REPORTABLE

FORM A

PARTIES: **SIMON WORALI vs MINISTER OF SAFETY AND SECURITY AND 2 OTHERS**

REFERENCE NUMBERS -

1] Case No: **1087/2005**

2] High Court**: TRANSKEI DIVISION**

3] Date heard: **21 SEPTEMBER 2007**

Date delivered:

JUDGE(S): **ERASMUS J, SCHOEMAN J and NXULAMO AJ**

LEGAL REPRESENTATIVES -
Appearances:

1]for the Applicant(s): **ADV. MBENENGE & ADV. DA SILVA**
2]for the respondent(s): **ADV. DUKATA & ADV. MOTIWANA**

Instructing attorneys:
1] Applicant(s): **MVUZO NOTYESI INC.**
2] Respondent(s): **STATE ATTORNEY c/o S.Z. JOJO ATTORNEYS**

CASE INFORMATION –

a) *Nature of proceedings* : **Full Bench Appeal**

b) *Topic*: **Lawfulness of seizure of vehicle**

c) Keywords: **Members of the SA Police Service seized the motor vehicle of the appellant on the grounds that the engine and chassis numbers had been tampered with and that possession of the vehicle was therefore unlawful i.t.o. s 68 of the National Traffic Act 93 of 1996. The respondents opposed the appellant's spoliation application on the grounds that the seizure was lawful by virtue of the fact that the vehicle was seized on the strength of a written authorization by the acting Provincial Commissioner that the area be cordoned off i.t.o. s 13(7) of the SAPS Act 86 of 1995 for the specified object: SEIZURE OF FIREARMS. Held by majority that seizure unlawful. Spoliation – Section 13(7)(c) SA Police Service Act 86 of 1995 – Written authorization by acting Provincial Commissioner to cordon off area – Infringement of constitutional right to privacy – Balanced by rights of other citizens to proper and safe environment – Capacity of acting Provincial**

Commissioner – Section 10(2) of the Interpretation Act 33 of 1957 – Dispute fact in application procedure – Ambit of authorization – Reasonableness of decision to issue certificate – Execution of written authorization – Reference in s 13(7)(c) to s 20 of the Criminal Procedure Act 51 of 1977 – Effect of – Interpretation of s 13(7)(c).

IN THE HIGH COURT OF SOUTH AFRICA

(TRANSKEI DIVISION)

Case No: 1087/2005

In the matter between:

SIMON WORALI **APPELLANT**

vs

MINISTER OF SAFETY AND SECURITY	**FIRST RESPONDENT**
THE STATION COMMISSIONER, MTHATHA CENTRAL POLICE STATION	**SECOND RESPONDENT**
XOLILE CHRISTOPHER NTANTISO N.O.	**THIRD RESPONDENT**

JUDGMENT

SCHOEMAN J.

3] This is a judgment on appeal. Members of the South African Police Service seized the appellant's motor vehicle because they averred that the chassis and engine numbers had been tampered with. The appellant brought a spoliation application for the return of the motor vehicle; this was opposed on the basis that the vehicle had been seized after the cordoning off of the Elliotdale taxi rank had been authorised in terms of the provisions of s 13(7) of the South African Police Service Act, 86 of 1995 ("the Act") and therefore the seizure was lawful. The appellant then widened the scope of his attack, amended the notice of motion, joined the third respondent who issued the authority in terms of which the vehicle was seized and asked for an order setting aside the authorisation certificate issued in terms of s 13 of the Act. The third respondent thereafter filed a further set of affidavits to which the

appellant replied.

4] The matter was disposed of in the Court *a quo* on the basis that the appellant should have dealt with this aspect in his founding affidavit and dismissed the application without dealing with the merits of the matter. The Court *a quo* granted leave to appeal to the Full Bench. The respondents do not support the judgment of the court *a quo*, but support the order on different grounds.

