

SOUTH AFRICA / JUDGMENT

J.W. v J.D. and Others (039454/2023) [2025] ZAGPJHC 731 (24 July 2025)

[2025] ZAGPJHC 731**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Thobane

CASE / FILE NUMBER

039454/2023

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Policy**FLYNOTES:**

CRIMINAL – Search and seizure – Electronic devices and data –
Alleged
sexual assault against minor – Supported by medical and
psychological reports – Use of electronic devices
to
document abuse – Issued warrant resulted in seizure of
multiple electronic items – Intelligibility and reasonable
suspicion – Some devices returned while others remained with
police due to unresolved password issues – Warrant
lawfully
issued – Magistrate had reasonable grounds based on sworn
allegations and supporting evidence – Rule
nisi discharged.
REPUBLIC OF SOUTH
AFRICA
IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
JOHANNESBURG
CASE NO: 039454-2023
(1)
REPORTABLE: NO

(2)
OF INTEREST TO OTHER JUDGES: NO
(3)
REVISED: NO
24 JULY 2025

In the matter between: W[...],
J[...]
Applicant
And
D[...],
M
First Respondent
BALOYI,
TERRY
Second Respondent
THE STATION COMMANDER
OF THE PRETORIA-
Third Respondent
MOOT SOUTH AFRICAN
POLICE SERVICES STATION
THE MINISTER OF
POLICE
Fourth Respondent
THE MINISTER OF
JUSTICE AND CORRECTIONAL Fifth
Respondent
SERVICES

JUDGMENT

THOBANE AJ,

Introduction

[1] The applicant brought an application on an urgent basis seeking the following summarised relief;

1.1. the setting aside of a search and seizure warrant;

1.2. the return of seized electronic gadgets, equipment and/or items;

1.3. the destruction, by the respondents, of copies or duplicates, in whatever format, of the seized items;

1.4. interdicting and restraining the utilisation of any copied, reproduced or saved copies or data, in whatever form.

- [2] In the alternative, the applicant sought the same relief by way of a rule nisi calling on the respondents to show cause why the orders sought, which are mentioned above, should not be made final. Further alternative relief was sought, and it makes provision for the duplication, reproduction, copying and preservation of what was seized, while maintaining the integrity of the chain of custody. Further, that after the process of copying or duplication, which was proposed to take place within seven days of the order, the items be returned to the applicant.
- [3] The application is directed at the following parties;
- 3.1. the magistrate who authorised the issuance of a search and seizure warrant against the applicant, first respondent;
- 3.2. the investigating officer in the employ of the South African Police Services who is attached to the Family, Child & Sexual Offences Unit at Pretoria Moot and who applied for the issuance of such a search warrant, second respondent;
- 3.3. the Station Commander of Pretoria Moot Police Station, third respondent;
- 3.4. the Minister of Police, fourth respondent and;
- 3.5. the Minister of Justice and Correctional Services, fifth respondent.
- [4] The third to fifth respondent, to the extent that the relief sought may impact the offices they respectively occupy, were cited in their official capacities. No direct relief is sought against them, it is pleaded. In turn they have all chosen to abide by the decision of this court.
- [5] As part of the introduction it suffices to say at this stage that the urgent application came before the urgent court on 09 May 2023 where the following order was granted by agreement between the parties;
- “1. A rule nisi be and hereby is issued calling upon the Second, Third and Fourth Respondents to show cause on 15 June 2023 why an order in the following terms should not be made final:*
- 1.1 That the search and seizure warrants, pertaining to Applicant, issued by the First Respondent on 29 March 2023 under Brooklyn CAS 12/03/20223 in terms of Section 29 read with Sections 25 and 33 of the Cyber Crimes Act 19 of 2020 ("the Act") on application and request of the Second Respondent be and hereby is set aside;
- 1.2 That the Third Respondent be and hereby is ordered and directed to ensure the return of the items seized, as more fully set out in Annexure "A" hereto, on 3 April 2023 from the premises of the Applicant at 28 The H[...], [...] A[...] Road, S[...], Germiston, Gauteng, are returned to his possession forthwith;

1.3 That, in so far as copies of any of the items seized have been made, whether in printed form or by electronic means, including but not limited to downloading and mirror-imaging, such copies are to be destroyed forthwith and the Second Respondent is to confirm, on oath within 3 (THREE) days hereof, that either no such copies exist or, in so far it did exist have been destroyed.

