

Sneller Verbatim/lks

IN THE HIGH COURT OF SOUTH AFRICA

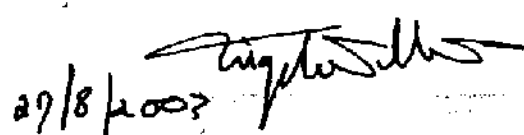
(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 22001/02

2002-11-14

29/8/2003

A handwritten signature in black ink, appearing to read 'Angela S...', is written over the date '29/8/2003'. There are also some faint, illegible handwritten notes above the signature.

In the matter between

VAN WYK, GIDEON PETRUS

Applicant

and

CROLE, MICHAEL ANTHONY

First Respondent

LITTLE, NIGEL MARK SHANNON

Second Respondent

J U D G M E N T

WILLIS, J: The applicant, who is the Senior State Advocate in the office of the Director of Prosecutions operating at the 12th Floor, High Court Building, Johannesburg, has approached the court as a matter of urgency seeking an order that the subpoena issued in the Randburg Magistrate's Court in the matter between the first respondent as

plaintiff and the Minister of Safety and Security, under Case No. 4233/2001, served upon the applicant, be and is hereby set aside. The applicant has also requested an order that the first respondent pay the costs of this applicant on the attorney and client scale, jointly and severally with the second respondent.

The second respondent is the attorney who issued the subpoena.

The first respondent is the plaintiff in the aforesaid case in the Randburg Magistrate's Court.

The subpoena which was served on the applicant on 6 November 2002 requires him to produce:-

"All correspondence of any kind (including reports, memoranda) between yourself and the following listed parties:

- (a) Office of the National Director of Public Prosecutions;
- (b) The Asset Forfeiture Unit;
- (c) The Special Investigation Unit of the South African Police Service;
- (d) The Task Force;
- (e) The Public Order Policing Unit of the South African Police Service.
- (f) The office of the Director of Public Prosecutions, Bloemfontein;
- (g) Mr Andre De Vries SC of the Office of the Director of Public Prosecutions, Witwatersrand Local Division.
- (h) Members of the Aliens Investigation Unit;
- (i) Members of the National Anti Corruption Unit, Pretoria

pertaining to the raid on 2 February 2000 at The Ranch property at 54 Autumn Road, Rivonia.

The requested correspondence is to cover the time period both prior and subsequent to the raid and is to include all correspondence which relates to any events occurring prior to the raid, during the raid and subsequent to the raid."

The applicant alleges in paragraph 4.3 of the founding affidavit that:

"My sole connection with the events of the raid is that I was appointed to prosecute one Andrew Phillips."

This allegation is not disputed by the respondents in the answering affidavit. In the replying affidavit the applicant makes the issue clearer when he says"

"I have nothing to do with any prior investigations or with the raid on The Ranch on 2 February 2000 and my only knowledge of the matter arises from my office as State Prosecutor."

It is common cause that the action in the Magistrate's Court is an action for damages arising from assaults which allegedly took place by members of the Police Force on the first respondent during the raid.

I cannot see any possible relevance in these documents in determining:

- (a) whether an assault took place; or
- (b) the assessment of the quantum of damages in such a case.

I would wish to point out that *prima facie* members of the public are entitled to live peaceful and undisturbed lives and such a raid and

such assaults, if that occurred, would have to be justified by the defendant in the case in the Magistrate's Court. Furthermore, in the light of the fact that the uncontested evidence before me is that the applicant was not even a witness and could not possibly have been a witness to the events which took place during the raid, I cannot see how his presence can reasonably be required for the trial or that it is even relevant. Therefore, *prima facie* it would seem to me that the subpoena does indeed constitute an abuse of court proceedings.

I am prepared to accept, especially as I am sitting as a Judge in a busy motion court, that there is perhaps some slight possibility that the subpoena was not an abuse and that there may be circumstances which could, in the light of further evidence, justify it. The trial is said to commence tomorrow and it is clear that if the applicant is excused from attendance, this will not prejudice the first respondent in proceeding with the trial and in leading quite a considerable amount of evidence.

In all the circumstances of the matter the following order is made:

1. The applicant is excused from attendance at the trial in the Randburg Magistrate's court in Case No. 4233/2001 between Michael Anthony Crole as plaintiff and the Minister of Safety and Security as defendant until a further order is made by this court.
2. The subpoena *duces tecum* issued in this case calling upon the applicant to appear in person before the court will be set aside without further hearing, if the first respondent does not make

an application to this court for a reconsideration of the matter within six months of this order.

3. In the event that the subpoena is set aside consequent upon the order made in paragraph 2 above, the first respondent is to pay the costs of this application.
4. In any other event, the costs of the application thus far are reserved.