



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/ NO
Of Interest to other Judges:	YES/ NO
Circulate to Magistrates:	YES/ NO

Case No: 237/2023

In the matter between:

**THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**

Applicant

and

KETSO BABA KETSO

1st Respondent

MARU- A- PULA GROUP (PTY) LTD

2nd Respondent

HEARD ON: 16 NOVEMBER 2023

CORAM: NAIDOO, J

DELIVERED ON: 22 FEBRUARY 2024

[1] This matter started out as an urgent *ex parte* application brought before this court for a preservation of property order (the preservation order) in terms of section 38(1) of the Prevention of Organised Crime Act 121 of 1998 (POCA). The applicant (the NDPP) sought to freeze an amount of Three Million Eight Hundred and Twenty Thousand Rand (R3 820 000.00), together with interest thereon (the property), held at the First National Bank (FNB), under

account number 62808802682. The order was granted on 20 January 2023. Before me is the application for a forfeiture order, which the NDPP asserts is in terms of section 53 of POCA, and which I will deal with later. The NDPP was represented by Adv (Ms) S Khumalo, while the first and second respondents were represented by Adv MS Mazibuko

[2] The first respondent, his wife, Joyce Mamonono Ketso and the second respondent are interested parties in respect of the property. The preservation order was served on the first respondent in his personal capacity, as well as his capacity as director of second respondent. His wife could not be found at the addresses at which the NDPP attempted service. The applicant alleges that service did take place by affixing at an address, on 22 February 2023. That return of service does not appear to have been filed. The respondents, however, do not take issue with the service on Mrs Ketso. It is common cause that the first respondent and his wife are directors of the second respondent. The first respondent is also a shareholder of the second respondent. The latter information was furnished by the first respondent in his affidavit filed in terms of section 39(5) of POCA. I mention that the first respondent is the only respondent who opposed the grant of the forfeiture order.

[3] This matter has its genesis in the Kingdom of Lesotho where certain government tenders were awarded to various entities for the rehabilitation of certain flood damaged roads. Allegations of fraud perpetrated by certain government officials and private entities, where tenders were awarded without following proper procurement procedures and where monies were paid when such was not due,

led to investigations into such allegations. It was found that as a result of such unlawful activities, the government of Lesotho was defrauded of an amount of Thirty Seven Million Six Hundred and Twenty One Thousand Eight Hundred and Thirty Maloti (M37 621 830). Maloti is the currency of Lesotho and is equivalent in value to the South African Rand.

[4] One of the main beneficiaries of the unlawful tender was an entity known as Maru-A- Pula Mining Construction (Pty) Ltd) (Maru-A-Pula Mining). Investigations revealed that the Principal Secretary in the Ministry of Local Government and Chieftainship (MoLGC), Nonkululeko Zaly (Zaly) unlawfully and irregularly engaged a company called Kypros Engineering (Pty) Ltd (Kypros) to oversee the road rehabilitation work. Kypros engaged Maru-A Pula Mining to do the work. It was found that Kypros and Maru-A-Pula Mining were wholly owned by Phoenix Investments (Pty) (Ltd), which in turn, is wholly owned by the first respondent. The Disaster Management Authority (DMA) was tasked with coordinating the various processes and procurement, as well as paying contractors for services rendered. Zaly by-passed the procurement office (DMA) in engaging Kypros, as her department (MoLGC) was not authorised to procure services.

[5] On 1 November 2022, Maru-A-Pula Mining received an amount of M5 538 192 from the DMA. Prior to this the balance in its bank account was M43.55. On 14 December 2022 the investigating team received information that an amount of M3 820 000 was being

transferred to a South African First National Bank account being held by the Maru-A Pula Group. This was done on 15 December 2022. Intensive investigations continued, the extent and details of which were set out in the Founding Affidavit to the preservation application. There were numerous findings by the investigators in respect of the road rehabilitation project in Lesotho, which catalysed the launching of the preservation application. A brief summary follows hereafter.

