



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2024-121210

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
30/05/2025	
DATE	SIGNATURE

In the matter between:

**THE COMMISSIONER FOR THE REVENUE
SERVICE**

Applicant

And

ADAMJEE, EBRAHIM AHMED

First Respondent

ADAMJEE, SAHAIR BANU ISMAIL

Second Respondent

ADAMJEE, AADIL EBRAHIM

Third Respondent

ADAMJEE, MUNEEB

Fourth Respondent

CLASSIO TRADE AND INVEST (PTY) LTD

Fifth Respondent

ERF 792 FAERIE GLEN (PTY) LTD

Sixth Respondent

GRAND BRIDGE TRADING 64 (PTY) LTD	Seventh Respondent
GRAY LETTER INVESTMENTS CC	Eighth Respondent
IMPACT PLUS TRADING 736 (PTY) LTD	Ninth Respondent
NARBADA INVESTMENTS (PTY) LTD	Tenth Respondent
RAZOMART (PTY) LTD	Eleventh Respondent
TAG GROUP (PTY) LTD	Twelfth Respondent
THALASSA PROPERTIES (PTY) LTD	Thirteenth Respondent
TIMES SQUARE FILLING STATION (PTY) LTD	Fourteenth Respondent
USHUKELA INVESTMENTS (PTY) LTD	Fifteenth Respondent
YSM INVESTMENTS (PTY) LTD	Sixteenth Respondent
ZCC SECURITY SERVICES (PTY) LTD	Seventeenth Respondent

JUDGMENT

MBONGWE J:

INTRODUCTION

- [1] The Applicant (the South African Revenue Services (SARS) or Commissioner of SARS) brought an *ex parte* application in terms of section 59 of the Tax Administration Act 28 of 2011 (the 'TA Act') against the Respondents on 29 October 2024. The application was heard in chambers before the then ADJP, Kubushi J. SARS sought the following orders:

- “1. That the application be heard *ex parte* in chambers;
2. That a warrant for search and seizure as contemplated in section 60 of the Act, a draft of which is annexed hereto marked “SARS1”, be issued;”

- [2] Having read the papers and heard counsel for the Applicant, Kubushi J issued an order (the provisional order) in terms whereof, *inter alia*, all the realisable assets of the Respondents were preserved and a curator *bonis* to administer same appointed, pending the return date of 05 December 2024.
- [3] The court orders were executed by the Sheriff of the court on 05 November 2024.
- [4] On 05 December 2024 the provisional orders of 05 November 2024 were extended to 19 May 2025.
- [5] On 7 March 2025 the Respondents, save for Respondents 6, 9 and 14, filed an application in terms of Rule 6 (12) (c) under case number 2025/121459 seeking, *inter alia*, the following orders:
 - 5.1 The order granted *ex parte* against the applicants on 29 October 2024 by Kubushi ADJP is reconsidered and set aside.
 - 5.2 The respondent is prohibited from utilising any of the documentation, information and/or material of whatsoever nature seized pursuant to its execution of the search and seizure granted on 29 October 2024 against the applicants.

- 5.3 The applicant is directed to return to the relevant respondents all mirror copies, hard copies and all copies of whatsoever nature that were seized in execution of the search and seizure warrant.
- 5.4 Costs of suit on an attorney-client scale against SARS and against Mr Godfrey Baloyi and severally, alternatively against SARS, further alternatively on scale C.
- [6] The reconsideration application became opposed by SARS and, by agreement between the parties, both opposed applications were set down to be heard simultaneous on 19 to 23 May 2025.
- [7] For clarity and convenience the 1st to the 5th, 7th, 8th, 10th, 12th, 13th, 15th and the 17th Respondents shall be referred to as the 'Adamjee respondents' and the 11th and 16th Respondents as 'the Razomart respondents'. These respondents collectively brought the reconsideration application seeking the setting aside of the provisional preservation orders and are each represented by Mr Bhana as lead counsel and each has a separate team of junior counsel.
- [8] The 6th, 9th, and the 14th respondents are not opposing the confirmation of the provisional preservation orders.

ISSUE 1 – ONUS

- [9] It is common cause that the Applicant who brought the impugned ex parte application carries the burden of proof in respect of the issues raised by the respondents regarding the validity of the search and seizure application:

- 9.1 whether the institution of the search and seizure application was authorised by the Commissioner of SARS as envisioned in the provisions of section 59 (1) read with section 6 (3) (c) of the TA Act;
- 9.2 whether the Applicant met the requirements for entitlement to the orders it sought in the search and seizure application;
- 9.3 whether appropriate material facts, including those prejudicial to the Applicant, were placed before the presiding judge to enable her to make an informed decision whether to grant the relief sought;
- 9.4 whether the Applicant had demonstrated to the court that there was no less intrusive manner of approach to obtain the documentation and the material it sought to be seized;

[10] At the commencement of his address to this court, Mr Snyman, who appeared for the Applicant, advised that he would approach the matter by directly addressing the four issues raised by the Respondents.

