



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: CR189Mar22/SUB005Apr25

In the application to set aside between:

**BRADLEY JONATHAN SACKS** Applicant

and

**META PLATFORMS INC.** First Respondent

**WHATSAPP INC.** Second Respondent

**FACEBOOK SOUTH AFRICA (PTY) LTD** Third Respondent

*In re:* the matter between:

**COMPETITION COMMISSION** Applicant

and

**META PLATFORMS INC.** First Respondent

**WHATSAPP INC.** Second Respondent

**FACEBOOK SOUTH AFRICA (PTY) LTD** Third Respondent

**GOVCHAT (PTY) LTD** First Intervenor

**HASHTAG LETSTALK (PTY) LTD** Second Intervenor

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Panel: G Budlender (Presiding Member)

T Vilakazi (Tribunal Member)

I Valodia (Tribunal Member)

Heard on: 02 December 2025

Order Issued on: 18 December 2025

Reasons Issued on: 28 January 2026

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## REASONS FOR DECISION

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### INTRODUCTION

- [1] This application relates to the complaint referral proceedings brought before the Competition Tribunal (“**Tribunal**”) by the Competition Commission (“**Commission**”) under case number CR189Mar22 (the “**Referral**”).
- [2] On 2 December 2025, we heard an application by Bradley Jonathan Sacks (“**Mr Sacks**”) to have the summons issued by the Tribunal on 19 March 2025 in the above matter withdrawn. The summons was issued by the Tribunal at the request of Meta Platforms Inc, WhatsApp Inc, and Facebook South Africa (Pty) Ltd (collectively, “**Meta**” or the “**Respondents**”).
- [3] The summons, issued at the request of the Respondents, directed Mr Sacks to produce certain documents and information described in paragraphs 1 and 2 of the schedule to the summons.<sup>1</sup>
- [4] Mr Sacks advanced three main grounds for setting aside the summons, namely:<sup>2</sup>
  - 4.1. procedural irregularity, based on the contention that a summons in terms of section 54 of the Competition Act, 89 of 1998 (the “**Act**”) can only be issued against a South African resident and must be served by the Sheriff<sup>3</sup> (which was not done in this case);

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<sup>1</sup> Section 54(c)(i) of the Act.

<sup>2</sup> Summons bundle, Founding Affidavit, pp 5-30.

<sup>3</sup> A sheriff is defined in the Uniform Rules of Court as “*a person appointed in terms of section 2 of the Sheriffs’ Act, 1986 (Act 90 of 1986), and includes a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, and a person designated to serve process in terms of section 6A of the said Act*”.

- 4.2. an abuse of process, in that the summons is said to be overbroad, repetitive of prior discovery requests in respect of the Referral, irrelevant to the issues in the Referral, and issued for an ulterior or “fishing” purpose; and
- 4.3. redundancy, on the basis that Mr Sacks (and Govchat (Pty) Ltd (“**GovChat**”) and Hashtag Letstalk (Pty) Ltd, the “**Intervenors**”) have already provided the requested documents under oath through the discovery process, rendering the summons unnecessary.

[5] The Respondents disputed each of these grounds and submitted that the application should accordingly be dismissed.

[6] On 18 December 2025, we issued an order dismissing the application to have the summons withdrawn with no order as to costs.

[7] The reasons for dismissing the application are set out below.

## BACKGROUND

[8] On 19 March 2025, following a request from the Respondents, the Tribunal issued a summons in terms of section 54(c) of the Act requiring Mr Sacks, on behalf of Capital Appreciation Limited (“**Capital Appreciation**”)<sup>4</sup>, to produce various categories of documents.

[9] The Respondents requested that the Tribunal issue the summons due to the important role played by Capital Appreciation in the activities of the Intervenors. In addition, the Respondents submitted that since late 2024, the Intervenors had failed to make proper discovery of documents relevant to the complaint referral.<sup>5</sup>

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<sup>4</sup> Capital Appreciation is the principal shareholder and funder of the Intervenors.