5] The following facts are common cause or not really disputed.

a) The appellant's vehicle was seized by members of the South African Police Service while driven by an employee of the appellant;

b) The seizure was effected by virtue of a document headed "AUTHORITY TO CORDON OFF" ("the certificate") which was issued, on the face of it, by the Provincial Commissioner: SAPS Eastern Cape and signed by X C Ntantiso, the third respondent, in terms of s 13(7) of the Act;

c) **The certificate authorised the cordoning off of "*the Elliotdale taxi ranks on the 16th and 17th of August 2005 (09:00 – 17:00) with the object of restoration of Public order/restoration of safety and security / seizure of unlicensed firearms*."**

d) The authority instructed every member executing a search in terms of s13(7)(c) to exhibit a copy of the authorisation to every affected person.

e) Members of the police searched the vehicle of the appellant but the search of the interior of the vehicle yielded “nothing”. They thereafter opened the bonnet of the vehicle with the view to inspect the engine compartment thereof.

f) The driver of the vehicle was arrested and the vehicle seized.

6] The following facts are disputed:

d) Whether the members of the South Africa Police Service informed the driver of the vehicle that there were irregularities with the chassis and engine numbers of the vehicle;

e) Whether the chassis and engine numbers have been altered or defaced;

f) Whether the third respondent was the acting Provincial Commissioner at the time he allegedly issued the certificate of authorisation; and

g) Whether facts were placed before him before he decided to issue the authorisation for the cordoning off.

7] It is appellant’s case that he is entitled to the relief because-

a) the Court *a quo* misdirected itself in ruling that the application be dismissed because the applicant did not make out a case in the founding affidavit.

b) the certificate issued was invalid as

i) circumstances did not justify the issuing of the certificate; and

ii) the certificate was not regularly issued in terms of the enabling legislation; and

if found that the certificate was valid and issued regularly that

c) the certificate was not executed regularly as the respondents went outside the ambit of the authorisation when opening the bonnet of the vehicle and inspecting the chassis and engine numbers of the vehicle and furthermore that there was nothing wrong with the chassis and engine numbers of the said vehicle.

THE *RATIO* FOR THE DISMISSAL OF THE APPLICATION IN THE COURT *A QUO*.

8] The appellant and respondents are ad idem that the reasoning of the Court *a quo* was not correct in finding that the appellant was not entitled to the relief as he did not disclose his cause of action in the founding affidavit. The attitude of the respondents is a bit surprising as it was an argument advanced by the respondents in their further affidavit and persisted with during argument in the Court *a quo*.

9] The practice of the Courts is that an applicant must, generally speaking, stand

or fall by his founding affidavit and the facts alleged therein and that he cannot introduce for the first time in his replying affidavit facts or circumstances upon which he seeks to found a new cause of action.

10] There are occasions when the Court should and will allow an applicant to introduce additional facts or grounds for relief in his replying affidavit, even though that might necessitate the admission of further affidavits. As OGILVIE THOMPSON, J.A., pointed out in *James Brown and Hamer (Pty.) Ltd . v. Simmons, N.O* .[1] the general rules of practice in regard to such matters do not require that they *'must always be rigidly applied: some flexibility, controlled by the presiding Judge exercising his discretion in relation to the facts of the case before him, must necessarily also be permitted.'*

11] In deciding whether to permit additional facts in the replying affidavit there must be a distinction between a case where the applicant knew of the facts at the time of his founding affidavit, and the case in which facts alleged in the respondent's answering affidavit reveal the existence or possible existence of a further ground for the relief sought by the applicant. In the latter type of case, of under which the instant matter resorts, the Court will more readily allow an applicant in his

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replying affidavit to utilise and enlarge upon what has been revealed by the respondent and to set up such additional ground for relief as might arise therefrom.

12] The appellant properly made out a case in his founding affidavit for a *mandament van spolie.* The respondents had to justify their seizure of the vehicle and raised the certificate as justification. The appellant was entitled to attack the validity of the certificate and the proper execution thereof in the replying affidavit. The appellant further obtained an order for leave to amend his notice of motion to include the attack on the validity of the certificate and the third respondent filed a further affidavit. There was clearly no prejudice to the respondents in the way the application proceeded.

