REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No

10/11/2025

DATE SIGNATURE

Case No: 2025-198671

In the matter between:

MERVEILLE IMP AND EXP (PTY) LIMITED	First Applicant
ZAAKIRAH LE ROUX	Second Applicant
YANNICK OMAR MPUNGA	Third Applicant

and

APPLE INC	First Respondent
CUSTOMS INSPECTOR OF THE SOUTH AFRICAN REVENUE SERVICES	Second Respondent
HNMM MOBILE PHONES	Third Respondent
GSM HUB TRADING LLC	Fourth Respondent

JUDGMENT

This judgment is deemed to be handed down upon uploading by the Registrar to the electronic court file.

Gilbert AJ:

1. The applicants by way of urgent proceedings seek what appears from their founding affidavit as anti-spoliatory relief against the first respondent ("Apple") and the second respondent ("SARS") for effectively the return or release of some 540 mobile phones ostensibly manufactured by Apple. Although the relief as sought in the notice of motion is not framed as typical anti-spoliatory relief, when regard is had to the founding affidavit,[1] the matter must be approached on the basis that the effective relief being sought by the applicants is anti-spoliatory relief in nature.

2. On or about 19 July 2025, a consignment of mobile phones imported from Dubai into South Africa was inspected by the Customs Border Control Unit Cargo Team, a part of the South Africa Revenue Services. This inspection took place in terms of section 4(8A)(a) of the Customs and Excise Act, 1964.

[1] See, for example, paragraphs 14, 15, 29.7, 30 to 35 (which appears under the heading *"The Requirements for Spoliation"*) and 43 of the founding affidavit.

3. Following this inspection, on 19 July 2025 the consignment was detained in terms of section 88(1)(a) and 113A of the Customs and Excise Act. Section 113A deals with the powers and duties of SARS officers in connection with counterfeit goods.

4. The consignment comprised, apart from packaging, what appeared to be 788 iPhones manufactured by Apple.

5. Samples of the detained goods (totalling five units) were drawn in order for these to be examined by the attorneys Spoor & Fisher representing Apple for verification and determination as to whether the goods may be counterfeit.

6. On 6 August 2025, Spoor & Fisher reverted to SARS that of the five samples, two were identified as counterfeit. The consignment was removed to the counterfeit goods depot for each item in the consignment to be examined individually.

7. On 29 September 2025, Spoor & Fisher, on behalf of Apple, informed SARS that 466 of the mobile phones in the consignment were counterfeit as too was 575 items of packaging.

8. Also on 29 September 2025, Spoor & Fisher addressed a letter to the attorneys then representing the first applicant, setting out the basis on which the detained goods were found to be counterfeit and were being

retained by SARS in safe storage at the designated counterfeit goods depot. Those mobile phones that were identified as authentic were released to the applicants' clearing agent.

9. It appears from this letter that on 25 September 2025 the first applicant's then attorneys had communicated with Spoor & Fisher. That communication is not part of the court papers but it is clear from the correspondence that since at least 29 September 2025 the applicants were aware that the retained goods were not going to be released and are to be further processed as suspected counterfeit goods in terms of the appliable legislation.

10. The present application was only issued on 23 October 2025, nearly a month later.

11. The application was only served per email on Apple and SARS on 29 October 2025 and set down for hearing on 4 November 2025.

12. On 30 October 2025, SARS applied for and obtained a warrant in the magistrates' court in terms of section 6, read with sections 4 and 5 of the Counterfeit Goods Act, 1997 in relation to the detained goods.

13. On 3 November 2025, the detained goods were seized by SARS in terms of the warrant and are presently being held by SARS as seized goods in terms of the Counterfeit Goods Act.[2]

14. At all material times, as will appear below, the goods have remained in the possession or under the control of SARS.

15. As already stated, the applicants sought and persist in seeking the relief set out in their notice of motion, cast as anti-spoliatory relief in their founding affidavit.

16. Apple, as the first respondent, approached its opposition to the matter on the basis that:

    16.1. the applicants had failed to make out a case for urgency and had abused the urgent court process;

    16.2. on the merits, the applicants had failed to establish either of the requirements for anti-spoliatory relief;

    16.3. Sierra Mandisa Ngcamu Attorneys ("SMM Attorneys") must satisfy the court in terms of Uniform Rule 7 that they are authorised to represent each applicant;

[2] There appears to be a disparity between the 466 mobile phones as referred to by SARS and Apple and the 540 mobile phones referred to as the subject matter of the relief in the notice of motion but this is not of consequence given the outcome of these present proceedings.

