Reportable:	**YES** / NO
Circulate to Judges:	**YES** / NO
Circulate to Magistrates:	YES / **NO**
Circulate to Regional Magistrates:	YES / **NO**

IN THE HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE DIVISION, KIMBERLEY

Case No: 2746/2017
Heard on: 07/06/2019
Delivered on: 12/07/2019

In the matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **APPLICANT**

And

JERMAINE CHARLES JOHNSON **FIRST RESPONDENT**

YANFANG QIU **SECOND RESPONDENT**

JUDGMENT

MAMOSEBO J

[1] This is an application by the National Director of Public Prosecutions (NDPP) in terms of s 48(1) of the Prevention of Organised Crime Act,

121 of 1998 (POCA), for an order declaring forfeited to the State a Volkswagen Polo with registration numbers and letters [….], chassis number WVWZZZ6RZDY137775 and engine number CTH033333 (VW Polo) and a cash amount of R2 448 240 (Two Million Four Hundred and Forty Eight Thousand Two Hundred and Forty Rand) (the cash).

[2] The issue that stands for determination is whether the VW Polo and the cash should be forfeited to the State in terms of Chapter 6 of POCA. To arrive at the answer it must first be determined whether the VW Polo was an instrumentality of an offence under POCA and whether the cash was the proceeds of unlawful activities. The NDPP had applied for, and was granted, a preservation order on 19 October 2018.

Background facts which are mainly common cause

[3] The first respondent, Mr Jermaine Charles Johnson (Johnson Jnr), was handed a locked briefcase containing a cash amount of R2 430 000.00 to transport to Cape Town. As a means to transport this cash he was provided with a white VW Polo, the property of the second respondent, Ms Yanfang Qiu. Johnson Jnr was further given an additional cash amount of R20 000.00 kept in a Pick 'n Pay plastic bag, of which R5000.00 was for fuel and food while R15 000.00 was his payment.

[4] Johnson Jnr was the driver of the VW Polo and was accompanied by his cousin, Mr Deavon Noble. The two were stopped by the South African Police Service (SAPS) members on the N1 at a roadblock in Colesberg in the early hours of 21 September 2017 at 00:30. The VW Polo and its contents were searched but the police were left with a locked briefcase which they could not open. Johnson Jnr was unable to provide the code to unlock it. He telephonically contacted his father, Maj Gen Charles

Johnson, Component Head: Crime Investigation Services, Detective Services at the police Head Office in Pretoria (Major-General), who furnished the said code. The police discovered a cash amount of R2 430 000.00 contained therein together with the cash amount of R18 240.00. They confiscated the money as well as the VW Polo and proceeded to the Colesberg Police Station. The money was sealed and registered in the SAP 13. Johnson Jnr and his cousin were taken in for questioning and later arrested and charged with the offence of money laundering.

[5] Mr Eugene Brian Ontong, deposed to the founding affidavit on behalf of the NDPP. He relied on the supporting affidavits by Jacobus Smit, a Senior Financial Investigator attached to the Asset Forfeiture Unit (AFU), and SAPS members who participated at the roadblock, Const Zikali Nodoba, Sgt Mothubedi Lekeka, Const Andries Ngwane, the police official on standby, Sgt Thozamile Ziswana, and W/O Neels from the Local Criminal Record Centre as well as that of the Major General. It is on the basis of their affidavits read with the respondents' answering affidavits that the NDPP urged me to find that the VW Polo was an instrumentality of an offence and that the cash in question was proceeds of unlawful activities.

[6] Crucial to this entire application is the following background deposed to by Johnson Junior's father, a major-general in the SAPS. Undoubtedly, he understands the implications of an affidavit. He states that he was approached by a certain Mr Leon, a Chinese national, known to him since 2002 as an informant who assisted him in numerous kidnapping cases. The said Mr Leon informed him that he needed a driver to transport money for him from Pretoria to Cape Town. He offered Johnson Jnr for that purpose. Mr Leon informed Maj Gen Johnson that he has had past

encounters during which the Chinese nationals who transported money on his behalf were robbed by the police or traffic officers or even other individuals who extorted payment from his couriers. There is no documentary evidence to this effect nor that the incidents were reported to the police or that the Major-General investigated Mr Leon's claims.