13] In this instance the respondents suffered no embarrassment as they filed further affidavits and the issue raised in the replying affidavit was properly ventilated.

14] The appeal is successful in respect of this aspect and therefore it is appropriate to consider the other arguments advanced on behalf of the parties on the merits of the matter.

THE MERITS

15] In an unreported judgment of the Supreme Court of Appeal[2] Heher JA said the following about the approach when there are disputes of fact (as in the instant matter) and the way to approach such disputes in motion proceedings.

"[12] Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or *bona fide* dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers: *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C. See also the analysis by Davis J in *Ripoll-Dausa v Middleton NO* 2005 (3) SA 141 (C) at 151A-153C with which I respectfully agree. (I do not overlook that a reference to evidence in circumstances discussed in the authorities may be appropriate.)

[13] A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when

2 *Wightman v Headfour (Pty) Ltd* (66/2007) [2008] ZASCA 6 (10 March 2008)

arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter."

16] Therefore I must arrive at a decision based on those facts averred by the applicant which are admitted by the respondents, together with the facts averred by the respondents. The matter must therefore, in essence, be decided on the version presented by the respondents unless that version can, in the words of Corbett JA, be described as 'so far-fetched and clearly untenable that the court is justified in rejecting [it] merely on the papers'.[3] This is the position even if the onus is on the respondents.[4]

17] Appellant argued on the strength of inter alia *Powell NO and Others v Van der Merwe and Others*[5] that because of the dangers of misuse in the exercise of authority under search warrants their validity (both as to

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3 *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E - 635D,
4 *Ngqumba en 'n Ander v Staatspresident en Andere; Damons NO en Andere v Staatspresident en Andere; Jooste v Staatspresident en Andere* 1988 (4) SA 224 (A) at 262 A
5 [2005] 1 All South Africa 149 (SCA) at para [59]

the authority in terms of which the warrant is issued and the ambit of its terms) must be scrutinised as it infringes upon the liberty of the individual and his rights to privacy and property. I agree with this decision. Furthermore where reliance is placed on statutory authority to dispossess an applicant, such statutory provision must be strictly interpreted and the party relying on such authority must act strictly within its terms. [6]

18] Further factors to be considered (where a person is involved in an industry that delivers a service to the public at large, as the appellant in this instance, and where the public is wholly dependent on the proper and safe functioning of the taxi industry) are the principles relating to privacy in the words of Ackerman J in *Bernstein and Others v Bester and Others NNO*[7] :

> **'The truism that no right is to be considered absolute implies that from the outset of interpretation each right is always already limited by every other right accruing to another citizen. In the context of privacy this would mean that it is only the inner sanctum of a person, such as his/her family life, sexual preference and home environment, which is shielded from erosion by conflicting rights of the community. This implies that community rights and the rights of fellow members place a corresponding obligation on a**

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6 *Rikhotso v Northcliff Ceramics (Pty) Ltd and Others* 1997 (1) SA 526 (W) at 530F; *George Municipality v Vena and Another* 1989 (2) SA 263 (A) at 271E—F;*Minister of Finance and Others v Ramos* 1998(4) SA 1096(C) at 1011 G-H

7 1996 (2) SA 751 (CC) at para [67].

citizen, thereby shaping the abstract notion of individualism towards identifying a concrete member of civil society. Privacy is acknowledged in the truly personal realm, but as a person moves into communal relations and activities such as business and social interaction, the scope of personal space shrinks accordingly.' (my emphasis)

19]In the matter of *Mistry v Interim Medical and Dental Council of South Africa and Others*[8] Sachs J expressed the different degrees of privacy as follows:

'In the case of any regulated enterprise, the proprietor's expectation of privacy with respect to the premises, equipment, materials and records must be attenuated by the obligation to comply with reasonable regulations and to tolerate the administrative inspections that are an inseparable part of an effective regime of regulation. The greater the potential hazards to the public, the less invasive the inspection. People involved in such undertakings must be taken to know from the outset that their activities will be monitored.'

20] This has the effect that the right to privacy of the appellant must always be balanced by the rights of the other citizens making use of public transport for a proper and safe environment, free of institutionalised violence.

