



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 30 November, 2015  
**STATUS** Immediate

***Goqwana v Minister of Safety and Security & others*** (20668/20140504/14) [2015]  
ZASCA (xxxx 2015)

***Please note that the media summary is for the benefit of the media and does not form part of the judgment.***

Today the Supreme Court of Appeal (SCA) upheld an appeal with costs, set aside the order of the high court and replaced it with the following:

‘(a) The warrant issued by the fifth respondent on 3 May 2012, in respect of the applicant’s business premises at the Skylounge Internet Lounge, Eden Square Mall, corner of Palm and President Nelson Mandela Streets, Phalaborwa, is set aside.

(b) The fourth respondent and any other respondent who is in possession or control of the applicant’s goods and moneys listed in annexure ‘A’ to the applicant’s notice of motion is to be restored to the applicant’s possession forthwith.

(c) The first to fourth respondents are jointly and severally liable to pay the costs of the application, the one paying the other to be absolved.'

The appellant had conducted a business known as the Skylounge Internet Lounge at the Eden Square Mall in Phalaborwa. His business premises were searched on 4 May 2012, consequent upon a search warrant issued by the magistrate of Phalaborwa, the previous day. As a result of the search, various items of furniture, computer equipment and cash were seized.

The appellant then brought an urgent application on 15 May 2012 before the Gauteng Division of the High Court, Pretoria (Van der Byl AJ) for an order restoring possession to him of the items seized. The high court dismissed the application with costs.

The appellant based his case on two main contentions: (i) that the search warrant contained insufficient particularity as to whom it was addressed and (ii) that *ex facie* the document, it did not specify the offence in connection with which the search was to be conducted and therefore could not be 'reasonably intelligible' either to the searcher or person searched.

The SCA found that an identified police officer should be named in the search warrant and should act throughout. The SCA also found that it is ordinarily being desirable that when dealing with a statutory offence, as opposed to a common law crime, the search warrant should pertinently refer to the specific statute and the section or subsection thereof in order to enable the person in charge of the premises to be searched (assisted, if needs be, by his or her lawyer) and also the police official authorised in terms of the search warrant to know precisely that for which the search has been authorised and in relation to which particular offence the search is directed.

Additionally, the SCA concluded that it is imperative that the affidavit or sworn statement in support of the warrant should accompany the warrant and be handed over together with it. This would, additionally, facilitate the expedition of any court

application in which a person may wish to contend that his or her rights were adversely affected by the search.

For these reasons the SCA concluded that the appellant had rightly claimed the setting aside of the search warrant and the return of the articles seized.