<sup>5</sup> Summons bundle, Answering Affidavit para 24, pp 241, and para 52, pp 253

[10] The Respondents argued that Capital Appreciation has at all material times been involved in the provision of strategic and managerial support to the Intervenors. Mr Sacks, who is the Chief Executive Officer (“CEO”) of Capital Appreciation, was directly involved in the business of the Intervenors and in their engagements with the Respondents. Furthermore, Mr Sacks has deposed to affidavits on behalf of the Intervenors in the Tribunal proceedings, and it is common cause that he acted as the Intervenors’ *“principal representative”* in dealings with Capital Appreciation.<sup>6</sup> In addition, Mr Michael (Motty) Sacks was both the Chairman of Capital Appreciation and a GovChat director for the period relevant to the complaint proceedings.<sup>7</sup>

[11] The Respondents filed their initial discovery request on 23 October 2024; a further and better discovery request on 9 December 2024 (which included requests for documents relating to Capital Appreciation); and an application to compel further discovery on 25 February 2025 citing certain gaps in the Intervenors’ discovery.<sup>8</sup>

[12] In particular, the Respondents identified specific documents and categories of documents said to be missing from the Intervenors’ discovery – including strategic documents, internal analyses, correspondence, and records concerning the Intervenors’ use of WhatsApp’s Business API; their dealings with government and third-party partners (such as InfoBip and Synthesis); and shareholder/funding agreements with Capital Appreciation.<sup>9</sup>

[13] The Respondent asserts that these gaps, including with respect to Capital Appreciation, suggest that relevant documents exist but had not been discovered by the Intervenors.

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<sup>6</sup> Summons bundle, Replying Affidavit para 11, pp 531.

<sup>7</sup> Summons bundle, Answering Affidavit para 8, pp 234.

<sup>8</sup> Summons bundle, Founding Affidavit application to compel, commences pp 456

<sup>9</sup> Summons bundle, the documents requested are listed from pp 476 onwards.

[14] The Respondents contended that as an “*integral stakeholder in the business affairs of the Intervenors*”, Capital Appreciation was likely to be in possession or control of various relevant documents that the Intervenors had not discovered.<sup>10</sup>

[15] For these reasons, the Respondents requested that the Tribunal exercise its powers under section 54 of the Act to secure production of these documents and categories of documents directly from Mr Sacks in his capacity as the CEO of Capital Appreciation.

### **APPLICATION FOR WITHDRAWAL OF THE SUMMONS**

[16] Section 54 of the Act provides that the member of the Tribunal presiding at a hearing may:

- “(a) *direct or summon any person to appear at any specified time and place;*
- “(b) *question any person under oath or affirmation;*
- “(c) *summon or order any person –*
  - “(i) *to produce any book, document or item necessary for the purposes of the hearing; or*
  - “(ii) *to perform any other act in relation to this Act ...”.*

[17] Rule 47(3) of the Rules for the Conduct of Proceedings in the Competition Tribunal (the “**Tribunal Rules**”) provides that after a summons requiring a witness to attend proceedings to give evidence has been issued, “*it must be served by the sheriff in any manner authorised by Rule 4 of the High Court Rules*”.

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<sup>10</sup> Summons bundle, Answering Affidavit para 91, pp 265.

[18] On 19 March 2025, the then presiding member in this matter issued a summons against Mr Bradley Sacks, the CEO of Capital Appreciation. It required him to provide certain documents and information in his possession or under his control with regard to this matter.<sup>11</sup>

[19] In the course of correspondence with regard to the dispute about discovery in this matter, Webber Wentzel (the attorneys for the Intervenors) wrote to Bowmans (the attorneys for the Respondents) noting that the Respondents were entitled to bring an application for access to documents that were in issue, and stated that Webber Wentzel was “*authorised to accept service on behalf of Capital Appreciation*”.<sup>12</sup>

[20] Bowmans served the summons by e-mail on Webber Wentzel in their capacity as “*representatives for Capital Appreciation Ltd*”.<sup>13</sup> The summons was directed to “*Mr Bradley Sacks, in his capacity as Chief Executive Officer of Capital Appreciation Ltd*”.<sup>14</sup>

[21] Mr Sacks, a resident of the United States of America, was not present in South Africa at the time that the summons was served.

[22] Mr Sacks instituted an application for an order withdrawing the summons in terms of section 54(dA) of the Act. He raised the following matters:

22.1. He contended that the summons was irregular in that it was issued against a foreign *peregrinus* (a person not resident or domiciled in South Africa), who could not be served by the Sheriff as required by Rule 47(3) of the Tribunal Rules.

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<sup>11</sup> Summons bundle, Record BJS1, pp 31 – 40.