- [6] After numerous interviews and other investigations, it was found that in November 2021, Zaly purchased a property in Lesotho, in respect of which she made various payments. On 2 December 2021 Kypros received an amount of M7 086 240.00 from DMA in its bank account, which at that stage had a balance of M124.00. On 10 December 2021 Kypros transferred an amount of M250 000 into the Trust account of an attorney in Lesotho, for the benefit of Zaly. The attorney issued a receipt with the reference "*Kypros Engineering (Pty) Ltd House Purchase Payme*" (sic). The cashier who was employed at the attorney's office, and who issued the receipt, confirmed this payment and that it was made in respect of the property purchased by Zaly.
- [7] Nkosiphendule Mradla (Mradla), a Senior Financial Investigator with the Asset Forfeiture Unit in Bloemfontein, is the investigating officer for asset forfeiture purposes in this matter, which is being investigated in Lesotho by their Directorate on Corruption and Economic Offences

(DCEO) and in South Africa by the Directorate of Priority Crime Investigation (DPCI). Mradla in his affidavit in support of the preservation application, indicated that the asset investigations in this matter emanated from investigations by the Lesotho Law Enforcement Agencies into extensive government fraud and corruption, resulting in the loss of millions of Maloti, some of which have been laundered into South Africa.

- [8] Through his investigations, he obtained sworn statements that were deposed to by various officials in the Lesotho government, who provided detailed information regarding tender and procurement processes in Lesotho, and how these processes were contravened by government officials and private entities, who were identified in these statements. To these sworn statements, were attached documents that supported the assertions and allegations in the statements. What emerged is that the first respondent is alleged to have paid bribes to the Chief Executive Officer of the DMA, Makhotso Mahosi (Mahosi), and through Kypros, paid the amount of M250 000, as part-payment in respect of the property purchased by Zaly.
- [9] Mahosi was interviewed on 12 December 2022 by senior officials who were part of the investigating team. She advised the investigating team that Zaly had told her that she and the Principal Secretary – Cabinet, Thabo Motoko (Motoko) had offered tenders for the road rehabilitation to their friends' companies. They would receive M1 000 000 for awarding the tender. Mahosi's role was to request

government funds to pay these companies and she too would be compensated in the amount of M1 000 000. Mahosi did request such funds in about March/April 2022, for which the first respondent paid her M500 000, with the promise that the balance would be paid later, after he received the next payment. She was afraid to use the money, and hid it in her home. She agreed to take the police to her home and point out the money, which she did. The police found the money hidden in two separate bags, and seized the money. Confirmatory statements by the officials concerned were attached to Mradla's affidavit.

[10] The further allegation is that the work was either not done or not completed by Marula-A-Pula Mining, this being based on the evidence that the work was not verified by the relevant Department or official and signed off by them, signifying that the service provider could be paid. Therefore Maru-A-Pula Mining was not entitled to the payment it received, which was paid irregularly. According to the evidence of a Director of Procurement in the Lesotho government, retrospective authority can be obtained for payment to be made where the services have been rendered and the government has benefitted. Retrospective authority cannot be used to validate a flawed procurement process, as is the case in the present matter. This is even more so, where the services have not been rendered or have not been completed, being the applicant's allegation in this matter.

[11] As indicated, the preservation order that was granted by this court on 20 January 2023 is in respect of the money (R3 820 000.00) that

was transferred from Maru-A-Pula mining in Lesotho to the South African bank account of the Maru-A-Pula Group. The first respondent is a director and 100% shareholder in the latter entity. Only the first respondent filed a notice to oppose the application for a forfeiture order. He filed an affidavit in terms of section 39(5) of POCA, and in paragraph 8 thereof he alleges that he deposes to the affidavit on his own behalf and that of the second respondent. In paragraph 11, he refers to “our notice to oppose”, after alleging that the preservation order was served on him, the second respondent and his wife Joyce, as co-director. As I indicated, only the first respondent filed a Notice to Oppose.