THE VALIDITY OF THE CERTIFICATE.

21] The validity of the certificate is attacked on the bases that (a) the certificate was not issued by the proper functionary (b) the ambit was too wide as it did

8 1998 (4) SA 1127 (CC) at para [27]

not specify which taxi rank and (c) the decision to issue the certificate was not reasonable as no facts were placed before the functionary and it was not necessary to restore law and order or to ensure the safety of the public in a particular area.

The certificate was not issued by the proper functionary.

22] S 13(7)(a) of the Act empowers the Provincial Commissioner "*where it is reasonable in the circumstances in order to restore public order or to ensure the safety of the public in a particular area"* to authorise in writing that the particular area or any part thereof be cordoned off.

23] As s 15 of the Act provides that the powers conferred on the Provincial Commissioner cannot be delegated the appellant argued that the third respondent, who stated that he was the acting Provincial Commissioner, is not the functionary as envisaged b s 13(7)(a) of the Act and therefore the certificate is invalid.

24] S 10(2) of the Interpretation Act 33 of 1957 determines that if a power is conferred on the holder of an office, unless the contrary intention appears, the power shall be performed by the person lawfully acting in the capacity of such holder. In the present instance there is nothing to indicate that there is an intention that the acting Provincial Commissioner shall not exercise those

powers and therefore the acting Provincial Commissioner may issue the certificate in terms of s 13 of the Act.

25] The appellant, before filing his replying affidavit to the answering affidavit of the third respondent (the person who signed the certificate) first wrote a letter, through his attorneys, requesting a copy of the certificate of appointment as acting Provincial Commissioner, and then filed a request in terms of rule 35(12) of the Uniform Rules of Court. The third respondent's attorney replied to the letter stating that as third respondent made no mention of the document in his answering affidavit, the appellant was not entitled to be provided with the document. The appellant did not bring an application in terms of Rule 30A to compel the third respondent to comply with the notice.

26] No reasons were advanced by the appellant why the averment is made that the third respondent was not the acting Provincial Commissioner except to refer to the fact that the documentation was not attached. The third respondent is the Deputy Provincial Commissioner and he stated under oath that, at the time he issued the certificate, he was the acting Provincial Commissioner, in the absence of the Provincial Commissioner. The documentation appointing him could only be support for his statement under oath to the effect that he is the acting Provincial Commissioner. There is no averment that he cannot be the acting Provincial Commissioner without a

written letter of appointment. The appellant did not provide any substance to the averment and in the face of the bare denial I am of the opinion that I can accept that the third respondent signed the certificate in his capacity as acting Provincial Commissioner, if the matter is approached on the basis of the respondent's version.

The ambit of the authorisation was too wide as it did not specify which taxi rank.

27] It is common cause that there are two taxi ranks in Elliotdale and both are utilised by the Uncedo Taxi Service. The one is where the appellant's vehicle was found and the other is mainly used by light delivery vehicles. I am of the opinion that the description of the "Elliotdale taxi ranks" is specific enough to include both taxi ranks.

The decision to issue the certificate was not reasonable

28] As mentioned previously the relevant portion of s 13(7)(a) of the Act provides that the Provincial Commissioner may, where it is reasonable in the circumstances in order to restore public order or to ensure the safety of the public in a particular area, in writing authorise that the particular area or any part thereof be cordoned off.

29] In the *Powell*- matter a warrant could only be granted if there existed a reasonable suspicion that an offence has been committed. In terms of s

13(7)(a) of the Act, authorisation may be given where it is reasonable in the circumstances to ensure the safety of the public in a particular area.

30] In *S v Makwanyane and Another*[9] the Constitutional Court held, when determining whether the infringement of the right to privacy is reasonable and justifiable that there was no absolute standard to determine what is reasonable:

> 'This is inherent in the requirement of proportionality, which calls for the balancing of different interests. In the balancing process the relevant considerations will include the nature of the right that is limited and its importance to an open and democratic society based on freedom and equality; the purpose for which the right is limited and the importance of that purpose to such a society; the extent of the limitation, its efficacy and, particularly where the limitation has to be necessary, whether the desired ends could reasonably be achieved through other means less damaging to the right in question.'

