IN THE HIGH COURT OF SOUTH AFRICA /ES

(NORTH GAUTENG HIGH COURT, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED. ✓

5/10/2010

DATE SIGNATURE

CASE NO: 54183/2008

DATE: 12/10/2010

IN THE MATTER BETWEEN

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	APPLICANT
AND	
BARBARA DANIELS	1ST RESPONDENT
VENICIA NAIDOO	2ND RESPONDENT
SANOOSHA ABRAHAMS	3RD RESPONDENT
THILOSHANEE NAIDOO	4TH RESPONDENT

JUDGMENT

BAM, AJ

[1] On 21 November 2008 the applicant, *ex parte*, applied for and obtained a preservation order, regarding certain property, in terms of section 38 of the Prevention of Organised Crime Act, Act 121 of 1998, hereinafter referred to as "POCA". The four respondents were cited as such in their personal capacities.

[2] The property consisted of movables and immovables. I will refer to the immovable property in order to identify same for the purpose of this judgment without using the formal description of the Registrar's office. The property are as follows:

<u>immovable</u>

(a) sectional title "Lana's Lane";

(b) sectional title "Villa Mia";

(c) sectional title "Noon's Place";

(d) Numbi Park Erf 156;

(e) Farm 385, Knopslaagte;

(f) Erf 1694 Laudium;

<u>movable</u>

(g) Mercedes ML500;

(h) Mercedes AMG.

[3] It is common cause, or undisputed, that the aforesaid property is owned as follows:

(a) owner Dundee Impex (Pty) Ltd, of which company the sole director is the first respondent;

(b) owner P & V Naidoo Family Trust (second respondent is a trustee of the trust);

(c) Thiloshanee Naidoo (fourth respondent);

(d) owner is P & V Naidoo Family Trust (trustee second respondent);

(e) owner is P & V Naidoo Family Trust (trustee second respondent);

(f) owner is Sanoosha Abrahams (third respondent);

(g) owner is P & V Naidoo Family Trust (trustee second respondent);

(h) owner is P & V Naidoo Family Trust (trustee second respondent).

[4] On 10 December 2008 the respondents gave notice of their opposition of the forfeiture order and filed their affidavits in terms of the provisions of section 39(5) of POCA.

[5] The preservation order referred to above, however, lapsed due to the applicant not complying within the prescribed ninety days, with the procedure required in section 40(a) of POCA.

[6] On 19 March 2009 the applicant, again on an *ex parte* basis, obtained another preservation order, based on the same facts upon which the first application was based.

[7] On 24 April 2009 the respondents gave notice in terms of section 39 of POCA of their intention to oppose the forfeiture order. The four respondents attached to the said notice their affidavits made in terms of section 39(5).

[8] On 29 April 2009 the respondents filed a notice of motion to anticipate and rescind the *ex parte* order (section 47 of POCA). In the accompanying founding affidavit the first respondent stated the following grounds:

> "*1. the re-issuing of the preservation order is a circumvention of the ninety day period and irregular;*
>
> *2. it is an abuse of process to allow the applicant to apply for a second preservation order.*"

[9] The applicant opposed the contentions of the respondents and in its answering affidavit set out the full history of the matter and recorded four points *in limine* in opposition to the applicant's "anticipation" application to which I will refer herein below.

[10] I deem it apposite to deal at this stage with the respondents' contention that the applicant was not entitled to obtain a second preservation order in circumstances where the first one has lapsed as *in casu*. Mr Dodson, appearing for the applicant, with reference to *NDPP v Braun & Another (NO2)* 2007(1) SACR 556 (C), submitted that there was no reason at all, merely because of the fact that the first preservation order has lapsed as a result of the time restriction, that the applicant

could not subsequently obtain a second preservation order based on the same facts.

[11] I do not think that it is necessary to consider this issue in depth. Mr Roux SC, appearing for the respondents, during his argument, to my mind correctly, conceded that the applicant was indeed entitled to obtain a second or further preservation order based on the same facts in the circumstances. This point was accordingly disposed of.