[7] Maj-Gen Johnson maintained that his son had transported money on four or five occasions using the white VW Polo which he had in his possession for about a month before his arrest in September 2017. The General contacted Mr Leon who not only furnished him with the required code but also with the exact amount of what was contained in the brief case.

[8] The information furnished by 'the General enabled the police at the roadblock to unlock the briefcase. This evidence corroborates the evidence in the affidavit deposed to by Sgt Ziswana that Johnson Jnr explained to him that he was employed by a Chinese national called Mr Qui to whom the VW Polo belonged. He used the VW Polo to transport money from Pretoria to Cape Town and it was not his first time to be caught. The term 'caught' was used. The Oxford Dictionary defines the word 'catch' to mean 'to stop and hold a moving object especially in the hands' or 'to capture after chasing them or by trapping them, etc, to seize and hold'. Wikipedia shows arrest as the equivalent of 'caught'. It can be said that when Johnson Jnr told the police he was not "caught" for the first time he implied that he was previously arrested under similar circumstances.

<u>Instrumentality of the offence</u>

[9] Section 1 of POCA defines instrumentality of an offence as 'any property which is concerned in the commission or suspected commission of an offence at any time before or after the commencement of this Act, whether committed within the Republic or elsewhere.' Mpati DP and Cameron JA, writing for the unanimous court, in *National Director of Public Prosecutions v 37 Gillespie Street Durban (Pty) Ltd and Another; National Director of Public Prosecutions v Seevnarayan*[1] pronounced that by adopting the definition it was clear that the legislature sought to give the phrase a wide meaning.

[10] The Supreme Court of Appeal (SCA) interpreted the words 'concerned in the commission of an offence' used in the definition of 'instrumentality of an offence' in s 1 to mean that there had to be a reasonably direct link between the crime committed and the property in question. See *National Director of Public Prosecutions re Application for Forfeiture of Property in terms of ss 48 and 53 of the Prevention of Organised Crime Act, 1998*[2] .

Mpati DP et Cameron JA made the following remarks in *National Director of Public Prosecutions v RO Cook Properties (Pty) Ltd*[3]*:*

"As suggested in *National Director of Public Prosecutions v Prophet* [2003 (2) SACR 257 (C) at para 26], the determining question is whether there is sufficiently close link between the property and its criminal use, and whether the property has a close enough relationship to the actual commission of the offence to render it an instrumentality. Every case will of course have to be decided on its own facts."

[1] 2004 (2) SACR 208 (SCA) at 223f (para 12)
[2] Unreported case number 2000/12886 (WLD0 at para 12
[3] 2004 (2) SACR 208 (SCA) at 230d - e

[11] Mr R Mastenbroek, counsel for the respondents, argued that the NDPP has not set out clearly to the respondents the case they are called upon to answer. He was referring to para 7 of the founding affidavit which reads:

"[7] For reasons that will be dealt with below, it is submitted that the property are instrumentalities of an offence or the proceeds of unlawful activities referred to in Schedule 1 i.e items 26 (any offence relating to exchange control), 32 (any offence referred to in Chapter 3 or 4 of POCA)[4], 33 (any offence the punishment wherefore may be a period of imprisonment exceeding one year without the option of a fine i.e section 64 of Financial Intelligence Centre Act 38 of 2001 (FICA) and/ or 34 (any conspiracy, incitement or attempt to commit any offence referred to in Schedule 1 of POCA) (the offences)."

The respondents did not challenge the interpretation of the definition of instrumentality of an offence. They sought to challenge whether an offence was committed and that the respondents had nothing to be held for or answerable for.

