

SOUTH AFRICA / JUDGMENT

ADP Marine & Modular Proprietary Limited v Rocher and Others (5701/2022) [2025] ZAWCHC 281 (9 July 2025)

[2025] ZAWCHC 281

COURT

Western Cape High Court, Cape Town

BEFORE

Sipunzi

CASE / FILE NUMBER

5701/2022

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IN THE HIGH COURT OF

SOUTH AFRICA

WESTERN CAPE DIVISION,

CAPE TOWN

Case No: 5701/2022

In

the matter between:

ADP

MARINE & MODULAR PROPRIETARY LIMITED

Applicant

and

EMILE VIVIAN

ROCHER

First Respondent

WESTARCOR

ENGINEERING

Second Respondent

PROPRIETARY LIMITED

HAMMER TOOL

TRADING

Third Respondent

HAMMER TOOL TECH

CC
Fourth Respondent

JUDGMENT

SIPUNZI AJ

Introduction

[1] This is an application in terms of which the applicant seeks preservation of certain information and documentation that was seized pursuant to an Anton Pillar order. The court partially granted the applicant's request for interim relief on 18 May 2022, and subsequently the final relief was granted on 25 July 2023. The relief sought is as set out in the notice of motion dated 2 October 2024;

1. 'That all "Copied Data" obtained in terms of an Anton Pillar Order per Mr Justice Le Grange on 18 May 2022 and confirmed by Mr Acting Justice Hockey on 25 July 2023 (the Anton Pillar Order) shall remain under the control of the Sheriff pending the outcome of a criminal complaint to be lodged by the applicant with the South African Police Services (the Criminal Complaint); alternatively pending further directions of this Court;
2. Insofar as necessary, that leave is granted to the applicant to utilise the "Copied Data" processed in terms of Paragraph 5.3 of the Anton Pillar Order for purposes of formulating the Criminal Complaint.
3. Any party opposing this relief is ordered to pay the costs thereof, jointly and severally, the one paying the other(s) to be absolved.
4. Further or alternative relief.'

[2] The application is opposed. The first, the third and the fourth respondents have taken, only a point of law. The second respondent's opposition is predicated on the grounds that the relief sought offends its constitutional rights against self-incrimination, an abuse of process, and the same point of law as the other respondents.

The parties

- [3] The applicant is ADP Marine & Modular Proprietary Limited is a private company with limited liability, duly incorporated with registration number 2012/071318/07, and having its registered office at Golf Park 3, Golf Park, Raapenberg Road, Mowbray, Cape Town. It was formerly known as ADP Projects (Pty) Ltd.
- [4] The first respondent is Emile Vivian Rocher, an adult mechanical engineer, with ID number 8[...], who resides at 1[...] E[...] Road, Durbanville, Cape Town, 7550.

- [5] The second respondent is Westarcor Engineering Proprietary Limited, a private company with

limited liability, duly incorporated with registration number 200/021679/07, having its registered office at 25 Platinum Street,

Saldanha Industrial Area, Saldanha, Western Cape, 7395.

- [6] The third respondent is Hammer Tool Trading Proprietary Limited, a private company with limited liability, duly incorporated with registration number 2017/32442/07, and having its registered office at 18 Van Jaarsveld Street, Welgemoed, Bellville, Cape Town, 7530.

- [7] The fourth respondent is Hammer Tool Tech CC, a private company with limited liability, duly incorporated with registration number 2008/011228/23, and having its registered office at 7 Eike Road, Durbanville, Cape Town, 7550.

The

Background

- [8] This application is the result of ongoing civil litigation between the same parties. The litigation is at the instance of the applicant who sought to recover damages it allegedly sustained as a consequence of an alleged unlawful exploitation of its confidential information and or infringement of its copyright. The applicant had acquired intellectual property and copyright for the design and supply of the MB100 plant, a modular mineral processing design, in the amount of R7 million. The modular plant is widely utilised by diamond mines in the processing of diamondiferous materials.