[12] 0n 11 June 2009 the applicant applied for a forfeiture order in terms of the provisions of section 48 of POCA pertaining to the aforementioned properties attached by the applicant in terms of the second preservation order.

[13] Section 39 read with sections 48(2) to (4), 52 and 54 of POCA creates a mechanism in terms of which persons with legitimate interests in property could oppose the application for the forfeiture of the said property. It seems to be necessary to keep in mind that POCA with regard to the forfeiture procedure, chapter 6 of the Act, establishes a two stage asset forfeiture mechanism. The preservation order is the first stage of the proceedings, with the second phase involving an application to the court for the forfeiture of the preserved property. See *National Director of Public Prosecutions v Parker* 2006(1) SACR 284 (SCA) at 291 par [13].

[14] The applicant submitted that the persons listed herein below were the only persons that may claim to have an interest in the property referred to above, upon which persons a notice of the order for forfeiture sought by the applicant had to be served:

1. Pragasan Naidoo with ID 580721 5107 08 0;
2. Venicia Naidoo with ID 590909 0140 08 5;
3. Sanoosha Abrahams with ID 800808 0040 08 7; and
4. Thiloshanee Naidoo with ID 830508 0160 08 3.

In this regard it appears from the papers that the first person named above, Pragasan Naidoo, was not cited as a respondent. The other three people mentioned are the second, third and fourth respondents. There is no evidence that Venicia Naidoo, the second respondent, is a trustee of P & V Naidoo Family Trust. It is, however, not clear whether the first person mentioned, Pragasan Naidoo, ex husband of second respondent, is a trustee of the said family trust.

[15] It was confirmed under oath by an inspector of the South African Police Services, Inspector Mziwandile Alfred Sizane, that on 12 June 2004, in the presence of Mr Pragasan Naidoo, a huge quantity of Mandrax tablets was found in the house on the premises Lana's Lane. (Initially, according to the applicant, first respondent denied any knowledge of the said premises or Dundee Impex (Pty) Ltd the owner of the property. I will again refer to this aspect hereinafter.) Similarly on the same date, again in the presence of Mr Pragasan Naidoo, on the premises of Villa Mia, the police found a further quantity of Mandrax tablets. From other

evidence gathered on the two premises it was clear that Mandrax was either stored there or dealt in, in contravention of section 5(b) of Act 140 of 1992. (Drugs and Drug Trafficking Act.) Both premises were unoccupied.

[16] According to the evidence adduced by the applicant no Mandrax was found on any of the rest of the properties referred to above.

[17] The applicant submitted that its investigations further revealed and proved that the Naidoo's, that is Mr Pragasan Naidoo and the second respondent, his erstwhile wife, and the rest of the family, amassed the six immovable properties and the two vehicles of considerable value within a relatively short period of time. None of these assets, according to the plaintiff, is encumbered, which implies that it was purchased for cash. Some of the properties are registered in the children's names, third and fourth respondents, and were purchased when the children were still minors. 0thers were purchased and registered in circumstances which were "fraudulent or suspicious". The immovable properties were all purchased between the years 2000 and 2003. The applicant further submitted that no evidence of any form of legitimate income could be found, explaining how the Naidoo's (respondents) could have amassed such wealth.

[18] The applicant further contended that according to the evidence *in casu* the "Naidoo's" were involved in the packaging and distribution of drugs, and that in all likelihood, the "Naidoo's" obtained their income from the drug business.

It was therefore submitted by the applicant that the properties in question are the proceeds of criminal activity as provided for in POCA. The said evidence constituted proof on a balance of probabilities, as submitted by the applicant, in that no evidence could be found of any legitimate transaction in that regard.

[19] The respondents denied the applicant's contention that the respondents have been involved in any illegitimate situation. I will hereunder refer to the respondents' version in more detail.

[20] In anticipation of the return date of the second preservation order, the respondents deemed it correct in law to enroll the relevant application on 3 July 2010. The applicant, taking a point *in limine*, contended that the respondents' anticipation of the return date was irregular in that it is not provided for in the Rules of Court nor in terms of the provisions of POCA.