2. That, pending the return day and the finalisation of the matter, the Second to Fourth Respondents, and/or any entity and/or unit and/or persons under such respondent's control or in the employment of such respondent, be and hereby are forthwith and with immediate effect interdicted and restrained from making any copies, whether printed or electronic copies of any item seized or the information and or data contained on any such item seized, subject to paragraph 3 hereof.

3. The items mentioned in Annexure "B" hereto shall be returned to the Applicant within 15 (FIFTEEN) days of the granting of this order, provided that:

3.1. The chain of custody of the seized items during the making of copies as contemplated in paragraph 3.2 is preserved.

3.2. Copies of the electronic information and/or data stored on the items mentioned in Annexure "B" hereto shall be made in a manner that preserves the chain of custody and integrity of the items seized and any copies made, which copies shall be retained in sealed evidence bags and which shall be subject, *mutatis mutandis*, to paragraphs 1.1. and 1.3 hereof.

4. The costs of 9 May 2023 are reserved."

[6] On the return day, being 15 June 2023 and before Franck AJ, the rule nisi was extended to 31 July 2023. It then served before Vally J who in turn extended the rule nisi to 19 September 2023. When the matter served on 19 September 2023, Francis J extended the rule nisi once again by agreement between the parties, to 05 February 2024. Costs were reserved on all the previous days on which the rule nisi was extended.

[7] On 05 February 2024 in the opposed motion court, the matter served before Glaeser AJ, who after hearing the matter, reserved judgment. Due to ill health, Glaeser AJ has not been able for a considerable period of time, to deliver a judgment. The parties patiently waited for judgment to be delivered and eventually approached the office of the Judge President for his intervention. Having communicated with the Judge President, the parties agreed that they have no objection in the matter being placed before and be considered by another Judge, who would have regard to the papers that have been exchanged and are on CaseLines, as well as the heads of argument that had already been filed by the parties. The Judge President designated me, in light of the parties' posture and agreement, to adjudicate this matter. Hence my involvement. This judgment therefore is a product of such historical exposition. It was prepared after having considered the papers as well as the parties' submissions as set out in their respective heads of argument, as per the parties' wishes communicated to the office of the Judge President.

Applicant's case

[8] The applicant's case is that he was in a love relationship with a woman, hereinafter referred to as "the complainant",

whose identity is irrelevant for purposes of this application. The complainant, so the applicant alleges in the founding affidavit,

caused a search and seizure warrant to be issued against him by stating vague falsehoods of a sexual nature involving the complainant's daughter, in an affidavit that she deposed to at Brooklyn Police Station. It must be mentioned that the complainant is not a party to these proceedings. The affidavit of the complainant which contains those allegations of sexual assault of the complainant's daughter at the hands of the applicant, was utilized by the investigating officer in preparing his own affidavit when applying for the issuance of a search and seizure warrant.

[9] He goes further to say, prior to the complainant laying charges, he had a good relationship with the complainant's daughter to the extent that she regarded him as her father, so the applicant pleads. It is the version of the applicant that the relationship became strained between him and the complainant to the extent that the applicant decided to terminate it. It was after the termination of the relationship, according to the applicant, that the complainant, viewing the termination as an attack or assault on her stature and professional status, made up spurious allegations so as to get back at him. The allegations of sexual assault are therefore, the applicant contends, a strategy to get back at him.

