

**REPUBLIC OF SOUTH AFRICA**



**SOUTH GAUTENG HIGH COURT, JOHANNESBURG**

**CASE NO: 2009/6444**  
**REPORTABLE**

- (1) REPORTABLE: YES / NO  
(2) OF INTEREST TO OTHER JUDGES: YES/NO  
(3) REVISED.

.....  
DATE

.....  
SIGNATURE

**In the matter between:**

**ABDOOL SATTAR AYOB**

**MOHSIN AYOB**

**RIZWANA AYOB**

**1<sup>st</sup> Applicant**

**2<sup>nd</sup> Applicant**

**3<sup>rd</sup> Applicant**

**and**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**INVESTIGATION OFFICER SSI LERM**

**MINISTER OF SAFETY & SECURITY**

**1<sup>st</sup> Respondent**

**2<sup>nd</sup> Respondent**

**3<sup>rd</sup> Respondent**

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## J U D G M E N T

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### MOKGOATLHENG J

- (1) The applicants instituted these proceedings consequent upon the search warrants issued by Judge Preller in chambers at the North Gauteng High Court on the 27 October 2008. The search warrants were sought in terms of ***section 29 of National Prosecuting Authority Act 32 of 1998 (The Act)*** and authorised the search of certain premises belonging to and occupied by the applicants. The purpose of this application is to set aside the search warrants and the seizure of the applicants articles.

### THE FACTUAL MATRIX

- (2) On the 29 October 2008 at approximately 8:30am, the first applicant, his son Mohammed Ayob and the second applicant were at their premises at Unit 4 Kariba Street No. 17 Powerville – Vereeniging when eight policemen in civilian clothing entered the premises, and informed them that they had search warrants to search the premises. The premises were searched.
- (3) Another search was conducted at No. 12A Bukhari Street, Dadeville, 52 Kerk Street Heilbron, pictures and video tapes of the search were taken and an inventory of the goods seized and removed was made. A further search was also conducted at No. Fridoze Street, Dadeville – Roshnee, and at the second respondent and Mohammed Ayob's employment. The police seized *inter alia*:
- (a) one tower computer of a company;

- (b) one laptop and a passport belonging to Mahommed Ayob;
  - (c) the first applicant's cell phone, and two cell phones belonging to his wife; and
  - (e) from the first applicant's shop in Heilbron, boxes of cigarettes, boxes of Grand – Pa, "*three account books*," text books on chemistry and paper works.
- (4) Subsequent to the search, the first and second applicants and Mohammed Ayob were arrested and charged with fraud, and appeared at the Vereeniging Magistrate's Court on the 13 October 2008 where they were subsequently released on R5 000.00 bail respectively.

#### **THE FACTUAL BACKGROUND LEADING TO THE APPLICATION FOR THE SEARCH WARRANTS**

- (5) The genesis of the search warrants is predicated upon the investigation ordered by the Western Cape Regional Head of the Directorate of Special Operations on 16 September 2008 in terms of **section 28(13) of the Act** pertaining to the commission or attempted commission of specified offences pursuant to the ***Drugs and Drug Trafficking Act, Act 140 of 1992*** which were allegedly committed or attempted to be committed in an organised fashion by the first and second applicants and Mohammed Ayob.
- (6) The second respondent was designated as an investigator of the preparatory investigation. The second respondent received reliable information regarding a drug syndicate operating between Gauteng and the Western Cape, indicating that the syndicate intended to distribute on a massive scale illegal drugs by concealing same in the packaging of Grand – Pa Headache Powder a legitimate pharmaceutical product.

- (7) On verification of the information the second respondent discovered from Johannes Jurie Theron of "*Basically Branding*" in July 2008, that the second applicant and Mohammed Ayob had concluded a contract with a printing company "*Basically Branding*" in Vereeniging to print facsimiles of the standard 38 sachets size Grand – Pa boxes for R7 454.99.
- (8) Theron was suspicious of the request as he was aware that the printing rights for Grand – Pa were held by GlaxoSmithKline. He reported the matter to Grand – Pa and agreed to work with the South African Police Service in investigating the matter. The first and second applicants and Mohammed Ayob were kept under surveillance by the South African Police Service surveillance team which monitored the transactions and their activities.
- (9) The surveillance revealed that on 24 July 2008, the second applicant ordered a further 10 000 printed Grand – Pa boxes, 380 00 printed Grand – Pa wrappers and 20 000 seals from the printing company. On 11 August 2008 the second applicant and Mohammed Ayob visited Solar Stainless Steel in Elsies River, Western Cape and placed an order in the amount of R68 000.00 for the manufacturing of a wrapping machine similar to the one used by GlaxoSmithKline who are the manufacturers of Grand – Pa headache powders.
- (10) On 20 August 2008 an amount of R34 000.00 was electronically deposited into the bank account of Solar Stainless Steel by the second applicant. On 8 September 2008 Theron received a cash amount of R15 700.00 as a deposit towards the pre-ordered Grand – Pa packaging.