- The respondents, however, persisted with their argument that Rule 6(8) of the Rules of Court entitles them to anticipate the trial date of the forfeiture order.
- I have considered both arguments in depth. To my mind Rule 6(8) of the Rules of Court, as submitted by the respondents, indeed make provision for the anticipation of a trial date as *in casu*.
- I am of the opinion that section 47 of POCA also entitles the respondents to bring such an application. The provisions of POCA is draconic. To some extent it limits the rights of any citizen. Section 47 of POCA to my

mind therefore should be regarded as a remedy to a respondent to aleviate his/her situation.

- Mr Dodson's argument that the issue at this point in time turns upon the forfeiture order and not the preservation order any more, is to my mind without substance. The forfeiture order, at this point in time is still subject to the lawful existence of the preservation order, as submitted by Mr Roux SC, appearing for the respondents. I agree. Therefore the respondents are entitled to lodge the "anticipation" application directed at the preservation order.
- After having considered all the circumstances I also arrived at the conclusion that the respondents' anticipation of the trial date did not prejudice the applicant in any way whatsoever.

[21] Accordingly I found in favour of the respondents and the applicant's point *in limine* in this regard is dismissed.

[22] The applicant's application for the forfeiture of the properties is regulated by section 50 of POCA.

- It is trite that this matter should be dealt with as a civil matter and that the rules of evidence applicable in civil proceedings apply to the proceedings *in casu*.
- Regarding the application of the applicant I find it apposite to quote section 50 of POCA, pertaining to the issuing of the forfeiture order:

"*50(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) The high court may, when it makes a forfeiture order or at any time thereafter, make any ancillary orders that it considers appropriate, including orders for and with respect to facilitating the transfer to the state of property forfeited to the state under such an order.

(3) The absence of a person whose interest in property may be affected by a forfeiture order does not prevent the high court from making the order."

[The contents of subsections (4), (5) and (6) not quoted.]

[23] Pertaining to the *onus* the following was stated in the matter of *Mohunran & Another v National Director of Public Prosecutions & Another* 2007 4 SA 222 (CC) at para [75]:

"*The onus of establishing that all the requirements for a forfeiture order in terms of section 50 of POCA – including that of proportionality – have* *been met, rests on the NDPP throughout. However, as some of the factual matter relevant to the proportionality analysis will often be peculiarly within the knowledge of the owner of the property concerned, the owner who is faced with a prima facie case established by the NDPP would in the usual course be well advised to place this material before the court. This does not, however, shift the onus of proof to the owner in question; it merely places on the owner an evidentiary burden or, as it is sometimes called, a burden of adducing evidence in rebuttal.*"

See also *National Director of Public Prosecutions v Parker, supra*, at 293 par [18].

[24] The applicant's contentions regarding the reasons or grounds for the forfeiture of the immovable and movable property in question, have been referred to above. It is based on the averments of the applicant that the property, in accordance with the provisions of POCA:

"*(a)* *is an instrumentality of an offence referred to in Schedule 1; (sect 50(1)(a))*

(b) *is the proceeds of unlawful activities.*" (Sect 50(1)(b))

[25] Mr Roux SC pertaining to the issue as to whoever is involved with the property submitted the following *ad* property Lana's Lane:

"*It is common cause that the property is registered in the name of Dundee Impex (Pty) Ltd. The applicant has not brought an application against*

Dundee Impex (Pty) Ltd and as such an application for forfeiture against the first respondent, which is merely the shareholder and director of Dundee Impex (Pty) Ltd, is fatally defective."

Ad the properties Villa Mia, Numbi Park, Knopslaagte and the Mercedes Benz with registration number RCN538 GP (the ML500) Mr Roux submitted:

"*These properties belong to the trust. The applicant has failed to cite the second and fourth respondents in their official capacities as trustees of the trust and as such the application for forfeiture in respect of those properties is fatally defective.*"

- Pertaining to the above quoted submissions of Mr Roux SC, it is clear that it turns upon questions of law.