[10] In the introduction to the founding affidavit, the applicant states that where he makes legal submissions, it is on the advice of his legal representative, which advice he accepts as correct. He refers to various sections of the Cybercrimes Act[1], including section 29 which partly reads as stated below, as well as case law. The section is contrasted with section 21(1) of the Criminal Procedure act, 51 of 1977. The nub of the submission is that before a warrant is issued, there ought to be information for one to believe, on reasonable grounds, and that such information should be set out in an affidavit that; a specific crime was committed, that objects or items connected with the commission of that crime are at premises intended to be searched.

[11] The applicant further seriously takes issue with the facts that are relied on by the complainant and in turn by the second respondent, in formulating a view that a crime was committed and that certain devices were involved. He also takes issue with and questions the laws that are relied upon. He goes into detail about the definition a "sexual act", as described in legislation. The first respondent, he argues, should have independently made a determination before arriving at a finding that a "sexual act" was performed. I pause to mention that there is no obligation placed on the person before whom a warrant is sought to be granted, to independently "make a determination".

- [12] The applicant is scathing in his criticism of what is contained in the affidavits of both the complainant and the second respondent. There is, in his view, terse information as well as lack of detail. He poses a few questions in the affidavit, such as when it is alleged that photos were taken of the minor child with her legs open, was she clothed or naked? Were the photos not taken to show that at times the child seats in an uncouth position? There is no information about the exact type of device that was used in taking the photos; no allegation is made about uploading, sharing or distribution.
- [13] He picks apart the affidavits, questions what is stated therein about CCTV and hard drives; argues that reference is made to the “dark web” with no evidence supplied or contextualization. In addition, it is argued that he is of the view that the first respondent did not satisfy herself that the information tendered to her was credible and that it came from a reliable source. The affidavits are said to be speculative, demonstrate no connection between the warrant and the Cybercrimes Act. They were therefore irregularly issued, so it is argued.
- [14] On the other hand the applicant, importantly states in his founding affidavit; “I interpose to point out that the procedural steps taken to obtain the warrant is not under scrutiny in this matter and I accept that, procedurally the warrant was sought and obtained as required by the Act as well as the process and procedures of the relevant Court.”. He then states that what he takes issue with, was the question whether the first respondent, the magistrate, has substantively made out a case for the relief sought. This is with reference to information that was placed before the magistrate when an application
- for issuance of a search and seizure warrant was made. The applicant denies that there was substantively enough information at the disposal of the first respondent.
- [15] The allegations that were made against the applicant, which allegations are contained in the complainant’s affidavit that was utilized to obtain the warrant, are criticized by the applicant. The applicant is of the view that when the warrant was sought, no credible information was placed before the magistrate and further that the magistrate failed to meaningfully deal with the information placed before her.

Respondents’ case

- [16] The respondents’ case is that allegations of rape and sexual assault were made under oath by the complainant who alleged that two of her children had been sexually assaulted by the applicant and that there had been a contravention of section 19A (1) of the Sexual Offences Act[2]. Since certain electronic equipment is alleged to have been used in the commission of the sexual assault, such equipment ought to be seized in accordance with section 29 of the Cybercrimes Act, 19 of 2020, they argue.

- [17] The allegations of sexual assault were, as mentioned above, set out in the affidavit of the complainant which she deposed to at Brooklyn Police Station in Pretoria. In that affidavit she details behavioral changes that she observed in her daughter; the change in sexual behavior; the change in the minor child's sleeping patterns as well as other physical signs and symptoms.
- [18] In addition to the above, the complainant placed it on affidavit that her daughter complained of a painful and itchy vagina; constipation and burning urine. Further additionally, the nanny of the minor child alerted the complainant to a vaginal discharge.
- [19] During the time of what the complainant explains was unfolding, which is set out in detail in her affidavit to the police, the complainant referred her daughter to a Pediatric Psychiatrist, a Forensic Psychologist, a Gynecologist as well as a Trauma Counselor.
- [20] Worse allegations were laid bare in the affidavit. It was alleged that the applicant inserted his tongue in the mouth of the minor child; licked the vagina of the minor child; inserted his fingers in her vagina; asked the minor to stimulate him and lastly that the applicant penetrated the minor child with his penis.
- [21] Armed with all the information mentioned above, the complainant turned to the SAPS to open a criminal case against the applicant. The information that was contained in the complainant's affidavit was utilized by the second respondent to prepare his own affidavit for purposes of approaching the first respondent for a warrant to search the premises of the applicant and seize items.
- [22] Section 20 of the Criminal Procedure Act provides that;

