floor Nedbank Building, 58 Schoeman Street Polokwane, the version of the respondents is that these were removed with the consent of the second applicant. In view of the fact that the relevant search was preceded by the warrants which I have found to have been *ultra vires* and therefore unlawful, the search and seizure

at the aforesaid premises was contemporaneous with the said unlawful search and cannot be looked at in isolation and differently. The applicants were cooperating with the respondents as they believed that they were obliged to do so. That cooperation does not imbue the unlawful search and seizure with the efficacy of lawfulness, nor did it take away their right to challenge the unlawfulness of such search and seizure. I am therefore of the view that the relevant search and seizure is also unlawful.

[30] It has further been contended by the respondents that the first applicant is an attorney and therefore he ought not have had difficulty in identifying the relevant documents. This cannot be an answer because the second applicant is not an attorney and would not have the legal skills possessed by the first applicant to be in a position to identify such documents. The documents, as described in the warrants are coughed in too general terms. The applicants further contend that the respondents have embarked on a fishing expedition. I am inclined to adopt the view of Van Dijkhorst J in the matter of Cullinan Holdings Ltd v Mamelodi Stadsraad 1992 (1) SA 645 at 648F that where a party calls for documents to be produced he cannot do so "deur gebruikmaking van generiese omskrywing 'n net kan knoop waarmee vir halfbekende dokumente gevis kan word nie". The person seeking documents must specify the documents which he seeks and knows of and he must give full details and specific description thereof. In *casu,* a very wide net is cast since the objects are described in broad and generic terms extending from 1995 to date. Besides it would seem that it is left to the

investigating officer to decide what document is or is not relevant. I do not think that this passes the master as stated by Van Dijkhorst J.

[31] I am of the view that the point of vagueness and over breadth raised by Mr. Hellens has merit and well taken and should be upheld and for that reason as well the warrants should be set aside.

[32] What then remains to be determined is the question of costs, in respect of part A whether the respondents must be ordered to pay attorney and client cost; in respect of part B also whether the respondents must be mulcted with attorney and client cost as well.

[33] In Texas Co. (SA) Ltd v Cape Town Municipality 1926 A.D. 467 at page 488 Innes C.J. said that "Cost are awarded to a successful party in order to indemnify him for the expenses to which he has been put through having been unjustly compelled either to initiate or to defend litigation as the case may be." Generally, the successful party will be entitled to the party and party cost

[34] In the Law of Attorneys' Costs and Taxation Thereof, Jacob and Ehlers at par44 state that "An award of attorney and client costs (payable by the opposite side) will be made only in exceptional cases to mark the court's disapproval of fraudulent, dishonest and reprehensible or 'very reprehensible' conduct usually

persisted in by a party to a suit". These attorney and party cost, are described in JK Fulton (Pty) Ltd v Logic Engineering Enterprises (Pty) Ltd and Others 1983 (1) SA 735 (W) at 741A-B as follows:

"The attorney and client costs are those which are taxable as such, when such an award is made as between adversaries and not necessarily such as might be recoverable as between an attorney and own client"

Vide also Ernest and Young and Others v Beinash and Others 1999 (1) SA 114 at 1148 A-C

[35] As I have stated earlier, my view is that there was no bases at all, notwithstanding the undertaking to do so, that the identity of Mr. Shikoane be protected as he had no difficulty in having an interview conducted with him by the Noseweek. There was no reason at all for the respondents to have refused to make available to the applicants the requested affidavit that was used in support of the application for the issue of the warrants. Once the respondents made available the relevant affidavits to the applicants it meant that they have by implication conceded to the fact that the applicants were entitled to bring the application referred to in part A. However, the respondents persisted in their opposition to the attorney and client cost. I am of the view that the respondents must bear the attorney and client costs pertaining to part A as from the 8th of March 2005, after the party and party order was made, since there was no justification in their contention.

[36] In respect of part B, it was contended on behalf of the applicants that the respondents should be ordered to pay attorney and client cost because the respondents refused to retreat much earlier and had been warned of the gross unlawful nature of the refusal to supply the relevant documents. It is further contended that the respondents wield extensive powers as the result of both NPA Act and under the Criminal Procedure Act and that the Court should mark its displeasure in their conduct. I do not agree that this is a matter where the respondents should be rapped over on the knuckles as this would then make it difficult for the respondents to investigate genuine complains for fear of being mulcted with punitive cost every time they lose an application. Besides, I do not think that the applicants have shown that there was gross and deliberate abuse of authority, if ever that they have shown any abuse, which I do not think they have.

[37] In the premises the following order is made:

ORDER:

It is hereby ordered:

(a) That the search warrants granted by a judge in chambers on the 26 May 2004, copies of which are annexed to the Notice of Motion marked" A", "B" "C" and "D" are set aside;

(b) That the first respondent is directed to return all documents seized pursuant to the search warrants, as itemized in receipts annexed to the Notice of Motion marked "E", "F", "G" and "H";

(c) That the second and third respondent are directed to ensure compliance with the directive contained in (b) herein above;

(d) That the respondents pay the cost of the PART A application as follows:

(i) On party and party scale up to and including the granting of the order dated the 08 May 2005;

(ii) On attorney and client scale as from and after the granting of the order of the 08 May 2005.

(e) That the respondents pay the cost of the application in respect of PART B on party and party scale;

(f) That costs in (d) and (e) herein above shall be paid jointly and severally, the one paying the other to be absolved.

N.M.MAVUNDLA

JUDGE OF THE HIGH COURT

Date of hearing: 8/3/05
Appl Counsel: M/R. Hellens
Instructor: Deneys Reitz Att
Resp/ Counsel: S.J. Maritz (sc)
Instructor: State Att