17. Apple also made extensive submissions, both in argument and on the affidavits, why SMN Attorneys were to pay the costs personally of the litigation.

18. SARS' position as the second respondent is that:

    18.1. the application against SARS is fatally defective because there has been non-compliance with section 96(1)(a) of the Customs and Excise Act and that the applicants' request for condonation for non-compliance with this section is to be refused;

    18.2. in any event, the application is not urgent;

    18.3. further, in any event, the application is bad on its merits because the requirements for a *mandament van spolie* have not been established.

19. For reasons that follow, it is convenient that the applicants' failure to comply with section 96(1) of the Customs and Excise Act be considered first.

20. Section 96(1)(a) and (c) provides:

> *"96 Notice of action and period for bringing action*
>
> *(1)(a)(i) No process by which any legal proceedings are instituted against the State, the Minister, the Commissioner or an officer for anything done in pursuance of this Act may be served before the expiry of a period of one month after delivery of a notice in writing setting forth clearly and explicitly the cause of action, the name and place of abode of the person who is to institute such proceedings (in this section referred to as the 'litigant') and the name and address of his or her attorney or agent, if any.*
>
> *(ii) Such notice shall be in such form and shall be delivered in such manner and at such places as may be prescribed by rule.*
>
> *(iii) No such notice shall be valid unless it complies with the requirements prescribed in this section and such rules.*
>
> *…*
>
> *(c)(i) The State, the Minister, the Commissioner or an officer may on good cause shown reduce the period specified in paragraph (a) or extend the period specified in paragraph (b) by agreement with the litigant.*
>
> *(ii) If the State, the Minister, the Commissioner or an officer refuses to reduce or to extent any period as contemplated in subparagraph (i), a High Court having jurisdiction may, upon application of the litigant, reduce or extend any such period where the interest of justice so requires."*

21. The applicants accept that section 96(1) applies and that the applicants are required to comply with the section by furnishing notice to SARS. This

appears *inter alia* from the applicants seeking that their non-compliance with the section be condoned.[3]

22. During argument applicants' counsel appeared to adopt the position that there was no notice and so in arguing for condonation he was effectively seeking condonation on behalf of the applicants on the basis that no notice at all had been delivered. But when regard is had to the founding affidavit[4] the position adopted is that notice was given by the applicants' erstwhile attorneys through correspondence and condonation is being sought in relation to that notice. No specific notice is referred to or attached to the founding affidavit from these erstwhile attorneys.

23. Without any details of that notice, whether in the body of the founding affidavit or by way of an annexe in the form of the notice, not only is there no credible evidence of any notice being given (bearing in mind that the notice must comply with the requirements of section 96(1)(a)(i) and (ii) including in writing setting forth clearly and specifically the cause of action against SARS together with the name and place of abode of the person who is to institute legal proceedings), the applicants cannot begin to make out a case for condonation in terms of section 96(1)(c)(ii). Condonation cannot be sought, and then granted, in the absence of the notice in respect of which condonation is being sought.

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[3] See prayer 1.5 in the notice of motion and paragraphs 39 to 41 of the founding affidavit.

[4] Paragraph 40.

24. Further, as argued by SARS' counsel, no facts are set out in the founding affidavit to support a finding by the court that it would be in the interests of justice to condone non-compliance with section 96(1)(a). The section in the founding affidavit dealing with condonation simply sets out the legislation dealing with the section and then refers to the notice made by the erstwhile attorneys but with no further facts.[5]

25. Whether the application for condonation is approached on the basis that the applicants are seeking condonation for no notice at all or in respect of a notice that is not attached to the founding affidavit, there are simply no facts upon which a court can decide whether it is in the interests of justice to condone non-compliance.

26. I was referred to *Commissioner for the South African Revenue Services and Others v Dragon Freight (Pty) Ltd and Others* [2022] 3 All SA 311 (SCA). Schippers JA for the Supreme Court of Appeal cited with approval[6] the full court decision of *Commissioner for the South African Revenue Services v Prudence (Pty) Ltd*[7] that compliance with section 96(1)(a) constitutes a jurisdictional condition precedent which if not fulfilled results in the court lacking jurisdiction to grant relief against SARS in respect of anything done in pursuance of the Act.