"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)-

- (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] The respondents are of the view that when one reads the above section as well as the provisions of section 19A of the Cybercrimes Act, it is clear that they were entitled to search the premises or properties of the applicant and seize specified items which they believed on reasonable grounds, were connected to commission of an offence because it had been alleged under oath among others that;

- 23.1. a sexual offence was committed within the area of jurisdiction of this court;
- 23.2. within the republic;
- 23.3. photos were taken by use of a device;
- 23.4. and lastly that in the affidavit of Captain Naicker, who was responsible for downloading material from the applicant's seized devices or gadgets, he confirmed that offensive material was found in one or more of the applicant's devices.

[24] Counsel further submitted, in the heads that the applicant deftly avoids, in his affidavit, to deal with the question whether or not he in fact took pictures, and opportunistically adds that his primary focus is context. The respondents are of the view that they have dealt with the following which in their view accords with case law;

- 24.1. the statutory provision for the issuance was mentioned;
 - 24.2. the searcher was identified;
 - 24.3. mention was made of the authority that was conferred on the searcher;
 - 24.4. the premises or person to be searched were identified;
 - 24.5. the property and the article sought to be seized was identified with clear particularity;
 - 24.6. the crime that triggered the investigation as well as the name of the suspect was specified.
- As a result, little more need be done as the main protagonist had been brought to the fore.

[25] In supplemented papers the respondents indicated that the applicant was approached to provide passwords and in some instances patterns to unlock the devices so that they could gain access thereto for purposes of downloading. Some of the passwords provided were wrong and in some instances were not provided. In the devices which the respondents had access to, data or information obtained seemed to indicate that in some of them, in particular an SD card, they found evidence of child pornography. They also tendered the return of the gadgets that they were able to access and download.

The rule nisi

[26] The law on rule nisi has long become crystalised. In *Member of the Executive Council for the Department of Health, Eastern Cape v BM*[3], the Supreme Court of Appeal had occasion to say the following about the rule nisi;

"[12] A rule nisi is an order issued by a court, at the instance of a party, calling upon another party or parties to show cause on a stipulated date before that court why relief, as claimed, should not be granted. The procedure, which derives from English law, has been employed by our courts for well over a century. Its use and development is underpinned by the principle that a court will not grant relief which impacts or constrains the rights and interests of a party without affording that party an opportunity to be heard (audi alteram partem). It is also premised on the acceptance that the interests of justice require the balancing of rights and interests to ensure that what is worthy of immediate

protection is not prejudiced by the time it takes to hear all interested parties.

[13] The rule nisi is generally used in ex parte applications. Van Zyl explains that,

‘This rule, or order, for after all it is really an order, is granted only on an ex parte application. This application should be by petition setting forth fully all of the circumstances of the applicant’s cause of complaint, so as to induce the Court to grant his prayer. He must [show] a good prima facie cause to entitle him to this rule, and a good reason must be assigned, or [shown] for the urgency of the application, and why it should be ex parte instead of serving the respondent with the notice of motion.’

[14] Since those observations were made, the practice relating to rules nisi has been used in various contexts. The essential character and purpose of the procedure, however, remains to ensure that (a) notice

is given to an affected party; (b) a prima facie case is made out for the relief sought; and (c) such relief may be granted unless cause is shown why it should not be granted.” (Footnotes have been omitted).

