



IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

25/1/2017

CASE NUMBER: 96217: 2016

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
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25 / 01 / 2017	
DATE	SIGNATURE

In the matter between:

COSMAS TSHILAS

APPLICANT

And

THE MINISTER OF SAPS N.O.

1<sup>ST</sup> RESPONDENT

CAPTAIN ANTON VILJOEN N.O.

2<sup>nd</sup> RESPONDENT

THE MAGISTRATE POTCHEFSTROOM N.O.

3<sup>RD</sup> RESPONDENT

THE CHAIRPERSON:

NORTH WEST GAMBLING BOARD

4<sup>TH</sup> RESPONDENT

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## JUDGMENT

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MAVUNDLA J;

[1] This is an urgent application in terms of which the applicant sought an order in the following terms:

- 1.1 Dispensing with forms and services in terms of Rule 6 (12) of the Rules of the High Court and disposing of the matter as one of urgency in terms of this Rule;
- 1.2 Reconsideration in terms of Rule 6(12)(c) of the Rules of the High Court of:
  - (a) the warrant issued by the third respondent on the 5 December 2016 in respect of the applicant's business ZAR Entertainment situated at 159 Sykiotis Building, "Wandelaan", 3 Wes Walk Way, Potchefstroom and executed on 5 December 2016 ;
  - (b) Directing and ordering the First, Second and Fourth Respondents and any other respondent who is in possession or control of the applicant's movable goods and monies listed in ANNEXURE A hereto, to forthwith return and restore possession of the moveable goods that were removed by the SAPS representatives, who were under the control of the second respondent from the applicant's business

premises, which are situated at 159 Sykiotis Building, 'Wandelaan', 3  
Wes Walk Way, Potchefstroom;

- (c) Costs of suit (only in the event of opposition) against those respondents who oppose the application.

[2] The matter was opposed by the first to third respondents. There was neither appearance for nor any opposition to the application by the fourth respondent. In that regard they raised three points *in limine*, one of which was during the hearing of the matter abandoned, the remaining two being one of urgency and the second one being of *locus standi*. The main defence on the merits being that the warrant issued in terms of s25 of CPA was duly issued by the third respondent having bona fide and properly applied his mind.

[3] The matter came before me on the 12 January 2017. I allowed the parties to address me on the points of *limine*, and without deciding thereon, as well on the merits, just in case I were to dismiss the points *in limine*. Having heard the parties I reserved judgment. I therefore proceed to deal with the points *in limine*.

AD POINTS IN LIMINE:

AD URGENCY

[4] Rule 6(12) of the Uniform Court Rules of High Court deal with urgent applications.

- 4.1 The purposes of this rule is, in my mind, to afford an aggrieved person to approach the Court for whatever relief he / she or it seeks on urgent basis without following the prescribed ordinary Court rules with regard to forms, service, time frames for entering notice of intention to oppose, filing of opposing and replying affidavits and the setting down of the matter. The applicant may structure the rules and truncate the time frames as he deems fit to meet the exigency or urgency of situation; rule 12(a);
- 4.2 The applicant in his founding affidavit must set forth explicitly the circumstances which render the matter urgent and the reason why he claims that he cannot be afforded substantial relief at a hearing in due course;
- 4.3 An urgent application although brought in terms of rule 6(12), it is in essence brought in terms of rule 6(5) the provisions of which also apply. The subrule 6(5) prescribes the time frames for the filing of the notice of appearance to oppose and the filing of the opposing affidavit. Whereas, under normal circumstances, in terms of this subrule 6(5), the filing of the opposing affidavit must be filed within fifteen days after filing of the notice of intention to oppose, the applicant, in an urgent application is permitted to truncate this period of filing of the opposing affidavit;
- 4.4 The question of abridging the prescribed time frames in Rule 6(5), is dictated upon by the exigency and circumstances of the particular case. The Courts have warned that an applicant who believes that the matter is urgent, must truncate the period afforded to the other party, mindful of and proportionate to the degree of urgency. The Courts have warned that not every matter is urgent and therefore a kneejerk approach in truncating the period will not be tolerated; *vide Gallagher v Norman's Transport Lines (Pty) Ltd.*<sup>1</sup>
- 4.5 In my view, the applicant in an urgent application can only deviate from the prescribed time frames, by, inter alia, truncating the period of filing opposing affidavit, but is not permitted to extend same beyond the ordinary prescribed period in subrule 6(5). An extension beyond the ordinary prescribed period suggests that the matter is not urgent and therefore the applicant must bring it in an ordinary motion court; *vide Luna Meubel Vervaardigers v Makin and Another* 1977 (4) SA 135 (WLD) at 136H-137A-B.