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[5] The applicants do not rely in support of condonation, at least expressly, on their alleged urgency of the proceedings but even if they did, condonation could not be granted on that basis given the findings later in this judgment that the applicants have not made out a case of urgency in terms of Uniform Rule 6(12).

[6] In para 37 and 38.

[7] 2015 JDR 2545 (GP). Also reported at [2016] JOL 35747 (GP).

27. *Dragon Freight* was subsequently applied by this Division in *Alliance Fuel (Pty) Ltd v CSARS* [2024] 4 All SA 759 (GJ) where there too Modiba J found that the failure to comply with section 96(1) was fatal to the application.

28. There is no dispute that the relief sought by the applicants is directed at something done in pursuance of the Customs and Excise Act by the SARS officials, in this instance, the detention of the goods in terms of section 88(1)(a) of the Act and which was superseded by the seizure by SARS of those goods in terms of section 88(1)(c) and section 113A of the Act.

29. As there has been no compliance by the applicants with section 96(1)(a) and there is no basis to condone non-compliance in terms of section 96(1)(c)(ii), the application is fatally defective as against SARS and so must be dismissed.

30. Nonetheless, to the extent that I may have erred in relation to the applicants' non-compliance with section 96(1), the application would in any event not succeed on its merits.

31. The requirements for a spoliation order are clear: an applicant must prove that he was in peaceful and undisturbed possession (occupation) of the property and that the respondent deprived him of his possession (occupation) forcibly or wrongfully or against his consent. Bristowe J in *Burnham v Neumeyer* 1917 TPD 630 at 633 is typically cited as authority:

> *"Where the applicant asks for spoliation he must make out not only a prima facie case, but he must prove the facts necessary to justify a final order – that is, the things alleged to have been spoliated were in his possession and they were removed from his possession forcibly or wrongfully or against his consent."*[8]

32. Greenberg JA in what is perhaps the *locus classicus* of *Nienaber v Stuckey*[9] agreed as to the level of the proof required:

> *"Although a spoliation order does not decide what, apart from possession, the rights of the parties to the property spoliated were before the act of spoliation and merely orders that the status quo be restored, it is to that extent a final order and the same amount of proof is required as for the granting of a final interdict, and not of a temporary interdict."*[10]

33. What this means is that if there are two *bona fide* but conflicting factual versions, the respondent's version is effectively to be preferred in terms of the usual *Plascon-Evans* approach. But this matter can be decided on the common cause facts or facts that cannot be seriously disputed.

34. At no stage were any of the applicants, or any other person for that matter other than SARS, in possession of the goods. The goods were taken into possession by SARS in customs upon the goods entering the country in July 2025. At no stage did any of the applicants come into possession of

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[8] See, for example, *Nienaber v Stuckey* 1946 AD 1049 at 1053 and also *Painter v Strauss* 1951 (3) SA 307 (O).

[9] Above, at 1053.

[10] See too *Painter* above at 312A-C.

the goods. This point was squarely raised in both respondents' opposition, whether in the affidavits, written submissions or oral argument. Nothing to the contrary was argued by the applicants' counsel.[11]

35. Without any of the applicants having had possession of the goods, there is no prospect of the applicants succeeding in obtaining spoliatory relief .

36. Although both Apple and SARS sought during argument to impress upon me that SARS was initially empowered to detain the goods in terms of section 88(1)(a) of the Customs and Excise Act, and then subsequently, from 3 November 2025, empowered to continue to retain possession through the exercise of their power to seize the goods in terms of section 88(1)(c) of the Act,[12] this enquiry is unnecessary. There is no need for, nor could there be in the present instance, an enquiry whether the dispossession was forcibly or wrongfully or against the consent of the applicants. The second requirement for anti-spoliatory relief presupposes that the first requirement has been satisfied, which is that the applicants were in possession.

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[11] Applicant's argument before me appearing to be directed more at the merits of whether the goods were actually counterfeit, seeking to dispute Apple's asserted basis why Apple held the view that the goods were counterfeit and needed to be investigated and processed in terms of the Counterfeit Goods Act. That enquiry is irrelevant to anti-spoliatory relief, and to the extent that the applicants were seeking to advance some or other collateral challenge to the actions or decisions of SARS, that is not the manner in which the case was advanced in the founding affidavit.

