



Gard Alert: South Africa – new obstacle to writ searches

In a significant departure from the established practice, the procedure for writ searches in South Africa has now been changed in the Cape High Court by a recent unreported judgment.¹

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This will make it less easy for vessel owners wishing to establish their vessel's exposure to arrest or to a party looking to arrest if, for example, they wish to establish whether there will be competing interests.

South Africa has long been a favourable jurisdiction for those wishing to arrest vessels in order to enforce a maritime claim. South African lawyers are often asked to carry out writ searches to ascertain whether arrest proceedings have been issued for particular vessels. These searches are conducted by review of the relevant Admiralty Register, which generally reflect the first plaintiff/applicant and first defendant/respondent in each matter, and then by checking the relevant court files for the target vessels, if not or not fully reflected in the Admiralty Register concerned.

There have always been some limitations in the results of such searches:

- To cover the possibility of a possible arrest in all ports in South Africa would mean a search being conducted in the High Courts located in Pietermaritzburg, Durban, Port Elizabeth, East London, Grahamstown and Cape Town. Generally, the Durban and Cape Town courts are chosen as being the most regularly used, thereby risking the possibility of a writ existing in other courts.
- A physical search of the court records is necessary because these are not kept electronically.
- Court documents are sometimes misfiled or the file itself might not be available, which can result in information being missed by the searcher.

These limitations are practical in nature and relate more to the way in which the court records are kept rather than being legal restrictions. The searcher has in the past generally as a matter of practice been given unrestricted access to court files for the purpose of writ searches.

However, the procedure for writ searches has now been changed by the Cape High Court in a recent judgement. ¹ In the matter of South African National Roads Agency Limited v the City of Cape Town and others (unreported judgment, WCD, Cape Town, Case No 6165/2012, 28 August 2014), the judgment focused on rule 62(7) of the Uniform Rules (Uniform Rules of Court – Section 62: Filing, preparation and inspection of documents), which reads-

“(7) Any party to a cause, and any person having a personal interest therein, with leave of the registrar on good cause shown, may at his office, examine and make copies of all documents in such cause.”

The court found the rule served to reinforce the principle that documents given in the course of discovery may only be used for the litigation in which they are engaged, and not for any collateral or ulterior purpose. Consequently, a court file only becomes publicly accessible at the stage of hearing in open court.

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The result is that those searching for writs will not be able to access court files unless they can show a personal interest in the litigation on the part of their clients. In practical terms for Gard Members, this means that it will now be difficult to check whether their vessels are at risk of arrest when calling at South African ports; and when considering arresting an opponent's ship, the possibility is diminished of checking whether others are targeting the vessel in South Africa.

Please contact your usual Gard contact or ENS Africa, if you require further information or advice.

Thanks to [ENSafrica](#) for providing the basis for this article.

1 South African National Roads Agency Limited v the City of Cape Town and others (unreported judgment, WCD, Cape Town, Case No 6165/2012, 28 August 2014).

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