HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case no: 42827/2020

REPORTABLE: No
OF INTEREST TO OTHER JUDGES: No
REVISED.
24 March 2022

In the matter between:

LTE CONSULTING (PTY) LTD	First Applicant
MAJOLA MAKHOSI THULANI	Second Applicant

and

THE MINISTER OF POLICE	First Respondent
DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION	Second Respondent
SIMELANE MZIZIKAZI FLORENCE	Third Respondent

***Case Summary*: APPLICATION - SEARCH AND SEIZURE WARRANTS - BE DECLARED INVALID AND SET ASIDE**

JUDGMENT

SENYATSI J

A. INTRODUCTION

[1] Applicants before this court seek an order that the search and seizure warrants attached to the application, four in number and all dated 30 October 2020 be declared invalid and set aside.

[2] The search and seizure warrants were issued by Mabesele J of this court. The application is opposed.

B. BACKGROUND

[3] First Applicant is LTE Consulting (Pty) Ltd, a private company with its registered office at 5 Elgin Road, Belvedere Place, Building 1, Sunninghill, Johannesburg.

[4] Second Applicant is Makhosi Thulani Majola an adult businessman, and a director of First Applicant.

[5] First Respondent is the Minister of Police, care of the State Attorney 10th Floor North State Building, 95 Market Street, Johannesburg, who is the political head of the South African Police Services.

[6] Second Respondent is Directorate for Priority Crime Investigation with its head office at 141 Crosswell Road, Lindopark, Silverton, Pretoria.

[7] Third Respondent is Mzizikazi Florence Simelane, an adult female Lieutenant-Colonel, a member of the South African Police Services stationed at Rentmeester Building No 74, Watermeyer Street, Pretoria.

[8] The four warrants which are sought to be impugned were,as stated, obtained on 30 October 2020 and the searches and seizures were effected thereafter.

[9] Applicants contend that Honourable Justice Mabesele who issued the warrants did not have jurisdiction and / or authority to issue them because he was not in an open court when he issued same, regards being had to section 21(1)(b) of the Criminal Procedure Act No: 51 of 1977 ("the Act").

[10] Respondents deny that the warrants for search and seizure are invalid and stand to be set aside on the basis that criminal proceedings had not commenced against Applicants.

[11] Respondents contend that it was not necessary to sit in criminal proceedings to have the authority to issue the warrants of search and seizure. Respondents also contend that the court consisting of a single sitting judge does not have jurisdiction to review and set aside the warrants of search and seizure issued on 30 October 2020 by another judge. They argue that the prayers sought in the proceedings are incompetent in law.

[12] Respondents argue that when the warrants were executed, police did not provide Applicants with the copy of the affidavit that led to the issuing thereof. However, following the demand letter issued by Applicants'' legal representatives the affidavit and a list of police officers who executed the warrants were provided on 14 November 2020 a day after receipt of the demand letter. Consequently, so continues the argument by Respondents, the application has become moot.

C. ISSUES

[13] The issues for determination is whether or not this court is competent to intervene given that the documents demanded were provided and furthermore whether or not the court is competent to make a determination on the validity or lack thereof of the warrants for the arguments raised by Respondents.

D. THE LEGAL PRINCIPLES

[14] The bone of contention by Applicants is that the warrants did not comply with the provisions of the Criminal Procedure Act 51 of 1977, in the particular section 21 ("the CPA").

[15] Section 21 of the CPA provides as follows:

"21 Article to be seized under warrant

(1) Subject to the provisions of sections 22, 24 and 25 an article referred to in section 20 shall be seized only be virtue of a search warrant issued-

(a) by a magistrate or justice, if it appears to such magistrate or justice form information on oath that there are reasonable grounds for believing that any such article 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 control of any person or upon or at any premises is required in evidence at such proceedings.

(2) A search warrant issued under subsection (1) shall require a police official to seize the article in question and shall to that end authorize such police official to search any person identified in the warrant, or to enter and search any premises identified in the warrant and to search any person found on or at such premises.

(3)(a) A search warrant shall be executed by day, unless the person issuing the warrant in writing authorizes the execution thereof by night.

(b) A search warrant may be issued on any day and shall be of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.

(4) A police official executing a warrant under this section or section 25 shall, after such execution, upon demand of any person whose rights in respect of any search or article seized under the warrant have been affected, hand him a copy of the warrant."