[12] Ms Van Dyk, counsel for the NDPP, submitted that the averments by the NDPP are that the VW Polo was used as the instrumentality of the offence whereas the cash was proceeds of unlawful activities hence the use of the word "or" by the NDPP. Johnson Jnr appeared in a criminal court on a charge of money laundering, however, it was contended, criminal proceedings are distinct from civil proceedings. Counsel further submitted that the focus when determining whether property is an instrumentality of an offence the guilt or wrongdoing of the owner is not primarily relevant.[5] The focus is on the role that property played in the commission of the offence. I agree. The property can still be forfeited even when no criminal proceedings are pending. See *National Director of*

[4] Chapter 3 deals with offences relating to proceeds of unlawful activities, e.g,(4) money laundering, (5) assisting another to benefit from proceeds of unlawful activities (6) acquisition, possession or use of proceeds of unlawful activities. Chapter 4 deals with (9) gang related offences.

[5] National Director of Prosecutions and Another v Mohammed NO and Others 2002 (4) SA 843 (CC)

Public Prosecutions v 37 Gillespie Street Durban (Pty) Ltd and Another; National Director of Public Prosecutions v Seevnarayan[6].

[13] The pronouncements pertaining to a matter being struck off roll by Tokota J in *Jojwana v Mene and Another*[7] are insightful:

> "[10] The striking of the matter from the roll has nothing to do with the merits of the case. In civil matters it often happens that if a party has either failed to comply with practice directives such as pagination, filing of heads of argument etc, or that the applicant or plaintiff failed to appear when the matter was called, the matter is struck from the roll. In practice where the matter has been struck from the roll under those circumstances it may be re-enrolled upon the delivery of an affidavit explaining the reasons for the failure to comply with the practice directive and/or failure to appear when the matter was called. In this context therefore striking of the matter from the roll is not aimed at terminating the proceedings but merely suspends the hearing thereof pending an application for re-instatement."

I therefore find that the contention by Johnson Jnr that the criminal charges against him were struck off the roll is of no moment.

[14] I am guided and mindful of the Constitutional Court's finding[8] that a deprivation of property is arbitrary when the statute does not provide sufficient reason or is procedurally unfair. The preamble of POCA recognises, among others, that no person should benefit from the fruits of unlawful activities nor be entitled to use property for the commission of an offence.

[15] The question to be answered is whether there is a functional relation or a direct causal connection between the VW Polo and transportation of the

[6] 2004 (2) SACR 208 (SCA) at 222 (para 10)
[7] (5435/17) [2018] ZAECMHC 54 (11 September 2018)
[8] Mkontwana v Nelson Mandela Metropolitan Municipality & Another; Bisset & others v Buffalo City Municipality & others; Transfer Rights Action Campaign & others v MEC, Local Government and Housing, Gauteng, & others (KwaZulu-Natal Law Society & Msunduzi Municipality as *Amicus curiae*) 2005 (1) SA 530 (CC) para 35

money? The VW Polo made it possible or facilitated the commission via the transporting of the cash.

I find that the VW Polo played a direct role in the commission of an offence. I will deal later with the offence in the paragraphs that follow.

[16] Ms Van Dyk submitted that the NDPP has listed several offences as reflected at para 7 of the founding affidavit as some of the possible charges and offences listed under Schedule 1 of POCA as a basis of which the forfeiture application can be brought. She maintained that the respondents have contravened s 64 of the Financial Intelligence Centre Act[9] which stipulates:

"64. **Conducting transactions to avoid reporting duties**

Any person who conducts, or causes to be conducted, two or more transactions with the purpose, in whole or in part, of avoiding giving rise to a reporting duty under this Act, is guilty of an offence."

[17] Under this head, and it becomes clearer hereunder, the movement of the money is highly questionable but certainly suspicious and has not been cogently explained by the respondents. The claims of the huge casino winnings as well as the substantial US Dollars which apparently changed hands without any reporting to the authorities falls squarely within the prescripts of this Act. The fact that no authorised mechanism was used to transport the money but rather a youthful courier or "mule" to act as a decoy shows the extent to which the respondents stooped. Mr Mastenbroek gave the excuse that the inability by the respondents to furnish a cogent explanation that satisfied the NDPP is no reason to deprive the owners of the properties of their ownership. I disagree. The

[9] Act 38 of 2001

respondents had the responsibility to deal with all factual averments fully and adequately in their answering affidavits.

