CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 1/00

THE INVESTIGATING DIRECTORATE: SERIOUS ECONOMIC OFFENCES AND OTHERS	Appellants

versus

HYUNDAI MOTOR DISTRIBUTORS (PTY) LTD AND OTHERS	Respondents

In re:

HYUNDAI MOTOR DISTRIBUTORS (PTY) LTD	First Applicant
SWEDISH TRUCK DISTRIBUTORS (PTY) LTD	Second Applicant
SA BOTSWANA HAULIERS (PTY) LTD	Third Applicant
WHEELS PARTS DISTRIBUTORS (PTY) LTD	Fourth Applicant
HYUNDAI MOTOR DISTRIBUTORS LIMITED	Fifth Applicant
HYUNDAI MOTOR DISTRIBUTORS BOTSWANA (PTY) LTD	Sixth Applicant
SCANDINAVIAN MOTOR CORPORATION	Seventh Applicant
SWEDISH MOTOR CORPORATION (PTY) LTD	Eighth Applicant
MULLER CONRAD RAUTENBACH	Ninth Applicant
DESIGNED DECOR CC	Tenth Applicant

and

SMIT NO	First Respondent
THE INVESTIGATING DIRECTORATE: SERIOUS ECONOMIC OFFENCES	Second Respondent
THE INVESTIGATING DIRECTOR OF THE	

INVESTIGATING DIRECTORATE: SERIOUS ECONOMIC OFFENCES — Third Respondent

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS — Fourth Respondent

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE — Fifth Respondent

THE MINISTER OF JUSTICE — Sixth Respondent

Heard on : 16 March 2000

Decided on : 25 August 2000

JUDGMENT

LANGA DP:

Introduction

[1] The National Prosecuting Authority Act[1] (the Act) makes provision for the search and seizure of property by an Investigating Director in the office of the National Director of Public Prosecutions, to facilitate the investigation of certain specified offences. The power to search and seize property may be exercised on the authority of a warrant issued by a judicial officer. This case is concerned with the constitutionality of the provisions that authorise the issuing of warrants of search and seizure for purposes of a "preparatory investigation", one of two

[1] Act 32 of 1998.

investigatory procedures provided for in Chapter 5 of the Act.

The facts of the case

[2] On 17 November 1999, search warrants were authorised by the first respondent, a judge of the Transvaal High Court (the High Court), pursuant to an application made to him in chambers by the Investigating Directorate for Serious Economic Offences and its Investigating Director, respectively the second and third respondents. The warrants empowered the second and third respondents to conduct a search and seizure operation, for purposes of a preparatory investigation, at the premises of the "Wheels of Africa Group of Companies" and at the home of the ninth applicant, Mr Muller Conrad Rautenbach. The search was carried out on 18 and 19 November 1999 and a large quantity of documents, records and data - three lorry-loads in fact - were seized.

[3] Applicants immediately approached the High Court challenging the legal and constitutional validity of the operation. The relief they sought was wide-ranging. In his judgment delivered on 23 December 1999,[2] Southwood J, before whom the matter was argued, declared certain provisions of the Act to be unconstitutional. This application, brought under sections 167(5)[3] and 172(2)(a)[4] of the Constitution, is for the confirmation of that declaration of

---

2 Reported as *Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others* 2000 (2) SA 934 (T).

3 It reads:

> "The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm an order of invalidity made by the Supreme Court of Appeal, a High Court, or a court of similar status, before that order has any force."

invalidity, which is contained in paragraph 1 of the order of Southwood J and reads:

> "The provisions of ss 29(5), 28(13) and 28(14) of the National Prosecuting Authority Act 32 of 1998 are declared to be inconsistent with the Constitution and invalid, to the extent only that they permit the issue of a warrant to authorise the search and seizure of property and accordingly the invasion of privacy of persons where there are no reasonable grounds to suspect that a specified offence has been committed."[5]

---

[4] This section reads:

> "The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court."

[5] At 973I - 974A. Some of the other relief given by Southwood J reads as follows:

> "(2) The decision of the first respondent to issue the search warrants . . . in terms of s29(4) and (5) of the National Prosecuting Authority Act 1998 is reviewed and set aside.
>
> (3) The second and third respondents are ordered to return to the applicants forthwith all the documents, records, data and other property of the applicants seized by the second and third respondents under search warrants, as well as all photographic or electronic copies thereof, and insofar as the records consist of electronic data of the applicants which were copied by the second and third respondents the second and third respondents are ordered to destroy such data forthwith.
>
> . . . .
>
> (10) The Registrar of this Court is directed to comply with Rule 15 of the Rules of the Constitutional Court in respect of the order declaring the provisions of ss 29(5), 28(13) and 28(14) unconstitutional."

The rest of the order is not relevant for purposes of this judgment. Confirmation of the order is opposed by the second, third, fourth, fifth and sixth respondents, who have also filed an appeal contending that the provisions in question are consistent with the Constitution. The dispute before us concerns the constitutionality of the relevant provisions only in so far as they apply to a preparatory investigation. For the sake of convenience, the parties will be referred to in this judgment in the manner in which they were cited in the application before the High Court.

The scheme of the Act

[4] The Act came into force on 16 October 1998. It provides for the establishment of a single national prosecuting authority in the Republic pursuant to section 179 of the Constitution.[6]

---

[6] See the Preamble of the Act. The relevant provisions of section 179 of the Constitution read:

> "(1) There is a single national prosecuting authority in the Republic, structured in terms of an Act of Parliament, and consisting of —
>
> (a) a National Director of Public Prosecutions, who is the head of the prosecuting authority, and is appointed by the President, as head of the national executive; and
>
> (b) Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament.
>
> (2) The prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.
>
> (3) National legislation must ensure that the Directors of Public Prosecutions —
>
> (a) are appropriately qualified; and
>
> (b) are responsible for prosecutions in specific jurisdictions, subject to subsection (5).
>
> (4) National legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice.
>
> . . . .
>
> (7) All other matters concerning the prosecuting authority must be determined by national legislation."