It is clear that the legislature intended to have a formal procedure followed in respect of the issue.

[16] In *Malherbe v State*[1] the court held that magistrate and justices (police officers) are empowered and have the authority to issue search warrants before criminal proceedings are instituted on the basis of information on oath.

[17] In *Thint (Pty) Ltd v National Director of Public Prosecutions and others, Zuma and another v National Director of Public Prosecutions and others*[2] the Constitutional Court held that certain jurisdictional factors also need to be met first, that there is a reasonable suspicion that an offence, which might be a specified offence in terms of the CPA, has committed and secondly, that there are reasonable grounds to believe that an item that has a bearing or might have a bearing on the investigation is on or is suspected to be on the premises to be searched. Finally, the judicial officer must consider whether it is appropriate to issue a search warrant.

[18] Section 21 of the CPA refers to a 'justice'. Section 1 of the CPA defines a justice as a person who is a justice of the peace under the provisions of the Justices of the peace and Commissioners of Oaths Act No 16 of 1963. In terms of the Justices of Peace and Commissioners of Oaths Act, a justice of peace is appointed by the Minister of Justice or any officer of the Department of Justice with the rank of director, or an equivalent or higher rank, delegated thereto in writing by the Minister, and is empowered to carry out such instructions for the preservation of the peace good order in such magisterial district as he may receive from the magistrate of that magisterial district, and render all assistance possible in suppressing disorder or in such magisterial district.

---

[1] [2019] ZASCA 169 at para 6
[2] 2008 (2) SACR 421 (CC); 2009 (1) SA (CC), BCLR 1197 (CC) para 85

[19] A Judge and judicial officers may issue a search warrant once the criminal proceedings are pending before them. This is clearly what section 21(1)(b) of the CPA provides. However, this section does not limit the power of a judge to issue the warrant. A judge means a judge sitting otherwise than in court which means that warrants issue in chambers are quite valid. More reasons will follow later in this judgment on this point.

[20] The reason for the distinction between magistrates and judges on the authority to issue a search warrant is that our law does not allow the decision of one judge to be subject to the review of another judge.[3] This is so when a judge is sitting in court but not in chambers as in this case in which case this court does have jurisdiction to adjudicate the matter.

[21] In *Minister for Safety and Security v Van Der Merwe*[4] the Constitutional Court held that the terms of a search warrant should not be too general and must be defined with adequate particularity to ensure that only particularity to ensure that only articles which have a bearing on the offence under investigation are seized.

[22] The terms of a warrant should not be too general.[5] To achieve this, the scope of the search must be defined with adequate particularity to avoid vagueness or over breath. The search and seizure must be confined to those premises and articles which have a bearing on the offence under investigation.

[23] The content of the search warrant in this case stated as follows:-

"WHEREAS it appears to me from information on oath provided by a police official involved in an investigation into the commission or otherwise suspected commission of offence(s) listed below, that there ***are reasonable grounds for reasonably believing that****-*

[3] See *S v Kheswa and Another* 2008(2) SACR 123 (N) at para 27.
[4] 2011 (5) SA 61 (CC) at 73
[5] Ibid

1. *Contravention of section 86(3) of the Public Finance Management Act, 1999 (Act No. 1 of 1999);*
2. *Fraud, and*
3. *Corruption*

B. ***the articles*** *capable of seizure which may afford evidence in the commission or suspected commission of the said offence(s) are listed (as attached hereto); and*

C. *such articles-*

(i) are upon or at the following premises with any area of jurisdiction, namely 64 Mount Street, Bryanston, Sandton (such being hereinafter referred to as, "the premises and/or

(ii) otherwise are under the contract of or upon the following person(s) who currently reside within my area of jurisdiction:

Thulani Makhosi Majola Director of LTE Consulting ID: [....] [such being hereinafter referred to as "the identified person(s)]

THEREFORE THERE IS A NEED *to search for and seize said article(s) upon or at the premises under the control of or upon the identified person(s).*

YOU ARE HERBY AUTHORISED AND REQUIRED *within the context of performance of all relevant duties to-*

- *Enter the premises and approach the identified person(s) during the day/night time and search the identified person(s) / premises and any person found upon or such premises, for the articles (listed as attached hereto) and to seize any such articles that are found and exercise any further powers and perform any further duties in relation to such seized articles as set out in Chapter 2 of the CPA, and*

- *Search for and trough any data and data messages and the examination thereof, on any information system that is found (as three terms are defined in the Electronic Communications and Transactions Act, No 25 of 2002), such may be done during the conducting of the search via the making and employment of mirror-image copy(s) of the data and data messages stored on the information system.*

Any person whose rights in respect of any search or article seized under this warrant have been affected is entitled to a copy of this warrant, together with a copy of the supporting affidavit of Lt. Colonel M.F. Simelane.