[12] The first respondent filed his Notice to Oppose, Affidavit in terms of section 39(5) and Answering Affidavit out of time. He tendered an explanation in the two affidavits I referred to and sought condonation for such late filing, without bringing a substantive application for condonation. His prayer for condonation was rigorously opposed by the applicant, who pointed out the deficiencies in the first respondent’s explanation as well as the fact that a substantive application for condonation is not before the court. However, at the start of the hearing of this matter before me, Ms Khumalo advised that the applicant no longer takes issue with the late filing of the first respondent’s pleadings and that the matter may proceed on the merits. In the interests of justice, and the expeditious finalisation of this matter, I grant condonation, to the extent necessary, to the first respondent for the late filing of his pleadings that I mentioned earlier.

[13] In his affidavit in terms of section 39(5) of POCA, the first respondent denies that the property is the proceeds of unlawful activities or that it arises out of the offence of money laundering, as alleged by the applicant. He asserts that as the money was transferred from the bank account of Maru-A-Pula Mining in Lesotho to the bank account of the second respondent in South Africa, they made no attempt to conceal or disguise the nature and origin of the property. He also asserts that Maru-A-Pula Mining received monies, of which the property forms a part, from a department of the Lesotho government as a result of construction work it did for the Lesotho government. He alleged that the funds were derived in the course of lawful business activities, and denied that Maru-A-Pula Mining derived such funds through fraudulent or corrupt conduct. He further asserted that the applicant has no evidence that respondents committed offences in Lesotho.

[14] The first respondent repeated these allegations and assertions in his Answering Affidavit, asserting further that irregularities in the procurement process did not render the property proceeds of unlawful activities. He denied that he paid Mahosi the M500 00.00 as a bribe for her to process payments from the Lesotho government for work that was not done, or that the payment of M250 000.00 by Kypros towards Zaly's property was a bribe. The first respondent further indicated that Phoenix Investments only purchased Kypros in November 2021, whereas the Kypros contract with the local government ended in August 2021. When Maru-A-Pula was awarded the contract, Phoenix Investments was not a shareholder in Kypros. He attached a large number of documents and photographs to his Answering Affidavit, without referring to them

or explaining what they were or what their significance is. I shall accordingly take no notice of such annexures.

[15] The issues for the court to decide are:

15.1 whether the property constitutes proceeds of unlawful activities;

15.2 whether the offence of money laundering has been committed where the property was not concealed or disguised;

15.3 whether the funds, of which the property forms a part, were derived from lawful business activities;

15.4 whether the respondents not being criminally charged in South Africa has any bearing on the forfeiture application.

[16] It is perhaps useful to mention the relevant provisions of POCA, which will inform the outcome of this application:

The following definitions in **section 1** are relevant:

'proceeds of unlawful activities' means any property or any service advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived;

'property' means money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof;

The relevant provisions of **section 4** read thus:

Money laundering

Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and-

(a)

(b) performs any other act in connection with such property, whether it is performed independently or in concert with any other person,

which has or is likely to have the effect-

(i) of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or

(ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere-

(aa) to avoid prosecution; or

(bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence,

shall be guilty of an offence.

With regard to forfeiture orders, the following sections of POCA are relevant.:

48 Application for forfeiture order

(1) If a preservation of property order is in force the National Director, may apply to a High Court for an order forfeiting to the State all or any of the property that is subject to the preservation of property order.

Section 50 provides as follows

(1) The High Court shall, subject to section 52, make an order applied for under section 48 (1) if the Court finds on a balance of probabilities that the property concerned-

(a) is an instrumentality of an offence referred to in Schedule 1;

- (b) is the proceeds of unlawful activities; or
- (c) is property associated with terrorist and related activities.
- (2)
- (3)
- (4) The validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.
- (5) The Registrar of the Court making a forfeiture order must publish a notice thereof in the *Gazette* as soon as practicable after the order is made.
- (6) A forfeiture order shall not take effect-
 - (a) before the period allowed for an application under section 54 or an appeal under section 55 has expired; or
 - (b) before such an application or appeal has been disposed of.