The national prosecuting authority consists of a national director, deputy national directors, directors, deputy directors and prosecutors.[7] In terms of the Act, the President may establish up to three Investigating Directorates within the office of the National Director of Public Prosecutions[8] in respect of specific offences or specified categories of offences. Three Investigating Directorates have, as a consequence, been established; the first is for the investigation of organised crime and public safety offences,[9] the second for serious economic offences[10] and the last for the investigation of corruption.[11] The powers and duties of the Investigating Directorates are set out in Chapter 5 of the Act.

[5] This matter is concerned with the activities of the Investigating Directorate for Serious Economic Offences. It is necessary to draw attention to section 26(1) of the Act which defines a "specified offence" as —

> "any offence which in the opinion of the *Investigating Director* falls within the category

---

7 Section 4 of the Act.

8 Section 7(1)(a) of the Act.

9 Proclamation R 102, 1998 (GG 19372, 16 October 1998).

10 Proclamation R 123, 1998 (GG 19579, 4 December 1998).

11 Proclamation R 14, 2000 (GG 20997, 24 March 2000).

of offences set out in the proclamation referred to in section 7(1) in respect of the *Investigating Directorate* concerned."

The specified offences that the second respondent is required to investigate are set out in the Schedule to Proclamation R123 of 1998. They are:

"(a) Any offence of —
  (i) fraud;
  (ii) theft;
  (iii) forgery and uttering; or
  (iv) corruption in terms of the Corruption Act, 1992 (Act No. 94 of 1992); or
(b) any other —
  (i) economic common law offence; or
  (ii) economic offence in contravention of any statutory provision, which involves patrimonial prejudice or potential patrimonial prejudice to the State, any body corporate, trust, institution or person,
which is of a serious and complicated nature."

[6] Central to Chapter 5 are the provisions of sections 28 and 29, which deal respectively with investigations and searches. Section 28 makes provision for two forms of investigatory procedure. The first is an "inquiry"[12] which may be held if the Investigating Director —

"has reason to suspect that a specified offence has been or is being committed or that an attempt has been or is being made to commit such an offence. . ."

The second procedure is a "preparatory investigation"[13] which may be held if the

12 In section 28(1) of the Act.

13 In section 28(13) of the Act.

Investigating Director considers it necessary to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an inquiry.

[7] Section 28 has fourteen subsections. Subsections (1) to (12) are concerned with matters pertaining to the conduct of an inquiry. Subsections (13) and (14) deal specifically with a preparatory investigation. The latter two provisions read as follows:

> "(13) If the *Investigating Director* considers it necessary to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an investigation in terms of subsection (1) (a), the *Investigating Director* may hold a preparatory investigation.
>
> (14) The provisions of subsections (2) to (10), inclusive, and of sections 27 and 29 shall, with the necessary changes, apply to a preparatory investigation referred to in subsection (13)."

A preparatory investigation is thus held if the Investigating Director is uncertain whether there are reasonable grounds to conduct an inquiry. At least two kinds of doubt may give rise to the decision to conduct a preparatory investigation rather than an inquiry: doubt whether there is reason to believe that an offence has been committed, on the one hand, and doubt whether an offence, suspected to have been committed, is in fact a specified offence.

[8] The effect of the reference to section 29 in section 28(14) is to permit an Investigating Director to invoke the powers of search and seizure for purposes of a preparatory investigation.

Section 29 provides for the issuing of search warrants for purposes of the inquiry referred to in section 28(1), and of the preparatory investigation held under section 28(13). It also provides for the manner in which the warrants may be executed. Armed with a warrant, an Investigating Director has extensive powers. The warrant authorizes the examination and seizure of any object, the copying of, or the taking of portions from any document or book located on or in the premises, that has or may have a bearing on the inquiry or preparatory investigation, as the case may be.[14]

---

[14] The full text of section 29(1) is as follows:

> "The *Investigating Director* or any person authorised thereto by him or her in writing may, subject to this section, for the purposes of an inquiry at any reasonable time and without prior notice or with such notice as he or she may deem appropriate, enter any premises on or in which anything connected with that inquiry is or is suspected to be, and may —
>
> (a) inspect and search those premises, and there make such enquiries as he or she may deem necessary;
>
> (b) examine any object found on or in the premises which has a bearing or might have a bearing on the inquiry in question, and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
>
> (c) make copies of or take extracts from any book or document found on or in the premises which has a bearing or might have a bearing on the

[9] It was common cause, and rightly so in my view, that when the officials of the state exercise the section 29 powers of search and seizure, the right to privacy which is guaranteed under section 14 of the Constitution is implicated. Section 14 of the Constitution provides that:

> "Everyone has the right to privacy, which includes the right not to have —
>
> (a) their person or home searched;
>
> (b) their property searched;
>
> (c) their possessions seized; or
>
> (d) the privacy of their communications infringed."

[10] The Act places certain constraints on the exercise of the powers of search and seizure. Section 29(4) requires that there be prior judicial authorisation before a search and seizure is conducted by an Investigating Directorate. The nature of the judicial officer's function in an application for a warrant is governed by the provisions of section 29(5). The two subsections read as follows:

> inquiry in question, and request from any person suspected of having the necessary information, an explanation of any entry therein;
>
> (d) seize, against the issue of a receipt, anything on or in the premises which has a bearing or might have a bearing on the inquiry in question, or if he or she wishes to retain it for further examination or for safe custody."

> "(4) Subject to subsection (10), the premises referred to in subsection (1) may only be entered, and the acts referred to in subsection (1) may only be performed, by virtue of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which the premises is situated . . . .
>
> (5) A warrant contemplated in subsection (4) may only be issued if it appears to the magistrate, regional magistrate or judge from information on oath or affirmation, stating —
>
> (a) the nature of the inquiry in terms of section 28;
>
> (b) the suspicion which gave rise to the inquiry; and
>
> (c) the need, in regard to the inquiry, for a search and seizure in terms of this section,
>
> that there are reasonable grounds for believing that anything referred to in subsection (1) is on or in such premises or suspected to be on or in such premises."