[12] As to the distinction between SARS 'detaining' the goods and then 'seizing' the goods, I was referred to *CSARS & another v Sterling Auto Distributors CC et al* [2006] JOL 17382 (T).

37. The present position can be contrasted to that in the unreported decision of *Bafana Bafana and Others v Commissioner for the South African Revenue Services and Others,*[13] to which both respondents' counsel referred, where Van der Byl AJ found that the exercise by SARS of its powers such as those in terms of section 88(1)(a) was done pursuant to its statutory power and so it cannot be said that SARS had taken the law into their own hands by taking possession or had resorted to self-help.[14] In that matter the applicants had been in possession of the relevant goods, being gambling machines, which had been removed from their possession by the SARS officials. In the present instance, the applicants were not in possession of the goods at any time, and so no need to consider whether any dispossession was forcibly or wrongfully or against their consent.

38. As to the opposition of Apple as the first respondent, it did not rely on non-compliance with section 96 of the Customs and Excise Act as it may be that only SARS can raise such non-compliance. Nevertheless the same reason why the applicants cannot succeed on the substantive merits with anti-spoliatory relief against SARS also apply to why the applicants cannot succeed with such relief against Apple. And that is because at no stage were the applicants in possession of the goods, and so it follows they could not have been dispossessed.

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[13] [2010] ZAGPPHC 191 (29 October 2010).

[14] Judgment, para 36.

39. Having approached the matter on this basis, and having heard the parties' argument the matter in all respects, there is no utility in striking the matter from the roll for want of urgency. Full sets of affidavits were filed by the parties and by the time I heard argument on 6 November 2025 no party was seeking leave to file further papers. The matter was fully argued before me that day, having stood down from 4 November 2025.

40. The application fails on its substantial lack of merit and is to be dismissed on its merits, both because of non-compliance with section 96(1) of the Customs and Excise Act insofar as SARS is concerned as well as on its failing to sustain a case for anti-spoliatory relief in respect of both SARS and Apple.

41. This is not to say that the manner in which the applicants have gone about bringing the application as one urgency is irrelevant. As will appear below, it features prominently in relation to the issue of costs, to which I now turn.

42. Both Apple and SARS have succeeded in opposing the application and are entitled to their costs.

43. The question of costs is complicated, and informed, by whether the applicants are properly before the court and more particularly whether their attorneys are authorised to act on each of their behalf.

44. The issue of the applicants' attorneys' authority to represent the applicants assumed prominence consequent upon Apple delivering a notice in terms of Uniform Rule 7(1) calling upon the applicants' attorneys

to satisfy the court that they were so authorised to act on behalf of each applicant. This was not a mere technical challenge, as will appear below.

45. When the matter was first called by me in the urgent court on 4 November 2025, Apple's counsel pointed out the Rule 7 challenge and that Apple was persisting with that challenge. I directed that as the matter was to stand down to 6 November 2025 to accommodate the applicants delivering a replying affidavit to the answering affidavits that had been filed, the applicants too must deliver their response to the Rule 7 challenge.

46. It is disconcerting that given the highlighted challenge made by Apple to the applicants' attorneys' authority that their response thereto proved meagre.

47. The only response that was forthcoming was a power of attorney in generic form signed by the second applicant authorising the applicants' attorneys to act on her behalf. No document was delivered seeking to establish the applicants' attorneys authority to act on behalf of the first and third applicants.

48. This is notable as the authority challenge appeared to be more pertinent to whether the applicants' attorneys were authorised to act for the first and third applicants, rather than the second applicant. The second applicant was an applicant in her personal capacity and had signed the founding affidavit. Ordinarily it would be inferred that the second applicant had

authorised her attorneys to bring these proceedings on her behalf as she she had signed the founding affidavit.[15]

49. As the first applicant is a juristic entity, ordinarily it would have been expected of the applicants' attorneys to produce a board resolution authorising them to act for the first applicant. No such board resolution was forthcoming. Nor did the power of attorney signed by the second applicant refer to any authority relating to the first applicant. Throughout these proceedings the second applicant represented that she is a director of the first applicant. But as Apple has pointed out in their affidavit with reference to the records of the Companies and Intellectual Property Commission, the second applicant had resigned already on 25 September 2025 and was not in a position to represent the first applicant, at least as a director.