[15] In *National Director of Public Prosecutions v Mohamed NO and Others*[4] the court expressed itself as follows on the rule nisi and the applicable principles; ‘[28] Our common law has recognised both the great importance of the audi rule as well as the need for flexibility, in circumstances where a rigid application of the rule would defeat the very rights sought to be enforced or protected. In such circumstances, the court issues a rule nisi calling on the interested parties to appear in court on a certain fixed date to advance reasons why the rule should not be made final, and at the same time orders that the rule nisi should act immediately as a temporary order, pending the return day. This practice has been recognised by the South African courts for over a century:

The term ‘rule nisi’ is derived from English law and practice, and the rule may be defined as an order by a court issued at the instance of the applicant and calling upon another party to show cause before the court on a particular day why the relief applied for should not be granted. Our common law knew the temporary interdict and, as Van Zyl points out, a ‘curious mixture of our practice with the practice of England’ took place and the practice arose of asking the court for a rule returnable on a certain day, but in the meantime to operate as a temporary interdict.’

The order by consent and analysis

[27] The parties in this matter obtained an order by consent. In terms of that order the respondents were required to show cause on the return date why in summary form the following orders should not be made final;

27.1. setting aside the search and seizure warrants;

27.2. returning the gadgets seized during the execution of the search and seizure warrants mentioned in annexure “A”;

- 27.3. destruction of any duplicated or copied materials;
- 27.4. interdicting the copying or duplication of the seized material;
- 27.5. returning the items mentioned in annexure “B”, and that;
- 27.6. costs are reserved.

[28] In light of the consent order, the issue for determination is simply whether or not the rule should be confirmed or discharged as well as the issue of the reserved costs.

[29] To the consent order there are two annexures, “A” and “B” attached. They list items that were seized on 03 April 2023 following the issuance of the warrant on 29 March 2023. As mentioned above, the items listed in “A” were tendered and made available to the applicant in accordance with the draft order. That much is apparent from exchanged correspondence and the pleadings. In fact, in the supplementary affidavit, the respondents indicate that the items listed in annexure “A”, were handed in at Brooklyn SAPS and registered in the SAP13 register kept at that police station. They are available, it was pleaded, for collection there.

[30] The second respondent is of the view that the applicant is making it difficult for them to comply with the court order in particular, the return of the gadgets, in that he provided the investigating team with wrong passwords. As a result, some of the gadgets could not be downloaded by the SAPS Cyber office. This matter was heard over a year ago. One would have expected that by now all the gadgets would have been downloaded. The items mentioned in “B” were, according to the consent order, to be given to the applicant on 30 April 2023 “provided” they were preserved and the integrity of the copying process was maintained. I take the view that the couching of the order permits the holding on to the gadgets that have not been downloaded, and in respect of which passwords or patterns have not been provided. The order in relevant parts reads as follows;

“1.2.5. the items mentioned in Annexure "B" hereto shall be returned to the Applicant

within 15 days (FIFTEEN) days of the granting of this order, provided that:

1.2.5.1. the chains of custody of the seized items during the marking of copies as contemplate in paragraph 3.2. is preserved.

1.2.5.2. Copies of the electronic information and/or data stored on the items mentioned in

Annexure "B" hereto shall be made in a manner that preserves the chain of custody and integrity of the items seized and any copies made, which copies shall be retained in sealed evidence bags, and which shall be subject, mutatis mutandis, to paragraphs 1.1 and 1.3 hereof.”

[31] A balance has to be struck between the interest of the applicant and those of the respondents. The overriding principle being that whatever decision the court arrives at, it is arrived at in the interests of justice. The order was obtained by agreement. Therefore, I can think of no scenario where the decision, be it to confirm or discharge the rule, will be prejudicial to any of the parties, in circumstances where they consented to an order.

[32] It is apposite that I deal with the contention or submission by the applicant that there was insufficient information placed before the first respondent when she issued the warrant. I have to respectfully disagree with that submission. As mentioned above, all that needs to happen is that the jurisdictional requirements set out in sections 20 and 21 of the Criminal Procedure Act[5] be shown to exist. An article or item;

1. 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;

2. which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere; or
3. which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence;

shall be seized only by virtue of a search warrant issued-

- (a) by a magistrate or justice, if it appears to such magistrate or justice from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or upon any person or upon or at any premises within his area of jurisdiction; or
- (b) by a judge or judicial officer presiding at criminal proceedings, if it appears to such judge or judicial officer that any such article in the possession or under the control of any person or upon or at any premises is required in evidence at such proceedings.

