NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE, PORT ELIZABETH)

CASE NO. 1992/2004

In the matter between

NATIONAL DIRECTOR OF

PUBLIC PROSECUTIONS Applicant

and

PAVANIE WEST (nee RAMASAMY) Respondent/Defendant

JUDGMENT

HARTLE, J:

1. The applicant applies for a "*realisation order*" pursuant to the provisions of section 30 (2) (b) of the Prevention of Organised Crime Act, No. 121 of 1998 ("**POCA**") in respect of certain realisable property

owned by the defendant[1] which is the subject matter of a restraint order of this court against her made final on 24 August 2004. The order prayed for is set out in the following terms:

"1. That in terms of section 30(2)(b) of POCA, the *curator bonis* be authorised to realise the realisable property in such a manner as will in his discretion, yield the highest market-related return in the most cost effective way;

2. That in terms of section 31(1) of POCA, the *curator bonis* be authorised to apply the proceeds of such realisation as follows:

2.1 To pay any outstanding monies in terms of existing obligations on Erf 588, Lorraine having regard to the bondholder ABSA'S right and title over such property;

2.2 To deduct the fees and expenses (costs) of the *curator bonis* calculated in accordance with section 28(3)(c) and Regulation 2 of POCA as well as his costs incurred after the date of the Order, as approved by the Master;

2.3 To calculate the amounts due to Hans Hermann Heiman in terms of the confiscation order dated 27 July 2010 and to pay him accordingly;

2.4 To pay the balance of the Defendant.

3. That the *curator bonis* file his final report on the Master as soon as possible, but not later than 90 days of the Order and serve a copy on the Applicant and the Defendant indicating:

3.1 The manner in which he conducted the administration and realisation of the property since his second report dated 28 July 2010;

3.2 The manner in which he complied with the terms of the Order

1 The respondent is referred to in this judgment as "*the defendant*" within the meaning contemplated by the definition of that appellation in section 12 (1) of the POCA.

4. Costs in the event of the matter being opposed."

2. Erf 588, Lorraine, is the only property which has remained under restraint in terms of the original order, the appointed curator having released the other restrained assets at the defendant's request after she was discharged on 6 October 2006 in terms of section 174 of the Criminal Procedure Act, No. 51 of 1977 on several counts yielding an aggregate benefit value of approximately R281 000.00.

3. The applicant seeks the order supposedly as a natural sequel to the restraint order being the culmination of a three stage process pursuant to the provisions of Chapter 5 of the POCA. It is - so he alleges, to give effect to paragraph 1.4.16 thereof which provides as follows:

"In terms of section 28(3)(c) of the Act the fees and, *ex post facto*, the expenses and disbursements of the curator *bonis* reasonably incurred by him in the execution of his duties which have not been paid out of the estate in terms of paragraph 1.4.4 *supra*, shall be paid **from the proceeds of any confiscation order that may be made against the Defendant, failing which by the State**; provided that the curator *bonis* is entitled to recover interest not exceeding the prime lending rate of the major financial institutions on such expenses and disbursements." (Emphasis added)

4. The expenses and disbursements contemplated by paragraph 1.4.4 of the restraint order relate to those incurred in managing and maintaining the restrained assets which would normally be carried by the estate out of restrained assets. Provision is made for these expenses to be defrayed from the proceeds of the sale of the restrained assets with a view to the

curator properly administering the assets under his control in the event that no liquid assets are available towards this end. These expenses are however not in issue here, the applicant's concern being with the professional fees of the curator.

5. The provisions of section 28 (3) (c) of POCA pursuant to which paragraph 1.4.16 of the restraint order was ostensibly made determines that the high court (which ordered the person against whom a restraint order was made to surrender any property to the appointed curator *bonis*) "*may make such order relating to the fees and expenditure of the curator bonis as it deems fit, including an order for the payment of the fees of the curator bonis-*

   (i) *from the confiscated proceeds if a confiscation order is made; or*

   (ii) *by the State if no confiscation order is made.*"

6. The defendant was ultimately convicted on 8 May 2008 in the commercial crimes court, Port Elizabeth, of theft from her erstwhile employer, Guage Tools and Press CC, involving an amount of R216 424,29.

7. She appealed against her conviction and sentence - partially succeeding, the upshot being that her conviction of theft or attempted theft still in a sum of R157 651,92 was confirmed.