- (11) The second applicant requested Theron to print a specific batch number and expiry date on the packaging, which after been checked, correlated with the particulars of a batch manufactured by GlasxoSmithKline in February 2008. The second applicant also asked that the leaflet normally included in Grand – Pa packaging should also be copied, and that 100 000 thereof should be printed.

### **THE FORMULATION OF REASONABLE SUSPICION**

- (12) The second respondent testified that during the investigation, the surveillance team identified the premises from which the first and second applicants and Mohammed Ayob were operating from as Unit 4, 17 Kariba Street, Vereeniging. An operational decision was taken to covertly enter the aforesaid premises to obtain samples of the product which was manufactured in order that it could be tested and analysed.
- (13) Authorisation in terms of ***section 252A of the Criminal Procedure Act 51 of 1977*** was obtained in respect of the covert entry into the premises. The covert entry of the premises occurred on or about 23 October 2008. Lionel Snyman of the Law Enforcement Unit of the Department of Health was present when the premises were entered.
- (14) On entering the premises, it was patent that the premises were being used for the manufacturing of a drug-like substance which resembled Grand – Pa Headache Powder and which was being packaged in the Grand – Pa packaging which Theron had provided. The surveillance team inspected the drug-like substance and the various chemicals which were used to manufacture same.

- (15) On the premises there were approximately 500 packets which contained 38 sachets of the drug-like substance. There were also 2 mixing bowls which contained chemicals which were mixed and ready to be packed. Further, the wrapping machine was set up to wrap the drug-like substance and only needed to be switched on. Various chemicals which were used in the manufacture of the drug-like substance and illicit and/or contraband cigarettes were found stored on the premises.
- (16) The day after the covert entry took place Snyman contacted the second respondent and informed him that he had done preliminary tests on one of the samples of the drug-like substances to identify the chemicals used in its manufacture. He advised that the drug-like substance appeared to be hazardous for human consumption.
- (17) The samples were taken to a forensic laboratory for testing and analysis. No final results are yet available. However, preliminary forensic results obtained from testing the drug-like substance indicate that it is harmful substance which does not mimic medicinal qualities, the composition whereof was not manufactured as a generic version of the Grand – Pa product, as it is potentially life threatening if consumed by humans.
- (18) As consequence of the hazardous nature of the drug-like substance found on the premises together with the fraudulent packaging, it was essential that it not be allowed to be distributed and/or mixed with genuine Grand – Pa pharmaceutical products.
- (19) The second respondent states that he believed that the first and second applicants and Mohammed Ayob were complicit in the planned,

ongoing, continuous or repeated attempt of contravening **sections 14(1), 18(1), 22C(5) and 19(1)** read together with **sections 29(b) and (k) and section 30 of the Medicines and Related Substances Act, 101 of 1965**, which contraventions were in an organised fashion.

- (20) In view of the aforesaid information the second respondent states that he reasonably suspected that an offence which might be a specified offence, had been committed or an attempt to commit such offence was being made, consequently, that there was a need for a search and seizure warrant to prosecute the investigation further.

#### **THE APPLICATION FOR THE SEARCH WARRANTS**

- (21) On the 27 October 2008 the second respondent made an affidavit in support of the application for the search warrants in terms of **section 29 of the Act**. This affidavit was, presented to Judge Preller in chambers at the North Gauteng High Court. The Honourable Judge Preller considered same and authorised the issuing of six individual search warrants.
- (22) On the 29 October 2008 at approximately 8:30am and 10:30pm, search seizure operations were conducted at the applicants various premises. Upon entering the premises, the second respondent states that they identified themselves as members of the Directorate of Special Operations, and informed the first and second applicants of the purpose for which they sought entry to the premises in order to execute the search warrants. The third applicant was not present.