[17] In this matter it is not in dispute that

- 17.1 a tender was awarded to Kypros for the road rehabilitation project in Lesotho;
- 17.2 Kypros contracted with Maru-A-Pula Mining to do the work;
- 17.3 Kypros and Maru-A-Pula Mining both received large payments from the DMA, Kypros in the amount of M7 086 240.00 and Maru-A-Pula Mining in the amount of M5 538 192;
- 17.4 Kypros paid an amount of M250 000 as part payment of the purchase price of a property that Zaly purchased;
- 17.5 Mahosi received an amount of M500 000 which she alleges was paid by the first respondent.
- 17.6 The tender awarded to Kypros was not in accordance with procurement procedures in Lesotho and was unlawful.

[18] The detailed statements from the various Lesotho government officials and others involved in this matter set out clearly that the award of the tenders for the road rehabilitation project was not in accordance with the procurement procedures of the Lesotho government. In fact, Zaly deliberately by-passed the designated Procurement Office in awarding contracts to service providers, including Maru-A-Pula Mining. There is further evidence that she in fact openly disclosed to the former Procurement Manager, Motolo Mandoro, in her department (the MoLGC), that she was responsible for appointing the consultant who she tasked with engaging the contractors. Mandoro advised her that her actions were irregular and in contravention of the Procurement Regulations. He suggested to her that the solution would be to request retrospective approval from the Ministry of Finance.

[19] Zaly, it seems, took this suggestion seriously and directed a request for retrospective authority to the Ministry of Finance. Likotsi Leseli (Leseli), the Director of Procurement Policy and Advice Division in the Ministry of Finance, set out in great detail the procurement process, which is governed by the Public Procurement Regulations 2007, as amended. He also dealt with the procedure governing emergency procurements, which is briefly that the Prime Minister must declare a state of emergency, which must be published in the Government Gazette, after which the Minister of the concerned Ministry is required to address the emergency. There is a specific and detailed procedure to be followed thereafter, where the ministry concerned writes a justification for the emergency procurement and seeks authority from the tender panel, after other preliminary steps are followed. In the case of a procurement where the procurement

rules and regulations were not followed, retrospective authority must be requested. Such authority will only be granted for payment to be made where the government has benefitted from the services that have been rendered. It will not be granted to validate a flawed procurement process. In this case Leseli found that the Ministry of Public Works, which is mandated to issue a certificate of compliance and completion, was not involved at all in the work relevant to this matter. Leseli asserts that, as a result, the procurement in this matter amounts to “misprocurement” malpractice and unethical behaviour.

[20] Mahosi who was the CEO of DMA, clearly had the power to refuse to make payments where proper procurement procedures were not followed. In fact, she had done so previously. Two such contractors complained to the office of the Accountant General, Malehlonolo Likhapa Mahase (Mahase) that the DMA was delaying in making payment to them. Mahase contacted the CEO of the DMA (Mahosi) to enquire about the delay in payment and was advised by the latter that payment was not made as there were allegations that the work was not completed or was sub-standard. Mahosi in this matter was aware that that Zaly and Motoko sourced the companies of their friends to whom tenders were awarded, and for which they were offered payment of M1000 000 each. She was also told by Zaly to request funds from the government in order to pay these companies, in return for which, she would herself receive M1000 000. Mahase said in her statement that Mahosi informed her that she (Mahosi) was in fact paid M500 000 by a person called Baba Ketso (first respondent) for the services she rendered in requesting government funds for payment to his company, with the promise of

payment of the balance when she assists him in obtaining another payment.