8. At the conclusion of the appeal the applicant sought a confiscation order against the defendant which was finalised on 27 July 2010.

9. The terms of the order are repeated below:

"1. The Defendant has, in terms of section 18(1) of the Prevention of Organised Crime Act 121 of 1998 (POCA) benefited from the offences she has been convicted of.

2. In terms of section 19(1) of POCA the value of the Defendant's proceeds of unlawful activities is R66 566.92 being the capital amount still outstanding.

3. In terms of section 18(2) (a) of POCA, the appropriate amount for a confiscation order against the Defendant is R133 133.84 which is made up of the amount …..[2]

4. A Confiscation Order is accordingly made in the amount of R133 133.84.

5. The Defendant must pay the confiscation order to Pricewaterhouse Coopers, Port Elizabeth:

   5.1 Within 14 days of the expiry of the period allowed for an appeal or review of this order

   5.2 If an appeal or review is lodged, within 14 days of disposal or abandonment thereof.

6. Should the Defendant fail to satisfy this order interest from the 15th day at 15.5% per annum on the amount of this order shall be calculated and

---

2 This paragraph of the order ends abruptly there, but the judgment clarifies how the amount was calculated as follows: "*It is common cause that she benefited from the theft in the amount of R157 651, 92 and that of this R91 085, 00 was repaid to Gauge Tools. This leaves an amount of R66 566, 92 of the stolen money still to be repaid to Gauge Tools*". Further in the judgment he finds the *in duplum* rule to be of application and thus doubles the amount payable: "*An appropriate amount would therefore include interest from the* ***mora*** *dates but the total interest will, by operation of the* ***in duplum*** *rule, be limited to the total capital amount being R 66 566. 92. The* ***total amount*** *therefore capital R66 566. 92 plus interest R66 566. 92 =* ***R 133 133.84***."

capitalised daily in advance on the first date of each calender month, from the date of this order until the full amount plus interest has been paid."

10. Despite the terms of restraint order concerning the source of the curator's fees for administering the restrained assets surrendered to him, regional magistrate *Cooney* in his reasoned judgment pursuant to the confiscation enquiry answered the question whether costs for the curator *bonis* should be included in the "*appropriate amount*" to be paid to the state pursuant to the provisions of section 18(1)(c) as follows:

"Section 18(1) of Act 121 of 1998[3] empowers a court who makes a confiscation order to "make any further orders as it may deem fit to ensure the effectiveness and fairness of that order".

It seems that where a **curator bonis** has therefore had a role to play in managing the defendant's assets under restraint that an appropriate amount for a confiscation order should also include the curator's disbursements.

The applicant has however failed to show exactly which disbursements or expenses should be considered by this court.[4]

3 The full text of this provision is as follows:

"18(1) Whenever a defendant is convicted of an offence the court convicting the defendant may, on the application of the public prosecutor, enquire into any benefit which the defendant may have derived from –

a) that offence;

b) any other offence of which the defendant has been convicted at the same trial; and

c) any criminal activity which the court finds to be sufficiently related to those offences,

and, if the court finds that the defendant has so benefited, the court may, in addition to any punishment which it may impose in respect of the offence, make an order against the defendant for the payment to the State of any amount it considers appropriate and the court may make any further orders as it may deem fit to ensure the effectiveness and fairness of that order."

4 It is not clear why this presented an obstacle to the inclusion of the *curator's* fees in the amount to be paid in terms of section 18(1) since the ambit of these is determined with reference to the provisions of Regulation 2 promulgated under the POCA. It would have been sufficient to have referred to such costs as are allowable in terms of the Regulations. Seemingly the magistrate's unwillingness to include the curator's fees had less to do with the question of his entitlement to these under the POCA than with his unwarranted concern that they should be absolutely quantified. The notion that a curator ought to be reimbursed for his professional fees and disbursements in caring for and managing assets under a restraint order from the confiscated proceeds if a confiscation order is granted appears to be consistent with the provisions of

In the consequences I am unwilling to include any curator's costs in the amount of this order."

11. Both the applicant and the defendant sought to challenge the confiscation order on various bases which I need not repeat here except to note that in a cross appeal launched by the applicant against the defendant's appeal, magistrate *Cooney's* finding that the appointed curator *bonis* was not entitled to fees and disbursements passed without demur on the applicant's part.[5]

12. Much was made of the defendant's failed attempts in various forums to set aside or vary the confiscation order, but I am satisfied that both parties appear to have accepted ultimately – and indeed the applicant has insisted that it is the position, that the confiscation order is definitive of the matter and final in effect. The defendant's last formal attempt to challenge the order on appeal was scuttled when the high court struck the matter from the roll on 4 November 2011.