- (23) The contents of the search warrant was presented and explained. The search was conducted with strict regard to decency and order in relation to the rights of the persons present. Also present was an adult male who stated to Senior Special Investigator May that he was an attorney. The attorney perused the search warrant and declared that it was in order.
- (24) All the persons present at the various premises were treated with the utmost respect and dignity. Before the questioning commenced all present were advised of their constitutional rights.
- (25) During the execution of the search warrants at 52 Kerk Street Heilbron the following items were found at the premises:
- (a) boxes, paracetamol, caffeine and aspirin in powder form,;
  - (b) a stainless steel paper folding machine, approximately 300 cartons of cigarettes in boxes;
  - (c) packaging material and paper and steel tables;
  - (d) a huge quantity of salicylic acid;
  - (e) one drum of aspirin (acetylsalicylic acid);
  - (f) seven drums of salicylic acid;
  - (g) seven drums of caffeine;
  - (h) eleven large carton boxes of paracetamol;
  - (i) a stainless steel paper folding machine and Grand – Pa wrappers or sachets thereon; and
  - (j) 300 cartons of illicit cigarettes.
- (26) The information received and gathered turned out to be correct. Chemicals were found in the manufacturing process of the drug-like substance. Machinery and equipment used in the manufacture, weighing, calibration, packaging, storage and distribution of the drug-like substance was found on the premises.



- (27) The search and seizure operation gave rise to a reasonable suspicion that the first and second applicants and Mohammed Ayob were in possession of articles and documents concerned in the commission or suspected commission of the crimes identified in the search warrants.

### **THE APPLICANT'S SUBMISSIONS**

- (28) The applicants contend that:
- (a) the application for the search warrants was not accompanied by any material information under oath justifying the violation of their constitutional rights to dignity, privacy and economic freedom;
  - (b) they had a right to examine the “*information on oath*” referred to in the search warrants and relied upon by the second respondent to secure the search warrants;
  - (c) the search warrants were issued without first hearing their version and without providing them with the protection to enable them to establish what their rights were and how they were to enforce such rights;
  - (d) there was no “*reasonable grounds*” or credible information for believing that any of the articles seized from their possession were concerned in the commission or suspected commission of an offence within the Republic of elsewhere;
  - (e) the application for the search warrants was not supported by any factual material on the strength of which it could have been concluded that the objects of **section 29 of the Act 32 of 1998** would be defeated if prior notice of the application had been given to them or if safeguards were built into the order in terms of which they were given a fair chance to establish and enforce their rights before they were invaded;
  - (f) the second respondent did not apply his mind to the matter in respect of which the search warrants were sought, consequently, the search warrants are over-broad;

- (g) there is no rational connection between the wide terms of the search warrants sought and the grounds for the justification for such search warrants; and
- (h) the respondents have not justified, as **section 36 of the Republic of South Africa Constitution Act 108 of 1996** decrees, the limitation they sought pursuant to the search warrants in respect of the power conferred upon them by **Act 32 of 1998** for infringing their constitutional of rights; and

### **THE RESPONDENT'S SUBMISSIONS**

- (29) The respondents contend that Judge Preller is a necessary party to these proceedings, and should have been joined as a party because he has a direct and substantial interest in any order which this Court might make, consequently the non-joinder is fatal to the applicants case.
- (30) The search warrants were lawfully issued by Judge Preller after applying his mind to and considering the second respondent's affidavit. The applicants rights to privacy, dignity or to practice their trade were not infringed. The applicants were not entitled to be heard by the Honourable Judge Preller before the search warrants were issued nor were they entitled to a hearing before the authorisation of the search warrants.

### **THE ANALYSIS OF EVIDENCE**

- (31) The gravamen of the applicant's case is that:
  - (a) the search warrants issued by Mr Justice Preller were irregularly issued in that they were not based on information on oath, consequently, the said search warrants are unlawful;