[33] Similarly, section 29 of the Cybercrimes Act[6], lists a number of jurisdictional factors that must exist. Section 27 of the Cybercrimes Act ties the two Acts together for it provides that the provisions of the Criminal Procedure Act are applicable to Chapter 4 of the Cybercrimes Act which is headed "POWER TO INVESTIGATE, SEARCH, ACCESS OR SEIZE". There is no incongruity between the relevant provisions of the two Acts. Besides on his own version the applicant stated "..... the procedural steps taken to obtain the warrant is not under scrutiny in this matter and I accept that, procedurally the warrant

was sought and obtained as required by the Act as well as the process and procedures of the relevant Court."

[34] In *Minister for Safety and Security v Van Der Merwe and Others*[7], the Constitutional Court before whom the question was the alleged unlawfulness of search warrants, discusses at length the law around search and seizure warrants as well as the safeguards that exist in our law for the protection of the Constitutional rights of those who are at the receiving end of the warrants. The jurisdictional requirements for the issuance of a search warrant are narrowed down to simply two, namely; (i) the existence of a reasonable suspicion that a crime has been committed and (ii) the existence of reasonable grounds to believe that objects connected with the offence may be found on the premises or persons intended to be searched. Those two requirements were present at the time the second respondent applied for a warrant before the first respondent.

[35] The Constitutional Court further discussed the Intelligibility Principle which it described thus;

“[14] The intelligibility requirement is a common law principle introduced by the courts and is quite separate and distinct from the requirements of sections 20 and 21. As the name suggests, intelligibility is on the one hand about ensuring that the police officer understands fully the authority in the warrant to enable her to carry out the duty required of her, and on the other that the searched person also understands the reasons for the invasion of his privacy.”

[36] Referencing *Thint*[8], the Court went on to say the following at paragraph 18;

“As Langa CJ observed, the most relevant requirement in relation to the principle of intelligibility is that a warrant must convey intelligibly, to both the searcher and the searched person, the ambit of the search it authorises. Intelligibility also requires that a warrant be reasonably intelligible in the sense that it is reasonably capable of being understood by a reasonably well-informed person who understands the relevant empowering legislation and the nature of the offences under investigation.”

[37] On the authority of *Thint* and *van der Merwe*, mentioned above, the process of the issuance of the warrant was comprehensible, there was accountability and predictability in the exercise of all power. The warrant in my view was crafted, regard being had to its contents, in a manner that enabled the applicant to know why rights have to be interfered with in the manner authorised by the warrant.

[38] The rule nisi has served its purpose. Firstly, it secured on an interim basis the setting aside of the search and seizure warrant. Secondly, it secured the release of the items listed in annexure “A” or at least they were tendered to the applicant and made available for collection by him at Brooklyn Police Station. Thirdly, it secured the items listed in annexure “B” in the hands of the SAPS and made provision for the download thereof. It also provided for the integrity of the chain of custody to be maintained and thereafter the release of those items to the applicant. Unfortunately, it is said that the applicant had not provided correct passwords and in some instances provided none. It would not, in the circumstances, be in the interest of justice to confirm the rule.

Costs

[39] Previously, when the rule was extended, costs were reserved. The award of costs falls within the discretion of the court. There appears to me to be no reason why any of the parties should be mulcted with costs as there does not appear, on record, to be serious contestation about penalizing any of the parties with a costs order. Besides, each of the parties partially succeeded. I am of the view therefore that none of the parties should be out of pocket.

Order

[40] The following order is made;

1. The rule nisi is discharged and;
2. There is no order as to costs.

SA THOBANE

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For Applicant:

Mr. Charles E. Thompson

Instructed by:

Martin Vermaak Attorneys

Bryanston, Johannesburg

For Respondent: Ms. Kefilwe Sithole

Instructed by:

The State Attorney

Johannesburg

Date of the hearing: 05 February 2024

Date of

judgment:

24 July 2025 - This judgment was handed down electronically by circulating to the parties' legal representatives by e-mail, by being uploaded to the CourtOnline platform of the Gauteng Division and by release to SAFLII. The date and time of hand down is deemed to be 16:00 on 24 July 2025.