<sup>12</sup> Summons bundle, Record DL23, pp 516.

<sup>13</sup> Summons bundle, Record BJS1, pp 32.

<sup>14</sup> Summons bundle, Record BJS1, p 33 para 1.

22.2. He pointed out that Rule 47(3) of the Tribunal Rules states that a summons must be served by a Sheriff. There was not, and could not have been, service by those means, given that Mr Sacks lives and works in New York.

22.3. He submitted that the fact that Webber Wentzel had agreed to accept service of documents addressed to Capital Appreciation did not mean that the summons was regular and compliant. He asserted that the summons was incapable of serving its intended purpose, as there would be no enforcement mechanism in the event that Mr Sacks did not comply with it. He contended that the summons could be nothing more than a request to Mr Sacks, a foreign third party, to provide certain information and documents, rather than a demand that the information and documents be provided upon pain of criminal sanction.<sup>15</sup>

[23] Assuming for the purposes of argument that these submissions are correct, they do not have the result that the summons was unlawfully issued or is invalid. There are two distinct steps in the process in this regard:

- 23.1. first, the summons must be issued by the Tribunal; and
- 23.2. second, the summons must then be served on the person to whom it is addressed.

[24] The attack to which we have referred above does not relate to the lawfulness of the decision to issue the summons. Rather, it bears upon whether the summons is legally binding on Mr Sacks, in the light of the fact that he is a foreign peregrinus, and the manner in which it was served. This is in part a question of jurisdiction.

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<sup>15</sup> Summons bundle, Record, founding affidavit pp 14 – 15, paras 23 – 26.

*Jurisdiction over the person of Mr Sacks*

- [25] In *Bank of America*, the Competition Appeal Court noted that the Rules of the Tribunal with regard to service generally do not distinguish between service within South Africa and service abroad, and that they are more permissive than the High Court rules in providing for service by fax or email.<sup>16</sup> This makes service on foreign *peregrini* without a local *domicilium* generally straightforward. However, that does not answer the question whether the Tribunal has jurisdiction over the person of Mr Sacks.
- [26] In *Strang*,<sup>17</sup> the Supreme Court of Appeal developed the common law with regard to jurisdiction over persons who are resident and domiciled outside South Africa. The Court held that where attachment of property is not possible in order to found jurisdiction, a South African High Court will have jurisdiction if the summons is served on the defendant while in South Africa and there is sufficient connection between the suit and the area of jurisdiction of the court concerned so that disposal of the case by that court is appropriate and convenient.<sup>18</sup>
- [27] The issue in the present matter is somewhat different. Capital Appreciation is a South African company, and it is a party to this matter. Mr Sacks is its CEO. The Tribunal clearly has jurisdiction over Capital Appreciation, and the contrary was not suggested. Ordinarily Capital Appreciation may act through its CEO, wherever he or she may be.
- [28] The issue in this matter is whether the service of the summons on Mr Sacks by e-mail at Webber Wentzel was effective, given that he is not resident or domiciled in South Africa, and given that it was not served by the sheriff.

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<sup>16</sup> *Competition Commission v Bank of America Merrill Lynch International Ltd & others* [2020] 1 CPLR 26 (CAC) para 60; [2020] ZACAC 1; 2020 (4) SA 105 (CAC).

<sup>17</sup> *Bid Industrial Holdings (Pty) Ltd v Strang and Another (Minister of Justice and Constitutional Development, Third Party)* 2008 (3) SA 355 (SCA), [2007] ZASCA 144.

<sup>18</sup> Para 19.

[29] As to the first, it seems to us that once Webber Wentzel had stated that it would accept service on behalf of its client, Capital Appreciation, a summons served on Webber Wentzel in South Africa would be effectively served on Capital Appreciation.

[30] However, two problems arise.

30.1. Mr Sacks is as a matter of fact outside South Africa. There is a general presumption that legislation does not have extra-territorial application.<sup>19</sup> This would appear to apply to the powers of the Tribunal to issue a summons.<sup>20</sup>

30.2. The summons was not served in the manner stipulated in Rule 47(3) of the Tribunal Rules, namely by the Sheriff.

[31] As to the first problem, we note that

31.1. if Mr Sacks returns to South Africa, which he apparently intends to do in the light of the witness statement which has been filed on his behalf, the summons can then be served on him; and

31.2. the summons could also be re-applied for and issued in respect of a suitable person who forms part of Capital Appreciation, in South Africa, and served on that person.