31] Appellant made the allegation in the replying affidavit that no facts were placed before the third respondent when he issued the certificate. Appellant further alleged that there was no public disorder or threat of security at their rank. This was denied by the third respondent and he stated "*I would not issue a certificate without satisfying myself from facts placed before me that it was necessary to do so.*" He stated that it is the police's duty to forestall plans to disrupt public order and not wait until such incidents have taken place. "*It would have been foolish of the*

9 1995 (3) SA 391 (CC) at

***police to wait till there were shoot-outs at Elliotdale taxi ranks before they intervened.*"**

32] It is clear from the statement by the third respondent that there were facts placed before him before he exercised his discretion. It is unfortunately notorious that taxi violence is prevalent in all jurisdictions and it is implied when the third respondent stated that the police cannot wait until there are shoot-outs before they intervene. It would be reasonable under the circumstances to authorise the cordoning off the area to determine whether there were firearms in the taxi rank to forestall violence. The ideal of policing is surely to have effective preventative measures and not only to react to crimes already committed.

33] The purpose of s 13(7) of the Act differs materially from the search and seizure warrant that was issued in the *Powell* matter as there need not be a reasonable suspicion, but it must be reasonable under the circumstances.

34] I am of the opinion that where the onus rests on the applicant to prove his allegation, the bald statement that no facts were placed before the third respondent, is insufficient, in the light of the reply by the third respondent. Furthermore, seen in the light of the importance of public safety in the taxi

industry, it is reasonable under the circumstances for the Provincial Commissioner to have issued the authorisation.

THE EXECUTION OF THE AUTHORITY.

35] Appellant argues that the police were not entitled to open the bonnet of the vehicle and inspect the chassis and engine numbers of his vehicle as the object of the cordoning off was the seizure of unlicensed firearms and not the seizure of a motor vehicle. The argument is that the police had already determined that there were no firearms in the vehicle and as motor vehicles that bear engine and chassis numbers that have been tampered with do not *per se* adversely affect public order and public safety, the police were not entitled to seize the said vehicles. The objectives of preserving public order and public safety are prerequisites to the issue of the authorisation in terms of s 13(7) of the Act and not the object specified in the authorisation.

36] Furthermore the appellant denied that the chassis and engine numbers had been tampered with. All the averments by the Inspector Mnyakaza that he noticed that the original chassis numbers have been ground off and restamped; the engine numbers have been ground off and re-stamped and the manufacturers tag had been removed and riveted afresh were denied by

the appellant. The appellant furthermore denied that the irregularities were pointed out to the driver of the vehicle. No supporting affidavit of the driver was attached to confirm the denial.

37] There was also an affidavit by a certain Muller who is a vehicle identification specialist employed by Toyota South Africa Motors Ltd. He stated that he examined the vehicle with the same registration and identification marks as the vehicle in question on the 6th of August 2005 and found the same irregularities as mentioned by Mnyakaza. However it is common cause that the vehicle in question was only seized on the 17th of August 2005; therefore no weight can be attached to the affidavit of Muller. The factual dispute remains whether the chassis numbers and engine numbers have been tampered with or not.

38] It is important to note that although there was a factual dispute in this regard, there was no application to have the matter referred to oral evidence. That being the case as stated by the respondents must be accepted for purposes of this application.

39] Section 13(7)(c) of the Act determines as follows.

> **"Upon receipt of the written authorisation referred to in paragraph (a), any member may cordon off the area concerned or part thereof, and may, where**

it is reasonably necessary in order to achieve the object specified in the written authorisation, without warrant, search any person, premises or vehicle, or any receptacle or object of whatever nature, in that area or part thereof and seize any article referred to in section 20 of the Criminal Procedure Act, 1977, found by him or her in the possession of such person or in that area or part thereof: Provided that a member executing a search under this paragraph shall, upon demand of any person whose rights are or have been affected by the search or seizure, exhibit to him or her a copy of the written authorisation."

