

MAGAMBA CULTURAL NETWORK TRUST
versus
MINISTER OF HOME AFFAIRS N. O
and
COMMISSIONER GENERAL OF POLICE N. O
and
DETECTIVE CHIEF INSPECTOR RUNGANGA N. O

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 20 & 29 November 2017

Urgent Chamber Application

T. Bhatasara, with him *Ms T. Takawira*, for the applicant
Ms R. Gurira, with her *Ms M Gwatidzo*, for the respondents

ZHOU J: This is an urgent chamber application for an order directing the respondents or any person acting on their behalf to return the property seized at the applicant's premises on 14 November 2017. The applicant also seeks an order interdicting the respondents or any persons acting on their behalf from demanding from the applicant's employees the passwords of the computers seized by the police and threatening to arrest the employees. The terms of the final order sought are as follows:

- “1. The warrant of search and seizure against applicant dated 8 November 2017 be and is hereby set aside with the retrospective consequences.
2. The seizure of applicant's property by the respondents on 4 November 2017 pursuant to the warrant of search be and is hereby declared to be in contravention of s 57 of the Constitution.
3. The demand of passwords for the seized property by the respondents be and is hereby declared (to be) in contravention of s 57 and 70 (1) (i) of the Constitution.
4. The respondents to pay costs of suit.”

The facts which are not in dispute are that on 14 November 2017 police detectives from the Criminal Investigations Department's Law and Order section attended at the applicant's premises armed with a search warrant issued by a Magistrate. On the basis of that

warrant they seized some computers, including laptops. The officers took the laptops and other computers into their possession.

The applicant alleges, but it is disputed by the respondents, that the police officers demanded disclosure of the passwords to the computers. The respondents' position is that they only asked and did not demand for passwords. They also denied the allegation made by the applicant that the officers threatened the applicant's employees with arrest if they refused to disclose the passwords.

The applicant makes the contention, which is contested by the respondents, that the search warrant is invalid for being too wide and general in its terms, and contravenes ss 57, 61 and 64 of the Constitution. The applicant makes very general statements without stating the specific portions of the sections cited which have been contravened or the factual basis upon which the alleged contraventions are predicated. It is insufficient to just cite a whole section of the Constitution. For instance, s 57 of the Constitution has five paragraphs numbered (a) to (e). The applicant has not said, let alone proved, the one that is alleged to have been contravened. Sections 61 and 64 of the Constitution which in the founding affidavit are alleged to have been violated are not mentioned in the draft provisional order. Besides, the precise portions of those sections which are alleged to have been violated are not specified. In relation to s 64 the founding affidavit does not state how it is alleged that the provisions thereof have been contravened. The basis of the alleged contravention of s 70 (1) (i) is the alleged threatened arrest if the applicant's employees fail to disclose the passwords to the seized computers. There is a dispute of fact in respect of the alleged demand for disclosure of the passwords and the threat of arrest. That dispute, quite clearly, cannot be resolved on the papers.

The applicant complains that the manner in which the search warrant is couched contravenes s 50 (1) (a) of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. The complaint is that the warrant is worded in wide and general terms which would suggest that the issuing officer did not apply his mind. Section 50 (1) (a) of that Act provides as follows:

“Subject to sections fifty one, fifty two and fifty-three, an article referred to in section forty-nine shall be seized only by virtue of a warrant issued –

- (a) by a magistrate or justice (other than a police officer), if it appears to the magistrate or justice from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of any person, or upon or in any premises or area, within his area of jurisdiction.”

The allegations made do not show how the above section was contravened. In any

event, the search warrant explicitly identifies the items to which it relates. It specifies laptops, computers and printers. It is difficult to understand how else those items could have been described. Whether or not those items are ultimately found to have been used in the furtherance of or in the commission of an offence is a matter that falls outside the scope of the instant application. The applicant has not shown how, having regard to the provisions of s 49 of the Criminal Procedure and Evidence Act, it can be alleged that the Magistrate did not apply his mind properly to the facts placed before him when he issued the warrant of seizure. As pointed out earlier on the warrant is not general but specifically identifies laptops, computers and printers as the items to which it relates.

The interdict sought cannot, therefore, be granted as the applicant is seeking to interdict a lawful process. An order for the return of the seized items would defeat the process of investigation. The interdict pertaining to the passwords cannot be granted as the applicant has not proved that the police officers demanded under threat of arrest for the disclosure of the passwords.

In the result, the application is dismissed with costs.

Mapanga Bhatasara, applicant's legal practitioners
Civil Division of the Attorney-General's Office, respondents' legal practitioners