13. On 23 November 2011 - and pointedly with regard to the period indicated in the confiscation order relative to the conclusion of the appeal in mind, the defendant's present husband, *Phil West*, paid a sum of R158 970.92[6] to the curator *bonis* in satisfaction of the order. The amount paid included interest provided for in paragraph 6 of the order

---

section 28 (3) (c) and the general scheme of the POCA.

5 In the notice of cross appeal delivered by the applicant he sought to challenge only the finding that the *in duplum* rule applied to the determination of the appropriate amount; and the court's failure to have awarded costs to him, including the increased costs of counsel employed at the confiscation hearing.

6 The defendant paid a further amount of R25 837.08 over and above the capital amount referred to in the confiscation order. This further amount represented interest upon the quantum of the order as calculated by the curator *bonis* and was paid to satisfy the order upon the applicant's interpretation thereof.

which, on the applicant or curator's calculation of when the 15th day was fixed in time[7] amounted to R25 837, 08. At the time *West* made the payment he reserved the right - on the defendant's behalf, to challenge the amount which the applicant contended was due in this regard.

14. Other than the additional amount in lieu of interest calculated by the curator - which the applicant accepted stopped interest from running from the date on which *West* paid it, it has not otherwise been suggested that the amount paid on the defendant's behalf was short of the capital or interest specified in the order. However, the applicant persists in applying for realisation of the defendant's property still held by the curator *bonis* under restraint in order "*to pay the curator bonis costs (fees and expenses) as approved by the Master as envisaged in section 28(3)(c) read with regulation 2 of the POCA*" which includes not only fees incurred to date in administering the surrendered property held under restraint, but also such further costs as will be incurred in the process of realisation. In effect therefore this application is for the leave of this court to permit the defendant's property to be realised strictly for purposes of defraying the curator's costs which were not made provision for in the confiscation order.[8]

15. The defendant – who is unrepresented, raises two objections *in limine* to the applicant's application.

7 On the applicant's argument the appeal lapsed on 9 November 2010 in terms of Rule 50 (4) (a) of the Uniform Court Rules.

8 That this was the manifest purpose of the application was confirmed by Mr *Kingsley* who appeared for the applicant during argument. When I queried what, if any amount was still due in terms of the confiscation order, he clarified that what was still needed was the curator's costs which had not being addressed by the regional court.

16. The first is that, since by the applicant's own admission in the founding affidavit the confiscation order was satisfied, this brought a conclusion to the proceedings within the meaning referred to in section 17(d), thus precluding the grant of a realisation order by virtue of the provisions of section 30(1)(c) of POCA.

17. In addition, so she contends, the rescission of the restraint order by the High Court "*became peremptory*" in terms of section 26 (10) (b) of POCA once the confiscation order was satisfied and the proceedings thus concluded. The order which the applicant seeks is therefore "*defective*". Both objections were dismissed out of hand by Mr *Kingsley* appearing on behalf of the applicant as "*red herrings*" and bad in law.

18. On the merits the defendant claims that the application is an abuse of process and vexatious because the applicant is disingenuously seeking to claim the curator's costs which were "*excluded in terms of the restraint order paragraph 1.4.16 in conjunction with paragraph 1.4.4 as well as excluded in the judgment and order of Magistrate Cooney*." The applicant persists in reply that the property under restraint is realisable thus entitling him to obtain an order towards this end.

19. The defendant also counterclaims for a rescission of the restraint order and for a further order directing the applicant, alternatively the curator *bonis*, to repay the sum of R25 837.08 overpaid as "*interest upon the*

confiscation order and 15.5% interest on the quantum paid as interest".

20. In his replying affidavit the applicant purports to reverse the admission made in the founding affidavit that *West* paid what was due in terms of the confiscation order by creating what is in my view an artificial dispute of fact, *viz.* that the payment could not have been made in "*satisfaction*" thereof because of the tentative nature of the tender by him on the defendant's behalf. In this regard it is contended that the wording of the letter giving cover to the cheques comprising the total payment is "*ambiguous at the very least*". It is further, as the applicant avers, an "*ostensible conditional payment*." He adds his denial that the defendant has satisfied the confiscation order "*in the light of the fact that she is bringing a counter claim for part of monies paid to the curator bonis*."