40] The respondents did not expressly rely on the provisions of s 13(7) in that the said section was not pertinently mentioned in the application. It is however not necessary for a litigant to refer to a provision of an act before the provisions of the act become applicable to the facts of the matter. The said section is mentioned in the certificate of authority as previously stated.

41] It is clear that s 13(7) empowers the police to seize articles mentioned in s 20 of the Criminal Procedure Act 51 of 1977 if the need arises. In terms of s 20 of the Criminal Procedure Act 51 of 1977, the State may seize any 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'.

42] Section 13(7) of the Act enables the police to act in a preventative manner as opposed to reacting to a crime that has already been committed or is about to be committed. Whereas s 20 of the Criminal Procedure Act is usually circumscribed by the provisions of ss 21, 22 and 23 of the Criminal Procedure Act in that the powers of the police in respect of search and seizure are limited, under s 13(7)(c) of the Act they are not limited by ss 21 to 23 of the Criminal Procedure Act for if an article is found in the process of the search as set out in s 20 they are entitled to seize such article. I am of the opinion that the dictum of Van Zyl J in the matter of *Sithonga v Minister of Safety and Security and Others* [10] relating to s 13(8) of the Act, is equally apposite here:

> **"[23].....in order to primarily achieve the object of prevention of crime, sub-section (8) empowers and enables police officials to conduct a search and to seize an article without first having to arrest a person, or being satisfied upon reasonable grounds that an article referred to in section 20 of the Criminal Procedure Act is in the possession or under the control of any such person. Sub-section (8) accordingly enables a police officer to perform a function he would otherwise not have been able to do without first having complied with the provisions of s 21 to 23 of the Criminal Procedure Act."**

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10 Unreported Full Bench decision of this Division (Case number A122/06 delivered on the 24th of May 2007)

43]The argument has been raised that s 13(7)(c) of the Act, with the concomitant reference to s 20 of the Criminal Procedure Act can only be applicable in circumstances where the seizure relates to an article mentioned in the certificate, in the present instance, seizure of firearms. I cannot agree with this. S 20 of the Criminal Procedure Act is clear that it authorises the seizure of any article "*which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence"* or that is evidence of the commission of an offence. Section 68(6) of the National Road Traffic Act 93 of 1996 prohibits a person to be in possession of a motor vehicle of which the engine or chassis number has been altered or defaced. In terms of s 89 of the said Act it is a criminal offence to contravene s 68(6). To be in possession of a vehicle where the chassis number and engine numbers have been tampered with is an offence and falls within the ambit of an article as set out in s 20 of the Criminal Procedure Act. There is nothing in s 13(7) of the Act that limits the articles to an article that was part of the objective of the authorisation. It would be incongruous to envisage a situation that there is authorisation to search for firearms and in the process police come across drugs or any other prohibited article and are not be empowered to seize it without having to resort to ss 21 to 23 of the Criminal Procedure Act. There is nothing to

suggest that it was not in the process of looking for firearms that the bonnet of the vehicle was opened where the irregularities in respect of the vehicle were noticed. Furthermore s 13(7)(c) refers to the restoration of public order or to ensure the safety of the public. Nothing is mentioned in respect of the seizure of any articles. If it were the intention that only articles that were mentioned in the certificate of authorisation were to be seized, then the section would not have referred to s 20 of the Criminal Procedure Act but to the articles that would be instrumental in restoring order or ensuring the safety of the public.

44] In the premises I am of the opinion that the appeal must fail. I would accordingly make the following order:

The appeal is dismissed with costs.

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I. SCHOEMAN

JUDGE OF THE HIGH COURT

A.R. ERASMUS J

[43] I am in agreement with the judgment of Schoeman J up to and including para [36] thereof, but respectfully disagree with her finding in paras [37] to [41] that the seizure of the appellant's motor vehicle was lawful in terms of s 13(7)(c) of the South African Police Service Act by virtue of the reference therein to s 20 of the Criminal Procedure Act. My interpretation of the section leads me to a conclusion different from hers on the outcome of the appeal.