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<sup>1</sup>1992 (3) SA 500 at 502E-503 D.

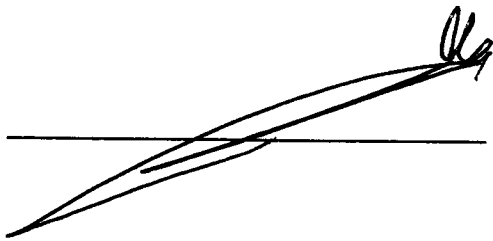
- [5] *In casu* it is common cause that the application was launched on the 9 December 2016. It is common cause that the respondents were called upon to file their notice of intention to oppose the application, if any, not later than the 14 Decembers 2016. The respondents were afforded until the 29 December 2016 to file answering affidavit thus 20 days, which was done; and the matter was set down for hearing on the 10 January 2017.
- [6] It brooks no argument that the aforesaid 20 days afforded to the respondents to file their answering affidavit was in fact not a truncation, but an extension of the time frame prescribed by rule 6(5).
- [7] The reason why the applicant decided to afford the respondents twenty days, as contained in the founding affidavit are:
- “143 that the respondents are afforded sufficient time to oppose this application and file opposing papers and that there cannot be any mention of any prejudice on their part due to the shortened time periods laid down in the notice of motion;
- 145 ... the first and second respondent chose to raid my business strategically at a time when the court is about to go on recess and when the state departments are run on Skeleton staff;
- 146 This forces me to afford the respondents adequate time bearing in mind that it is almost mid-December;
147. I have been accordingly been advised to afford the respondents more time than what the facts actually justify, and stress that this is done for no other reason than to ensure that the matter gets heard and not be subject of unnecessary time delays.”
- [8] A search warrant is by its very nature invasive and infringes upon the rights of privacy of the person or owner of the premises the warrant is directed against. Once issued and executed, it invariably attracts urgency, thus accords a person aggrieved thereof, or dispossessed of his goods thereof, a right to approach the Court on urgent basis to have such warrant reviewed and set aside.

- [9] Once the right to approach the court on urgent basis arises, it must be exercised promptly, otherwise the urgency is lost. *In casu*, as pointed out herein above the applicant, decided to afford the respondents more time than is prescribed by sub rule 6(5). The reason advanced for affording the respondents adequate time was that it was almost mid-December and the Court was about to go on. In my view, these reasons advanced by the applicant are not persuasive to justify stretching the prescribed period of 15 days demanded by rule 6(5). It needs to be borne in mind that the Court doors remain open even during recess period. The fact that the respondents offices would be operating on skeleton staff is also not a justification to stretch the Court rules beyond fifteen court days. The very fact that the respondents operate its offices on skeleton staff is because the respondents appreciate that it is not an excuse not to defend any matter simply because it is mid-December and the Court is in recess. The very fact that the Court doors are open even during recess period, is to ensure that deserving urgent matters are dealt with during such period.
- [10] In my view, the applicant by "relaxing" the period of filing of opposing affidavit upward, for unpersuasive reasons, deliberately gave away his right to access the urgent court and must therefore bear the consequences he crafted for himself. The matter stands therefore to be struck from the urgent roll with costs, without having to decide the rest of the other points *in limine* because, as same can be decided together with the merits of the matter.

[11] In the result it is ordered that:

(i) The matter is removed from the urgent roll;

(11) The applicant is ordered to pay the first, second and third respondents' costs.

A handwritten signature in black ink, appearing to be 'N.M. MAVUNDLA J.', is written over a horizontal line.

N.M. MAVUNDLA J.

DATE OF HEARING : 10 / 01/ 2017

DATE OF JUDGMENT : 25 / 01 / 2017

APPLICANT'S ADV : ADV N JAGGA

APPLICANT'S ATT : VARDAKOS ATTORNEYS

RESPONDENT'S ADV : ADV M BOTMA

RESPONDENT'S ATT : STATE ATTORNEY PRETORIA