[21] As a result of the officers of the DCEO interviewing Mahosi, she led them to her home where the M500 000 was hidden. There is therefore no doubt that she received an amount of M500 000 from the first respondent, as he himself has not denied paying her the money. He also did not deny that an amount of M250 000 was paid as part payment towards the purchase price of Zaly's property. What the first respondent denied is that he bribed either Zaly or Mahosi. He has not dealt at all with the uncontroverted evidence that the money was found at Mahosi's house, or with the evidence of the Tebello Masamuel Ramakhale (Ramakhale), an employee of the firm of attorneys in Lesotho who were dealing with the sale of the property that Zaly purchased. Ramakhale's evidence that the attorneys had received a bank transfer from Kypros Engineering Pty Ltd in the amount of M250 000 for Zaly's credit in respect of a "House purchase payment" is supported by the receipt issued by the firm to Kypros.

[22] The first respondent gave no explanation with regard to why these payments were made to Zaly and Mahosi. These were matters peculiarly within his knowledge, and while there is no onus on him to prove his case, there is certainly an evidentiary burden to rebut the allegations of the applicant that he paid those amounts as bribes. When his failure to place such evidence before the court and to give an explanation for such payments, is viewed against the surrounding circumstances and all the evidence placed before this

court, the inescapable inference is that those amounts were paid as bribes to both Zaly and Mahosi. Corruption and bribery are criminal offences in Lesotho. Mahosi, the first respondent, Zaly, Kypros, and Maru-A-Pula Mining, together with a host of others, have already been charged criminally in Lesotho with, *inter alia*, fraud, corruption, bribery and money laundering.

[23] I pause to note that Mahosi, and another person brought an urgent interdict application in the Lesotho High Court in Maseru, against the DCEO, the Director of Public Prosecutions and the Attorney General seeking, *inter alia*, to declare the seizure of the M500 000 from her possession null and void and of no legal force, and seeking return of the money to her. The application was brought on 10 January 2023, when a *rule nisi* was issued, returnable on 14 February 2023. When the matter was heard before this court 16 November 2023, I was informed that the judgment in the interdict application was still awaited. During the course of preparing this judgment, I requested my registrar to enquire of the applicant's legal representative whether the judgment in that matter was handed down. Ms Khumalo then forwarded a copy of the judgment to me, via my registrar.

[24] The matter appears to have been heard in April 2023 and judgment was handed down in September 2023, some two months before this application came before me. The Lesotho High Court dismissed the application, the nub of the judgment being that all the issues raised in the urgent application would best be reserved for hearing by the court hearing the criminal trial, which would be in a position to hear evidence on the various issues, and be in a better position to make

a ruling. I then requested my registrar to forward the judgment to the respondents' legal representative and enquire from both legal representatives if they wished to make any further submissions as a result of the judgment coming to light. They both declined to do so.

[25] In its Founding Affidavit, the applicant sets out in paragraph, 29.24, Mahosi's version, namely that Zaly told her in March 2022 that Zaly and Motoko offered the companies of their friends the tender for the rehabilitation project in return for payment of M1 000 000 each. The first respondent's bald answer to this in paragraph 31 of the Answering Affidavit is that *"Mahosi applied to court for these statements to be declared null and void and this was granted"*. He attached no proof of such application nor did he give any further details in respect thereof. The only legal proceedings instituted by Mahosi was the interdict application I referred to earlier in this judgment, and I am inclined to agree with the applicant's submission that the first respondent is attempting to mislead the court in this regard.

[26] In paragraph 29.25 of the Founding Affidavit, the applicant goes on to allege that Zaly requested Mahosi to release government funds to pay those companies, in return for which she (Mahosi) will be paid M1 000 000. Notably, the first respondent does not answer to this. Other than a denial which I mentioned earlier, no further explanation was forthcoming from the first defendant.

[27] With regard to the transfer of money from Maru-A-Pula Mining in Lesotho, to the second respondent's bank account in South Africa, the first respondent argues that he did not in any way conceal or

disguise the origins and nature of the property. The applicant knew where the property originated and how, namely as a result of a contract concluded with the Lesotho government, in terms of which they carried out the work contracted for. The applicant at all times acknowledged the origins and nature of the property. It relies on the corrupt relationship between the respondents and the government officials which led to the award of the tenders and ultimately the payments that were made to them.

