Loxton + State

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH WEST DIVISION, MAHIKENG)

CASE NO: 5662/2025

Held at MMABATHO on this the 07th day of NOVEMBER 2025
BEFORE the Honourable Madam Justice MABUZA AJ

In the matter between:

ESSOP ZAMAN ALI JAMAL — Applicant

And

MINISTER OF POLICE — Respondent

HAVING HEARD ADV. N JAGGA on behalf of the Applicant and having read the Notice of Motion and other documents filed of record,

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG
Private Bag X2010, Mmabatho 2735
2026 -03- 20
MWD-NW-003

IT IS ORDERED

1. THAT: Judgment reserved.

THEREAFTER on this the 10th day of DECEMBER 2025

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG

IT IS ORDERED

1. THAT: The application is struck from the urgent roll.

2. THAT: The joinder of the Commissioner for SARS as Second Respondent is confirmed.

3. THAT: The detention of the truck and cigarettes under Sections 87, 88 and 102 of the Customs and Excise Act is declared lawful.

4. THAT: The costs in this application shall be costs in the cause.

BY THE COURT

REGISTRAR OF HIGH COURT
NORTH WEST HIGH COURT
MAFIKENG

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG

REGISTRAR

L Att

Private Bag X2010, Mmabatho 2735

2026-03-20

NWD-NW-003

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION MAHIKENG

CASE NO:5662/2025

In the matter between:

ESSOP ZAMAN ALI JAMAL **APPLICANT**

And

MINISTER OF POLICE **RESPONDENT**

Judgment is handed down electronically by distributing to the parties' legal representatives by e-mail. The date that the judgment deemed to be handed down is 10 December 2025 at 10H00.

ORDER

Consequently. The court makes the following order:

1. The application is struck from the urgent roll.
2. The joinder of the Commissioner for SARS as Second Respondent is confirmed.
3. The detention of the truck and cigarettes under sections 87, 88 and 102 of the Customs and Excise Act is declared lawful.
4. 37 The costs in this application shall be costs in the cause.

JUDGMENT

MABUZA AJ

INTRODUCTION

[1] This is an urgent application in which the applicant seeks the immediate release of a white FAW truck with registration FTZ 046X / LH50 ZD GP and a consignment of Remington Gold Blue 20s cigarettes seized by South African Police Services (SAPS) and detained by South African Revenue Services (SARS).

[2] The respondents oppose the application, contending that the detention is lawful under the Customs and Excise Act [1](Custom Act) and that the matter lacks urgency.

HISTORICAL BACKGROUND

[3] On 13 October 2025, SAPS seized the applicant's truck in Potchefstroom containing boxes of Remington Gold cigarettes. SAPS referred the matter to SARS' Illicit Economy Unit for assessment. SARS investigator Mr B.E. Nkosi examined sample cigarettes and confirmed non-compliance with the Customs Act and Tobacco Products Control Act.[2]

[4] SARS calculated potential tax-at-risk at Three Million Two Hundred and Seventy-Seven Thousand Five Hundred Rand (R3 277 500.0). SARS issued Detention Notices in terms of sections 87 and 88 of the Customs Act.

[5] The applicant launched this urgent application on 22 October 2025. It was on the urgent roll on the 31 October 2025. The respondent file the answering affidavit a day before the date of hearing. The Applicant requested postponement to file their replying affidavit. The matter was postponed to the 7 November 2027 for filling of the replying affidavit on or before the 4 November 2025 and for hearing on the 7 November 2025.

SARS JOINDER

[6] On the 7 November 2025 SARS applied for joinder under Rule 12 citing a direct and substantial interest. Mr Nkosi as a representative for SARS argued that SARS is the lawful custodian of the detained goods and its application for joinder to be upheld by this court.

APPLICANT'S CONTENTIONS AGAINST SARS' JOINDER

[1] Customs and Excise Act 91 of 1964.
[2] Tobacco Product Control Act 83 of 1993.

[7] The applicant opposes SARS' joinder, arguing SARS has no direct role and is delaying relief. The applicant argues urgency remains despite SARS' intervention.

RESPONDENTS' ARGUMENTS ON JOINDER

[8] SAPS supports SARS' joinder, contending this Court cannot decide lawfulness without SARS. They argued that SARS' custodianship makes joinder necessary.

EFFECT OF SARS AFFIDAVITS ON URGENCY

[9] SARS' detailed affidavits expanded the issues substantially. The matter became fact-heavy and unsuitable for urgent determination. Urgency was materially diminished.

ISSUES TO BE DETERMINED

[10] The issues are:

1. Whether the matter is urgent.
2. Whether SARS' joinder should be granted.
3. Whether the detention is lawful.
4. Whether spoliation or interdictory relief is competent.

LEGAL PRINCIPLES

[11] *In Luna Meubel Vervaardigers (Edms) Bpk v Makin*,[3] the court stated that urgency requires exceptional circumstances. In *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite*,[4] the court stated that commercial prejudice does not establish urgency.

[12] Rule 12 joinder requires a direct and substantial interest as stated in *Amalgamated Engineering Union v Minister of Labour*.[5] In *Commissioner for*

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[3] *Luna Meubel Vervaardigers (Edms) Bpk v Makin* 1977 (4) SA 135 (W).
[4] *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd and others* (11/33767 [2011] ZAGPJHC 196 923 September 2011.
[5] *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A).

SARS v Trend Finance (Pty) Ltd,[6] it is stated that SARS may detain goods under sections 87–88 of the Customs Act.

[13] Spoliation cannot lie against lawful statutory authority. See: *Tswelopele Non-Profit Organisation v City of Tshwane*.[7]

ANALYSIS

[14] The urgency claimed is based on commercial inconvenience, not irreparable harm. SARS' joinder was necessary as it is the detaining authority. The applicant provided no documentary proof of lawful importation as required by section 102 of the Customs Act. SARS acted lawfully under statutory authority. Therefore, spoliation cannot apply against statutory detention.

FINDINGS

[15] This Court find that the application does not meet the requirements of urgency. SARS' joinder is granted and confirmed. This Court further finds that the detention is lawful under the Customs Act. The applicant is therefore, not entitled to spoliatory relief.

COSTS

[16] I make no determination on liability for costs at this stage. The costs of this urgent application shall be costs in the cause, to be determined by this Court hearing the main proceeding.

ORDER

[17] Consequently, this court makes the following order:

1. The application is struck from the urgent roll.
2. The joinder of the Commissioner for SARS as Second Respondent is confirmed.
3. The detention of the truck and cigarettes under sections 87, 88 and 102 of the Customs and Excise Act is declared lawful.

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[6] *Commissioner for SARS v Trend Finance (Pty) Ltd* 2007 (6) SA 117 (SCA).
[7] *Tswelopele N on-Profit Organisation v City of Tshwane* 2007 (6) SA 511 (SCA).

4. 37 The costs in this application shall be costs in the cause.

Mabuza

B MABUZA
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION, MAHIKENG

Heard and postponed on:	31 October 2025
Heard and Court order made on:	7 November 2025
Judgment delivered on:	10 December 2025

Appearances

Counsel for the Applicant:	Adv N Jagga
Instructed by:	Jassat Mictchell Attorneys, Klerksdorp
	Email: andreas@thelawhub.co.za
	C/O Bruce Loxton Attorneys, Mafikeng
Counsel fort Respondent:	Office of the State Attorney
Instructed by:	M Dluli