The issues

[11] In this Court, the applicants argued in support of the High Court's finding that section 29(5), read with sections 28(13) and 28(14), was unconstitutional. Mr Marcus, who presented argument on their behalf, contended that the impugned provisions, properly interpreted, do not require that there should be a reasonable suspicion that a specified offence has been committed before a judicial officer may authorise a search warrant for purposes of a preparatory investigation. He argued that the purpose of a preparatory investigation is to determine whether there are grounds for such a reasonable suspicion so that an inquiry may be held. To read section 29(5) so as to include the requirement of a reasonable suspicion before a search warrant may be issued, in the context of a preparatory investigation, would be self-defeating. The provisions are

accordingly in violation of the Constitution since they permit the granting of a search warrant in the absence of a reasonable suspicion that a specified offence has been committed.

[12] Mr Marcus further drew attention to section 29(1) which refers to "any object . . . which has a bearing or might have a bearing on the inquiry in question". He submitted that the language, which he described as wide, strengthens the view that the provisions, as they stand, permit premises to be searched for purposes of a preparatory investigation in the absence of a reasonable suspicion that a specified offence has been committed. I pause here to comment that, in my view, this last proposition is somewhat overstated. I do not think that the use of the phrase "might have a bearing" is anything more than a recognition by the legislature that, in order to determine whether a particular object has a bearing on a particular investigation, it may be necessary to examine it, make copies of or take extracts from it or even seize such object. Mr Marcus submitted further that the order by Southwood J did not go far enough and that appropriate relief would be an order that the words "and 29" be severed from section 28(14). The effect of the suggested severance would be that the search and seizure provisions in section 29 would not be applicable to preparatory investigations.

[13] In his submissions for the respondents, Mr Soggot agreed with the applicants' contention that a provision which authorized the issue of a warrant of search and seizure for purposes of a preparatory investigation in the absence of reasonable grounds for the suspicion that an offence has been committed would be constitutionally impermissible. He argued, however, that properly construed, the provisions do not permit a judicial officer to authorise such a warrant for purposes of a preparatory investigation, unless there are reasonable grounds to suspect that an offence has

been committed. He advanced two reasons for his contention. First, he submitted that section 29(5) explicitly provides that prior to issuing a search warrant, a judicial officer must be satisfied that there are reasonable grounds to believe that some object which is connected to the preparatory investigation, or that might have a bearing on such investigation, is on the premises sought to be searched. This necessarily involves, in the first place, an assessment by the judicial officer of the reasonableness or otherwise of the suspicion that an offence has been committed, and thereafter, a determination whether or not there are reasonable grounds to suspect that the article which is the object of the search has a bearing, or might have a bearing on the investigation of that crime. Secondly, Mr Soggot relied on the fact that section 29(4) prescribes prior judicial authorisation before a search and seizure operation can be undertaken. It could be accepted that a judicial officer, because of his or her training, qualifications, experience and the nature of judicial office, would not act without applying his or her mind to the issue at hand. A judicial mind would thus be brought to bear on the reasonableness of the belief that an offence had been committed. Mr Soggot argued that to hold otherwise would render the requirement of prior judicial authorisation pointless. He accordingly submitted that although the impugned provisions constituted a limitation of the privacy right, they were not constitutionally objectionable.

[14] The arguments presented by counsel in the High Court did not distinguish between a reasonable suspicion that a specified offence has been committed and a reasonable suspicion that an offence, which might be a specified offence, has been committed. The judgment by Southwood J, likewise, did not make that distinction which, as appears later in this judgment, is crucial to a proper interpretation of the relevant provisions.

The right to privacy

[15] The right to privacy has previously been discussed in judgments of this Court.[15] In *Bernstein and Others v Bester and Others NNO*,[16] Ackermann J characterises the right to privacy as lying along a continuum,[17] where the more a person inter-relates with the world, the more the right to privacy becomes attenuated. He stated:

> "A very high level of protection is given to the individual's intimate personal sphere of life and the maintenance of its basic preconditions and there is a final untouchable sphere of human freedom that is beyond interference from any public authority. So much so that, in regard to this most intimate core of privacy, no justifiable limitation thereof can take place. But this most intimate core is narrowly construed. This inviolable core is left behind once an individual enters into relationships with persons outside this closest intimate sphere; the individual's activities then acquire a social dimension and the right

---

15 See *National Coalition For Gay and Lesbian Equality and Another v Minister of Justice and Others* 1998 (12) BCLR 1517 (CC); 1999 (1) SA 6 (CC) at paras 29 - 32; *Mistry v Interim Medical and Dental Council of South Africa and Others* 1998 (7) BCLR 880 (CC); 1998 (4) SA 1127 (CC) at paras 22 - 23, 25, 27 -30; *Case and Another v Minister of Safety and Security and Others, Curtis v Minister of Safety and Security and Others* 1996 (5) BCLR 609 (CC); 1996 (3) SA 617 (CC) at para 91.

16 1996 (4) BCLR 449 (CC); 1996 (2) SA 751 (CC).

17 See *Mistry* (above n 15) at para 27.

of privacy in this context becomes subject to limitation."[18] (Footnotes omitted)

[16] The right, however, does not relate solely to the individual within his or her intimate space. Ackermann J did not state in the above passage that when we move beyond this established "intimate core", we no longer retain a right to privacy in the social capacities in which we act. Thus, when people are in their offices, in their cars or on mobile telephones, they still retain a right to be left alone by the state unless certain conditions are satisfied. Wherever a person has the ability to decide what he or she wishes to disclose to the public and the expectation that such a decision will be respected is reasonable, the right to privacy will come into play.

