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**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: 4395/2023
4647/2023**

In the matter between:

**THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**

Applicant

and

**MAINE MANAGEMENT & CHARTERED
ACCOUNTANT (PTY) LTD**

Respondent

HEARD ON: 25 JANUARY 2024

CORAM: NAIDOO, J

DELIVERED ON: 19 MARCH 2024

[1] Two Applications for Reconsideration of preservation orders bearing the case numbers cited above, serve before me. Each 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). For convenience, I shall refer to the applicant in the main applications as the NDPP and Maine Management and Chartered Accountant (Pty) Ltd as the respondent. The NDPP was represented by Adv (Ms) S Khumalo, while the respondent was represented by Adv SJ Reinders.

- [2] The application under case number 4395/2023 was issued on 21 August 2023 and the preservation order was granted by this court on the same day. In that matter, the applicant (the NDPP) sought to freeze an amount of One Million Nine Hundred and Seventy One Thousand Six Hundred and Fifty Seven Rand and Seventy Five Cents (R1 971 657.75), together with interest thereon (the property), held at the First National Bank (FNB), under account number 6[...].
- [3] The application under case number 4647/2023 was issued on 5 September 2023, and the preservation order was granted on the same day. In this matter, the applicant sought to freeze an amount of Two Million Two Hundred and Fifteen Thousand and Eighty Four Rand (R2 215 084.00), together with interest thereon (the property) held at First National Bank (FNB), under account number 6[...]. I mention that in the application for reconsideration in respect of both matters, the respondent asked to be joined as a party as it has a substantial interest in the matter. It rendered the services to the municipality and has therefore earned the money, which is payable to it. The applicant's response is that the respondent is recognised as an interested party so there is no need for joinder. When it files its affidavit in terms of section 39(5) it will be a respondent
- [4] The Mangaung Metropolitan Municipality (the municipality) awarded a tender to the respondent to verify municipal customers who qualified as indigent customers in accordance with the municipality's indigent policy (the policy). The tender was awarded on 3 March

2022. The contract was to commence on 7 March 2022 and end on 6 March 2023, but was extended to 31 August 2023. The policy set out the detailed qualification criteria for indigent customers/households, the manner of verification and the process to be followed, vis-à-vis the interaction with the municipality after verification, to obtain approval of such verification. In essence, the respondent would conduct the verification of the relevant customers and submit applications to the responsible municipal official, who would in turn ensure that all information regarding the applications is verified.

[5] The municipal official would then submit the application and recommendation to the relevant supervisor for review and submission to the relevant committee or body for approval. The municipal supervisor designated to deal with indigent applications in this case was Salome Mamakhooa Makhooa (Makhooa), who was employed by the municipality as Customer Service Manager. Her role was to compile all pre-approved and rejected applications and hand them to the relevant manager indicating which were pre-approved and which were rejected. The respondent was instructed to contact Makhooa to obtain information about the full scope of work. The respondent was also obliged to provide Makhooa with an estimate of hours to be worked and its costs associated with such work. Its performance was subject to monthly monitoring, the results of which were to have been communicated to Makhooa.

[6] On 15 June 2023 the respondent rendered two invoices to the municipality, for R1 587 327.75 and R384 330.00 respectively,

totalling an amount of R1 971 657.75. This latter amount is the subject matter of the preservation order that was granted on 21 August 2023. A payment requisition was signed on 27 June 2023, by the Acting Chief Financial Officer (ACFO), approving payment of the amount of R1 971 657.75 to *“Maine Management and CA Inc”*, for *“Indigent Verifications Vol 12 15 May to 15 June 2023”*. The ACFO certified *“I hereby certify: (1) That the allocations above are correct; (2) the prices are reasonable or according to contract; (3) The estimated provision is sufficient to meet the requested payment; and (4) That the necessary authority for the payment has been obtained”*. The payment requisition also indicates that Makhooa requested the payment, and bears a signature, certifying as follows: *“I hereby certify that the abovementioned amount is due to the payee specified and that all goods/services have been rendered”*.

- [7] On 7 August 2023, the municipal official responsible for capturing municipal payments brought the payment requisition to Makhooa’s attention. The latter denied any knowledge of the payment requisition, that she had made such a request, or that she had signed the document. She denied that the signature on the document was hers. The respondent confirms that such payment was made into its bank account, which fact was verified, during the investigation of this matter, by Christian Sebue Ralekoa, a senior analyst employed by the Financial Intelligence Centre. He found that the said amount was transferred from a Nedbank Account held by the Municipality to the respondent’s bank account held at FNB, under the account number I mentioned earlier.

