



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 PROVINCIAL DIVISION, KIMBERLEY)

Case No: 117/19

In the matter between:

The National Director of
Public Prosecutions

Applicant

and

ISAAC ARROL JOHANNES

Respondent

Coram: Lever AJ

JUDGMENT

1. This is an application to confirm a *rule nisi* obtained *ex parte* to preserve R26,849.30 (twenty-six thousand eight hundred and forty-nine Rand and thirty cents) (the property) under the provisions of s38 of the PREVENTION OF ORGANISED CRIME ACT¹ (POCA).

¹ Act 121 of 1998.

2. The matter was heard on the 28 August 2019 and judgment was reserved on that date. After argument was heard and judgment was reserved, two short affidavits by Angeline Sebastian and Chanine Roux respectively, which appear to have been filed on the 16 August 2019 were brought to my chambers to be placed in the file. Through my secretary I arranged for Ms Van Dyk and Mr CF Van Heerden, Counsel for the respective parties, to come and see me in chambers. When this meeting took place, both Counsel informed me that they were in agreement that the said affidavits would not form part of the record in the present application as there was no application to file further affidavits out of sequence. It is on this basis that I proceed with the matter.

3. Mr Van Heerden appeared for the respondent in this matter, and argued that the test to be applied to determine whether the *rule nisi* should be confirmed or not was that applied in the well-known case of **Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd**², where the then Appellate Division cited the Stellenbosch Farmers Winery case³ and quoted the test set out therein with apparent approval. The said test reads as follows:

"... where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order ... Where it is clear that

² 1984 (3) SA 623 (AD) at 634E to 635C

³ 1957 (4) SA 234 (C)

the facts, though not formally admitted, cannot be denied, they must be regarded as admitted.”⁴

4. Mr Van Heerden, on behalf of the respondent submitted that my sister Mamosebo J applied the said test in the matter of **NDPP v P.D.P.**⁵ Also a matter where confirmation of a *rule nisi* in respect of a preservation order was sought. He then went on to reinforce this point by citing the case of **NDPP v ZHONG**⁶.
5. Firstly, Mamosebo J in the **P.D.P.** case⁷ decided the case on a different basis than the application of the rule in **Plascon-Evans**. Accordingly, the application of the rule in **Plascon-Evans**⁸ does not form part of the *ratio decidendi* of the **P.D.P.** case. The basis on which Mamasebo J made her decision is to be found at paragraph 22 of the **P.D.P.** judgment. The contents of paragraph 22 of her judgment constitutes the *ratio decidendi* of the **P.D.P.** case.
6. Read properly and in the context of the judgment in the **P.D.P.** matter as a whole, at most, Mamasebo J was saying that if she had to decide the matter on the basis that final relief was sought, then she would have rejected the version of the respondent in that matter for the reasons set out in paragraph 16 of her judgment.⁹

⁴ Plascon-Evans at 634F citing the dictum in the Stellenbosch Farmers Winery case

⁵ 2017 (2) SACR 577 (NCK) at para [16]

⁶ 2005 (2) SACR 544 (W) at 549h to 550d

⁷ Above, at footnote 5.

⁸ Above, in para [16] of the said judgment.

⁹ PDP matter above at para [16].

7. Then, as set out above, Mr Van Heerden in an effort to strengthen his argument referred to the **ZHONG** case¹⁰. However, the **ZHONG** case dealt with the question of whether the relevant property should be finally forfeited to the State under s48 of POCA. Accordingly, the law applied in **ZHONG's** case is not applicable to the present matter.
8. As the nature of the test to be applied at the stage of confirming the *rule nisi* seems to have created some confusion in this case, it is necessary for me to deal with this issue.
9. The rule in **Plascon-Evans**¹¹ applies to final relief. In the circumstances, it is necessary to deal with the meaning of final relief in this context. A useful starting point is to look at the characteristics of an interim or interlocutory interdict and contrast this with 'final relief'. **CB Prest** in his work on **INTERLOCUTORY INTERDICTS**¹² sets out 10 characteristics of interim interdicts. I am not going to quote all of them, but only those that will assist in the present exercise. These characteristics are:
- "(a) ...;
 - (b) it is an interim order of court pending the final determination of the principal dispute between the parties;
 - (c) it is directed at the maintenance of the *status quo* pending final determination of the matter;
 - (d) ...;
 - (e) it does not involve a final determination of rights and does not affect their final determination;
 - (f) ...;

¹⁰ Above, at footnote 6.