[17] The protection of the right to privacy may be claimed by any person. The present matter is concerned with the right to privacy of Mr Rautenbach, a natural person, and nine business entities, which are juristic persons. Neither counsel addressed argument on the question of whether there was any difference between the privacy rights of natural persons and juristic persons. But what is clear is that the right to privacy is applicable, where appropriate, to a juristic person. The applicability of the Bill of Rights to a juristic person is set out in section 8(4) of the Constitution which states:

"A juristic person is entitled to the rights in the Bill of Rights to the extent required by

---

[18] Above n 16 at para 77.

the nature of the rights and the nature of that juristic person."

[18] As we have seen, privacy is a right which becomes more intense the closer it moves to the intimate personal sphere of the life of human beings, and less intense as it moves away from that core. This understanding of the right flows, as was said in *Bernstein*,[19] from the value placed on human dignity by the Constitution. Juristic persons are not the bearers of human dignity. Their privacy rights, therefore, can never be as intense as those of human beings. However, this does not mean that juristic persons are not protected by the right to privacy.[20] Exclusion of juristic persons would lead to the possibility of grave violations of privacy in our society, with serious implications for the conduct of affairs. The state might, for instance, have free licence to search and seize material from any non-profit organisation or corporate entity at will. This would obviously lead to grave disruptions and would undermine the very fabric of our democratic state. Juristic persons therefore do enjoy the right to privacy, although not to the same extent as natural persons. The level of justification for any particular limitation of the right will have to be judged in the light of the circumstances of each case. Relevant circumstances would include whether the subject of the limitation is a natural person or a juristic person as well as the nature and effect of the invasion of privacy.

[19] The Act itself recognises the serious implications which the search and seizure provisions have on the rights of those who are subjected to them. Section 29(2) provides:

---

19 Id.

20 See *Financial Mail (Pty) Ltd and Others v Sage Holdings Ltd and Another* 1993 (2) SA 451 (A).

"Any entry upon or search of any premises in terms of this section shall be conducted with strict regard to decency and order, including —

(a) a person's right to, respect for and the protection of his or her dignity;

(b) the right of a person to freedom and security; and

(c) the right of a person to his or her personal privacy."

[20] As it is clear that the search and seizure provisions of section 29 constitute a limitation to the right of privacy, it must be determined whether the limitation is constitutionally justifiable in terms of the provisions of section 36(1) of the Constitution.[21] It is necessary, for the purpose of this inquiry, to ascertain the proper meaning of the relevant provisions in the Act, in particular that of section 29(5). I start with a consideration of the principles which are applicable to such an interpretation.

Interpreting statutory provisions under the Constitution

[21] Section 39(2) of the Constitution provides a guide to statutory interpretation under this

---

[21] Section 36(1) provides:
"The rights in the Bill of Rights may be limited only in terms of a 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."

constitutional order. It states:

> "When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights."

This means that all statutes must be interpreted through the prism of the Bill of Rights. All law-making authority must be exercised in accordance with the Constitution. The Constitution is located in a history which involves a transition from a society based on division, injustice and exclusion from the democratic process to one which respects the dignity of all citizens, and includes all in the process of governance. As such, the process of interpreting the Constitution must recognise the context in which we find ourselves and the Constitution's goal of a society based on democratic values, social justice and fundamental human rights. This spirit of transition and transformation characterises the constitutional enterprise as a whole.

[22] The purport and objects of the Constitution find expression in section 1 which lays out the fundamental values which the Constitution is designed to achieve. The Constitution requires that judicial officers read legislation, where possible, in ways which give effect to its fundamental values. Consistently with this, when the constitutionality of legislation is in issue, they are under a duty to examine the objects and purport of an Act and to read the provisions of the legislation, so far as is possible, in conformity with the Constitution.

[23] In *De Lange v Smuts NO and Others*,[22] Ackermann J stated that the principle of reading in conformity does —

[22] 1998 (7) BCLR 779 (CC); 1998 (3) SA 785 (CC).

> "no more than give expression to a sound principle of constitutional interpretation recognised by other open and democratic societies based on human dignity, equality and freedom such as, for example, the United States of America, Canada and Germany, whose constitutions, like our 1996 Constitution, contain no express provision to such effect. In my view, the same interpretative approach should be adopted under the 1996 Constitution."[23]

Accordingly, judicial officers must prefer interpretations of legislation that fall within constitutional bounds over those that do not, provided that such an interpretation can be reasonably ascribed to the section.

[23] Id at para 85.

[24] Limits must, however, be placed on the application of this principle.[24] On the one hand, it is the duty of a judicial officer to interpret legislation in conformity with the Constitution so far as this is reasonably possible. On the other hand, the legislature is under a duty to pass legislation that is reasonably clear and precise, enabling citizens and officials to understand what is expected of them.[25] A balance will often have to be struck as to how this tension is to be resolved when considering the constitutionality of legislation. There will be occasions when a judicial officer will find that the legislation, though open to a meaning which would be unconstitutional, is reasonably capable of being read "in conformity with the Constitution". Such an interpretation should not, however, be unduly strained.

[25] In National *Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others*,[26] it was said that —

> "[t]here is a clear distinction between interpreting legislation in a way which 'promote[s] the spirit, purport and objects of the Bill of Rights' as required by s 39(2) of the Constitution and the process of reading words into or severing them from a statutory provision which is a remedial measure under s 172(1)(b), following upon a declaration of constitutional invalidity under s 172(1)(a) . . . . The first process, being an interpretative one, is limited to what the text is reasonably capable of meaning. The latter can only take place after the statutory provision in question, notwithstanding the application of all

---

24 See *S v Bhulwana; S v Gwadiso* 1995 (12) BCLR 1579 (CC); 1996 (1) SA 388 (CC) at para 28; *Mistry v Interim Medical and Dental Council of South Africa and Others* (above n 15) at para 32; and *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (1) BCLR 39 (CC); 2000 (2) SA 1 (CC) at paras 23 - 24.

25 See *Dawood and Another v Minister of Home Affairs and Others, Shalabi and Another v Minister of Home Affairs and Others, Thomas and Another v Minister of Home Affairs and Others* 2000 (8) BCLR 837 (CC) at paras 47 - 48.