21. It is in my view however of no moment that *West* appeared tentative when making the payments on his wife's behalf. The objective fact is that the appeal/review process ran its course and the payment was made before the 15th court day after the appeal was struck from the roll. The applicant accepted that the amount advanced comprised the capital and *in duplum* interest component, and further that the additional payment (specifically asked for) stopped further interest from running. That *West* protested against the curator's calculations concerning the interest arising from the confiscation order does not in my view operate to negate the payment. It certainly did not influence the applicant's acceptance of the amounts paid by him. If he had any reservation in this regard it was not so expressed in the founding affidavit but was raised

for the first time in reply to counter the suggestion that the effect thereof was to have brought a conclusion to the proceedings.

22. Also the applicant's appreciation of the payment as an *ex gratia* one – and the failure of *West* to clarify whether he was making it on the defendant's behalf as a gift or loan, are similarly in my view of no significance. A confiscation order – despite what is suggested by its label, is not made for the confiscation of a specific object but is a civil judgment for the payment of an amount of money to the State.[9] Of course if a defendant who has been convicted at the stage of the enquiry still possesses criminally acquired goods those will be confiscated but, conversely, if he is no longer so possessed he will be deprived of assets of equivalent value if he has any.[10] A confiscation order is directed at confiscating the *benefit* that accrued to a defendant and depriving him of it. The object therefore is not to penalise a defendant in the sense that it is only he or she who can satisfy the order although Mr *Kingsley* sought to suggest in argument that it was the defendant - being the person involved in the crime, who ought to bear the brunt of making good the value of the benefit received by her.

23. Evidently in this instance the defendant had access to the restrained asset from which she could comfortably meet payment of the judgment, but perhaps the difficulty was that she was prevailed upon in a very short space of time, after it was accepted that there was no longer going to be an appeal or review of the confiscation order, to come up with the monies from a source outside of the realisation of the very property held

9 *Shaik v S* 2008 (5) SA 354 CC at para [24].
10 *Organized Crime and Proceeds of Crime Law in South Africa*, Albert Kruger at p75

as security to satisfy the anticipated judgment. The cooperation of the applicant at the time might have allowed the defendant to resort to the security rather than accepting *West's* assistance on her behalf. But in any event I find nothing remarkable or unnatural about the fact that the payment ultimately came from the defendant's spouse. Even by the payment on her behalf the defendant remained deprived of her ill-gotten gains[11] and the objective of the confiscation order was thereby adequately achieved.

24. The question for determination in this matter is whether - given the peculiar turn of events, the applicant is entitled still to pursue a realisation order; or indeed to have this court redress the issue of the curator's entitlement to costs which the regional magistrate declined to allow as providing a basis for a realisation order. On both accounts the answer must be a resounding "*No*". On the first part, the purpose of a restraint order is to preserve property in the interim pending a reasonably anticipated conviction and confiscation order being issued, so that the property restrained thereby will be available to be realised in satisfaction of such an order.[12] It is by its very nature a temporary interdict. Once the confiscation order has been satisfied (by whatever means in my view if the applicant accepts the payment), the basis for the security falls away and hence also the *raison d'être* for a subsequent realisation order - which is in effect an order for execution in respect of the property restrained in order to meet payment of the confiscation order. That this was intended by the scheme of POCA is made clearer by the provisions of section 30 (1) which requires among its jurisdictional facts for the issue of a realisation order that "*the*

11 *National Director of Public Prosecutions v Rebuzzi* 2002 (2) SA 1 (SCA) at par [19].
12 *National Director of Public Prosecutions v Rebuzzi* 2001 (1) SACR 128 (SCA) at par [4].

*proceedings against (*the) *defendant have not been concluded*". "*Proceedings*" in this regard is a reference to those contemplated by Chapter 5.[13] Section 17 in turn provides that proceedings against a defendant shall be concluded, *inter alia*, when "*the defendant satisfies the confiscation order made against him or her"*. Section 26 (10) (b) further provides that a final restraint order stands until the proceedings against the defendant are concluded. By the applicant's own admission the order has been satisfied. To argue that it has not because it does not take account of curator's fees which were expressly disallowed is an artificial one.

