

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: **62604/2021**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 1 February 2024

SIGNATURE: JANSE VAN NIEUWENHUIZEN J

National Director of Public Prosecutions

Applicant

and

Kurt Robert Knoop N.O.

1st Respondent

Johan Louis Kloppe N.O.

2nd Respondent

Kgashane Christopher Monyela N.O.

3rd Respondent

Juanito Martin Damons N.O.

4th Respondent

Optimum Coal Mine (Pty) Ltd

5th Respondent

Kurt Robert Knoop N.O.

6th Respondent

Johan Louis Kloppe N.O.

7th Respondent

Tegeta Exploration & Resources (Pty) Ltd

8th Respondent

Kurt Robert Knoop N.O.

9th Respondent

Kgashane Christopher Monyela N.O.

10th Respondent

Optimum Coal Terminal (Pty) Ltd	11 th Respondent
Jan Frederick (John) Myburgh N.O.	12 th Respondent
National Union of Mine Workers	13 th Respondent
Templar Capital Limited	14 th Respondent
Liberty Coal (Pty) Ltd	15 th Respondent
The Affected Creditors in the OCM and OCT Business Rescue process	16 th to Further Respondents

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

INTRODUCTION

[1] On 23 March 2022 the court granted a preservation order in terms of the provisions of section 38 (2) of the Prevention of Organized Crime Act, act 121 of 1998 (“POCA”) in respect of the following property:

- 1.1 all shares in Optimum Coal Mine (Pty) Ltd (“OCM”);
- 1.2 the business of OCM (“the business”) as defined in the Business Rescue Plan adopted by the creditors of OCM in September 2020 as it appears on Caselines (017, sub-section HTC1) including but not limited to the assets listed on paginated pages 017-118 to 017-153 and 017-166 to 017-168 of Caselines and
- 1.3 all shares held in Optimal Coal Terminal (“OCT”).

- [2] The applicant, the National Director of Public Prosecutions (“NDPP”), duly brought an application, in terms of the provisions of section 48(1) of POCA, for an order forfeiting to the State the property identified in the preservation order.
- [3] The parties in the forfeiture application are *ad idem* that a forfeiture order should be granted, and the matter has been set down for the court to consider the proposed draft order agreed upon by the parties.

Legal Framework

- [4] It is intrusive at this stage to have regard to the statutory requirements applicable to a forfeiture application.

- [5] Section 50(1) of POCA provides as follows:

*“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; or

*(b) is the proceeds of unlawful **activities**.” (own emphasis)*

- [6] Section 52 makes provision for the exclusion of interests in property.

- [7] Bearing the aforesaid requirements in mind, I now turn to the facts relied upon by the parties in support of the forfeiture order.

Facts

- [8] The facts set out *infra* are common cause between the parties. The facts are summarised in the heads of argument filed on behalf of the NDPP and I quote freely from the heads.

- [9] In April 2016, Tegeta paid R 2 084 210 206, 10 for the acquisition of the Optimum property. R 916 500 000, 00 of the purchase price is the proceeds of unlawful activities, which activities are dealt with separately hereinafter.

The Eskom pre-payment: R 660 000, 00

- [10] On 13 April 2016 Eskom transferred R 660 000 000, 00 to the eight respondent, Tegeta Exploration & Resources (Pty) Ltd (in business rescue) ("Tegeta") as a pre-payment for coal to be delivered over the next five months. Eskom executives represented the prepayment as necessary to avert an impending supply crisis to Arnot Colliery. Their representation was fraudulent, in that:

10.1 the same coal could have been sourced at less than a third of the price from Optimum which, to the knowledge of Eskom had excess coal which it was obliged to supply to Eskom under the Eskom / Optimum Hendrina coal supply agreement, but which Eskom refused to take; and

10.2 even if Eskom wanted to procure coal from Tegeta, there was no need for a pre-payment because Tegata was procuring coal that it on sold to Eskom from Optimum on 30 day terms.

- [11] The true reason for the prepayment was the improper purpose of financing Tegeta's purchase of Optimum.

- [12] The fraudulent acts, consisted of:

12.1 positive misrepresentations made to Eskom's Board Tender Committee ("BTC") regarding the purpose and necessity of the Tegeta pre-payment;

12.2 the failure of BTC member to disclose their conflict of interests;

12.3 the Chief Financial Officer's positive and negative misrepresentation regarding the security for the payments; and

12.4 the Chief Executive Officer's misrepresentation that payment was essential.

[13] Due to the aforesaid misrepresentations Eskom suffered actual prejudice when it unnecessarily parted with R 659 558 079, 00 in circumstances where Eskom could have acquired the coal it required from OCM without any risk and at considerably less cost to Eskom.

The Albatime fixed deposit: R 104 500 000, 00

[14] The Bank of Baroda advanced a loan to Tegeta in the amount of R 104 500 000, 00, for which amount Albatime (Pty) Ltd provided a fixed deposit of R 110 million as security. The R 110 million was the proceeds of crime, in that:

14.1 R 56 million was stolen from the Transnet Second Defined Benefit Fund ("TSDBF") by Regiments Fund Managers, of which R 42 million was laundered on to Albatime to form part of the loan;

14.2 R 74 784 800, 00 flowing from a fee of R 93 480 000, 00 procured by Trillian Asset Management (Pty) Ltd from Transnet through fraud and corruption, before being laundered on to Albatime.