50. The third applicant is a natural person but no power of attorney was forthcoming in response to the Rule 7 challenge.

51. It appears that the applicants' attorneys did not wish to grapple substantively with the challenge to their authority, something that should have been simple to address in this instance. This gives credence towards the assertion made by Apple in its answering affidavit that *"it appears likely that the activities of the first applicant are taking place through the*

[15] A different question is why she was an applicant at all in these proceedings where her only interest appeared to be that she had been a director of the first applicant until 25 September 2025 and further had resigned before the institution of these proceedings.

machinations of the third applicant [sic] who appears to be safely hidden behind the first and second applicants, not giving out his true address and apparently not having any means with which to satisfy any costs orders obtained against him."

52. It was only after much engagement by me with the applicants' counsel during argument as to the absence of a confirmatory affidavit by the third applicant, that the applicants' counsel eventually towards the end of the hearing attended to upload a confirmatory affidavit by the third applicant deposed to on 26 October 2025. Taking this confirmatory affidavit at face value, it appears that the third applicant has authorised these proceedings given that he has signed a confirmatory affidavit and where he is cited as the third applicant. The applicants' attorneys have produced sufficient evidence that they represent third applicant and so that the third applicant is before the court and so can be held liable for costs.

53. It appears that the third applicant has been the sole director of the first applicant since 25 September 2025. The third applicant has signed a confirmatory affidavit. Even should the second applicant's persistence throughout that she is a director of the applicant be accepted, she has signed the affidavits and furnished a power of attorney. Whether or not the second applicant remains a director, both her and the third applicant are aware of these proceedings by the first applicant at the instance of the applicants' attorneys and so I find that there is sufficient evidence that they represent third applicant and so that the third applicant is before the court and so can be held liable for costs.

54. Each of the applicants are liable, jointly and severally, for the costs of Apple and SARS.

55. But the issue of costs does not end there.

56. Apple as the first respondent gave notice on several occasions to the applicants' attorneys that costs would be sought against them personally, such as in heads of argument and correspondence exchanged during the course of the application. Those costs are sought on an attorney and client scale, including the costs of two counsel.

57. The first basis asserted by Apple why the applicants' attorneys should be responsible for costs is because they have no authority to litigate on behalf of the first and second applicants and therefore should be liable for the costs that would normally have been granted against those applicants, but which applicants are not before the court. Allied to this, Apple argues that in any event the manner in which the applicants' attorneys went about responding to the Rule 7 challenge informs why they should be held liable personally for the costs.

58. I have found that the applicants' attorneys were authorised to represent each applicant. But, as described above, this is because it was only after much interaction by me with the applicants' counsel that the third applicant's confirmatory affidavit was uploaded and so addressed the issue of authority. The manner in which the applicants' attorneys went about addressing the authority challenge is a factor taken into account in determining whether they should be personally liable for costs.

59. The second ground relied upon by Apple is the abuse of the court process by the applicants' attorneys. Although the application was issued on 23 October 2025, it was only served upon the respondents per email on 29 October 2025, to be heard the following week on 4 November 2025. By that stage the periods given to the respondents for delivering their notice of intention to oppose and answering affidavits had already lapsed. No explanation is given as to why there was this delay between the issuing of the papers and service thereof upon the respondents and so in effect affording the respondents no time to deliver any answering affidavits.

60. It may be that some of the delay is attributable to the second applicant and third applicant signing their founding affidavit and confirmatory affidavit respectively on 26 October 2025. But this exacerbates the problematic conduct of the applicants' attorneys, as it follows that they attended to issue court papers on 23 October 2025 without any signed affidavits. Apple's counsel also made the point that the assertions made by the applicants' attorneys in their compliance statement when applying for an urgent court date on 26 October 2025 had been misstated in various respects, such as that the respondents had been invited to the electronic court file and that the notice of motion and founding affidavit had been duly served.