(A) ALLEGED LACK OF AUTHORISATION TO LAUNCHING SEARCH AND SEIZURE APPLICATION

[11] It is common cause that the *ex parte* search and seizure application was authorised by Mr Godfrey Baloyi in line with the procedure provided for in section 60 of the TA Act. In terms of the provisions of section 59(1) of the TA Act, an application of this nature must be brought by the Commissioner or a senior official of the Applicant ('SARS'). With regard to his authority, Mr BALoyi states in his confirmatory affidavit as follows:

"3 I confirm that the post I hold within SARS falls within the definition of senior SARS official as defined in section 1, read with section 6(3) (c) of the Tax Administration Act 28 of 2011("the Tax Administration Act"), for purposes of an application for a search and seizure warrant ("the warrant") as envisaged in Part D of Chapter 5, section 59, of the Tax Administration Act."

[12] Mr Snyman, appearing for the SARS accepted that there was no written authority issued to Mr Baloyi by the Commissioner, but argued, with reference to Mr Baloyi's statement in para 3 of the founding affidavit, that Mr Baloyi was a senior official in terms of the Act who, by virtue of his office and position at SARS, did not require written authorisation to bring the search and seizure application.

[13] The Respondents remained steadfast in their dispute that Mr Baloyi had the requisite authority in the absence of proof /production of the written authority of the Commissioner. The Respondents sought that the search and seizure application and consequent orders be set aside on that basis alone.

REQUEST FOR ADJOURNMENT

[14] Upon announcing that it was time, 11h15, to have a tea adjournment, the court was requested to extend the normal 15 minutes tea break by another 15 minutes to 11h45 to enable the parties to engage in discussions of the matter. Another request was later made for the matter to a stand down until the next morning – a request that was acceded to.

- [15] The following morning, on 20 May 2025 after a requested delayed starting time, a meeting was held in chambers attended by the parties' lead counsel. A settlement had been reached in respect of the provisional preservation orders and a draft order setting out the settlement terms was presented with a request that same be made an order of the court.
- [16] For reasons that will later be apparent, I deem it necessary to state broadly settlement terms which were made an order of the court. The draft order of settlement reads in part as follows:

" THE COURT ORDERS THAT:-

1. The provisional preservation order granted by Kubushi ADJP on 29 October 2024 is discharged against all the respondents, save for the sixth, ninth and fourteenth respondents (own emphasis)."

- [17] The main terms of settlement pertain to the restrictions placed on the dealings with the immovable properties of the interdicted respondent juristic entities and place the time frames within which SARS is to process the assessments of the Respondents' taxes and communicate same as well as further steps that could be followed until the finalisation of the tax matters concerned.
- [18] Counsel for the Applicant also presented a second draft order relating to the 6th, 9th and the 14th respondents who were not opposing the confirmation of the provisional preservation orders. In terms of this draft order, which was made an

order of the court, the provisional preservation orders were confirmed and became final orders against the 6th, 9th and the 14th Respondents.

RECONSIDERATION OF THE PRESERVATION APPLICATION AND ORDERS – RULE 6(12) (c)

[19] Ostensibly due to the settlement reached, Mr Snyman did not resume his argument to defend the challenges that had been raised by the Respondents. Instead, it was the Respondents counsel who commenced to present the thereconsideration and setting aside of SARS' search and seizure application on the same grounds stated earlier in this judgment.

CONCERNS RAISED BY THE COURT

[20] Soon after the commencement of the hearing of the reconsideration and setting aside application of SARS, I asked counsel what effect will a negative finding on the validity of the search and seizure application have, in the light of the settlement agreement which had earlier been made an order of the court. Counsel vaguely mentioned the curatorship without elaborating or responding to the question asked. The question was much later answered by Mr Snyman, when responding to Respondents' arguments, that any finding will have no effect on the terms of the settlement agreement. That has been the view of this court is weighing whether there was still the necessity for the hearing of the reconsideration application. Out of extreme caution, however, the hearing continued to the end.

ANALYSIS

[21] In terms of the settlement agreement between the parties, the provisional orders emanating from the impugned search and seizure application were discharged and, therefore, ceased to exist when the agreement was made an order of court. Thus the order sought in the reconsideration application will have no practical effect, even if it were to be granted.


CONCLUSION - MOOT ORDER SOUGHT

[22] Section 16(2) (a) (i) of the Superior Courts Act 10 of 2013 empowers the court to dismiss an application if the order sought will have no practical effect.¹

ORDER

[23] Resulting from the finding in this judgment, the following order is made:

1. The application for reconsideration and setting aside of the provisional search and seizure application is dismissed.
2. The respondents are to pay the party and party costs, including the costs consequent upon the employment of three counsel.



MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

¹ *Mngwenya v Kruger* (1060/16 [2017] ZASCA 102 96 September 2017

Appearances:

For the Applicant: Adv HGA Snyman SC; Adv K. Millard;

Adv. I.M. Hlaalethoa

Instructed by: VZLR Inc

For the 1st to 12th Respondents: Adv A.R. Bhana SC; Adv L. Minne;

Adv. S. Mohammed

Instructed by: Abba Parak Inc

For the 13th and 14th Respondents: Adv A.R. Bhana SC; Adv A. Kolloori;

Adv. J. Davis

Instructed by: Girard Hayward Inc

Date of hearing: 21 May 2025

Date of Judgment: 30 May 2025