26 Above n 24.

> legitimate interpretative aids, is found to be constitutionally invalid."[27]

[26] It follows that where a legislative provision is reasonably capable of a meaning that places it within constitutional bounds, it should be preserved. Only if this is not possible should one resort to the remedy of reading in or notional severance. I now turn to consider the proper interpretation to be given to section 29(5).

The meaning of section 29(5)

[27] Id at para 24.

[27] The real issue between the parties was whether all searches under section 29, in respect of preparatory investigations, are inconsistent with the Constitution. Mr Marcus, relying on his interpretation of the impugned provisions,[28] argued for unconstitutionality because, in the case of a preparatory investigation, there could never be a reasonable suspicion that a specified offence had been committed. In defending their constitutionality, Mr Soggot maintained that properly interpreted, the provisions require the judicial officer to authorise a warrant only if such reasonable grounds exist.

[28] The submissions of both parties proceeded from the view, which was common cause, that a search and seizure under section 29, for purposes of a preparatory investigation, would not be constitutionally justifiable in the absence of a reasonable suspicion that an offence has been committed. For reasons which appear later, I agree with this conclusion. I should emphasize at this stage, however, that this judgment is concerned only with the constitutionality of search warrants issued for purposes of a preparatory investigation under section 29. It should not be understood as stating that all searches, in whatever circumstances, are subject to the requirement of a reasonable suspicion that an offence has been committed.

[29] In his judgment, Southwood J adopted the interpretation proposed by Mr Marcus, and held accordingly that the impugned provisions were an unjustifiable violation of the right to privacy. Having reached this conclusion he made an order of notional severance declaring the

---

[28] See above paras 11 - 12.

relevant provisions of the Act to be inconsistent with the Constitution to the extent only that they permit searches where there are no reasonable grounds to suspect that a specified offence has been committed. The practical effect of this order was no different to that which would have followed had the interpretation which was advanced by the respondents in their argument in the High Court been adopted.

[30] The Act is not explicit regarding the circumstances under which a search warrant may be authorised for purposes of a preparatory investigation. More specifically, it is not immediately obvious whether or not a warrant may be authorised by a judicial officer in the absence of a reasonable suspicion that an offence has been committed. The answer to this depends on a proper interpretation of section 29(5). In this respect, it is necessary firstly to spell out the different functions of the two investigatory procedures.

[31] Section 28(1)(a) relates to the institution of an inquiry. Its provisions are not applicable to a preparatory investigation. The section is concerned with the jurisdictional facts which must exist before the Investigating Director may conduct an inquiry. He or she must, among other things, have "reason to suspect that a specified offence has been or is being committed or that an attempt has been or is being made to commit such an offence." Section 28(13), on the other hand, is concerned only with a preparatory investigation. There is no corresponding requirement, as in the case of an inquiry, that the Investigating Director must have "reason to suspect" before a preparatory investigation may be held. This form of procedure is instituted in order to enable the Investigating Director to determine if there are reasonable grounds to conduct an inquiry. It is therefore a preliminary step and is not an end in itself. It is a procedure that is

available to an Investigating Director who has insufficient grounds or information to form a reasonable suspicion that a specified offence has been committed. A mere suspicion may therefore trigger a preparatory investigation, provided the purpose is to enable the Investigating Director to decide whether or not there are in fact reasonable grounds for a suspicion that a specified offence has been or is being committed.

[32] Section 28(14) provides that the provisions of sections 28(2) to 28(10) inclusive, and of sections 27 and 29 shall, "with the necessary changes",[29] apply to a preparatory investigation. In

---

[29] In *Touriel v Minister of Internal Affairs, Southern Rhodesia* 1946 AD 535 at 544 -545, it was held that the test for *mutatis mutandis,* the Latin equivalent of the phrase "with the necessary changes", should be necessity rather than fitness, and that the phrase should be construed narrowly. According to that court, a broad interpretation would render it difficult to ascertain, with certainty, the meaning of legislation that contained this phrase. This decision has been adopted without challenge in subsequent Appellate Division cases (*Big Ben Soap Industries Ltd v Commissioner For Inland Revenue* 1949 (1) SA 740 (A) at 75; *R v Adams and Others* 1959 (3) SA 753 (A) at 751; *South African Master Dental Technicians Association v Dental Association of South Africa and Others* 1970 (3) SA 733 (A) at 745; *South African Fabrics Ltd v Millman NO and Another* 1972 (4) SA 592 (A) at 600). Furthermore, in *Smith v Mann* 1984 (1) SA 719 (W) at 722, the court cautioned that in alteration exercises, a court should ensure that its changes are guided

the context of the Act, the phrase "with the necessary changes" means that, where applicable, the words "preparatory investigation" should be substituted for the term "inquiry". The construction of the relevant sections "with the necessary changes" must also be undertaken in the light of the provisions of section 39(2) of the Constitution.

[33] Section 27 makes provision for persons who suspect that a specified offence has been or is being committed or that an attempt has been or is being made to commit such an offence, to lay the matter before the Investigating Director who may then decide to conduct an inquiry or preparatory investigation. It should be noted that section 27 requires that such person should have reasonable grounds to suspect that a specified offence has been or is being committed. This does not mean that the Investigating Director should be satisfied on the basis of such evidence alone that an inquiry in terms of section 28(1)(a) is warranted. Section 28(1)(a) requires that the Investigating Director should have "reason to suspect" that a specified offence has been committed. Depending on the information received, he or she may proceed either in terms of section 28(1)(a) or section 28(13). The choice depends on whether there is reason to suspect that a specified offence has been committed. Section 28(13) caters for those instances where the Investigating Director does not have sufficient information to institute an inquiry in terms of section 28(1)(a).