61. On 31 October 2025, Spoor & Fisher for Apple sent a detailed and self-explanatory letter to the applicants' attorneys concerning what they contended was the improper conduct of the litigation. Spoor & Fisher in the letter set out the abusive nature of the urgent application, demanding

that the matter be removed from the roll for 4 November 2025, failing which counsel would be instructed to appear on behalf of Apple and in which event costs would be sought as against the applicants and the applicants' attorneys *de bonis propriis* on a punitive scale.

62. The applicants' attorneys did not respond to this letter. Instead, on 3 November 2025 at 15h41, the day before the matter was to be heard, the applicants' attorneys delivered a notice that the applicants intended, unilaterally it would appear, removing the matter from the urgent court roll, without any tender of costs. This was followed by correspondence from Spoor & Fisher later that day pointing out that the applicants could not simply remove the matter from the roll without an appropriate order as to costs and requiring a tender of costs consequent upon the removal, failing which counsel would appear in court the next day.

63. The applicants' attorneys did later that day revert that there would be a tender of costs and so the matter could be removed. Spoor & Fisher responded requiring that an updated notice be furnished tendering the wasted costs, including the costs of senior counsel.

64. No such notice was delivered. Instead, when I called the matter the next day, on 4 November 2025, the applicants' counsel stated that the applicants intended proceeding with the matter and were ready to proceed. This notwithstanding the correspondence of the day before that the matter was to be removed with a tender for costs.

65. When I enquired of the applicants' counsel whether the applicants intended filing a replying affidavit in response to the answering affidavits that had been filed, the applicants' counsel, notwithstanding that he had just stated that the applicants were ready to proceed, sought that the applicants be given an opportunity to respond by way of a replying affidavit. Apple's counsel raised this vacillation as further evidence of the abusive nature of the litigation.

66. I directed that the applicants should file their replying affidavit by close of business the next day, and so too the other parties who wished to file any further documents, so that the matter could be heard on 6 November 2025.

67. That was also the occasion when I directed that to the extent that the applicants were going to deal with the Rule 7 challenge, that the applicants' response should also be forthcoming by the next day. I have already dealt with the deficiency of the response in relation to the Rule 7 challenge.

68. There has been no regard at all by the applicants' attorneys as to what is required when assessing whether a matter is to be brought urgently or as to what is an appropriate truncation of the periods for the exchange of affidavits to ensure that the matter is ripe for hearing. This is self-evident from what I have already set out.

69. Nor, as required in term of Uniform Rule 6(12)(b), has any substantial case been made out that the applicants would not be afforded substantial

redress at a hearing in due course. Nor is any basis made out why if not afforded an urgent hearing during the week of 4 November 2025 (rather than in some later week,[16] or even in the ordinary course), the applicants will not be afforded substantial redress. The goods have been in the possession of SARS since the goods entered the country in July 2025. Even should the applicants have been delayed because of some or other uncertainty (which they do not assert), at least from 29 September 2025 upon receipt of a letter from Spoor & Fisher to the applicants' erstwhile attorneys, it was clear that the goods were not going to be released. Yet the applicants did not explain why they waited until 23 October 2025 to launch the application, or why it was so urgent that the application was to be launched without affidavits having yet been signed.

70. Nor do the applicants' assertions that the first applicant's business will be destroyed if the goods are not released hold much water. Only the most cursory averments are made, devoid of any factual detail. Further, as argued by the opposing respondents, it is not clear whether first applicant is necessarily the correct party to be seeking any relief given that the importer and owner is reflected in various of the documents as being some other corporate entity.

[16] See para 5 of the DJP's notice on the urgent motion court, Johannesburg dated 4 October 2021.

71. There is therefore merit in Apple's submissions that the applicants' attorneys have abused the urgent court process, and informs whether the applicants' attorneys should bear the costs personally.[17]

72. Apple has also set out in its answering affidavit that the applicants' attorneys previously represented the third applicant in similar proceedings seeking the release of mobile phones in which the third applicant's attorneys removed the matter from the roll at the eleventh hour. Apple asserts that the present urgent proceedings are part of a pattern of improper and abusive litigation engaged in by the third applicant concerning the seizure of counterfeit goods. Apple's counsel argued that the applicants attorneys, acting for the third applicant, effectively sought to ambush Apple and SARS with urgent litigation on deficient papers and without proper authority, and then when faced with opposition, to seek to avoid the matter being heard.

73. As is the case with the other serious averments made by Apple in its answering affidavit, the applicants did not seek to engage substantially with these averments.