- [9] The first respondent served as an employee of the applicant for approximately twelve years. Over time, he acquired intimate knowledge of the applicant's MB100 plant. As part of his duties, he collaborated closely with the second respondent to further fabricate the applicant's designs, which resulted in the M70 and MB200. During his tenure with the applicant, the first respondent began to work with the third and fourth respondents, who subsequently became competitors of the applicant on the supply of modular mineral processing design. The first respondent became the director of the third respondent.

- [10] The plant that was the product of collaboration between the first and second respondent became known as PT100 and had identical characteristics as the applicant's MB100 plant. At a later stage, the first respondent ceased to be the employee of the applicant. The applicant was of the opinion that the creation of the PT100 plant was the cause of damages or harm that it suffered as a result of cooperation between their former employee who is the first respondent and the second respondent who had worked for the applicant in the development of the MB100, M70 and MB200.

[11] On 18 May 2022, at the instance of the applicant, an interim Anton Pillar order was granted by this Court. It was confirmed and made final in the judgment dated 25 July 2023. The order granted that;

“1. The rule nisi relating to the “Applicant Information” and the “Related Information” that was obtained from the second respondent at the second respondent’s premises in the execution of the order of this court dated 18 May 2022 (“the Anton Pillar order”), pursuant to the Anton Pillar application which was brought under the above case number (“the Anton Pillar application”) and which remains in possession of the sheriff of Vredenburg (“the second respondent’s information”), is hereby confirmed.

2. The further conduct of this matter in relation to the second respondent’s information shall be as follows:

2.1 All information and documentation seized pursuant to the Anton Pillar order at the second respondent’s premises are to remain preserved and be kept by the sheriff at Vredenburg.

2.2 The information and documentation in relation to the remaining respondents are to be dealt with as provided for in the agreed order with those respondents.

2.3 The applicant shall be permitted to have paragraph 5 of the Anton pillar order in the terms sought therein executed and given effect vis-à-vis the second respondent.

2.4 The sheriff, the second respondent, the forensic experts (ENS Forensics) and the supervising attorney, Mr Ross Kudo, shall agree on a date or dates and place for the execution of the steps described in paragraph 5 of the Anton Pillar order to be completed.

2.5 In the event that the sheriff, the second respondent, the forensic experts and the supervising attorney are unable to agree on such date or dates, the sheriff shall be entitled to unilaterally determine a date and place and have the forensic experts proceed with the execution of the steps described in paragraph 5 of the Anton Pillar order in accordance with the remainder of the terms provided therein on 5 (five) days’ written notice to the attorneys of record for the second respondent.

2.6 The Sheriff of Vredenburg shall do all things necessary to enable the execution of the steps described in paragraph 5 of the Anton Pillar order, including but not limited to the Sheriff of Vredenburg providing ENS Forensics with the passwords for the second respondent’s email and cloud accounts comprising part of the second respondent’s information, which passwords are contained in the evidence bags under his control, and access to all other documentation and further evidence of an electronic nature currently preserved by him and under his control.

2.7 Thereafter, the parties are to make discovery in terms of Uniform Rule 35(1) and

(2) - including of information and documentation obtained through the execution of paragraph 5 of the order.

2.8 The parties are to call for further and better discovery in terms of Uniform Rule 35(3) in the event that such further and better discovery is required.

2.9 The parties' further rights in terms of the Uniform Rules with regard to applications to compel discovery, the issuing of subpoenas duces tecum, etc., are reserved.