- (b) Mr Justice Preller was a victim of serious misrepresentation which led to him issuing the search warrants without properly applying his mind thereto; and
  - (c) the exclusive reliance predicated the search and seizure operation is based on the authorisation given in terms of **Section 252A of Act 51 of 1977** and not on ***The Prevention of Organised Crime Act***.
- (32) The contention that the second respondent misled Mr Justice Preller to issue the search warrants, and that the latter issued the search warrants without having recourse to information on oath, that consequently, the search warrants were a nullity is without merit.
- (33) The application for the search warrants was lawfully authorised and did not intrude upon the applicants right to dignity, privacy and economic freedom. A Judge prior to issuing search warrants under **section 29 of the Act** is not legally obliged to hear an affected person's "*side of the story*" or version. In my view the second respondent acted in good faith and made a full and objective disclosure of all material facts to Judge Preller. See ***Mohamed v NDPP and Others 2006 (1) SACR 495 WLD para (110(b)-(d))***.
- (34) The allegations made against the Honourable Judge Preller are unfounded. What is disconcerting is the fact that the allegations have been made in the absence of the Honourable Judge having been cited and joined as a party to this application.
- (35) The applicant's contention that "*had the said search warrants been preceded before their issue by the careful application of the mind*", safeguards would have been built into the search warrants,

consequently, *“no consideration was given to the serious impact the search and seizure operation would have”* has no merit.

- (36) The applicants misconceive the jurisdictional prerequisites of **section 29 of the Act** that an article may only be seized by a search warrant on application to a Judge, ensures that the intrusion upon an individual's rights to privacy, dignity or to practice a trade are safeguarded.
- (37) The object of **section 21** read with **section 20 of the Act** would be defeated *“if prior notice of the application had been given to the applicants or if safeguards were built into the search warrants in terms of which they were given a fair chance to establish and enforce their rights before they were invaded”*.
- (38) There is no provision in the **Act** that prior notice ought to be given to the affected party of the intention of the State to obtain search warrants or that safeguards be built into the order in terms of **section 21** read with **section 20 of the Act**.
- (39) In my view due to the peculiar countervailing circumstances, this is a case wherein it was not necessary to inform the applicants of the planned search and seizure operation. Due to the nature of the contraventions it was reasonably necessary to infringe the right to privacy of the applicants. The search operation was conducted within the ambit of the investigation pursuant to **the Act**.
- (40) **Section 21** envisages an ex parte application, the procedure has the element of surprise to preempt or frustrate the concealment or detection of crime or impede the investigation thereof. In my view, this

procedure is not unconscionable as alleged by the applicants because there was the distinct danger that the object of the search and seizure operation would be pre-empted and accordingly render the investigation nugatory.

- (41) The second respondent's affidavit spells out the reliable information received in detail regarding an alleged drug syndicate operating between Vereeniging in Gauteng and the Western Cape. The information clearly indicated that the syndicate of which the first and second applicants were part of intended to mass distribute illegal drug-like substances by concealing same in the packaging of a recognised reputable pharmaceutical product.
- (42) The second respondent explains in full detail the apparently unlawful activity and conduct in pursuance of the syndicates exploits which culminated in an operational decision been taken to covertly enter the premises to obtain samples of the product manufactured in order to test and analyse same.
- (43) In my view the second respondent's belief was reasonably formed and lawfully justified an application to Judge Preller in chambers to issue the search warrants in terms of **Section 29(5) of Act 32 of 1998** as the jurisdictional requirements thereof were satisfied and met.
- (44) The Honourable Judge Preller, by appending his signature to the search warrants, confirmed that it appeared to him from the information on oath that there were reasonable grounds to believe that there were articles or documents on the premises used, in the commission of or in the suspected commission of an offence in contravention of **Act 101 of 1965 and the Medicine and Related Substance Act 121 of 1998**.

- (45) The search warrants contain a list of four premises to be searched. although one falls outside the jurisdiction of the court from which the impugned search warrants were issued, in my view there was no jurisdictional or territorial legal bar which precluded Judge Preller from issuing the search warrants in respect of premises situate in the Free State.
- (46) The contention that Judge Preller was unlawfully and intentionally misled into believing that the investigation involved the manufacture/distribution/possession of drugs contemplated in **Act 140 of 1992** has no merit. The second respondent specifically stated that the drug-like substance seized were forwarded to the Forensic Laboratory to be analysed, that the results were still awaited.
- (47) The search warrants specifically allude to the search for the and seizure of *“all machinery and or equipment, chemicals used in the manufacture of packaging, storage and distribution of the drug-like substance” and all documents, files, computers, all information pertaining to the search manufacture and storage transport of the drug-like substance”*.

**WHETHER THE LIMITATION OF APPLICANTS RIGHTS WERE  
REASONABLE AND JUSTIFIABLE**

- (48) The applicants state that the second respondent has not justified, or even made any serious efforts to justify the limitation of their rights pursuant to **section 36(1) of the Constitution**.