[18] In as far as Item 26 of Schedule 1 of POCA is concerned, the respondents stood to be charged with any offence relating to the Exchange Control Act based on their version that the two Chinese nationals, Messrs Yehong Wu and Yexing Wu (the Chinese nationals) entered South Africa in possession of US dollars and failed to disclose or declare them. These are civil proceedings for forfeiture of the said properties. In the respondents' response to Rule 35(12) Notice to produce documents in the preservation application the following was stated:

"The Chinese Nationals were not asked to declare the amount of US Dollars brought into the country, alternatively, they were not obliged to declare same."

[19] Ms Qiu furnished the following explanation in her answering affidavit in the preservation application:

"28.4 The Chinese nationals explained they brought a substantial amount of US Dollars with them when travelling from China and enquired whether they could pay in US Dollars;

29. Prior to their departure, the Chinese nationals duly paid me R2 430 000.00 which I kept in safekeeping until Salmar requested payment."

Mr Yehong Wu stated in his supporting affidavit that during their visit to South Africa they stayed in numerous casinos where they often gambled and won substantial sums of cash exceeding R2 500 000.00. During March 2017 Ms Qiu was entrusted with an amount of R2 430 000.00 for the purchasing of the oysters from Salmar Trading (Pty) Ltd based in Cape Town.

[20] Ms Van Dyk submitted that it is the responsibility of any person entering the country with foreign currency to declare it. The exact substantial

amount with which the Chinese Nationals allegedly entered the country remains undisclosed. The money in question is said to be the property of Mr Yehong Wu and Mr Yexing Wu who failed to enter an appearance to defend this application as interested parties as envisaged by POCA.

[21] As stated Johnson Jnr and his cousin were also arrested and charged with money laundering. Chapter 3 of POCA stipulates:

"4. Money laundering. – Any person who knows or ought to have known that property is or forms part of the proceeds of unlawful activities and –

(a) Enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or

(b) Performs any other act in connection with such property, whether it is performed independently or in concert with any other person, which has the likely effect –

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

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

(aa) to avoid prosecution; or

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

[22] Mr Mastenbroek submitted that the NDPP is required to allege and prove the existence of the proceeds of unlawful activities and not have a mere suspicion of unlawful activity. It was argued on behalf of the NDPP that the respondents, in using the VW Polo to transport the money, were concealing or disguising the nature, source, location disposition of the cash in addition to avoiding the reporting duty pertaining to the said money.

[23] I have already stated that the cash was kept in a locked briefcase. Johnson Jnr had to contact Maj Gen Johnson, his father, who in turn had to contact the said Mr Leon for the code to unlock the briefcase. Mr Mastenbroek argued that it is not a crime to drive through the Karoo in the middle of the night with a large amount of cash stuffed into a suitcase. This argument is puerile. No one said it was an offence. The founding affidavit and all the supporting affidavits contained averments covering all material events that occurred at the roadblock and prior to 21 September 2017.

[24] In her answering affidavit, Ms Qiu only stated that she notes the contents of para 7 of the founding affidavit relating to the offences. She further notes the contents of the affidavit deposed to by Maj Gen Johnson as recorded by the NDPP but makes a bare denial that all the contents are a true representation of the facts. Noting averments does not amount to a pleading because a litigant neither admits nor denies the specific allegations. In *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*[10] Heher JA made these insightful remarks:

"[13] ……When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his

[10] 2008 (3) SA 371 (SCA) at 375 (para 13)

client disputes as to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter."

These pronouncements are equally relevant to the bare denials in the answering affidavit of Johnson Jnr pertaining to the averments by Maj Gen Johnson.

[25] The following remain very peculiar to me:

25.1 Mr Johnson Jnr claims to have been contacted by the second respondent, Ms Yanfang Qiu, an acquaintance, who asked him to transport a briefcase on her behalf to Cape Town. He does not specify how she contacted him. It is also unclear why he refers to her as an acquaintance. If she is the one who contacted him why would he, upon demand by the SAPS members for the code to unlock the briefcase, contact his father and not his acquaintance?