[15] The facts in respect of the TSDBF amount, are as follows:

15.1 the Regiments Group comprises of three companies: Regiments Fund Managers (Pty) Ltd ("RFM"); and Regiments Securities (Pty) Ltd; which are wholly owned subsidiaries of Regiments Capital (Pty) Ltd. Eric Wood and Salim Essa were directors of all three companies and the controlling minds behind them;

- 15.2 in July 2014 and October 2015, TSDBF appointed RFM to administer two asset portfolios with a combined value of R 9 million. This appointment gave Regiments access to TSDBF's Nedbank account;
- 15.3 on 4 December 2015, RFM transferred R 56 179 799 from TSDBF's Nedbank account to Regiments Securities' Nedbank account;
- 15.4 there was no lawful causa for the transfer and TSDBF did not authorise the transfer;
- 15.5 on 7 December 2015, Regiments Securities transferred R 50 million to Regiment Capital's Standard Bank account. In turn, Regiments Capital transferred the R 42 000 000, 00 referred to *supra* to Albatime's Bank of Baroda's account.

[16] The Trillian Asset Management (TAM") facts are as follows:

- 16.1 In the period May to August 2015, Regiments Capital performed certain services for Transnet related to the raising of a R 12 billion Club Loan. TAM performed no services in relation to the Club Loan;
- 16.2 on 27 August 2015, Ramosebudi invited Regiments to send Transnet a motivation to reward the "sterling work" it had done in respect of the Club Loan;
- 16.3 on 10 September 2015, Ramosebudi sent the Regiments proposal to his private Gmail address. By 11 September 2015, Ramosebudi had amended the memorandum, replacing references to "Regiments" with references to "Trillian". Stanley Shane ("Shane"), the chairperson of the Transnet Board Acquisitions and Disposals Committee ("BADC") played a role in the setting up of TAM and shortly before 11 September 2015, Salim Essa acquired control of TAM;

16.4 on 1 October 2015 and at a meeting chaired by Stanley Shane, the BADC approved the appointment of TAM as lead manager for the Club Loan. Shane did not disclose his manifest conflict of interest and Ramosebudi, who participated in the meeting, represented that TAM was responsible for the raising of the Club Loan and was entitled to a R 82 million reward for its work.

16.5 as a result of the aforesaid misrepresentations and on 18 November 2015, TAM, although it had done no work whatsoever, issued an invoice to Transnet for R 93 480 000, 00 (R 82 million plus VAT). The following day a payment instruction was issued and the amount was paid to Tam. There was no lawful basis for the payment.

The Trillian Management consulting loan: R 152 000 000, 00

[17] Trillian Management Consulting (“TMC”) provided a fixed deposit of R 160 000, 00 as security for the Bank of Baroda to advance R 152 000 000, 00 to Tegeta on loan.

[18] During the period 8 March 2016 to 11 April 2016, Regiments Fund Managers transferred an amount of R 172 264 206, 00 from the TSDBF’s Nedbank account to Regiments Securities without a lawful cause or authority from the TSDBF. From Regiments Securities, the amounts making up the R 160 000 000, 00 fixed deposit was transferred from Regiment Securities to TMC.

Forfeiture

[19] The undisputed facts prove that only R 916 500 000, 00 of the total OCM purchase price of R 2 084 210 206, 10 was proceeds of crime. This represents 43.97% of the total purchase price.

[20] In view of the aforesaid and in order to achieve a proportional forfeiture order, the parties utilised the current cash value of the business of OCM in the

amount of R 1,05 billion and calculated the proportional amount to be forfeited to be R 461 721 661, 90.

Conclusion

- [21] In view of the aforementioned undisputed facts I am satisfied that the amount of R 461 721 661, 90 is, on a balance of probabilities, the proceeds of unlawful activities.

Order

- [22] In terms of section 50 (2) provides that a court, when granting a forfeiture order, may make any ancillary orders that it considers appropriate.
- [23] The parties have agreed to an order that would enable OCM to exist business rescue and to trade as a going concern in future. I am satisfied that the order is appropriate as contemplated in section 50(2) of COPA. The continued existence of OCM will contribute to the economic growth of South Africa and will more importantly provide employment for the more than 500 previous employees of OCM.

In the result, I grant an order in terms of the order attached hereto marked "X".

N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT
DIVISION, PRETORIA

DATES HEARD:

30 January 2024

DATE DELIVERED:

1 February 2024

APPEARANCES

For the Applicant: Advocate M Chaskalson SC
Assisted by: Advocate M Sibande
Instructed by: Kunene Rampala Inc

For the 1st to 11th Respondents: Advocated G Wickins SC
Assisted by: Advocated L Van Tonder
Instructed by: Smit Sewgoolam Inc

For the Board of the 8th Respondent: Advocate NF De Jager

For the 13th Respondent: Advocate Adv M Desai
Instructed by: Ulrich Roux And Associates

For the 14th & 15th Respondents: Advocate A Bham SC
Advocate P Stais SC
Advocate J Brewer
Advocate L Quillan
Instructed by: Tabacks Attorneys