25. On the second part, although it was certainly envisaged by the restraint order that the curator's fees would be sourced from the proceeds of the confiscation order, the order that was ultimately granted by the regional court pointedly put paid to that eventuality. If the applicant was unhappy with this unexpected consequence he ought to have challenged this aspect of the order on appeal or review but was particularly selective regarding the features thereof which troubled him. Therefore the order stands, and is final and definitive of the matter.

26. The applicant appears further to have overlooked the fact that the curator's powers (and the basis for his entitlement to payment of his professional fees and disbursements) had already been provided for in par 1.4.16 of the restraint order in clear and peremptory terms which, as it turned out was subverted somewhat by the magistrate making the confiscation order but refusing the curator's costs. Although a high court may in terms of section 28 (3) (c) of the POCA "*at any time*"

13 See the introductory paragraph to section 17.

make an order relating to the fees and disbursements of a curator after his appointment (and indeed vary or rescind such order) a proper reading of section 28 as a whole indicates that the cut-off date by when such relief can be entertained is up to the point of the issue of the confiscation order because subsection 3 (a) envisages that such an order will make allowance for the curator's costs to be paid from the expected proceeds. Additional costs post realisation may seemingly be authorized by the provisions of section 30 (2) (b) when a realisation order is sought, but that presupposes that the court is entitled to issue a realisation order in the first instance. Further there are only two sources for the payment of such fees: They are either payable from the confiscation proceeds if such order is made, alternatively they are payable by the state where no confiscation order is made.

27. In this particular instance - and given that a basis exists in my view for the restraint order to be discharged (I return to deal with this aspect below), it appears proper that the state ought to be ordered to pay the costs of the curator *bonis*.[14]To insist in the circumstances on extracting them from the defendant (who is incidentally entitled to finality) when they were expressly disallowed - simply because the tenor of the POCA is that they ought properly to be borne from the estate of the restrained realisable property, cannot be countenanced.

28. The curator in this instance has no authority to keep a hold over the restrained assets with a view only to ensuring that the property is realised to defray his costs, provision for which was expressly

14 *NDPP v Tam and Others* 2004 (1) SACR 126 (W) at 131 b

disallowed by the magistrate.[15] Likewise any bid by the applicant to realise the property strictly in order to accommodate the payment of such refused fees would be in contempt of the confiscation order and against the purpose of the POCA and the restraining order (which in effect no longer has any efficacy).

29. Although I should have dealt with this first, the next issue for determination is whether there is any merit in the defendant's preliminary arguments and whether or not she had made out a case for a rescission of the order.

30. I have already to an extent dealt with all of these questions above. The satisfaction of the confiscation order by the defendant (or on her behalf in circumstances where the payment was accepted) had an important consequence in the customary progression of the three stage process envisaged by Chapter 5 of the POCA which has as its apex the issue of a realisation order. It rendered nugatory the need for what the applicant termed the "*next procedural step*". This is because the proceedings against the defendant have been concluded on the objective facts and by virtue of the deeming provisions of section 17.

31. Self evidently the purpose for which the restrained property was being held fell away once the proceeding against the defendant were

15 See *Phillips & Another v Van Der Heever N.O. & Others* [2005] 2 All SA 417 (W) generally concerning the exercise of the curator's powers within the strict confines of the powers permitted by the restraint order. This matter is *inter alia* authority for the proposition that until such time as a confiscation order is granted a curator may not recover any fees or expenditure however legitimately incurred from the restrained assets. How much more so must this be the case where the confiscation order expressly disallows the recovery of these by the curator from the confiscated proceeds?

concluded. Once this stage is reached, section 26 (10) (b) provides a peremptory basis for this court to rescind the restraint order. The reason for this is in my view to guard against the infringement of a defendant's property interests where no lawful basis exists any longer for a restraint to be in place. Our courts have warned of the draconian nature of restraint orders and the need for these to be strictly circumscribed and, by necessary extension, only for so long as a rational need is served thereby. [16] Since the defendant has succeeded in establishing on a preponderance of probabilities that the proceedings against her in terms of Chapter 5 have been concluded within the meaning envisaged by section 17 I am under the circumstances obliged to immediately release the her remaining property from under the restraint,

32. The final issue for consideration is whether she has established her entitlement to the second order prayed for in the counter-application.