[26] It is correct, as submitted by Mr Roux SC, that neither Dundee Impex (Pty) Ltd nor the trust was cited as a party to these proceedings. If the applicant, in law, was obliged to cite the said two entities, the question which arises is whether the failure of the applicant in that regard is fatal for its case. Erasmus in *Superior Court Practice* B1-126HH states the following:

"*Where a trust has more than one trustee, all the trustees must be joined in suing and all of them must be joined when action is instituted against a trust.*"

- A trust is correctly cited by referring in name to the trust as represented by trustee X, Y and Z in their nominal capacity. See in this regard also *Land*

& Agriculture Bank of South Africa v Parker 2005 2 SA 77 (SCA). (In this matter a trust applied for leave to appeal without having been cited as suggested above, with the result that the Supreme Court of Appeal remarked that the appeal of the trust should have been struck from the roll when it appear before the full court.)

[27] The applicant, represented by Mr Dodson, in referring to the matter of *National Director of Public Prosecutions v Braun & Another (NO2)* 2007(1) SACR 556 (C) quoted the contents of paragraphs [15] and [16]:

> *"[15] Counsel ... submits that the purpose of the act, and more specifically chapter 6 thereof, is aimed at the forfeiture of the proceeds of or an instrumentality used in crime. To achieve this purpose the lawgiver has provided for the filing of a civil law suit against the property itself, in effect an action in rem, and that the statutory procedure is modeled on modern notions of in rem forfeiture. The underlying notion is that property itself is an offender and thus can be cited as a defendant in rem in a civil case.*
>
> *[16] The courts have recognised the in rem nature of the proceedings ... [The court then goes on to refer to other jurisdictions which have schemes for in rem forfeiture of assets.]"*

[28] Mr Dodson further submitted that the provisions of section 52 of POCA are a safeguard against the interference with the interests of the so-called "innocent

bystander". Mr Dodson further submitted that it was not obligatory for the applicant to cite either the company and/or the trust in question. In terms of the provisions of section 39(3) of POCA any party concerned, could have and should have, after learning about the preservation order and the pending forfeiture order, joined or made application to be joined as party/parties to the application.

[29] After having considered the situation I am of the opinion that Mr Dodson is correct. There was no need for the applicant to either cite the company and/or the trust who now appear to be the owners of part of the property. The provisions of section 39(3), to my mind, put an *onus* on any party who may have interests in the property.

[30] The "instrumentality of an offence" is defined in section 1 of POCA as follows:

> *"Any property which is concerned in the commission or suspected commission of an offence ..."*

See *Prophet v National Director of Public Prosecutions* 2006 1 SA 670 (SCA) at 678a.

This court is called upon to determine whether and to what extent the properties in question fall within the ambit of the definition.

[31] In measuring the strength and extent of the *nexus* between the property and the offence, Mr Dodson submitted that the following issues should be considered:

(a) whether the use of the property in the offence was deliberate and planned or merely incidental and fortuitous;

(b) whether the property was important to the success of the legal activity;

(c) the time duration which the property was legally used and the nature and extent of its use;

(d) whether its illegal use was an isolated event or had been repeated; and

(e) whether the purpose of acquiring, maintaining or using the property was to carry out the offence.

[32] Mr Dodson further referred to *Prophet* paragraph [3(1)] which reads as follows:

> "*Where premises are used to manufacture, package or distribute drugs, or any part of the premises has been adapted or equipped to facilitate drug dealing (which in terms of section 1(1) of the Drugs Act includes* ***'manufacturing')*** *they will in all probability constitute an instrumentality of an offence committed on them.*"

- In this regard Mr Dodson submitted that the properties in question fall within the quoted remark from *Prophet*.
- I agree with Mr Dodson.

