

MINISTER OF POLICE v. MARAIS.

(CAPE PROVINCIAL DIVISION.)

1970. February 23. VAN WYK, J.

Evidence.—Document associated with State security in possession of a private person.—Belief that information contained therein, would be published.—Police activities and State security could thereby be prejudiced.—Document put at disposal of Court in order to decide whether to issue a temporary interdict.

The applicant, the Commissioner of the South African Police had, on behalf of the Minister of Police and with his consent, applied for a temporary interdict restraining the respondent from publishing or distributing a certain document which could prejudice the activities of the Police and the security of the State. A photostatic copy of the document was placed at the disposal of the Court in order for it to determine whether to issue a rule *nisi*.

Held, that the document was undoubtedly a document associated with activities of the Police and State security.

Held, therefore, that a rule *nisi* should be issued.

Application for a rule *nisi*. The facts appear from the judgment.
P. H. Tebbutt, S.C. (with him T. E. Kleynhans) for the applicant.

VAN WYK, J.: I think it is expedient, in the particular circumstances of this application, to give a very brief judgment.

It is an application by the Commissioner of the South African Police. He really acts on behalf of the Minister of Police and the application was in fact made with the knowledge and consent of the Minister.

In an affidavit General Gouws avers that the respondent had already released information in relation to police and security matters of the Republic of South Africa to the Press in conflict with the provisions of sec. 3 (2) of the Public Secrets Act, 16 of 1956. This section, as amended, reads as follows:

"(2) (a) Any person who has in his possession or under his control any sketch, plan, model, article, note, document or information which relates to munitions of war or any military, police or security matter and who publishes it or directly or indirectly communicates it to any person in any manner or for any purpose prejudicial to the safety or interests of the Republic, shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand five hundred rand or to imprisonment for a period not exceeding seven years or to both such fine and such imprisonment.

(b) For the purposes of para. (a)—

(i) 'police matter' means any matter relating to the preservation of the internal security of the Republic or the maintenance of law and order by the South African Police,

(ii) 'security matter' means any matter relating to security of the Republic and includes any matter dealt with by or relating to the Bureau of State Security referred to in sec. 1 of the Public Service Act, 1957 (Act No. 54 of 1957), or relating to the relationship subsisting between any person and the said Bureau."

The Commissioner further states in the affidavit that the facts already referred to came to his notice on 21st February and that he immediately took steps, by means of requests to newspapers, to prevent publication of such information in the public Press. He further states that according to newspaper reports of 23rd February, 1970 the respondent is of opinion that the aforesaid information has nothing to do with police or public security and that the newspapers should have published the information. General Gouws declares that he has good reason to believe that respondent will endeavour to publish and disseminate such information still further, and that further publication of such information will seriously prejudice police activities as well as public security unless respondent is forbidden by the Court. He has sound reason to believe that respondent or other persons will request the newspaper known as the *Afrikaner* and the magazine *Ster-Aktueel* and other publications to publish the information or that they have already done so.

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The information referred to by applicant and the publication of which he is endeavouring to prevent by this application is contained in a document of which the applicant had a photostatic copy.

The Court is perfectly aware thereof that in the case of an application of this nature it is almost impossible for the applicant to place the statement concerned before the Court, for that may have the result that the contents thereof are made known further. On the other hand the Court should as far as possible avoid issuing a rule *nisi* solely on

the inferences drawn and conclusions made by the applicant in a case like this. For this reason the Court raised the question whether this was not a proper occasion to apply the *dictum* of the CHIEF JUSTICE in *van der Linde v. Calitz*, 1967 (2) S.A. 239 (A.D.), and especially at p. 259. Mr. *Tebbutt*, who appeared for the applicant, agreed to make the document available to the Court and thus to give the Court the opportunity of reading the document of which the Court indeed has no knowledge, but it is perfectly clear that, depending on the whole background, the information contained therein may indeed prejudice public security. It is undoubtedly a document relating to Police activities and State security.

In the circumstances an order as prayed for in the notice of motion is granted. In other words the respondent is ordered to show cause on 2nd March, 1970 why an order shall not be made prohibiting respondent to publish, disseminate or make public either in writing or otherwise any information relating to Police activities or security matters contained in the document referred to in the supporting affidavit of General Gous or allow it to be made public, published or disseminated or to make public, publish or disseminate any similar information by way of writing or otherwise or allow it to be made public, published or disseminated.

This rule *nisi* will operate as a temporary interdict prohibiting respondent from publishing or disseminating the said information or allowing it to be published, disseminated or made public.

The costs of this application will stand over for decision on the return day of the rule.

In order to prevent any misunderstanding this document is identified as follows: The heading of the document reads: "Statement by Mr. Jaap Marais, M.P." Immediately below the heading the statement opens with: "It is surprising", and the document concludes: "but it gave an undesirable odour to their work".

If respondent opposes the application his replying declarations must be filed not later than 27th February, 1970 at 12 noon.

Applicant's Attorney: *Deputy State Attorney.*