3. Pending the final determination of the action proceedings instituted in this court under case number 9167/22 (the action), the second respondent is interdicted and restrained from directly or indirectly utilising any of the applicant's alleged information (as defined in paragraph 4.3.1 of the Anton Pillar order) or any other confidential information owned by the applicant, for any purpose whatsoever, unless expressly authorised by the applicant in writing to do so.
4. The second respondent shall pay the applicant's costs on a party and party scale, such costs to include the costs of two counsel.
5. The remaining costs of the Anton pillar application, including the qualifying costs of the forensic experts and Mr Paley, the further cost of the forensic experts and Mr Paley, the supervising attorney and the sheriff shall stand over for determination at the trial.
6. The second respondent's counter application was dismissed with costs.”[1]

[12] ‘Paragraph 5 of the interim Anton Pillar order’, referred to in the above reads that;

“5. On a date or dates, and at a place to be arranged with the Sheriff and the Supervising Attorneys, and in the presence of the Sheriff and the Supervising Attorneys and the First and Second Respondents and/or their legal representatives (should the First and Second Respondents or their legal representatives wish to attend), ENS Forensics are authorised to;

- 5.1. Upload the Copied Data to a secure off-site server(s) under their control;
- 5.2. prepare the Copied Data to be searched in accordance with paragraph 5.3 below;
- 5.3. Conduct a search of the Copied Data for purposes of locating the Applicant's Information and Related Information (“The Electronic Discovery”);
- 5.4. Prepare a list of the items comprising the Electronic Discovery;
- 5.5. Copy the Electronic Discovery onto a storage device or devices;
- 5.6. Hand the aforesaid storage device or devices and list of items comprising the Electronic Discovery to the Sheriff for safekeeping pending the directions of the Court; and
- 5.7. Thereafter, permanently delete the Copied Data, and confirm such permanent deletion of the Copied Data by way of an affidavit deposed to by an authorised representative of the IT Specialists.”

[13] These Court orders were executed, and the information and documentation which was retrieved and seized remained

in the possession of the Sheriff, Vredenburg. Subsequent to the preservation and the distribution of the information and

documentation seized as directed by the Court orders, the applicant now seeks a similar relief to have it preserved, again. The

applicant additionally seeks to be granted permission to utilise some of the information and documentation seized to lay criminal charges against certain individuals.

Submissions

[14] Mr Van Zyl SC, for the applicant acknowledged that the Court order granted on 25 July 2023 included the preservation of all information and documentation seized, and currently held by the Sheriff, Vredenburg. However, in order to safeguard same from contamination or interference, the applicant sought a similar relief, *ex abundanti cautela*. He submitted that the applicant was not motivated by any conduct that may have undermined the already existing relief, but rather acted out of fear, since some of the email accounts of the second respondent had already been deleted in order to frustrate the recovery processes. The applicant sought the perpetuation of the status quo. According to the applicant, the preservation-related relief is consistent with paragraph 9 of the Anton Pillar order, where the court ordered; All listed items taken into possession by the Sheriff pursuant to this order shall, subject to para 5 of the interim order of 22 May 2022, be retained by him until the Court ordered otherwise.’[2]

[15] He emphatically submitted that the applicant required to utilise certain information and documentation that had already been seized and that was in its possession to support the criminal charges the applicant intended to file with the South African Police Services. The applicant was mindful that, although they were already in possession of the information and documentation seized, they sought to utilise it when criminal charges were filed. However, since it was only provided to it for the purposes of the on-going civil proceeding, the applicant was not permitted to utilise it as it intended without first seeking the leave of the court. To make their point the applicant mainly relied on *Mathais International Ltd and Another v Baillache and Others*. [3] Their reliance was to the extent that the court argued that, “I consider in any event that a proper consideration of the content of the founding affidavit in the access application, assessed with regard to the latter’s context in the uncompleted Anton Pillar process, shows that the deponent gave the court an implied undertaking by the applicant not to use the information obtained in terms of the order for any other purpose than that for which it was averred to be sought. The effect is that the applicants were not entitled to use the material in the manner in which they did without first obtaining the leave of the court....It is therefore accepted that in appropriate circumstances the court may release the party receiving discovery from its implied undertaking or modify

the extent of its undertaking.”[4]

