

IN THE SUPREME COURT OF NAMIBIA

WINDHOEK, TUESDAY, 6 DECEMBER 1994,

BEFORE THE HONOURABLE MR. JUSTICE MAHOMED, C.J.  
THE HONOURABLE MR. JUSTICE DUMBUTSHENA, A.J.A.  
THE HONOURABLE MR. JUSTICE LEON, A.J.A.

In the matter between:

THE STATE APPELLANT

and

GERT JOHANNES SCHOLTZ RESPONDENT

Coram: Mahomed, C.J.; Dumbutshena, A.J.A. et Leon, A.J.A.

Heard on: 1994/12/06

Delivered on: 1994/12/08

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ORDER

A formal order upholding or dismissing the appeal would  
in the circumstances of this case be

inappropriate and will not serve or fulfil the object of this litigation which is to provide helpful guidance in future prosecutions in which the accused seeks to obtain the contents of police dockets relevant to the prosecution in a particular matter. The most useful course would be to make an order in the form of a declarator.

It is accordingly declared that:

1. In prosecutions before the High Court, an accused person (or his legal representative) shall ordinarily be entitled to the information contained in the police docket relating to the case prepared by the prosecution against him, including copies of the statements of witnesses, whom the police have interviewed in the matter, whether or not the prosecution intends to call any such witness at the trial.
2. The State shall be entitled to withhold from the accused (or his legal representative), any information contained in any such docket, if it satisfies the Court on a balance of probabilities, that it has reasonable grounds for believing that the disclosure of any such information might reasonably impede the ends of justice or otherwise be against the public interest. (Examples of such claims are where the information sought to be withheld would

disclose the identity of an informer which it is necessary to protect, or where it would disclose police techniques of investigation which it is similarly necessary to protect, or where such disclosure might imperil the safety of a witness or would otherwise not be in the public or state interest.)

3. The duty of the State to afford to an accused person (or his legal representative) the right referred to in paragraph 1 shall ordinarily be discharged upon service of the indictment and before the accused is required to plead in the High Court. Provided, however, that the Court shall be entitled to allow the State to defer the discharge of that duty to a later stage in the trial, if the prosecution establishes on a balance of probabilities that the interests of justice require such deferment in any particular case.
  
4. Nothing contained in this declaration shall be interpreted so as to preclude an accused person appearing before a Court other than the High Court, from contending that the provisions of paragraphs 1, 2 and 3 hereof should mutatis mutandis also be of

application to the proceedings before such other  
Court.

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MAHOMED, C.J.

I agree.

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DUMBUTSHENA, A.J.A.

I agree.

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LEON, A.J.A.

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Counsel for the Appellant: Adv. K. van Niekerk  
Adv. S. Winson

Counsel for the Respondent: On request of the Court:  
Adv. M.S. Navsa, S.C.  
Adv. L. Mpati  
(Legal Assistance Centre).