[34] Subsections (2) to (10) of section 28 deal with the manner in which inquiries and

---

by legislative intent, rather than moving against it.

preparatory investigations are to be conducted, and make provision for the taking of evidence and the summoning of witnesses to appear before the person designated to conduct the inquiry. Section 29 makes provision for the search and seizure of property in connection with inquiries. Applying section 29 "with the necessary changes" to a preparatory investigation, section 29(5) would have to be read as follows:

> "A warrant . . . may only be issued if it appears to the [judicial officer] from information on oath or affirmation, stating —
> (a) the nature of the preparatory investigation . . . ;
> (b) the suspicion which gave rise to the preparatory investigation; and
> (c) the need, in regard to the preparatory investigation, for a search and seizure in terms of this section,
> that there are reasonable grounds for believing that [anything connected with the preparatory investigation is . . . or is suspected to be on such premises]."

[35] Subsections (4) and (5) of section 29 are concerned with authorisation by a judicial officer before a search and seizure of property takes place. The section is an important mechanism designed to protect those whose privacy might be in danger of being assailed through searches and seizures of property by officials of the state. The provisions mean that an Investigating Director may not search and seize property, in the context of a preparatory investigation, without prior judicial authorisation.

[36] Section 29(5) prescribes what information must be considered by the judicial officer before a warrant for search and seizure may be issued. It must appear to the judicial officer, from information on oath or affirmation, that there are reasonable grounds for believing that anything connected with the preparatory investigation is, or is suspected to be on such premises.

That information must relate to (a) the nature of the preparatory investigation; (b) the suspicion that gave rise to the preparatory investigation; and (c) the need for a warrant in regard to the preparatory investigation. On the face of it, the judicial officer is required, among other things, to be satisfied that there are grounds for a preparatory investigation; in other words, that the Investigating Director is not acting arbitrarily. Further, the judicial officer must evaluate the suspicion that gave rise to the preparatory investigation as well as the need for a search for purposes of a preparatory investigation.

[37] It is implicit in the section that the judicial officer will apply his or her mind to the question whether the suspicion which led to the preparatory investigation, and the need for the search and seizure to be sanctioned, are sufficient to justify the invasion of privacy that is to take place. On the basis of that information, the judicial officer has to make an independent evaluation and determine whether or not there are reasonable grounds to suspect that an object that might have a bearing on a preparatory investigation is on the targeted premises.

[38] It is also implicit in the legislation that the judicial officer should have regard to the provisions of the Constitution in making the decision. The Act quite clearly exhibits a concern for the constitutional rights of persons subjected to the search and seizure provisions. That is the apparent reason for the requirement in sections 29(4) and (5) that a search and seizure may only be carried out if sanctioned by a warrant issued by a judicial officer. The Act repeals and takes the place of the Investigation of Serious Economic Offences Act,[30] which was the subject of the

[30] Act 117 of 1991.

litigation in *Park-Ross and Another v Director: Office for Serious Economic Offences*.[31] In that case, a provision authorising searches to be carried out without the sanction of a judicial officer was declared to be unconstitutional by Tebbutt J who, during the course of his judgment, stated:

> "It would, I feel, accord with the spirit and purport of the Constitution if it was provided that, before any search or seizure pursuant to s 6 of the Act, prior authorisation be obtained from a magistrate or from a Judge of the Supreme Court in Chambers for such search and seizure. Any application for such authorisation should set out, at the very least, under oath or affirmed declaration, information as to the nature of the inquiry in terms of s 5, the suspicion having given rise to that inquiry, and the need, in regard to that inquiry, for a search and seizure in terms of s 6."[32]

[39] In enacting section 29(5), the legislature clearly intended to give effect to the *Park-Ross* judgment, and to ensure that the search and seizure of property will be carried out in accordance with the provisions of the Constitution. The Act uses the very language which Tebbutt J suggested was necessary to give effect to the "spirit and purport" of the Constitution.

---

31 1995 (2) BCLR 198 (C); 1995 (2) SA 148 (C).

32 Id at 172G - H.

[40] The concern for the constitutional rights of those affected by the invasion of privacy as a result of the execution of a search warrant is also apparent, as stated earlier,[33] from the provisions of section 29(2) which require the execution of a search warrant to be conducted with strict regard to decency and order, including respect for a person's right to dignity, to personal freedom and security and to personal privacy. Persons carrying out searches are thus obliged by the legislation to comply with the requirements of the Constitution. Unless that intention is clear from the language of the statute, such legislation should not be construed as contemplating that judicial officers will authorise the search without regard to the constitutional rights of the persons likely to be affected.

[41] The Constitution also prescribes that all conduct of the state must accord with the provisions of the Bill of Rights. This is evident from section 8(1) of the Constitution which provides that —

> "[t]he Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state."

In *De Lange v Smuts*,[34] Ackermann J, in dealing with a provision authorising a magistrate at an administrative inquiry to commit a witness to prison for failing to answer questions satisfactorily, said:

---

33 See above para 19.

34 Above n 22.

"Section 66(3) does not in express terms prescribe the procedures to be followed before an examinee may be committed to prison. More importantly, it contains no explicit provision which obliges a presiding officer to conduct the proceedings antecedent to committal in any manner inconsistent with any norm of procedural fairness required by the Constitution or the common law. The inescapable conclusion, in my view, is that, whosoever is constitutionally permitted to issue a committal warrant under s 66(3), it is implicit in the provisions of the subsection that the relevant proceedings must be conducted by such presiding officer in a manner which is not inconsistent with any norms of procedural fairness required by the Constitution or the common law."[35]

35 Id at para 85. See also *Bernstein and Others v Bester NO and Others* above n 16 at para 59 and the authorities cited there in footnotes 85 and 87.

[42] Sections 20 and 21[36] of the Criminal Procedure Act[37] require that searches be undertaken in connection with criminal investigations only if there is reasonable suspicion that an offence has been committed, and that the search is designed to secure evidence of such an offence.

[43] In the light of our criminal procedure, the legislative history and the specific provisions of section 29(2) of the Act, the legislature must be taken to have contemplated that a judicial

---

36 Section 20 reads as follows:

> "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."