[33] Regarding the question whether the properties Lana's Lane and Villa Mia were in fact used for the illegal purposes as suggested by the applicant, I am of the opinion that there is overwhelming evidence adduced by the applicant that this was in fact the situation. It follows that I am satisfied that the evidence complied

with the criteria suggested in *Prophet, supra.* On those properties a substantial amount of Mandrax tablets were found, as well as indications that packaging took place on a large scale, apparently professionally done in that scales were used to weigh the drugs as well as "zip-lock" bags used for the packaging.

- Mr Roux's submission that there was no proof against the respondents in that regard loses sight of the totality of the evidence including proof that the respondents and the properties were interlinked.
- Accordingly I am satisfied that the applicant has proved, subject to section 52 of POCA, that the said two properties were "instrumentality" of an offence.

  See *National Director of Public Prosecutions v R O Cook Properties (Pty) Ltd* 2004(2) SACR 208 (SCA).
- The handling of the drugs on the two properties falls within the definition of "dealing" in drugs in contravention of section 5(b) of the Drugs and Drug Trafficking Act 116/1992.

[31] The applicant, in endeavouring to prove its case, filed affidavits and confirmatory documents in the usual way. The respondents opposed the application upon grounds including the so-called "innocent bystander" defence, that the property was not used as an instrumentality to commit a crime mentioned in the first schedule of POCA and that the properties in question were not the proceeds of unlawful activities. I have already referred to the applicant's evidence on record.

[illegible] The respondents sought an order in terms of section 47 of POCA setting aside the second preservation order, alternatively that the properties be excluded as envisaged in section 52 of POCA regarding the forfeiture application. The applicable subsections of section 52 of POCA read as follows:

> "*52. Exclusion of interests in property*
>
> *(1) The high court may on application*
>
> > *(a) under section 48(3); or*
> >
> > *(b) by a person referred to in section 49(1),*
>
> *and when it makes a forfeiture order, make an order excluding certain interests in property which is subject to the order, from the operation thereof.*
>
> *(2) The high court may make an order under subsection (1), in relation to the forfeiture of the proceeds of unlawful activities, if it finds on a balance of probabilities that the applicant for the order-*
>
> > *(a) had acquired the interest concerned legally and for a consideration the value of which is not significantly less than the value of that interest; and*
> >
> > *(b) where the applicant had acquired the interest concerned after the commencement of this Act, that he or she neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities.*

(2)A The high court may make an order under subsection (1), in relation to the forfeiture of an instrumentality of an offence referred to in Schedule ... if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and-

(a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in Schedule 1 or ...;

(b) ...

(3) (a) If an applicant for an order under subsection (1) adduces evidence to show that he or she did not know or did not have reasonable grounds to suspect that the property in which the interest is held, is an instrumentality of an offence referred to in Schedule 1 or ... the State may submit a return of the service on the applicant of a notice issued under section 51(3) in the rebuttal of that evidence in respect of the period since the date of such service.

(b) ..."

[20] In summation it is clear that section 52(1) of POCA provides for an order excluding certain interests in the property which is subject to the forfeiture order.

Such an order can be made in the event of the respondents *in casu* proving on a balance of probabilities, that he or she-

- acquired the interest concerned legally; and
- acquired the interest for a consideration, the value of which is not significantly less than the value of the interest itself, and neither knew or had reasonable grounds to suspect that the property in which the interest is held, is the proceeds of unlawful activities.

[37] Section 52(2A) provides for a similar order where it is proved that the interest was acquired legally and the applicant neither knew or had reasonable grounds to suspect that the property is an instrumentality of an offence referred to in Schedule 1 to POCA.

[38] The evidence adduced by the applicant, which was not rebutted by the respondents, proves on a balance of probabilities that the respondents and Mr P Naidoo, were mutually interlinked with each other and the property in question. However, the only link between the property Lana's Lane and the Naidoo's is through P Naidoo. Mr P Naidoo is implicated in the keeping or storing of Mandrax on the premises of Lana's Lane and Villa Mia. The first respondent is the sole director of Dundee Impex (Pty) Ltd which is the registered owner of Lana's Lane.