[28] The first respondent does not, in Answer, deal with or give any explanation of the purpose for which the property was transferred into the bank account of the second respondent, to enable the applicant to reply thereto. Rather belatedly, this was raised in the Heads of Argument filed on behalf of the respondents, where the explanation tendered was that the money was intended to provide capital to the second respondent to enable it to finance some work it anticipated receiving in South Africa. Notably this is yet another of many bald and bare allegations, totally unsubstantiated by any form of documentary evidence to show the need of the second respondent, what type of work was anticipated, how much the second respondent would actually need and when such work was likely to commence. There is in fact, nothing to show that such work was a certainty, as the allegation is that the second respondent “anticipated” receiving “some work”. Such unsubstantiated statements in the Heads of Argument are hardly of any persuasive value.

[29] The first respondent also deals in his Heads of Argument with the applicant’s contention that he bribed Mahosi to make payments to

Maru-A-Pula Mining under the tender. He asserts that in his Answering Affidavit, he indicated that whatever confession the Lesotho authorities obtained from Mahosi was done in violation of her rights. He further asserts that the *fact* that Mahosi challenges the legality of the process by which the confession was obtained must

cast doubt on the allegation that the first respondent bribed Mahosi.

[30] I note, firstly, that no mention whatsoever is made in the Answering Affidavit of any confession or that the obtaining of such confession was in violation of Mahosi's rights. Secondly, the first respondent has not placed a shred of evidence before this court that Mahosi has made any confession or that she has taken any steps at all to challenge the validity thereof, yet the first respondent refers to such action on the part of Mahosi as a fact. These submissions are clearly an afterthought designed to raise as much dust as possible in the hope that it will blind the court to the true facts, or to create disputes which are non-existent. The first respondent does not deal meaningfully with the allegations raised by the applicant, which are supported by sworn statements and other documentary evidence.

[31] The applicant has, by way of the sworn statements, shown that proper tender and procurement procedures were not followed, and that the relevant government department (Public Works) and/or individuals, who were mandated to verify completion of the work did not do so, and if such work was signed off as completed, such was done irregularly by people not authorised to do so. Bare denials of matters that fall solely within the knowledge of the respondents

(which I have mentioned earlier), without any further explanation or substantiation, do not assist the respondents in any way. It also does not assist the respondents to state matters as if they are fact, and not substantiate such statements.

- [32] The first respondent contends that neither he nor the second respondent have been charged with the offence of money laundering in a South African court, and hence the applicant has failed to establish that the property is the proceeds of unlawful activities. It is well established in our law that proceedings in terms of Chapter 6 of POCA are directed at the property and not the person, and a forfeiture application in terms of Chapter 6 may be instituted even if criminal charges have not been preferred against the wrongdoer.

In *National Director of Public Prosecutions v Mohamed* 2202(4) SA 843 (CC), the Constitutional Court held at para [17]

“Chapter 6 provides for forfeiture in circumstances where it is established, on a balance of probabilities, that property has been used to commit an offence, or constitutes the proceeds of unlawful activities, even where no criminal proceedings in respect of the relevant crimes have been instituted.... Chapter 6 is therefore focused, not on wrongdoers, but on property that has been used to commit an offence or which constitutes the proceeds of crime. The guilt or wrongdoing of the owners or possessors of property is, therefore, not primarily relevant to the proceedings”

In any event, section 50(4) of POCA makes it clear that the validity of a forfeiture order is not affected by the outcome of criminal proceedings or investigations with a view to instituting criminal proceedings.

[33] On a consideration of all the facts and evidence before me, I am satisfied that on a balance of probabilities, the property is the proceeds of unlawful activities and was not derived from lawful business activities as contended by the respondents. It is also of no moment that the respondents have not been criminally charged in South Africa, having regard to the established law on this aspect. That being said, the property which is the proceeds of unlawful activities, remains tainted and transfer of the money to the South African bank account of the second respondent constitutes money laundering.