Section 21 reads:

> "(1) Subject to the provisions of sections 22, 24 and 25, an article referred to in section 20 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 of 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 to him a copy of the warrant."

37 Act 51 of 1977.

officer would not exercise a discretion to issue a warrant if that would result in an impermissible violation of the right to privacy of the persons to be searched.

[44] The Investigating Directorate is a special unit established under the Act to conduct investigations into serious and complex offences. If it were unable to commence investigations until it had a reasonable suspicion that a specified offence had been committed, initial investigations which may be sensitive and crucial would have been beyond its jurisdiction. The provisions of the Act authorising the Investigating Directorate to engage in preparatory investigations serve the purpose of enabling the Investigating Directorate to be involved in sensitive investigations from an early stage. The purpose therefore is to assist the Investigating Director to cross the threshold from a mere suspicion that a specified offence has been committed to a reasonable suspicion, which is a pre-requisite for the holding of an inquiry.

[45] As outlined at paragraph 7 above, a suspicion, short of a reasonable suspicion that a specified offence has been committed could arise either because there is uncertainty whether an offence has been committed, or because there is uncertainty that an offence in respect of which there is reasonable suspicion, is in fact a specified offence.

[46] In the present case, for instance, the specified offences in the listed schedule are fraud, theft, forgery and uttering, corruption in terms of the Corruption Act,[38] and any other economic common law offence, or economic offence in contravention of any statutory provision which

[38] Act 94 of 1992.

involves patrimonial loss.[39] In order for these offences to fall within the jurisdiction of the Investigating Directorate, they must, however, be of a serious and complicated nature. As we have seen, Investigating Directorates have been established for two other categories of specified offences.[40] In one of the directorates, the requirement is that the offence in question be committed in an organised fashion or that it is one which may endanger the safety or security of the public;[41] in the other, the requirement is that the offence in question must relate to corruption.

[47] There may well be circumstances in which investigations commence and reach the stage of a reasonable suspicion that an offence has been committed, but further investigation is necessary in order to determine whether the matter is one that should be investigated by the Investigating Directorate under section 28(1), or which should be left to the police to deal with. That would be the case, for instance, where there is a reasonable suspicion that the offence of fraud has been committed, yet the information in the Investigating Director's possession is insufficient to constitute a reasonable suspicion that the offence is one of a serious and complicated nature and is therefore one that falls within his or her jurisdiction.

---

39 Above n 10.

40 See above para 4.

41 The definition of a specified offence in terms of the Directorate concerning organized offences and public safety is as follows: it is any offence referred to in the schedule "committed in an organized fashion or which may endanger the safety or security of the public, or any conspiracy, incitement or attempt to commit any of the above-mentioned offences." See above n 9.

[48] In the context of a preparatory investigation, the search and seizure of property can perform a number of functions. In view of the complexities of organised crime and the difficulty of identifying criminal conduct which may or may not constitute a specified offence, there is a clear need for the Investigating Directorate to have search and seizure powers in the context of preparatory investigations. It is therefore important that such Investigating Directors be able to obtain search warrants in appropriate circumstances, provided that in the context of a preparatory investigation, the use of search warrants is limited to those instances where there is a reasonable suspicion that an offence, which might be a specified offence, has been committed.

[49] Under those circumstances, a search warrant may properly be obtained, on the basis of a reasonable suspicion that an offence has been committed, provided that it is considered that further evidence might establish that such an offence is a specified offence. Before authorising the warrant, the judicial officer would have to apply his or her mind to the matters set out in section 29(5) in evaluating the information put before him or her. A warrant would be issued only if it appears to the judicial officer that there are reasonable grounds for the suspicion that an object connected with the commission of an offence, which might be a specified offence, is on the targeted premises.

[50] I am accordingly of the view that the meaning of section 29(5) suggested by Mr Marcus and which was adopted by the High Court is not correct. It fails to appreciate that section 29(5) is capable of an interpretation that is consistent with the Constitution. I should mention that this interpretation was neither raised before Southwood J, nor considered in his judgment.

[51] For the reasons given in this judgment, I conclude that the impugned provisions are reasonably capable of a meaning that requires a reasonable suspicion of the commission of an offence, which might be a specified offence, as a pre-condition for the issue of a search warrant for purposes of a preparatory investigation. That is a proper interpretation of section 29(5). In particular, as I have already mentioned, the legislature has expressly sought to draw the attention of officials to the requirements of the Constitution in section 29(2) which obliges officials, in executing a warrant, to do so with strict regard to decency and order, respect for a person's dignity, freedom and security, and personal privacy. Furthermore, the comments of Tebbutt J in *Park-Ross*[42] have clearly been taken to heart by the legislature. Section 29(5) was enacted with these comments in mind and this reinforces the view that the legislature set out to regulate the search and seizure of property in accordance with the provisions of the Constitution as they were interpreted in the judgment of Tebbutt J.

[52] The proper interpretation of section 29(5) therefore permits a judicial officer to issue a search warrant in respect of a preparatory investigation only when he or she is satisfied that there exists a reasonable suspicion that an offence which might be a specified offence has been committed. The warrant may only be issued where the judicial officer has concluded that there is a reasonable suspicion that such an offence has been committed, that there are reasonable grounds to believe that objects connected with an investigation into that suspected offence may

42 Above n 31.

be found on the relevant premises, and in the exercise of his or her discretion, the judicial officer considers it appropriate to issue a search warrant. These are considerable safeguards protecting the right to privacy of individuals. In my view, the scope of the limitation of the right to privacy is therefore narrow. It is now necessary to consider briefly the purpose and importance of section 29(5).