25.2 If the US Dollars that the Chinese nationals entered the country with were exchanged for South African currency why were supporting documents to that effect not produced used to substantiate the averment? On the other hand if the cash was derived from winnings from casinos what prevented the respondents from attaching supporting documentation to that effect?

25.3 The discussion between Ms Qiu and the Chinese nationals pertaining to the procurement of oysters purportedly took place in March 2017 and cash of R2 430 000.00 was also said to have been paid over to her in March 2017. At this stage Salmar Trading, which was apparently approached for the oyster deal by Ms Qiu, did not even possess any permit or licence to trade in oysters. There is further no proof of a conversion of the currency from US Dollars to Rands before Ms Qiu was entrusted with the cash. In South Africa cash payment includes EFT, which is electronic transfers. Mr Tsz Chueng, a director of Salmar Trading (Pty) Ltd, deposed to a supporting affidavit that Salmar received the news that the licences and permits ought to be ready by November 2017. He was then advised that the money will be delivered in September 2017.

25.4 The second respondent (Yanfang Qiu) failed to deal with the averment by the NDPP that the copy of a passport attached to her answering affidavit is either fake or not her passport because it does not reflect the name of the passport holder. What exacerbates the failure by Ms Qiu is that she was aware that Mr Willem Jacobus Steenkamp of the Department of Home Affairs had deposed to a section 212 affidavit as quoted below but she remained indifferent. He stated:

> "Passport numbers [….] and [….]. Both passports reflect the particulars of Yanfang Qiu a citizen of the People's Republic of China with date of birth, 31 January 1982. Comments on the MCS indicate that her application for Permanent Residence was approved on 24 February 2009. Movement on her traveller's record show that her last entry into the country was on 09 October 2009, no other entry or departure was detected after the indicated date. Passport with number [….] was only used once when she entered the country on 26 July 2005."

Pertaining to the Chinese nationals Mr Steenkamp had this to say:

> "Third part of the request deals with a Yehong Wu and Yexing Wu. The MCS reflects no records of the two names."

It is on this basis that the NDPP urged me to find that the explanation pertaining to the origin of the money is false and fabricated and should be rejected. Mr Mastenbroek was invited during the application to address me on the issue of the passports but the argument was sterile, to say the least.

[26] The National Regulator for Compulsory Specifications (NRCS) issued a certificate to Salmar on 20 December 2017. The roadblock which resulted in the seizure of VW Polo and the cash occurred on 21 September 2017. I have already pronounced in the preservation application the significance of the alleged presence or visit of the Chinese Nationals in March 2017 which allegedly resulted in substantial casino winnings which were not supported by any documentation. It is also inexplicable how the Wu's or Salmar Trading would have known the exact required amount of R2 430 000.00 if Salmar was unlicensed at that stage and the certificate issued, valid for three months, was meant for Salmar to notify the NRCS of its compliance with the requirements that their facilities could handle and package oysters. It was not a licence for Salmar to start the trade in oysters.

[27] POCA defines 'proceeds of unlawful activities' as meaning:

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

[28] The definition is wide and applies to individual wrong-doing[11]. Although the submissions by the NDPP regarding the cash are based on inferential reasoning the principles regarding a reasonable inference being drawn are based on the following cases:

[11] National Director of Public Prosecutions v RO Cook Properties 2004 (2) SACR 208 (SCA) at 239g

28.1 In *R v Blom*[12] the Appellate Division stated:

"In reasoning by inference there are two cardinal rules of logic which cannot be ignored: (1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn. (2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct."

28.2 In *S v Reddy and Others*[13] the following dictum is apposite:

"Best on Evidence (Tenth Edition) section 297 page 261, puts the matter thus:-

"The elements, or links, which compose a chain of presumptive proof, are certain moral and physical coincidences, which individually indicate the principal fact; and the probative force of the whole depends on the number, weight, independence, and consistency of those elementary circumstances. A number of circumstances, each individually very slight, may so tally with and confirm each other as to leave no room for doubt of the fact which they intend to establish … Not to speak of greater numbers, even two articles of circumstantial evidence, though each taken by itself weigh but as a feather, join them together, you will find them pressing on a delinquent with the weight of a millstone."