74. There is accordingly substance to Apple's assertion that the methodology adopted by the applicants' attorneys is to launch urgent applications and

[17] See pars 4 of the DJP's notice of 4 October 2021 above, forewarning that punitive costs *de bonis propriis* may be awarded against legal practitioners where non-urgent matters are enrolled.

then when being faced with opposition, seeking to remove the matter and avoid a determination of the matter.

75. Further, as highlighted by both respondents' counsel, the urgent application bristles with irregularities and deficiencies.

76. SARS' counsel pointed out that the belated replying affidavit filed ostensibly on behalf of the applicants and ostensibly deposed to by the second applicant is not commissioned in that the commissioner of oath's signature is missing. And so, SARS' counsel argues, there is actually no replying affidavit before the court. The only response forthcoming from the applicants' counsel is that the failure of the commissioner to sign the replying affidavit when commissioning the affidavit is something to be condoned. Again, no attempt was made to address this deficiency such as by asking for an indulgence for a properly signed and commissioned replying affidavit to be delivered.

77. This is no small thing in this particular matter whether Apple has squarely raised in its answering affidavit whether various signatures that purport to be those of the second applicant in fact are her signatures. Apple in its answering affidavit makes the averments that the signatures that purport to be those of the second applicant as appear in her founding and replying affidavits and her power of attorney differ significantly. Apple also under oath raises its own concerns as to the commissioning of the affidavits.

78. It would have been expected of the applicants' attorneys to seek leave to file a supplementary affidavit by the second applicant unequivocally

stating that the various signatures were hers and that she stood by what she has said in her affidavits and in her power of attorney.

79. As was the case with the many other serious averments made by Apple, neither the applicants nor the applicants' attorneys sought to substantively refute these averments. The applicants' counsel could do no better than seek to argue that these deficiencies were a product of the application having been launched on an urgent basis and therefore should be condoned. It is the applicants' attorneys who advised the applicants to have embarked upon urgent proceedings and therefore have little grounds to complain that the battlefield on which they chose to litigate turns out to be the cause of the multiple deficiencies in their papers.

80. I find that the manner in which the applicants' attorneys have gone about litigating in this matter, with no regard to the practice of the urgent court and with papers bristling with irregularities, is deserving of censure. It is appropriate in that, in addition to the applicants' being liable for Apple's costs, that so too the applicants' attorneys should be liable to pay costs personally.[18]

81. These costs, both as awarded against the applicants and the applicants' attorneys should be on an attorney and client scale, as requested by

[18] The applicants' attorneys are liable in addition to the applicants themselves. Contrast to *Machumela v Santam Insurance Co Ltd* 1977 (1) SA 660 (AD) at 664B/C where the litigant's attorneys were held liable and precluded from recovering a fee from the litigant as their client because no blame attached to the litigant himself.

Apple. Both the applicants and the applicants' attorneys have participated in the abuse of the court process.

82. The engagement of two counsel by Apple is justified, particularly given the truncated periods in which Apple had to oppose the urgent proceedings.

83. SARS as the second respondent also sought costs but did not seek it on a scale other than on a party and party scale, with the costs of counsel being on scale B. Although SARS' counsel during the course of argument submitted that costs should be granted on a more punitive scale, potentially also against the applicants' attorneys, I was not directed to any prior notice was given that such costs would be sought.

84. The following order is made:

84.1. the application is dismissed, on its merits;

84.2. the first applicant, the second applicant, the third applicant and Sierra Mandisa Ngcamu Attorneys personally are to pay, jointly and severally with each other, the costs of the first respondent on an attorney and client scale, including the costs of two counsel;

84.3. the first applicant, the second applicant, the third applicant, jointly and severally with each other, are to pay the costs of the second respondent on a party and party scale, including the costs of counsel on scale B.

Gilbert AJ

Date of hearing:	4, 6 November 2025
Date of judgment:	10 November 2025
Counsel for the applicants:	S M Nkabinde
Instructed by:	Sierra Mandisa Ngcamu Attorneys, Johannesburg
Counsel for the first respondent:	I Joubert SC (with T Mamabolo)
Instructed by:	Spoor & Fisher, Pretoria
Counsel for the second respondent:	W M Mothibe
Instructed by:	MacRobert Attorneys, Pretoria