The third respondent denied that she had made a contradictory statement to the police when she was initially questioned. According to the applicant's version in this regard she denied any knowledge of Lana's Lane and the company Dundee Impex. The reason she advanced to explain the problem, that it was due to police misconduct, holds no water.

[39] The respondents' counter-application (in anticipation) is based on statements of the respondents baldly denying any knowledge of illegal activities.

[40] There is insufficient evidence before the court adduced by the respondents to establish the "innocent bystander" defence in terms of section 52A of POCA.

[41] The further contention by the respondents that the applicant should have joined the company in this application, and that applicant's failure to do so was irregular and prejudicial against the company is to my mind not correct and should be rejected.

[42] The evidence adduced by the applicant regarding where and how the respondents acquired the rest of the property creates a suspicion that the property was acquired illegally and thus constitutes the proceeds of crime.

[43] In the absence of direct evidence of illegal activities from which an income could have been derived to purchase the other properties, a court should be cautious to speculate.

[44] A consideration of the probabilities shows the following:

- neither Mr P Naidoo nor any of the respondents were gainfully employed at the time of the purchase of the property, or could legitimately have generated income from any business to supply the funds to buy the properties; it is, however, kept in mind that Ms Naidoo did inherit a certain amount which amount of money was clearly spent on other properties non-related to this case;
- the registration of some of the properties in the names of the daughters, respondents 3 and 4, and/or the trust did not, to my mind, corroborate the respondents' contention that same had been lawfully purchased;
- none of the respondents could explain the criminal activities at Lana's Lane and Villa Mia. Mr P Naidoo did not make a statement of any sort. 0ne would have expected in these circumstances that he at least could have exculpated his erstwhile wife, the second respondent, and/or the two daughters, the third and fourth respondents.

[45] Mr Dodson for the applicant submitted that the evidence adduced by the applicant proved on a balance of probabilities that the respondents including Mr P Naidoo and the properties in question were connected to such an extent that it is inescapable to find that the illegal activities indeed took place as averred and proved and accordingly that the applicant has succeeded in proving (a) that the properties were instrumentalities (properties "A" and "B") and (b) that the balance

of the properties was acquired by using the proceeds of crime and should therefore be forfeited to the state. I agree with Mr Dodson.

[46] Mr Roux SC tried to convince me that the respondents should succeed with the application in anticipation of the applicant's forfeiture application, and to find that the preservation order should be set aside. I do not agree with Mr Roux. The evidence against the respondents was overwhelming.

[47] Counsel dealt with each and every aspect in a comprehensive way in their heads of argument. I express my gratitude to both Mr Roux SC and Mr Dodson in this regard.

[48] In conclusion I accordingly find that the applicant succeeds with its application and that the respondents' anticipation application should be dismissed. I make the following order: 0rder marked "X" attached.

Pages 1-2 refer to the property in question.

Pages 2-5 prayers 1-9

Prayer 10

The respondents are ordered, jointly and severally, to pay the costs of the application the one paying the other to be absolved.

A J BAM
ACTING JUDGE OF THE NORTH GAUTENG HIGH COURT

54183-2008

5/10/2010

HEARD ON:
FOR THE APPELLANT:
INSTRUCTED BY:
FOR THE RESPONDENT:
INSTRUCTED BY:

ANNEXURE A

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG, PRETORIA)

Case No: 54183/08

In the matter between:

The National Director of Public Prosecutions	**Applicant**
and	
Barbara Daniels	**First Respondent**
Venicia Naidoo	**Second Respondent**
Sanoosha Abrahams	**Third Respondent**
Thiloshnee Naidoo	**Fourth Respondent**

In re:

1. Sectional Title Number 56959/2003, SS Lana's Lane 223 Unit No 2 Clubview Ext 63, 912, Tswane
2. Sectional Title Number 48625/2001, SS No 59 Villa Mia Portion 128 of the farm Lyttelton No 381, Centurion
3. Sectional Title Number 52297/2000, SS No 13 Noon's Place Buccleuch