[44] It is axiomatic that a statutory provision is defined not only by the meaning of its individual words but also by their place in the grammatical structure of the written article. Section 13(7)(c) (quoted in para [37] above) consists of a single sentence with the operative words, 'any member' 'may' 'search' (certain objects) and 'seize' (certain articles). The word 'may' is followed by the adverbial clause 'where it is reasonably necessary in order to achieve the object specified in the written authorisation', which is followed by the adverbial phrase 'without warrant', followed seamlessly by elucidation of the verbs 'search' and 'seize', both of which cohere with the introductory 'may'. Syntactically, both the clause and the

phrase modify both the verbs search and seize. The meaning of the provision is clear: a member may without warrant seize any article (only) where it is reasonably necessary in order to achieve the object specified in the written authorisation. In the present context this means exclusively articles related to the possession of unlicensed firearms and therefore not to the seizure of the appellant's motor vehicle on a suspicion that it was concerned in a contravention of s 68 of the National Traffic Act 93 of 1996. There is no good reason to look beyond the plain and natural meaning of the section. However, principial and textual considerations in fact confirm this construction.

[45] This interpretation is not disturbed by the reference in para (c) of ss (7) to s 20 of the Criminal Procedure Act. That section empowers the state to seize any article that is concerned in or believed to be concerned in the commission of an offence, as more fully defined in paras (a), (b) or (c) thereof (quoted in para [39] above). Section 21 sets out the requirements for the issue of a search warrant and the procedure for the seizure of an article under the warrant. Section 22 prescribes the procedure whereby an article may be seized without a search warrant. Section 23 provides for the seizure of an article found in the possession of an arrested person. Clearly, s 20 read with ss 21, 22 and 23 limits the constitutional rights of the affected person. It does so however in a manner and to the extent that is reasonable and justifiable in our democratic order (s 36 of the Constitution of the Republic of South Africa Act 108 of 1996).

[46] Subsections (7) and (8) of s 13 too limit the affected person's constitutional rights, but strictly within the specified circumstances and to the specified extent. In the case of ss (7) the written authorisation to cordon off a particular area must specify the object of the contemplated exercise, which here was the seizure of unlicensed firearms. That specification informed the whole provision, particularly the verbs search and seize. The construction placed on the subsection by my colleague takes the authorised seizure beyond the specified object. The member would be authorised to seize any article qualifying under s 20 found by him anywhere in the cordoned off area, without the seizure being necessary in order to the achieve the object specified in the written authorisation; and what is more, without complying with the requirements of ss 21, 22 or 23 of the Code. Such a wide construction is inessential to the achievement of the objects of s 13(7) and is inconsistent with its text.

[47] The reference to s 20 of the Code in ss (7)(c) of s 13 does not widen the ambit of the provision so as to render lawful the seizure of articles falling outside the specified object of the written authorisation, but in fact limits the authorised seizure in order to render it constitutionally agreeable. Not only must the seizure be reasonably necessary in order to achieve the object specified in the written authorisation, but the articles seized must in addition meet the requirements of paras (a), (b) or (c) of s 20. Without such limitation the provision would be unacceptably wide and unclearly delineated.

[48] This does not mean that the member who in the process of an authorised search comes upon an article patently connected with an unlawful activity unrelated however to the object of the written authorisation, is powerless. The member could still in proper circumstances act in terms of ss 21 or 22 of the Code; or, where applicable, s 23. The respondents do not however rely on these provisions.

[49] In the result, the appeal succeeds with costs to be paid by the first respondent, which costs are to include the costs consequent upon the employment of two counsel, and the following order is substituted for the order of the court *a quo*.-

1. The first and second respondents are ordered to release to the applicant the motor vehicle with registration letter and numbers

CGX 148 EC.

2. The first respondent is ordered to pay the costs of the application.

_____
A.R. ERASMUS
JUDGE OF THE HIGH COURT

DATE: _____

Nxumalo AJ:

I concur in the judgment of A.R. Erasmus J.

_____
S.H. NXUMALO
ACTING JUDGE OF THE HIGH COURT