- [16] The applicant contended that the respondents’ assertion regarding the potential violation of their right to a fair trial and Constitutional rights due to the use of certain information and documentation seized in relation to criminal charges follows from a misinterpretation of the applicant’s purpose and intent in utilising the material. The applicant argued that the question of the admissibility of certain information and documentation obtained during the criminal trial remained open to the discretion of the criminal trial court, contingent upon the course or outcome of the criminal investigations.
- [17] The respondents contended that the preservation of the information and documentation seized under the Anton Pillar Order had already been granted to the applicant, making it unnecessary to seek the same relief in this application. The first, third and fourth respondents argued that in *City of Cape Town v South African National Roads Authority Limited and Others*,^[5] it was held that in similar circumstances, the applicant did not require the leave of the court. Further, that the ‘implied undertaking rule’ which informed the applicant’s approach was found not to be part of the South African Law and therefore not applicable.^[6] They also contended that the compilation of the ‘Theron Forensic Report’ at the instance of the applicant indicated that they had already utilised the information and documentation seized for purposes beyond what was granted by the Anton Pillar Order.
- [18] Based on *Ferreira v Levin* N.O^[7], they also submitted that this court lacked jurisdiction to determine what evidence ought to be presented in criminal proceedings, as this matter was meant to be left to the exercise of the judicial discretion of the criminal court before which the trial would serve. They argued that in this instance, the applicant unduly and improperly invoked the Plascon-Evans Rule by seeking to shift the onus from the state in criminal proceedings to the respondents, compelling them to make admissions and confessions, which infringed upon their rights to a fair trial.
- [19] The second respondent aligned itself with the contentions and submissions of the other respondents, to the extent that the applicant sought relief that was unlawful and with no legal basis. It echoed that the approach adopted by the applicant which was found to be contrary to and irreconcilable with the general principles of the legal framework governing Anton Pillar proceedings. According to the second respondent, the applicant’s attempt to expand the Anton Pillar order that was already granted, into criminal proceedings was fundamentally at odds with right not to be compelled to produce self-incriminating evidence.
- [20] Notwithstanding that there was no criminal prosecution yet, the respondents submitted that the potential for such action, as per the expressed intention of the applicant, triggered the application of the rights outlined in section 35(3) of the Constitution, which guarantees the right to fair trial for an accused or a suspect in criminal proceedings. They relied on the *S v Orie and Another* 2005

- (1) SACR 63 (C)[8] to emphasise that the respondents were entitled to fair pre-trial procedures, which were interlinked to the right to a fair trial.

Issues

[21] There are three primary issues that require determination in casu;

- (i) Whether the applicant had the requisite degree of necessity when it sought a relief that had already been granted obtained in previous proceedings;

- (ii) Whether the applicant should be granted leave to utilise some of the information and documentation

seized pursuant to the Antol Pillar proceedings to pursue criminal charges with the SAPS; and lastly

- (iii) If the relief sought is granted, whether the use of the said information and documentation would infringe upon the respondents' right to a fair trial.

The applicable legal principles

[22] Roamer Watch Co. SA and Another v African Textile Distributors, also t/a MK Patel Wholesale Merchants and Direct Importers, [9] provides the test for Anton Pillar relief. 'The applicant must establish prima facie that he has a valid cause of action against the respondent, which he intends to pursue, that the respondent has in his possession specific documents or items which constitute crucial evidence in substantiation of the applicant's cause of action (but in respect of which the applicant can claim no real or personal right), that there is a real and well-founded apprehension that this evidence may be concealed, destroyed, or in some manner spirited away before the trial, or at any rate before the stage of discovery. Furthermore, if the applicant requests the court to issue an order to safeguard this evidence, is the court required to take a non possumus stance, particularly in the absence of a viable alternative? I am inclined to think not. It would undoubtedly reveal a grave defect in our system of justice if it were to be discovered that, in circumstances such as these the Court was powerless to act. Fortunately, I am not persuaded that it would be. In my opinion, an order that involves in some way recorded evidence e.g. whether, by copying documents, photographing items, or even by placing them temporarily i.e. pendente lite in the custody of a third party, would not in my view be beyond the inherent powers of the court. I perceive no difficulty in permitting such an order to be sought ex parte, without notice, and in camera, provided that the applicant can demonstrate a genuine possibility that the evidence may be lost if the respondent gets the wind of the application.'