- [8] Ralekoa established further that on 8 August 2023, the amount of R1 971 657.75 was credited to the respondent's bank account, and that the day before, on 7 August 2023, there was a negative balance in the amount of R327 968.62 in the respondent's bank account. On the same day that its account was credited with the abovementioned amount, three debit transactions totalling R85 440.24 and 39 transfers into the names of various individuals in the amount of R316 081.33 were made, leaving the account with a positive balance of R2 946 973.06. The latter amount included an overdraft facility of R1 400 000.00. Ralekoa indicated that there were no further credit transactions on the respondent's account after receipt of the amount from the municipality.
- [9] The proceedings under case number 4647/2023 arise from the same tender and contract mentioned in respect of case 4395/2023. The same procedures for submission and verification of Indigent Applications, as I have set out earlier, were also applicable in this matter. On 17 August 2023, Makhooa had access to a requisition cheque in the amount of R2 215 084.00. She requested further documentation to determine what the payment was for and received two invoices that were issued by the respondent totalling the amount I mentioned, for the period 1 May to 15 May 2023. The requisition was very similar to the one I described earlier. In the space for person requesting the payment, was indicated Makhooa's name, which was struck out and above it was written the name BL Moiloo (Moiloo), purporting to be the finance manager, which she apparently was not. Investigations revealed that Moiloo was employed by the municipality as a Data Analyst manager. At the time the application was issued, she was acting in the position of

General Manager Revenue, and was not authorised to sign requisitions for payment. The requisition came from a cheque requisition book which was issued exclusively to Makhooa's department, namely the Customer Service Department, of which Makhooa is the Manager.

[10] Makhooa had, a few months earlier, spoken to Molioa, expressing her concern about invoices being issued by the respondent without submitting proof of work being done. Makhooa informed Moiloa that she (Makhooa) will not sign or approve invoices if proof of the work having been done is not submitted. Moiloa then informed Makhooa that she (Moiloa) will sign and approve such invoices herself. Makhooa alleges that from then Moila approved and signed for services allegedly rendered by the respondent, without Makhooa's knowledge. She alleges that after she refused to sign invoices without proof of work done being submitted, the requisition book went missing from her office and was still not located at the time of deposing to her confirmatory affidavit in the application under case number 4647/2023.

[11] This in essence, was the information before the two judges who granted the preservation orders on 21 August 2023 and 5 September 2023 respectively. In the applications for reconsideration in both matters, the respondent denies that it was involved in any fraud or unlawful activities in respect of the work it rendered in terms of the tender awarded to it. The respondent alleges that it is a reputable company registered in South Africa and provides assurance and advisory services to clients in the

private and public sectors. It has offices in various provinces of South Africa. The property which is the subject matter of the two applications for preservation orders are not proceeds of unlawful activities or fraud, forgery and/or uttering. There was, therefore, no need for the preservation orders to be granted.

[12] The parties agreed that the respondent would furnish the NDPP with information to show that the services, for which it issued invoices to the municipality, were rendered. To this end, the respondent compiled extensive spreadsheets with information of all the work it alleges it has undertaken in terms of the tender for verification of Indigent Applications. By the time the application for reconsideration in case 4647/2023 was issued, the respondent had not finalised the collection and compilation of the outstanding information. Correspondence was addressed to the NDPP by the respondent's legal representatives indicating that in the event that the applicant could furnish the NDPP with the information they required, there would be no basis for the preservation orders. The NDPP holds a different view.

[13] In its Reply to the Reconsideration Application, the NDPP dealt with issues relevant to both applications. With regard to the furnishing of the information by the respondent representing work the respondent alleges it has done, the NDPP admits that the spreadsheets were furnished to it, but denies that these prove that the respondent did the work for which it issued invoices. The NDPP elaborates that the invoices relevant to both applications list the number of recommended and rejected applications, without

attaching any of the applications and supporting documents which were specified in the indigent policy, namely the prescribed application form accompanied by the latest municipal account, proof of identity, proof of household income and 3 -months' bank statements. The respondent also did not furnish proof that these applications were submitted to Makhooa, as it was required to do.

[14] The NDPP further alleges that the item descriptions and dates on the invoices relevant to the property under case number 4647/2023 do not match the information contained in Annexure A in respect of recommended and rejected applications. The NDPP also asserts that it is not clear what Annexure A purports to be, as it does not reflect the names of the indigent applicants. The respondent invoiced for 5048 recommended applications, yet Annexure A contains a list of only 4530 file names, without any explanation from the respondent for this discrepancy. The NDPP argues that the respondent relies on Annexure A to prove that it has rendered the services for which it was paid, and therefore bears an evidentiary burden to explain how Annexure A correlates with the invoices it issued.