¹¹ Above

¹² Juta & Co., 1993 at p 5.

- (g) ...;
- (h)¹³

10. It is clear from considering the characteristics of an interim interdict set out above that a final interdict or final relief is dependant upon the principal issues of dispute being resolved finally between the parties. It has nothing to do with the confirmation or finalisation of the *rule nisi* in and of itself.

11. Looking at the structure of chapter 6 of the POCA, it is clear that s38 provides for a preservation order pending an application for forfeiture of the property concerned under s48 of that Act. A preservation order thus protects the *status quo* pending the final determination of the forfeiture application or the lapse of the time period contemplated in s40 of POCA. A preservation order under the provisions of s38 of POCA is analogous to an interim interdict. In that sense an application for a preservation order under s38 of POCA, even if it is for confirmation of the *rule nisi*, can never be for final relief in the sense contemplated in the **Plascon-Evans** case¹⁴.

12. Accordingly, the test in **Plascon-Evans** has no application in deciding whether to grant relief in an application for a preservation order under the provisions of s38 of POCA. Again, it bears repeating that it does not make a difference if the court is confirming the

¹³ Prest, above.

¹⁴ Above.

relevant *rule nisi*, it is not final relief in the sense contemplated in the **Plascon-Evans** case¹⁵.

13. What needs to be established is set out in the POCA, specifically s38(2) thereof, which reads:

“38(2) The High Court shall make an order referred to in subsection (1) if there are reasonable grounds to believe 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.”

14. In other words what needs to be established by the applicant, at this stage of the proceedings on the facts of this particular case, is that reasonable grounds exist for believing that the property concerned is either an instrumentality of an offence as defined in POCA or is the proceeds of unlawful activity as is also defined in POCA.

15. The test for ‘reasonable grounds to believe’ is that required for an interim interdict, being prima facie established though open to some doubt¹⁶. In addition, it must be objectively determined¹⁷.

16. The manner in which disputes of fact are to be resolved at the interim or interlocutory phase of motion proceedings was also dealt with by **Prest**, who set out the position as follows:

¹⁵ Above.

¹⁶ NDPP v Starplex 47CC 2009 (1) SACR 68 (C); NDPP v Van Heerden 2004 (2) SACR 26 (C) at pp 33-34.

¹⁷ NDPP v MADATT and OTHERS [2008] ZAWCHC 5 (25 January 2008) para [8] to [9].

"The correct meaning, it is submitted, is that an applicant is required to furnish proof which, if uncontradicted and believed at the trial, would establish his right. The use of the phrase '*prima facie* established though open to some doubt', however, indicates that more is required than merely to look at the allegations of the applicant, but something short of a weighing up of the probabilities of conflicting versions is required.

What then is the approach of the court to be in the face of a dispute of fact on the papers before the court?

The proper manner of approach is to take the facts set out by the applicant, together with the facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant should obtain relief at the trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown on the case of the applicant he could not succeed in obtaining temporary relief, for his right, *prima facie* established, may only be open to some 'doubt'.

This *onus* of proving such *prima facie* right rests upon the applicants."¹⁸ (references omitted)

17. Whilst *Prest* refers to trials in the above passage, it applies equally where the final relief is dealt with on motion, such as where a forfeiture order is sought under the provisions of s48 of POCA.

18. It is apparent from the papers before me in this matter that the criminal proceedings against the respondent have been withdrawn. This aspect is not material to the present proceedings as is demonstrated by the decision of the Constitutional Court in the matter of **NDPP v Mohammed NO and Others**¹⁹, where Ackerman J writing for the unanimous bench set the matter out as follows:

¹⁸ CB *PREST*, INTERLOCUTORY INTERDICTS., Juta & Co Ltd., 1993., p 60.

¹⁹ 2002 (4) SA 843 (CC) at para [17].