[23] In instances of criminal investigations, section 205 of The Criminal Procedure Act 51 of 1977 provides as follows "Judge, Regional Court Magistrate or magistrate may take evidence as to alleged offence provided that;

- (1) A judge of a High Court, a regional court magistrate or a magistrate may, subject to the provisions of subsection (4) and section 15 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, upon the request of a Director of Public Prosecutions or a public prosecutor authorized thereto in writing by the Director of Public Prosecutions, require the attendance before him or her or any other judge, regional court magistrate or magistrate, for examination by the Director of Public Prosecutions or the public prosecutor authorized thereto in writing by the Director of Public Prosecutions, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed: Provided that if such person furnishes that information to the satisfaction of the Director of Public Prosecutions or public prosecutor concerned prior to the date on which he or she is required to appear before a judge, regional court magistrate or magistrate, he or she shall be under no further obligation to appear before a judge, regional court magistrate or magistrate.
- (2) The provisions of sections 162 to 165 inclusive, 179 to 181 inclusive, 187 to 189 inclusive, 191 and 204 shall mutatis mutandis apply with reference to the proceedings under subsection (1).
- (3) The examination of any person under subsection (1) may be conducted in private at any place designated by the judge, regional court magistrate or magistrate.
- (4) A person required in terms of subsection (1) to appear before a judge, a regional court magistrate or a magistrate for examination, and who refuses or fails to give the information contemplated in subsection (1), shall not be sentenced to imprisonment as contemplated in section 189 unless the judge, regional court magistrate or magistrate concerned, as the case may be, is also of the opinion that the furnishing of such information is necessary for the administration of justice or the maintenance of law and order.”
- [24] In line with their opposition to the application, the respondents raised the Section 35 of the Constitution, as will be dealt with here below. In the circumstances, Uniform Rule 16A found application, and it reads:

“Rule16A Submissions by an amicus curiae -

- (1) Any person raising a Constitutional issue in an application or action shall give notice thereof to the registrar at the time of filling the relevant affidavit or pleading.”

Evaluation

The preservation order

- [25] At this point, it is essential to examine the facts in order to determine whether it was necessary or justified for the applicant to seek the same relief based on their fear or ex abundanti cautela, as these factors prompted them to seek this relief. In this instance, the applicant seeks relief to have the information and documents that were seized and

preserved by means of an already operational Anton Pillar court order, issued on 24 July 2023. By virtue of the same order, these documents and information remained in the possession of the Sheriff of this Court, Vredenburg. Therefore, it is fair to accept that all the respondents are not capable of exercising any authority over same. It is common cause that the preservation of the information and documentation seized was part of the Anton Pillar order initiated at the instance of the applicant. It is also common cause that the information and documentation seized and preserved were distributed to the same parties, in terms of the same court order.

- [26] Notwithstanding that the applicant had secured a judgment in its favour for the preservation of the information and documentation seized, they persisted to seek relief in similar terms out of fear that there could be some interference and *ex abundanti cautela*, it sought to obtain a relief in similar terms. It is important to note that when the applicant approached this Court there had been no indications that the preservation relief it obtained and which is currently in effect was undermined or under threat of interference. No factors or evidence suggested that there were efforts to undermine the order, save for some information

that the email account of the second respondent was deleted prior to the issuance of the Anton Pillar Order.

- [27] Having said that, one is also alive to the fact that even though the applicant may have already obtained the similar relief, it was not barred from approaching the Court, to seek relief aimed at protecting specific interests.[10] However, there must be a requisite degree of necessity, meaning that something must have occurred or intervened in the course of the operation of the order granted already on 25 July 2023.[11] Such an occurrence would have necessitated the applicant to intervene by approaching the Court for a similar relief in order to safeguard or in defence of specific interests that required protection.