33. In this regard she pleads that the difference in approach between her and the applicant/curator concerning the additional payment which is was contended was necessary to stop the running of the interest contemplated by paragraph 6 of the confiscation order relates to the peculiar interpretation accorded by them to the phrase in paragraph 5.2 "*...if an appeal or review is lodged*". The applicant argues that only a legitimate appeal or review was contemplated thereby. Accordingly he fixed the running of interest from the 15th day after the period allowed for an appeal or review, i.e. from 10 August 2010 (*sic*)[17], which was a date fourteen days after the grant of the confiscation order. The

16 *National Director of Public Prosecutions v Walsh & Others* 2009 (1) SACR 603 (T) at par [24].

17 This date should be 16 August 2010 with due regard to court days

applicant expressly disavows that the running of interest was meant to be suspended during the intervening period when according to him the defendant pursued an abortive appeal. The defendant on the other hand claims that interest would only have run from a date fourteen days after the appeal was struck from the roll on 4 November 2011, which eventuality did not arise since payment of the capital was effected within the grace period of fourteen days.[18] It is not otherwise in contention that the additional amount paid was in the exact amount directed by the curator which favoured the applicant's interpretation that the interest in terms of paragraph 6 commenced running on 10 August 2010.

34. An appeal was "*lodged*" by the defendant albeit she ostensibly failed to comply with the rules of court in this regard thus resulting in her being non suited when the appeal was argued. The applicant himself pursued a cross appeal and it was on the basis of a set down by him that the defendant ultimately found herself before the high court when the matter was struck from the roll on 4 November 2011. On a clear reading of paragraph 5.2 of the order however it was not contemplated that only an appeal lodged by the defendant could suspend the running of interest. Further and in any event the applicant gave the impression by his conduct in noting the cross appeal that he considered the allegedly defective appeal lodged by the defendant to be alive and justiciable. In fact he believed the issues raised by him on appeal to be of considerable importance[19]worthy of keeping the appeal process alive, albeit it was eventually accepted that it was in the interests of finality to

18 In this regard see the definition of "court day" in relation to court orders in both the Uniform Court Rules and the Rules promulgated under the Magistrate's Court Act, no 32 of 1944.
19 This is evident from a transcript of the appeal proceedings attached to the applicant's replying affidavit.

dispense with it after the matter was struck from the roll on 4 November 2011. It would therefore in my view be absurd to conclude that no appeal was lodged within the meaning contemplated by paragraph 5.2. I find in the circumstances that the interest contemplated by paragraph 6 did not commence to run and that payment of the amount referred to in paragraph 4 was timeously effected within the grace period for payment to be made after the "*disposal*" or "*abandonment*" of the appeal.

35. The amount paid on the defendant's behalf by *West* in lieu of interest is separate and over and above the capital amount indicated in the confiscation order which it is common cause will be paid to Mr Hans Heimann Herman, the founding member of Gauge Tools. It fairly represents what the defendant is entitled to recover from the curator arising from this court's interpretation of clause 5.2 of the confiscation order. It appears to me proper that the defendant should be reimbursed as there was no basis for the curator to retain the payment beyond the defendant's preparedness to advance the amount to secure a conclusion of the proceedings at least on the applicant's interpretation of what amount would be required to achieve this effect. There further appears to be no reason why, having been deprived of the loss of the monies advanced on the basis that she hoped to be refunded upon the prospect that the monies were found not to be due, she should not be entitled to recover *mora* interest from the date that the payment was made.

36. In the result I issue the following order:

(1) the restraint order is hereby rescinded;

(2) the curator *bonis* appointed pursuant to the restraint order is discharged;

(3) the state is ordered to pay the fees and expenses of the *curator bonis* arising from his control of the restrained assets in respect of which he was appointed;

(4) the applicant/curator is ordered to pay to the defendant, within fourteen days of the date of this order the sum of R25 837.08 representing the amount overpaid in lieu of interest specified in paragraph 6 on the confiscation order;

(5) the amount of R25 837,08 aforesaid shall bear interest at the legal rate of 15.5% per annum calculated from 23 November 2010 to date of final payment; and

(6) there will be no order as to costs.

B C HARTLE

JUDGE OF THE HIGH COURT

Date of hearing : 31 May 2012

Date judgment delivered : 6 September 2012

<u>Appearances:</u>

For applicant: *Mr W Kingsley together with Mrs F Hack*

Instructed by: *The State Attorney, 29 Western Road, Central, Port Elizabeth, Ref. 1247/2004/Y (Mr Myburgh)*

For defendant: *In person*