[34] I say this because the circumstances under which the transfer of the property took place, lead to the inference that such transfer was intended to avoid prosecution or to remove or diminish the property which was acquired as a result of an offence being committed. Maru- A-Pula Mining received the money from DMA on 1 November 2022. Mahosi was interviewed on 12 December 2022, during which interview, she implicated the first respondent as the person who bribed her. It is also the day that the M500 000 was seized from her home. On 15 December 2022 – three days later – the first respondent transferred the money into the bank account of the second respondent. On a balance of probabilities, and taking into account all the other evidence, it appears likely that the first respondent realised that Maru-A-Pula and possibly himself, would be likely to face criminal charges. He transferred the property in order to remove it from Lesotho so that the authorities in that country would be prevented from having access to the property, and in that

way to also avoid prosecution of Maru-A- Pula Mining and himself. I agree with the submission of the applicant that the first respondent and Maru-A-Pula Mining contravened section 4(b)(ii) of POCA.

[35] For the sake of accuracy and completeness, I refer to the draft order attached to the Notice of Motion, in which the applicant claims relief in terms of section 53 of POCA, which clearly deals with judgment by default where there is no appearance by any person (against whose interest such an order is made) on the day that the forfeiture application is made. I shall treat the reference to section 53 as a typographical error, as the relief foreshadowed in the draft order is clearly intended to be sought in terms of section 48(1), read with section 50(1), both of which I have set out earlier in this judgment. The application was opposed and there was appearance for the respondents, hence section 53 does not apply.

[36] In the circumstances, the following orders are made:

36.1 An order is granted in terms of the provisions of section 48(1) read with section 50(1) of the Prevention of Organised Crime Act 121 of 1998 (POCA), declaring forfeit to the state an amount of Three Million Eight Hundred and Twenty Thousand Rand (R3 820 000.00), together with interest thereon, held at First National Bank (FNB) under account number 62808802682;

36.2 The property is presently subject to a preservation of property order granted by this Court under the above case number on 20 January 2023;

- 36.3 The preservation order made no provision for the appointment of a *curator bonis*, and there is currently no need for this court to order the appointment of a *curator bonis*;
- 36.4 The Registrar of this court is directed to publish this order in the Government Gazette, as soon as is practicable, but not later than **Sixty (60)** calendar days from the date this order is granted;
- 36.5 This order will take effect **Forty Five (45)** days after this order has been published in the Government Gazette. Immediately thereafter:
- 36.5.1 FNB is directed to transfer the property into the FNB Lesotho account in the name of the Directorate on Corruption and Economic Offences, held under account number 62564648990;
- 36.6 Payment to the above account shall be deemed to be payment to the State;
- 36.7 Any person whose interest in the property concerned is affected by the forfeiture order, as specified in section 54(1) of POCA, may within 45 days of the order being published in the Government Gazette, apply for an order excluding his or her interest in the property concerned from the operation of the order, or varying the operation of the order in respect of such property.
- 36.8 In the event that the respondents wish to appeal this order, they are directed to do so in terms of the Rules of Court. In that event, and should it be necessary, the parties may agree on the extension of the date when this order will take effect. If they are unable to reach such agreement, either party may approach this court to consider whether such extension should be granted.

36.9 FNB or any person acting on its behalf shall as soon as possible, but not later than 90 days of this order coming into effect, file a report with the applicant on the manner in which it:

36.9.1 completed the administration of the property mentioned in this order; and

36.9.2 complied with the terms of the order.

NAIDOO. J

On behalf of the applicant: Adv (Ms) S Khumalo
Instructed by: The State Attorney
11th Floor, Fedsure Building
49 Charlotte Maxeke Street
Bloemfontein
(Ref: 619/202300064/P7M)

On behalf of the respondents: Adv MS Mazibuko
Instructed by: Webbers Attorneys
96 Charles Street
Bloemfontein
(Ref: M Koller/KET8/0001)