- [28] In casu, the applicant had to demonstrate that there is a real and well-founded apprehension that the information and documentation seized, currently held by the Sheriff may be concealed or destroyed or in some manner spirited away by the time the case comes to trial. [12] As evident in the judgment of 25 July 2023, when the initially application served before Hockey AJ, the applicant had satisfactorily demonstrated that there was a real possibility that the evidence would be lost if the respondents became aware of the application. Hence all the information and documentation seized was preserved in the custody of the Sheriff, who remains subject to the powers of this Court.[13]

- [29] Now that the applicant seeks the same relief to be restated or re issue, it needed to demonstrate a need to revisit that relief, or intervene in some way, or that there was a necessity for the exercise of some judicial power. The applicant confirmed the absence of any real or perceived threat to the existing order and failed to demonstrate factors that triggered its exercise of caution over any of the respondents and the Sheriff of Vredenburg. I am not persuaded that additional relief of further preservation of the already preserved information and documents seized will add any value and/or enhance the effectiveness of

the Anton Pillar Order of 25 July

2023. The applicant has not established that there are further interests or cause for action out of caution and or fear of interference that will further protect the already issued relief and or reaffirmed that relief.

[30] The applicant has failed to establish that it was necessary and justified to repeat the relief already granted for the preservation of the information and the documentation seized during the execution of the Anton Pillar Order of 25 July 2023. The motivation given by the applicant for approaching the court in this instance lacked the requisite degree of necessity/urgency and will not advance any substantial interests as no threat existed to instil fear of possible interference, or that there was any legal basis to exercise caution and pursue the same relief.

The intended criminal proceedings

[31] Upon the perusal of the documents and the information received through the Anton Pillar Order, the applicant held the view that a criminal matter should be registered with the SAPS. To substantiate its allegations of criminal conduct, the applicant concluded that it was necessary to utilise some of the information or documents that had been seized.

[32] The court order designates the Sheriff of the Court as the custodian of the seized documents and information,

ensuring their preservation. The office of the Sheriff is by design an officer of this Court, subject to the authority of the Court and has a legal duty it.[14] The members of the SAPS should have a legal framework and a range of options to explore in order to obtain or utilise any

information and documents they consider necessary during their investigations after a criminal case has been lodged. If a

complainant has filed criminal charges, it is sufficient for them to provide a statement and rely on the police's expertise or competency to utilise any legal tools available to them if necessary.

[33] For instance, the SAPS has the authority to issue a subpoenaed for an individual to attend court if they are likely to provide material and/or relevant information as to any alleged offence, regardless of whether the identity of the offender is known, provided they furnished that information to the satisfaction of the prosecution prior to the date on which they would be expected to appear before the court.[15] Should a need arise, it remains within the right of the SAPS to access any confidential information in the possession of the Sheriff of Vredenburg, including any private persons, in pursuit of criminal investigations. The police possess the powers to enter any premises, conduct searches; and seize material or information in pursuit of criminal investigations.[16] Therefore, I am inclined to agree with the assertion that, any attempt to enter into the realm of dictating or directing

how the SAPS should conduct their investigations and or what kind of evidence they should gather once a criminal case has be registered is untenable and lacks sound legal basis.

- [34] If the applicant firmly believed that they possess any grounds to pursue criminal charges, there is an abundance of mechanisms available to the SAPS, making it unnecessary for this court to enter that realm. Who knows, they may find whatever information this court may determine will be useful for their ends to be of no value and irrelevant. In the context of the ongoing litigation between the parties and their dispute/s this court is not well-placed to determine what evidence ought to be presented in criminal investigations or proceedings.
- [35] In light of the above findings regarding the utilisation of some of the information and documents seized in pursuance of the Anton Pillar Order, it is unnecessary to traverse the arguments, the applicability and relevance of Section 35 of the Constitution, particularly to the extent that the intended criminal litigation may reach trial.
- [36] In my view, to the extent that the applicant sought to place reliance on the decision of Mathais International Ltd and Another v Baillache, such reliance does not advance its case at all, as it does not find relevance for the intended purposes of the applicant. The information or documents that may be necessary and relevant for purposes of investigations of alleged criminal conduct remain a

matter for the SAPS and less of the responsibility of the potential complainants or the Court.