Purpose and importance of the search and seizure provisions

[53] It is a notorious fact that the rate of crime in South Africa is unacceptably high. There are frequent reports of violent crime and incessant disclosures of fraudulent activity. This has a seriously adverse effect not only on the security of citizens and the morale of the community but also on the country's economy. This ultimately affects the government's ability to address the pressing social welfare problems in South Africa. The need to fight crime is thus an important objective in our society, and the setting up of special Investigating Directorates should be seen in that light. The legislature has sought to prioritise the investigation of certain serious offences detrimentally affecting our communities and has set up a specialised structure, the Investigating Directorate, to deal with them. For purposes of conducting its investigatory functions, the Investigating Directorates have been granted the powers of search and seizure. The importance of these powers for the purposes of a preparatory investigation has been canvassed above.[43]

Proportionality analysis

[43] See above paras 47 - 49.

[54] I now turn to weigh the extent of the limitation of the right against the purpose for which the legislation was enacted. There is no doubt that search and seizure provisions, in the context of a preparatory investigation, serve an important purpose in the fight against crime. That the state has a pressing interest which involves the security and freedom of the community as a whole is beyond question. It is an objective which is sufficiently important to justify the limitation of the right to privacy of an individual in certain circumstances. The right is not meant to shield criminal activity or to conceal evidence of crime from the criminal justice process.[44] On the other hand, state officials are not entitled without good cause to invade the premises of persons for purposes of searching and seizing property; there would otherwise be little content left to the right to privacy. A balance must therefore be struck between the interests of the

---

44 See *California v Ciraolo* 476 US 207 (1985) at 213-4, where Chief Justice Warren Burger held that a person who was using a garden to grow illicit drugs could not expect it not to be searched by the state. The following has been said in Colb "Innocence, Privacy, and Targeting in Fourth Amendment Jurisprudence" (1996) 96 *Columbia Law Review* 1456, 1460: "[I]f a government official knows that an individual is using her privacy to commit crimes and to hide evidence of those crimes, the official is legally entitled to a warrant authorizing a search of the individual's premises. By committing a crime, the individual in effect creates the circumstances that may ultimately relieve the government of its obligation to respect her privacy."

individual and that of the state, a task that lies at the heart of the inquiry into the limitation of rights.

[55] On the proper interpretation of the sections concerned, the Investigating Directorate is required to place before a judicial officer an adequate and objective basis to justify the infringement of the important right to privacy.[45] The legislation sets up an objective standard that must be met prior to the violation of the right, thus ensuring that search and seizure powers will only be exercised where there are sufficient reasons for doing so. These provisions thus strike a balance between the need for search and seizure powers and the right to privacy of individuals. Thus construed, section 29(5) provides sufficient safeguards against an unwarranted invasion of the right to privacy. It follows, in my view, that the limitation of the privacy right in these circumstances is reasonable and justifiable.

Conclusion

[56] The conclusion I have reached is that the impugned provisions are reasonably capable of a meaning that is consistent with the requirements of the Constitution. In terms of that interpretation, a search warrant would be granted for purposes of a preparatory investigation only if there is a reasonable suspicion that an offence, which might be a specified offence, has been or is being committed, or that an attempt was or had been made to commit such an offence. It

[45] There may be circumstances, in the context of other legislation, in which a warrant may be authorised without the requirement of a reasonable suspicion, or where a search may be permitted without a warrant. This judgment is not concerned with such instances. It is confined to matters which arise in the narrow context of the facts, and the legislation implicated in this case. See, for example, the remarks in *Mistry* (above n 15) at para 29.

follows from this that no warrant may be applied for or issued in the absence of a reasonable suspicion that an offence has been committed.

[57] The decision of this Court is binding on all judicial officers called upon to issue search warrants. Such warrants can only be issued at the instance of the Investigating Director who will clearly be under a duty to bring this judgment to the attention of the judicial officer before whom the application for a warrant is made. That, and the duty that the judicial officer has to give effect to the terms of this judgment, provides adequate protection against unreasonable searches.

[58] In the result, the order of constitutional invalidity by Southwood J must be set aside.

Costs

[59] In the view I take of this matter, there should be no order for costs in this appeal. In the first place, the matter arose in the context of criminal investigations; in this Court, costs orders are not generally made in criminal proceedings.[46] Secondly, the issues involved the constitutionality of an important provision in the Act. There is no doubt that the correct interpretation of the impugned provisions is a matter of great public interest.[47] With regard to the proceedings in the High Court, however, Southwood J awarded costs to the applicants, consequent upon the multiple orders which were made in that court. Only one of the orders, the

---

46 See *Harksen v President of the Republic of South Africa and Others* 2000(5) BCLR 478 (CC); 2000 (2) SA 837 (CC) at para 30.

47 See *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1996 (1) BCLR 1 (CC); 1996 (1) SA 984 (CC) at para 155.

declaration of unconstitutionality, was the subject of the proceedings in this Court. The respondents have been successful on appeal to this Court on that issue. The other orders made in the High Court were not before us and must accordingly remain undisturbed. No argument has been addressed to us regarding the possible implications of this Court's finding, on the constitutionality issue, for the costs order made in the High Court. We do not know to what extent the costs involved in the High Court proceedings were affected by the canvassing of the constitutionality issue which has now been dealt with by this Court. I am therefore not in a position, in this judgment, to address the issue of the High Court's order for costs. Should the respondents wish to pursue the matter of the costs awarded in the High Court, they must notify the Registrar in writing of their intention to do so, within 14 days of the order in this matter and upon notice to all other parties, whereupon further directions will be given.

Order

[60] The following order is accordingly made:

(a) the appeal is allowed;

(b) the Court declines to confirm the order of unconstitutionality made by Southwood J on 23 December 1999 and, accordingly, the order of constitutional invalidity by the Transvaal High Court is set aside;

(d) there is no order for the costs of this appeal.

Chaskalson P, Goldstone J, Kriegler J, Madala J, Mokgoro J, Ngcobo J, O'Regan J, Sachs J, Yacoob J and Cameron AJ concur in the judgment of Langa DP.

LANGA DP

For the applicants : G Marcus SC, L Bekker and M Chaskalson instructed by Rothmann Rothmann and Nell Incorporated Attorneys, Pretoria.

For the respondents : D H Soggot SC and K Moroka instructed by the State Attorney, Johannesburg.