[32] As to the second problem:

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<sup>19</sup> *Bid Industrial Holdings (Pty) Ltd v Strang and another (Minister of Justice and Constitutional Development, third party)* 2008 (3) SA 355 (SCA).

<sup>20</sup> We have noted that the High Court has recently held that the Financial Sector Conduct Authority has jurisdiction to impose administrative penalties under the Financial Services Regulations on persons who are outside South Africa: *Financial Sector Conduct Authority v Financial Services Tribunal and Others* 2025 (6) SA 591 (GP). In our opinion that does not apply to a summons issued under the Rules of the Competition Tribunal.

32.1. Rule 6(1) of the Tribunal Rules stipulates that a notice or document may be “delivered” in any manner set out in Table CTR1 to the Rules. Table CTR1 sets out various means of service in respect of various classes of persons or entities.

32.2. Rule 6(3)(b) of the Tribunal Rules provides that if it proves impossible to serve a document in any manner provided for in the Rules, the person concerned may apply to the Tribunal for an order of substituted service.

32.3. Uniquely, Rule 47(3) of the Tribunal Rules stipulates in peremptory terms that a summons “*must*” be served by the Sheriff.

- [33] It is not necessary, for the purposes of this matter, to decide whether the Tribunal may make an order for substituted service in respect of a summons. There was no application before us for such an order.
- [34] At best, the statement by Webber Wentzel that it was authorised to accept service on behalf of Capital Appreciation in relation to the dispute about discovery addresses the person or entity on whom service may be affected. It does not constitute a waiver (if such is possible) of the Rule 47(3) stipulation of the manner in which a summons must be served.
- [35] We observe that a unique requirement that a summons be served by the Sheriff appear to have some logic. The service of a summons creates a legal obligation of compliance, with serious consequences for non-compliance.<sup>21</sup> There would appear to be a rational reason for requiring service by the relevant officer of the courts, who acts with a degree of formality and renders a formal return of service.
- [36] Mr Sacks also contended that the summons should be withdrawn because it is an abuse of process. He pointed out that he has already made a discovery affidavit

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<sup>21</sup> Section 71 of the Act.

on behalf of the Intervenors and has disclosed certain documents. He asserted that the summons is “*highly repetitive of the discovery requests made of the Intervenors, to which Sacks has already responded under oath*”.<sup>22</sup> In our view this does not of itself make the summons an abuse of process. To the extent that the summons duplicates the discovery that he has made, he can simply repeat that discovery.

[37] Mr Sacks also contended that the summons is “*overbroad*”.<sup>23</sup> To the extent that he contends that particular documents are not relevant, and therefore not “*necessary for the purposes of the hearing*”,<sup>24</sup> he can raise that objection in the appropriate manner. This does not require the withdrawal of the whole summons.

[38] It follows that:

- 38.1. the summons was validly issued and there is no reason to withdraw it;
- 38.2. the summons has not been validly served.
- 38.3. the summons is currently not effective against Mr Sacks, but may of course be served on him on his return to South Africa.

## **CONCLUSION**

[39] In light of the above, the Application by Mr Sacks to have the summons comprising a Notice CT13 and accompanying schedule, concerning CT case no. CR189Mar22 on 19 March 2025 withdrawn is dismissed.

[40] There is no order as to costs.

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<sup>22</sup> Summons bundle, Founding Affidavit, para 8, pp 7; para 28, pp 15.

<sup>23</sup> Summons bundle, Founding Affidavit, para 8, pp 7; para 28, pp 15 .

<sup>24</sup> Section 54(c)(i) of the Act.

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**28 January 2026**

**Date**

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**Adv. Geoff Budlender SC**

**Concurring: Prof. Imraan Valodia and Prof. Thando Vilakazi**

Tribunal Case Managers:	Andriza Liebenberg, Tarryn Sampson, and Theresho Galane
For GovChat (Pty) Ltd and Hashtag Letstalk (Pty) Ltd:	Paul Farlam SC and Luke Kelly instructed by Shawn van der Meulen of Webber Wentzel
For Meta Platforms Inc., WhatsApp Inc., and Facebook South Africa (Pty) Ltd:	Jerome Wilson SC and Lerato Zikalala instructed by Derek Lotter and Claire Reidy of Bowmans