- [1] Cybercrimes Act, 19 of 2020 heads as follows; Article to be searched for, accessed or seized under search warrant 29.

- (1) Subject to the provisions of sections 31, 32, 33 and 40(1) and (2) of this Act, section 4(3) of the Customs and Excise Act,

1964, sections 69(2)(b) and 71 of the Tax Administration Act, 2011, and section 21(e) and (f) of the Customs Control Act, 2014, an article can only be searched for, accessed or seized by virtue of a search warrant issued— 1.

- (a) by a magistrate or judge of the High Court, on written application by a police official, if it appears to the magistrate or judge, from information on oath or by way of affirmation, as set out in the application, that there are reasonable grounds for believing that an article— (i) is within their area of jurisdiction; or (ii) is being used or is involved or has been used or was involved in the commission of an offence—(aa) within their area of jurisdiction; or (bb) within the Republic, if it is unsure within which area of jurisdiction the article is being used or is involved or has been used or was involved in the commission of an offence; or (b) by a magistrate or judge of the High Court presiding at criminal proceedings, if it appears to such magistrate or judge that an article is required in evidence at such proceedings.

- [1] Cybercrimes Act, 19 of 2020 heads as follows;

Article to be searched for, accessed or seized under search warrant

29.

- (1) Subject to the provisions of sections 31, 32, 33 and 40(1) and (2) of this Act, section 4(3) of the Customs and Excise Act,

1964, sections 69(2)(b) and 71 of the Tax Administration Act, 2011, and section 21(e) and (f) of the Customs Control Act, 2014, an article can only be searched for, accessed or seized by virtue of a search warrant issued—

1.

- (a) by a magistrate or judge of the High Court, on written application by a police official, if it appears to the magistrate or judge, from information on oath or by way of affirmation, as set out in the application, that there are reasonable grounds for believing that an article—
- (i) is within their area of jurisdiction; or
- (ii) is being used or is involved or has been used or was involved in the commission of an offence—(aa) within their area of jurisdiction; or
- (bb) within the Republic, if it is unsure within which area of jurisdiction the article is being used or is involved or has been used or was involved in the commission of an offence; or
- (b) by a magistrate or judge of the High Court presiding at criminal proceedings, if it appears to such magistrate or judge that an article is required in evidence at such proceedings.

- [2] Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007; 19A Offences relating to child pornography (1) Any person who unlawfully and intentionally creates, makes or produces child pornography in any manner, other than by using a child for child pornography as contemplated in section 20 (1), is guilty of an offence. .
- [2] Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007;
- 19A Offences relating to child pornography
- (1) Any person who unlawfully and intentionally creates, makes or produces child pornography in any manner, other than by using a child for child pornography as contemplated in section 20 (1), is guilty of an offence.
- .
- [3] Member of the Executive Council for the Department of Health, Eastern Cape v BM (213/2021)
- [2022] ZASCA 140 (24 October 2022).
- [4] National Director of Public Prosecutions v Mohamed NO and Others 2003 (4) SA 1 (CC).
- [5] 51 of 1977
- [6] 19 of 2020.
- [7] Minister for Safety and Security v Van Der Merwe and Others (CCT90/10)
- [2011] ZACC 19; 2011 (5) SA 61 (CC); 2011 (9) BCLR 961 (CC); 2011
- (2) SACR 301 (CC) (7 June 2011)
- [8] Thint (Pty) Ltd v National Director of Public Prosecutions and Others; Zuma and Another v National Director of Public Prosecutions and Others [2008] ZACC 13; 2009
- (1) SA 1 (CC); 2008
- (12) BCLR 1197 (CC).

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/jw-v-jd-and-others-unknown-topic-agpjhc-2025>

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