Conclusion

- [37] In conclusion, the relief sought in prayer 1 of the notice of motion, if granted, will carry no better force to the already granted relief and therefore, has no sound legal basis. It is unnecessary and could be correctly perceived as dragging other litigants to court unnecessarily. The approach of the applicant in the relief sought in prayer 2 of the notice of motion is not supported by clearly established legal principles and procedures that regulate the conduct of criminal offence's investigations.

Costs

- [38] The applicant also seeks an order that 'any party opposing this relief is ordered to pay the costs thereof, jointly and severally, the one paying the other(s) to be absolved.'[17] However, during oral submission there was no insistence for a departure from the general norm, that costs follow the

results. The parties were in agreement on how the costs of this application should be determined, with which I also agree.

Order

- [39] The order below is made:

1. The application is dismissed;

2. The applicant to pay the costs, including the costs of two counsel where so employed. The costs of senior counsel on scale C and junior counsel on scale B.

Acting Judge of the High Court

Appearances

Counsel for the applicant: Adv Francois van Zyl SC

Adv Christopher Quinn

Instructed by:

Francis Thomson & Aspden Attorneys

Mr N McDougall

Counsel for the second respondent:

Adv Craig Webster SC

Adv Ben Prinsloo

Instructed by:

Ebersohns Attorneys

Ms M Sturgeon

Counsel for the first, third & fourth respondents:

Adv Jaco Roux SC – Pretoria Bar

Instructed by:

Bredenkamp Attorneys

Ms M van Aardt

Date of Hearing:

17 June 2025

Date of Judgment:

9 July 2025

This judgment was handed down electronically by circulation to the parties' representatives by email.

[1] ADP Marine & Modular Proprietary Limited v Rocher & Others (5701/2022) [2023] ZAWCHC 225 (25 July 2023, paragraph 103)

[2] Applicant's heads of argument, paragraph 32 and 33

- [3] Mathias International Limited Ltd and Another v Baillache and Others 2015
- (2) SA 357 WCC, paragraph 48
- [4] Applicant's heads of argument, paragraph 41, 42 and 43
- [5] City of Cape Town v. South African Road Authority Limited and Others 2015
- (3) SA 386 (SCA)
- [6] First, third & fourth respondents' heads of argument, paragraph 3
- [7] Ferreira v Levin N.O , paragraph 153 and pp 287, the court held, 'A compulsion to give self-incriminating evidence, coupled with only a direct use immunity along the lines indicated above, and subject to a judicial discretion to exclude derivative evidence at the criminal trial, would not negate the essential content of the section 11(1) right to freedom or section 25(3) right to a fair trial.....The trial judge is the person best placed to take that decision. The development of law of evidence in this regard is a matter for the supreme court. The essential content of the right is therefore not even touched.'
- [8] The second respondent's heads of argument, 49-54
- [9] Roamer Watch Co. SA and Another v African Textile Distributors, also t/a MK Patel Wholesale Merchants and Direct Importers 1980
- (2) SA 254 (W)
- [10] Minister of Local Government and Land Tenure and Another v Sizwe Development and Others : in re Sizwe Development v Flagstaff Municipality 1991 (1) SA 677 (Tk) at 679D
- [11] Appel and Others v Democratic Alliance and Others, In re: Democratic Alliance and Another v Council of Theewaterskloof and Others
- (19623/2024) HCWC,[2025] (4 February 2025), Paragraph 33
- [12] Roamer Watch Co. SA and Another v African Textile Distributors, also t/a MK Patel Wholesale Merchants and Direct Importers 1980
- (2) SA 254 (W)
- [13] Roamer Watch Co. SA and Another v African Textile Distributors, also t/a MK Patel Wholesale Merchants and Direct Importers 1980
- (2) SA 254 (W)
- [14] Sheriffs Act 90 of 1986
- [15] The Criminal Procedure Act, section 205
- [16] The Criminal Procedure Act, Chapter 2

[17] Notice of motion, paragraph 3

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