The police official in charges of this search and seizure will during the search and seizure be assisted by the following police officials as indicated in annexure "B" attached given under my hand at Johannesburg on this 30th day of October 2020.

Signed by the judge who issued the search and seizure warrant."

[24] The warrant provides two additional police officers to assist colonel Simelane and both police officers are colonel in the SAPS.

[25] The second search and seizure warrant is worded similarly but relates to the offices of LTE Consulting situated at Building 1 Elgin Street, LTE Capital Finance, Sunninghill, Gauteng, 2191.

[26] The third search and seizure warrant is also worded similarly and relates to premises at 12 Trafalgar Street Midstream Estate, Olifantsfontein.

[27] The fourth search and seizure warrant is worded the same as the others and relates to the premises at 129 Pitzer Road, Glen Austin AH, Midrand.

[28] Following the four search and seizure warrants, Second Applicant's personal iPhone was seized. HP Laptop; Toshiba 8G USB; 18 memory sticks; files; stapled

documents; 1 x tax invoice Limonite Trading (Pty) Ltd; 1 x Nedbank proof of payment; LTE Consulting proof of payment for R1 830 000; 1x Nedbank proof of payment dated 16/4/2020 for R399 000; 1 x Nedbank proof of payment for LTE Consulting / Arehaf Arman Logistics R540 000; 1 x Nedbank proof of payment dated 16/4/2020 LTE Consulting Rahjahal Import – R460 000; and many other documents and memory sticks were seized from various premises.

[29] If one has regard to views seized and what the search and seizure warrants stated if, is clear in my respectful view that the search and seizure warrants were not vague in that they made specific reference to what offences were being investigated. The police were in my view on an expedition to look for anything they could find to gather evidence relating to the suspected offences under investigation. I say this because warrants of search and seizure will not be able to itemize in advance what specific things would be searched in relation to the offences under investigation.

[30] In opposing the application and as a point in limine, it was submitted on behalf of Respondent that this court does not have jurisdiction to review and set aside the warrants of search and seizure issued on 30 October 2020 by Mabesele J. This point was, however not raised in the papers. I was referred to the case *Cusa v Tao Ying Metal Industries*[6] where the court held as follows:

"Where a point of law is apparent on the papers, but the common approach of the parties proceeds on a wrong perception of what the law is, a court of appeal is not only entitled, but is in fact also obliged, mero muto, to raise the point of law and require the parties to deal therewith. Otherwise the result would be a decision premised on an incorrect application of the law. That would infringe the principle of legality."

[6] 2009 (2) SA 204 (CC)

[31] This court was furthermore referred to the principle that jurisdiction is the power or competence which a particular court has to hear and determine an issue between the parties brought before it.[7]

[32] Counsel for Respondents also referred me to the provisions of section 14(1) of the Superior Courts Act 10 of 2013 which states that save as provided for in this Act or any other law, a Court of a Division must be court stated before a single judge when sitting as a court of first instance for the hearing of any civil matter, the Judge President or in his / her absence, the Deputy President or the senior available judge, may at any time direct that any matter be heard by a court consisting of not more than three judges as he or she may determine. This proposition is the correct summary of other law when dealing with appeals or review of a single Judge sitting as a court. It cannot apply in circumstances where a judge is sitting otherwise than in court as was the case in this matter.

[33] Counsel for Respondents submitted that warrants of search and seizure issued by a judge not sitting or presiding in proceedings has been a feature of ours and that in the issue of warrants of search and seizure by Judges has been a feature of our law. I am in agreement with the proposition expressed by counsel on behalf of Respondents on this point because as a matter of practice judges issue warrants of search and seizure regularly in chambers before charges are preferred against the suspects

[34] As regards the contention that this court does not have jurisdiction to preside over the matter this contention cannot, in my respectful vie, be sustained. I say so because the principles as well as the provisions of section 14(1) of the Superior Courts Act, related to instances where a judge sat as a court to deal with the issue before him or her.