[29] POCA's objectives include, among others, the removal of incentives for crime and advances the ends of justice. I am not persuaded by the explanation around the acquisition of the cash and the purpose for which it was transported to Cape Town. All the circumstances taken cumulatively support the averment by the NDPP that the cash was 'retained' in connection with or as a result of unlawful activities. I find that Ms Qiu made the VW Polo available as a mode of transport to facilitate moving huge sums of money from Pretoria to Cape Town. The VW Polo was therefore an instrumentality of an offence.

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[12] 1939 AD 188 at 202 – 203.
[13] 1996 (2) SACR 1 (AD) at 8e – h

[30] I am further not persuaded by the explanation regarding the money discovered in the locked briefcase. The reasonable inference to be drawn from the facts and circumstances is that the money was proceeds of unlawful activities.

[31] Mr Johnson Jnr may have been in possession of both the VW Polo and the seized cash but it is incomprehensible why he would oppose forfeiture because he has, in my view, not made out a case that he had a legal interest in either the VW Polo or the cash amount of R2 430 000.00. His opposition for forfeiture is therefore without merit.

[32] As far as the opposition for forfeiture of the property by Ms Qiu is concerned, I am also of the view that she has not made out a case for the restitution of the property to her. It is a myth that she was entrusted with the casino winnings as early as March 2017 for the purchase of 75 tonnes of oysters for export in the amount of R2 430 000.00 whereas Salmar was unregistered and unlicensed until November/December 2017. Ms Qiu's version in respect of the cash must be rejected as fabricated. I am therefore satisfied that the cash was proceeds of unlawful activities and the VW Polo was used as an instrumentality of an offence. There is no reason why costs should not follow the result.

[33] In the result, I make the following order:

1. **That in terms of s 50 of the Prevention of Organised Crime Act 121 of 1998 (POCA) the VW Polo with registration numbers and letters [….], chassis number WVWZZZ6RZDY137775 and engine number CTH033333 currently in the custody of the police at the**

Colesburg Police Station and the cash amount of R2 448 240.00 booked into the Colesberg SAP 13 and deposited in the South African Police Service (SAPS) ABSA bank designated account with reference number 686018 is declared forfeit to the State with immediate effect.[14]

2. **That in terms of s 50(6) of POCA, paragraph 5 below shall take effect 45 days after publication of the notice thereof in the Government Gazette.**
3. **That the SAPS Commanding Officer, Colesberg who was authorised to take care of the property is directed to continue to do so for the purpose of this order.**
4. **Pending the taking effect of this order the property shall remain in the custody of the SAPS Commanding Officer, Colesberg.**
5. **On the date on which this order takes effect, that is, 45 weekdays after publication in the Government Gazette, the SAPS Commanding Officer, Colesberg, shall hand the property to the Senior Special investigator, Mr Jacobus Smit of the applicant who shall:**
   - **(a) Assume control of the property and take it in his custody;**
   - **(b) Sell the property at a best price, either by public auction or private treaty;**
   - **(c) Sign all documentation necessary to effect the sale, transfer and registration of the property; and**
   - **(d) Pay the proceeds thereof as well as the R2 448 240.00 cash, less any commission and incidental expenses occasioned by the sale, into the Criminal Asset Recovery Account number 80 303 056 established in terms of section 63 of POCA.**

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(e) The applicant is directed to publish a notice of this order in the Government Gazette as soon as it is practicable.

6. **The respondents are ordered to pay costs of the suit jointly and severally the one paying the other to be absolved.**

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MAMOSEBO J

NORTHERN CAPE DIVISION

For the applicant:	Adv L Van Dyk
Instructed by:	The State Attorney, Kimberley
For the 1st and 2nd respondents:	Adv R Mastenbroek
Instructed by:	RHK Attorneys
	Engelsman Magabane Inc