"[17] Section 38 forms part of a complex, two-stage procedure whereby property which is the instrumentality of a criminal offence or the proceeds of unlawful activities is forfeited. That procedure is set out in great detail in ss 37 to 62 of the Act, which form chap 6 of the Act. Chapter 6 provides for forfeiture in circumstances where it is established, on a balance of probabilities, that property has been used to commit an offence, or constitutes the proceeds of unlawful activities, even where no criminal proceedings in respect of the relevant crimes have been instituted. In this respect, chap 6 needs to be understood in contradistinction to chap 5 of the Act. Chapter 6 is therefore focused, not on wrongdoers, but on property that has been used to commit an offence or which constitutes the proceeds of crime. The guilt or wrongdoing of the owners or possessors of property is, therefore, not primarily relevant to the proceedings."²⁰

19. Turning now to the application before me. The applicant filed a number of affidavits in support of its application. The founding affidavit was deposed to by E B Ontong, which was supported by the affidavits of J Smit, P L Brink, M P Lekeka (who filed two affidavits in support of the founding papers and a further affidavit in reply), A T Vorster, S B Pylman, W P Finck, P J P Kleynhans, T Fish, L M Maila, P C Jood and J B Eland.

20. The respondent did not deal with the substance of Ontong's affidavit and only dealt substantively with Smit's affidavit. Respondent did not deal substantively with any of the other affidavits referred to above.

21. The respondent in his answering affidavit made the following blanket assertion: "Where I fail to deal with specific allegations or

²⁰ Above at footnote 19.

submissions made by the applicant, this should not be construed as an admission or an acceptance thereof.”

22. It is trite that in motion proceedings that the affidavits filed constitute both the pleadings and the evidence. In such circumstances, a respondent cannot simply put up a bare denial. The respondent must deal substantively with the case put forward by the applicant. In fact, a respondent is required to admit or deny or confess and avoid every material contention made by the applicant²¹. It goes further than that a respondent in motion proceedings cannot simply set out a skeleton of a case based on bald assertions and denials²². Respondent must flesh out the skeleton with appropriate evidence to support his version.

23. For example, if his defence is that he runs a legitimate business he must furnish appropriate evidence to support this. If respondent asserts that he runs a tuck-shop he must be able to show tax invoices and the like, of sufficient magnitude from his suppliers to support the contention that the property in dispute came from a legitimate source. Similarly, if he claims to run a small building business, he can't simply make such assertion without adducing any records that would be appropriate to such business. At the very least such assertions carry very little evidential weight unless supported by appropriate evidence.

²¹ Moosa and Another v Knox 1949 (3) SA 327 (N) at 331.

²² NDPP v Mohamed Ali Adan and Another Case No 1759/13 (Unreported Decision of the Eastern Cape High Court Port Elizabeth) judgment handed down on the 13 January 2015 at para [21].

24. If an assertion made by the respondent and set out in paragraph 21 above is ever appropriate it would only be appropriate in very exceptional and special circumstances. In my view this is not such a case. Such general treatment of evidence in such blanket fashion has the potential to lead to serious anomalies as is in fact the case in the present matter.

25. Having set out the framework under which the evidence in this matter is to be assessed, it is now necessary to set out the background facts and the respective cases made out by both the applicant and the respondent respectively.

BACKGROUND:

26. The South African Police Services (SAPS) applied for and obtained a search warrant to search 423 Angelier Street, Hopetown. It is common cause that the respondent resides at that address. The basis upon which the said warrant was obtained was that there was reliable information that the respondent sold drugs from that address. A quantity of dagga and mandrax as well as the property concerned (the R26,849.30) was found at the address set out in this paragraph.

APPLICANT'S CASE:

27. The property is an instrumentality of an offence and/or it is the proceeds of unlawful activities related to the drugs found at the relevant address.

28. The search warrant was executed at the relevant address on Saturday the 30 December 2017. The respondent and his girlfriend were present when the warrant was executed. The respondent was shown the warrant and had its purpose explained to him.
29. Sergeant Lekeka (Lekeka) and Constable Vorster (Vorster) assisted with the search. Lekeka observed and stated in his supporting affidavit that the respondent appeared to be nervous. In the presence of the respondent, they started the search in the kitchen of the house.
30. In the sitting room of the house Lekeka found what is described as 'a blade of dagga'. According to Lekeka he asked the respondent what that was, and respondent replied that "It was a poke of dagga" but continued that he did not know who put it there.
31. Then Lekeka and Vorster searched the respondent's bedroom and Lekeka found a navy-blue bowl containing a white plastic bag. Lekeka opened this white plastic bag and found 162 (one hundred and sixty-two blades of dagga) as well as a transparent plastic bag containing 13 (thirteen) mandrax pills. The mandrax and dagga was counted in the presence of the respondent. While searching respondent's bedroom and in respondent's cupboard a locked steel drum was found. Lekeka asked respondent to open the said drum. Lekeka states that on respondent receiving this request, respondent put his right hand in his

right trouser pocket and took out the key and opened the said drum. It was inside this drum that the property which is the subject of the present application was found.