[35] In the instant case, Mabesele J correctly in my view, issued the warrant, not as court, but as a judicial officer, in chambers. The proposition that the intention of the

[7] See Graaff – Reinet Municipality v Reyneveld's Pass Irrigation Board 1950 (2) SA 420 (A) at 424

legislature in such an instance is to deprive judges of this court the inherent jurisdiction to make a determination on the lawfulness or lack thereof by this court, is therefore without legal basis and must fail and accordingly the court has jurisdiction to make a determination of this application.

[36] I now deal with whether the warrant as it stands is in gross violation of the rights of the Applicants and whether it amount to abuse of power.

[37] In dealing with the issue, the court in *Pretoria Portland Cement Co Ltd and Another v Competition Commission and Others*[8] held that in the absence of an abuse of power or a gross violation of the rights of a person to be searched, a court should be slow to find that a search warrant is unlawful on purely technical grounds.[9] The court must adjudicate each case on its own merits before making a determination on the lawfulness or lack thereof of a warrant.[10]

[38] In the instant case, the demand was made on the 13 November 2020 about the affidavit accompanying the warrants of search and seizure and was complied within a day later. This is, in my view, not unreasonable. Over and above that, at the time the search warrants were executed, the demand was not made for the copy of the affidavit in support of the warrant. I am satisfied that Respondents did not fall foul of the provisions section 22 of the CPA on this aspect. The provisions of Promotion of Access to Information Act 2 of 2000 were also complied with in that the Respondents did not refuse or delay to make the copy of the affidavit available to Applicants. It was handed to them within 24 hours from the receipt of the demand.

[39] The search and seizure warrants were as already stated, in my respectful view, clear and unequivocal. It stated the charges that were being investigated and were executed during the day. It should be remembered that the approach by court on search and seizure warrants is that the interests of the parties affected thereby should be

---

[8] 2003 (2) SA 385 (SCA) paras 71 and 73
[9] Ibid para 23.
[10] *Minister of Safety and Security v Van der Merwe and others* above paras 60 and 61.

balanced with the State's interests to combat crime. Applicants' contention that the searches were vague have no factual basis. The search and seizure warrants are an effort to "fish" for any material that can be used to sustain the charges that are being investigated and should in absence of abuse of power, be permitted.

[40] The contention by Applicants to that section 21(1)(b) of the CPA limits the power of the judicial officer or judge to issue search and seizure warrant only in cases where the said judge is presiding in the proceedings has no basis. I say so because it could not have been the intention of the legislature to limit such power to the magistrates and justices of peace to be able to issue a search and seizure warrant before commencement of the proceedings to the exclusion of judges, that would be untenable. As a matter of fact, and practice, judges of this Division issue search and seizure warrants in chambers on a regular and consistent basis and these warrants just like ex parte orders given in chambers and are capable of being challenged in the Division and before a court presided over by a single judge. It follows therefore that all the search and seizure warrants complied with section 21(1)(b) of the CPA read with chapter 2 thereof. The warrants and their execution did not constitute abuse of power capable of being impugned.

[41] Then regard is had to the fact that the affidavit sought by a demand letter was handed to Applicants the following day after receipt of demand, this application concerns, in my view all dispute that no longer exist. It has been held by our courts that courts should not concern themselves with disputes that have become moot.[11]

[42] In *National Coalition for Gay and Lesbian Equality v Minister of Home Affairs*[12] the Constitutional Court held that the case becomes moot when a dispute no longer presents a live controversy between the warring parties. In the instant case, the affidavit which was demanded by Applicants, was handed over without delay. There is therefore no need for this court to intervene. The relief sought by Applicant must, accordingly fail.

---

[11] See *MEC of Education, KwaZulu Natal v Pillay* [2007] ZACC 21, 2008 (1) SA 474 (CC), 2008 (2) BCLR 99 (CC) at para 22

[12] (1999) ZACC 17; 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC) at para 21.

ORDER

[43] The following order is made:

(a) The application is dismissed with costs.

M.L. SENYATSI
JUDGE OF THE HIGH COURT

Heard:	18 August 2021
Judgment:	24 March 2022
Counsel for Applicants:	Advocate E. Killian SC (Ms)
Instructed by:	Victor Nkwashu Attorneys Inc. Johannesburg
Counsel for First Respondents:	Advocate M.P. Mahlatsi
Instructed by:	State Attorneys, Johannesburg.