[15] I pause to note that the parties filed further affidavits without seeking the leave of the court to do so. The respondent filed a Supplementary Affidavit to explain the process it adopted to deal with indigent applications. The NDPP filed an affidavit in terms of Rule 6(5)(e), in which it dealt with the additional information furnished to it by the respondent, purporting to be proof of work done and attached to its affidavit a further affidavit by Makhooa

regarding the challenges in respect of verifying the information supplied by the respondent. The respondent then filed a Further Supplementary Affidavit to deal with Makhooa's evidence. Both parties simply flouted the Rules of Court, without seeking condonation therefor or the leave of the court to file such further documents. In any event this additional information does not appear to be intended for this court to take into account in reconsidering the preservation orders. Even if that was the intention, then the proper course to place such information before this court has not been followed, and this court is not obliged to consider such evidence.

- [16] I have dealt with the information that was before the two judges who granted the two preservation orders in this matter. The respondent alleges that if those courts had before them the information it now furnishes, neither of the preservation orders would have been granted. Uniform Rule 6(12)(c) provides that:

(c) A person against whom an order was granted in such person's absence in an urgent application may by notice set down the matter for reconsideration of the order.

This subrule affords the court hearing the application for reconsideration a wide discretion in respect of hearing additional facts and circumstances raised by the applicant for reconsideration.

"The dominant purpose of the subrule is to afford an aggrieved party a mechanism designed to redress imbalances in, and injustices and oppression flowing from an order granted as a matter of urgency in his absence. The

rationale is to address the actual or potential prejudice because of an absence of *audi alteram partem* when the order was made". [See *Erasmus Superior Court Practice, RS 22, 2023, D1 Rule 6-60 and the cases cited therein.*]

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

- 17.1 Makhooa was the authorised official to receive the recommended and rejected indigent applications, which she would process, after verification, and submit for approval;
- 17.2 proof of the work done and the invoices in respect thereof were to be submitted to her;
- 17.3 Makhooa was the only authorised official who could requisition payment on the invoices issued;
- 17.4 Makhooa would only approve invoices and requisition payment thereon, if proof of the work done by the respondent was submitted with the invoices;
- 17.5 proof of work done by the respondent was not submitted to Makhooa
- 17.6 Mookhooa did not sign either of the requisitions relevant to the two applications before me, nor did she have knowledge of the two requisitions;
- 17.7 both requisitions appear to have been signed by Moilooa, without any evidence that proof of the work done by the respondent having been submitted to the municipality

17.8 Moilola was not authorised to deal with indigent applications, nor was she authorised to approve and sign requisitions for payment in respect of such invoices.

[18] The respondent has not in the two applications before this court denied that the indigent applications and invoices were not submitted to Makhooa, and that Moilola was not authorised to sign the requisitions mentioned earlier. The respondent has also not dealt with the allegation that Makhooa did not receive the proof of work it had done, nor is there any indication by the respondent that such proof was submitted at all. This was a necessary step in the process, stipulated in the indigent policy, of submitting recommended and rejected applications, as this would be the basis for making payment to the respondent. Moilola's lack of authority to approve the invoices issued by the respondent and much less to requisition payment on those invoices, in itself speaks of unlawful activities, as the unlawful and irregular requests for payment directly resulted in such payment being made to the respondent.

[19] In reconsidering the matter, and taking account of all the additional facts, circumstances and information placed before me, it appears to me that the NDPP has made out a case for the strong belief that the property preserved in terms of the preservation orders of 21 August 2023 and 5 September 2023, were indeed the proceeds of unlawful activities. This belief was further strengthened by Makhooa's evidence that she personally observed a municipal official handing to personnel from the respondent's office, indigent applications which were already approved and captured on the municipality's system. She sent an email internally enquiring about

this and why this was done without her knowledge or authority. She further asserts that that the respondent has never provided the municipality with physical indigent applications as proof of work done in order for such to be verified.

[20] I am consequently of the view that even if the additional information that the respondent has placed before this court were to have been in front of the judges who granted the preservation orders, such orders would still have been granted, as there is *prima facie* evidence of unlawful activities, which led to the respondents being paid the monies that are the subject of the preservation orders

[21] In the circumstances, I make the following orders:

21.1 Case 4395/2023

The application for Reconsideration is dismissed with costs.

21.2 Case 4647/2023

The Application for Reconsideration is dismissed with costs

NAIDOO. J

On behalf of the applicant:

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