32. Lekeka then states that he informed the respondent that he was going to be charged for dealing in drugs. Respondent, was according to Lekeka, informed of his rights and was then arrested. The mandrax, dagga and the property were placed into separate forensic bags. The serial numbers of the forensic bags concerned have been duly recorded.

33. Lekeka in his second supporting affidavit filed with the founding affidavit herein records that he was about to arrest the respondent's girlfriend on the same charges when the respondent asked him not to arrest his girlfriend as the mandrax and the dagga belonged to him.

34. Then, according to Lekeka and upon a chronological reading of both of his affidavits filed in support of the founding affidavit, a Sergeant Pylman informed him that he found a Mr Fredericks sitting on a Dulux paint drum. The drum was searched and found to contain loose dagga. In his second affidavit referred to above, Lekeka states that the respondent asked them not to arrest Fredericks because the dagga in the Dulux drum belonged to him. Fredericks was arrested anyway.

35. Lekeka and Vorster weighed the drugs at the police station, and it was found that the 162 blades of dagga weighed 616 grams. The loose

dagga found in the Dulux drum was weighed and found to weigh 3,648 kilograms.

36. Lekeka estimated the street value of the 162 blades of daggas as R3,080.00 (three thousand and eighty Rand). He estimated the street value of the 3,648 kg of the loose dagga found in the Dulux drum at R18,240.00 (eighteen thousand two hundred and forty Rand). He estimated the street value of the 13 mandrax tablets at R1,300.00 (one thousand three hundred Rand). The total estimated street value of all the drugs concerned is R22,620.00 (twenty-two thousand six hundred and twenty Rand).

37. Lekeka also stated that at the time that the search was conducted he saw no signs of a tuck-shop business on the relevant premises.

38. The pills were tested at the relevant laboratory and confirmed to be mandrax. There was a mix up on a material date which was clarified in reply and need not enjoy any further consideration.

THE RESPONDENT'S CASE:

39. Respondent denies the validity of the search warrant and claims that it was not legally executed. Respondent denies being present at the start of the search. He claims that there was no affidavit from the informant attached to the warrant and that the name of the said deponent was redacted. He also states that Fredericks was not mentioned in the search warrant. Also, that Sergeant Pylman was not

named as a person who may execute or assist in executing the relevant search warrant. Respondent also complained that the terms of the relevant search warrant were too broad. Respondent also denies receiving the said warrant before the search was conducted and claims that the warrant was only handed to him later at the police station after his arrest.

40. The respondent denies Lekeka's claim that he was nervous and shivering during the search. Respondent also denied living in the house and claimed to live in the yard behind and next to the relevant house.

41. Respondent denies admitting that the dagga and mandrax concerned belonged to him. On respondent's version the police decided not to charge his girlfriend at the police station. He also claims that he only saw Fredericks at the police station and that he was not present when Fredericks was arrested.

42. Respondent avers that he sells chicken, sweets, snacks and cigarettes from the garage area of his residence which he operates as a shop. That the people found in the yard were his customers for such shop.

43. Respondent denies that the relevant property was the amount of R26,849.30 (twenty-six thousand eight hundred and forty-nine Rand and thirty cents) and claims the amount seized by the SAPS was in fact

the amount of R28,800.30 (twenty-eight thousand eight hundred Rand and thirty cents).

44. Respondent also makes certain contentions about the warning statement made by Fredericks. As a result of the view I have formed in this matter, it is not necessary to deal with the issues surrounding what Fredericks is alleged to have said in his warning statement.

45. Respondent avers that from his tuck-shop business and small business doing building and painting work he earns an income of R4,000.00 (four thousand Rand) to R5,000.00 (five thousand Rand) per month. That he was busy over the Christmas period and did good business. That the property concerned was generated by respondent's hard work in the building and painting business and the tuck-shop business. Respondent denied dealing in drugs and that the property was the proceeds of dealing in drugs.