Township, Johannesburg

4. Erf 156, NumbiPark **Township, Mpumalanga**
5. Farm 385, Portion 786, Knopslaagte
6. Portion 14 of Erf 1694, Extension 1, Laudium
7. Mercedes Benz ML500 vehicle with registration number RCM538GP
8. Mercedes Benz C32 AMG with registration number RCJ590GP

DRAFT ORDER

IT IS HEREBY ORDERED: -

1 An order is granted in terms of the provisions of section 50 of the Prevention of Organised Crime Act, No. 121 of 1998 (**POCA**) declaring forfeit to the State certain property (**the property**) namely:

1.1 Sectional Title Number 56959/2003, SS Lana's Lane 223 Unit No 2 Clubview Ext 63, 912, Tswane.

1.2 Sectional Title Number 48625/2001, SS No 59 Villa Mia Portion 128 of the farm Lyttelton No 381, Centurion.

1.3 Sectional Title Number 52297/2000, SS No 13 Noon's Place Buccleuch Township, Johannesburg.

1.4 Erf 156, NumbiPark Township, Mpumalanga.

1.5 Farm 385, Portion 786, Knopslaagte.

1.6 Portion 14 of Erf 1694, Extension 1, Laudium.

1.7 Mercedes Benz ML500 vehicle with registration number RCM538GP.

1.8 Mercedes Benz C32 AMG with registration number RCJ590GP.

which property is presently subject to a preservation of property order granted by this Honourable Court under the above case number on the 19 March 2009.

2. Directing that the curator bonis appointed by this Court in terms of the order granted on the 19 March 2009 continue to act as such with authority to perform all the functions specified in POCA subject to the provisions of the Administration of Estates Act, 66 of 1965, and to the supervision of the Master of the High Court.

3. The curator bonis shall have all such powers, duties and authority as provided for in POCA and in this order, including such powers, duties and authority reasonably incidental thereto and shall, in addition, be subject to the applicable provisions of the Administration of Estates Act, 66 of 1965. The fees and expenditure of such curator bonis reasonably incurred in the

execution of his duties, shall be paid from the proceeds of the forfeited property.

4. In terms of section 56(2) of POCA, the property shall vest in the curator bonis on behalf of the State on the date on which the forfeiture order takes effect.

5. The curator bonis is authorised, as of the date on which the forfeiture order takes effect to:

5.1 Assume control of the property and take it into his custody.

5.2 Dispose of the property by private sale or other means.

5.3 Subject to any order of this Court for the exclusion of any interest in the property under section 52(2) of POCA, to deduct his fees and expenditure which were approved by the Master of the High Court.

5.4 Deposit the balance of the proceeds into the Criminal Assets Recovery Account established under section 63 of POCA, number 80303056 held at the South African Reserve Bank, Vermeulen Street, Pretoria.

5.5 Perform any ancillary acts which, in the opinion of the curator bonis, but subject to any directions of the Criminal Assets Recovery Committee established under section 65 of POCA, are necessary.

6 The curator bonis shall as soon as possible but not later than within a period of 90 days of this order coming into effect, file a report with the Applicant and the Master of the High Court, indicating the manner in which he:

6.1 Completed the administration of the property mentioned above and

6.2 Complied with the terms of this order.

7 The Registrar of this Honourable Court must publish a notice of this order in the Government Gazette as soon as practical after the order is made.

8 Any person affected by the forfeiture order, and who was entitled to receive notice of the application under section 48(2) but who did not receive such notice, may within 45 days after the publication of the notice of the forfeiture order in the Gazette, apply for an order under section 54 of POCA, excluding his or her interest in the property, or varying the operation of the order in respect of the property.

9 All the paragraphs of the order operate with immediate effect, except paragraphs 4, 5 and 6, which will only take effect on the day that a possible appeal is disposed of in terms of section 55, or on the day that an application for the exclusion of interests in forfeited property in terms of section 54 of POCA is disposed of, or after expiry of the period in which an appeal may be lodged or application be made in terms of section 54 of POCA.

REGISTRAR OF THE ABOVE HIGH COURT

DATE