- (49) **Section 21** read with **section 20 of the Act** authorises the State to seize certain articles pursuant to a search warrant issued in terms of **section 21**. The object is to enable the State to obtain evidence to institute a prosecution in respect of certain alleged offences. The search and seizure operation impacts seriously on the constitutional rights to privacy, dignity and the right to practise a trade. The rights encapsulated are buttressed in the Constitution by values of human dignity, freedom and equality. (*Zuma v national Director of Public Prosecutions and Others 2009 (1) SA 1 (CC) para [76]; Bernstein and Others v Bester and Others NN) 1996 (2) SA 751 (CC) para [77] and Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others: In re Hyundai Motor Distributors (Pty) Ltd and Others v Smit N O and Others 2001 (1) SA 545 (CC) para [18]*).
- (50) Constitutional rights may be limited under certain circumstance in terms of **section 36(1) of the Constitution**, which provides:  
*“The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account all relevant factors, including–*  
(a) *the nature of the right;*  
(b) *the importance of the purpose of the limitation;*  
(c) *the nature and extent of the limitation;*  
(d) *the relation between the limitation and its purpose; and*  
(e) *less restrictive means to achieve the purpose”*.
- (51) The right to privacy, dignity and to practice a trade, occupation or profession are not absolute. These rights are mutually limiting, and need to be balanced and reconciled by limiting the exercise of the one right to the extent necessary to accommodate the exercise of the other, or by limiting the exercise of both or all the rights as required by the

particular circumstances of the case within the constraints imposed by **section 36 of the Constitution (See *Midi Television t/a E-V v Director of Public Prosecutions (Western Cape) 2007 (5) SA 540 (SCA) para's [9]-[11]*)**.

- (52) It is a trite principle of our law that search and seizure provisions of the Act, constitute a reasonable and necessary limitation on the right to privacy to combat crime. In balancing and reconciling, the right of the State to fight crime by detecting and prosecuting same and the rights of the applicants, i.e. the right to privacy underpinned by the right to dignity and the freedom to practice his or her trade, occupation or profession and the right to fair legal process, in the prevailing circumstances the limitation of the applicants rights to privacy was reasonable and justifiable in terms of **section 36 of the Constitution. (See: *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others (supra) paras [54]-[55]*)**.

- (53) In the matter of ***Thint (Pty) Ltd v National Director of Public Prosecutions and Others 2008 (2) SACR 421 (CC)*** at the Honourable Langa CJ held the following:

*“Although a search and seizure operation will inevitably infringe a person’s right to privacy, the Act provides considerable safeguards which ensure that the infringement goes no further than reasonably necessary in the circumstances. Furthermore, the requirement of judicial authorisation for search warrants is only one aspect of a broader scheme which ensures that the right to privacy is protected.*

*First, a judicial officer will exercise his or her discretion to authorise the search in a way which provides protection for the individual’s right to privacy. Second, once the decision to issue the search warrant has*



*been made, the judicial officer will ensure that the warrant is not too general nor overboard, and that its terms are reasonably clear. At the third stage, the right to privacy may still be vindicated by a reviewing court, which can strike down overly broad warrants and order the return of objects which were seized in terms thereof. Finally, the criminal trial must be fair, and an accused person is entitled to object to any evidence or conduct that may render the trial unfair.*

Understanding the range of protections for the right to privacy at the different stages of a criminal investigation and trial is important. Courts must take care in ensuring protection for the right to privacy, they do not hamper the ability of the State to prosecute serious and complex crime, which is also an important objective in our constitutional scheme.”

### **THE OVER-BROADNESS OF THE SEARCH WARRANTS**

- (54) The appellants contend that the search warrants were over broad in that the search warrants were crafted and treated as one, and were in identical terms “*as in a case of one size fits all,*” further that the search warrants as a whole were over-broad in that there is no rational connection between the wide terms of the search warrants sought and the grounds for justification for such warrants.
- (55) The allegation that the police officers who participated in the searches were too many and their methods over-broad or conducted search and seizure unlawfully has no merit. **Section 21(2) of the Act** authorises a police official to carry out search and seizure operations. **Section 29 of the Act** provides for the search to be conducted with strict regard to decency and order. The police official authorised to execute the search warrants, the second respondent is identified in the search warrants. The unidentified members of the Directorate of Special Operations

were merely required to assist the identified police officer, to execute the search warrants.

- (56) Taking into consideration that four different premises were to be searched, the number of identified and unidentified police officers, even though not specifically mentioned in the search warrants to participate in the search and seizure operation, does not make the search warrants over-broad or unlawful as contended by the applicants.
- (57) The contention that the search warrants as a whole were over-broad in that there was no national connection between the wide terms of the search warrants and the grounds for the justification for such warrants has no merit. A perusal of the search warrant reflects when the alleged offences were apparently committed or attempted. The search warrants were prepared by the second respondent and presented to Judge Preller as a draft warrants. The learned Judge did not see the necessity to limit the scope of the search warrants or to build in any safeguards thereto.
- (58) The parameters within which the searches were to be conducted is the function of the learned Judge and not the second respondent who is seized with the execution of the search warrants. The learned Judge as the custodian of the Constitution is in the best position to strike a balance between the interests of the State and the individual. ***(Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd (supra) para [54].)***
- (59) Cameron JA in ***Powell N O and Others v Van der Merwe N O and Others 2005 (5) SA 62 (SCA)***, succinctly enunciates at ***para [59]*** the legal principles thus:

- “(a) Because of the great danger of misuse in the exercise of authority under search warrants, the courts examine their validity with a jealous regard for the liberty of the subject and his or her rights to privacy and property;*
- (b) This applies to both the authority under which a warrant is issued, and the ambit of its terms:*
- (c) The terms of a search warrant must be construed with reasonable strictness. Ordinarily here is no reason it should be read otherwise than in the terms in which it expressed:*
- (d) A warrant must convey intelligibly to both searcher and searched the ambit of the search it authorises;*
- (e) If a warrant is too general, or if its terms go beyond those authorising statute permits, the courts will refuse to recognise it as valid, and it will be set aside;*
- (f) It is no cure for an overbroad warrant to say that the subject of the search knew or ought to have known what was being looked for: the warrant must itself specify its objects, and must do so intelligibly and narrowly within the bounds of the empowering statute”.*

(60) The appellant disputes the lawfulness of the search warrants on the basis that Judge Preller did not apply his mind to the matter when authorising the search warrants. The applicants have not joined Judge Preller in these proceedings. There is no cogent persuasive allegations detailing the alleged manner in which the learned Judge failed to apply his mind. The learned Judge’s integrity is impugned without any just cause. The conduct of impugning a Judge’s integrity without substantiation is deprecated in the strongest terms as it impacts on the constitutional notion of judicial independence.

- (61) The learned Judge acts in his capacity as a judicial officer carrying out a judicial function. The learned Judge as the guardian of the Constitution is enjoined to ensure that the fundamental rights enshrined in the Constitution, are protected. The learned Judge is enjoined to impartially, without fear or favour in considering the issuing of the search warrants to be acutely aware that such act could possibly infringe constitutional rights consequently, he is enjoined to safeguard as far as reasonably possible, the interest of the affected parties who are not present when the search warrants are sought. It is the learned Judge's prerogative function, to safeguard any infractions subject to limitations which are reasonable and justifiable in an open and democratic society.
- (62) There is no cogent evidence that there learned Judge fell short of his constitutional judicial obligation. The investigations against first applicant and second applicants and Mohammed Ayob are continuing. The seized articles will possibly be used as evidence in the first and second applicants and Mohammed's trial. The 300 cartons of cigarettes are in the possession of the Customs and Excise authorities, who are conducting an investigation relating to them. The drug-like substances seized are being analysed at a Forensic Laboratory. In the circumstances, the exhibits seized cannot be returned to the applicants at this time, consequently, the application for an order to that effect, is ill-conceived and premature.
- (63) In my view the objectives proven facts show that the application for the search warrants was lawful and justified. The issuing of the search warrants by Judge Preller was predicated on information on oath which lawfully justified him in issuing the search warrants. Further there is no cogent evidence that during the execution of the search and seizure operation, the conduct of the police was oppressive

**ORDER**

(64) The application is dismissed with costs.

Dated at Johannesburg on the 26<sup>th</sup> May 2011.

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MOKGOATLHENG J  
JUDGE OF THE HIGH COURT

DATE OF HEARING: 20<sup>TH</sup> MAY 2010

DATE OF JUDGMENT: 29<sup>TH</sup> MAY 2011

ON BEHALF OF THE APPLICANT: MR ZEHIR OMAR

INSTRUCTED BY: ZEHIR OMAR ATTORNEYS

C/O MARK-ANTHONY BEYL ATTORNEYS

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ON BEHALF OF THE RESPONDENT: J H VAN DER MERWE

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