THE ISSUES TO BE DETERMINED:

46. In the circumstances of this case, there are essentially three issues to be decided, being:

46.1. The admissibility of the evidence gathered by the execution of the warrant in this matter;

46.2. Whether the applicant has made out a *prima facie* case that the property is either an instrumentality of an offence referred to in schedule 1 of POCA and/or is the proceeds of unlawful activity; and

46.3. Whether the respondent in his answering affidavit has adduced evidence that raises sufficient doubt as to justify the refusal of the interim relief in the form of confirming the rule nisi pending the forfeiture application under the provisions of s48 of POCA.

47. Turning now to the first of the above issues. In dealing with the search warrant, Mr Van Heerden and the respondent contented themselves with raising all of the grounds which they allege that make the search warrant and its execution unlawful. This would possibly have been sufficient if the present proceedings were to be decided on the principles of evidence applicable to criminal law.

48. In my view of the manner that the matter is to be approached I do not have to decide whether the search warrant and its execution were lawful. I have assumed, without deciding the question, in favour of the respondent that the warrant and its execution were unlawful.

49. The admissibility, in criminal proceedings, of evidence obtained by unlawful means violating any constitutional right is governed by s35(5) of the Constitution²³. However, Mr Van Heerden seems to have overlooked the fact that the proceedings in chapter 6 of POCA are civil in nature and s37 of POCA provides that the rules of evidence relating

²³ The Constitution of the Republic of South Africa, 1996.

to criminal law do not apply to chapter 6 of POCA. In fact, s37 of POCA reads as follows:

“37 Proceedings are civil, not criminal.—(1) For the purposes of this Chapter all proceedings under this Chapter are civil proceedings, and are not criminal proceedings.

(2) The rules of evidence applicable in civil proceedings apply to proceedings under this Chapter.

(3) No rule of evidence applicable only in criminal proceedings shall apply to proceedings under this Chapter.

(4) No rule of construction applicable only in criminal proceedings shall apply to proceedings under this Chapter.”

50. There are fundamental differences in character between criminal proceedings and civil proceedings. In civil proceedings, the default position is that evidence, as long as it is relevant, even if it is unlawfully obtained, is admissible unless the court is convinced to exercise the discretion it has to disallow such evidence.²⁴

51. The respondent has not made out a case for this court to exercise its discretion to exclude the evidence obtained in executing the disputed search warrant. The onus is on the party seeking to exclude such evidence to make out a case for the court to exercise its discretion to exclude such evidence²⁵. Respondent has not done this. In these circumstances I cannot exclude the evidence attained by virtue of the execution of the said search warrant.

²⁴ *Hohne v Superstone Mining (Pty) Ltd* [2017] 1 All SA 681 (SCA) at para [23] as read with para [29] thereof.

²⁵ *Hohne matter above* at para [29].

52. This disposes of the first issue for me to determine. Turning now to the second issue, being whether the respondent has established reasonable grounds for believing that the property concerned is either an instrumentality of an offence and/or the proceeds of an unlawful activity. I only need to find that it constitutes at least one of the two options referred to herein. Having regard to the evidence that was adduced before me I do not intend to consider whether the property concerned was an instrumentality of an offence set out in schedule 1 of POCA. I will focus on whether the applicant has established, *prima facie* on reasonable grounds, that the relevant property was the proceeds of unlawful activity. In this case being, dealing in illegal drugs.
53. The case that the respondent sets up in this regard is that he did not know anything about the drugs and that the drugs were not found in the part of the premises that he occupied. Respondent then asserted that the property was income from his small building and painting business taken together with the tuck-shop he alleged that he ran on the premises.
54. In assessing the respondent's contentions, it is useful to have reference to the affidavit respondent filed in his bail application which he deposed to on the 5 January 2018. This affidavit has also been annexed to the founding affidavit. In such affidavit respondent states

that he has been living at the property that was searched being 423 Angelier Street for 35 years. Respondent lives there with his three children and the mother of his youngest child. In such affidavit he states that he owns a residence to the value of R60,000.00 (sixty thousand Rand) the address of the said property is not given. In the circumstances I am not able to say whether respondent owns 423 Angelier Street or not. In such affidavit he also states that he has a small building and painting business and runs a tuck shop. That from both of these sources he earns R4,000.00 (four thousand) to R5,000.00 (five thousand) per month. He has fixed expenses in the amount of R1,600.00 (one thousand six hundred Rand) per month and has approximately R3,400 (three thousand four hundred Rand) per month after deductions on which to live.

55. The manner in which respondent chose to deal with the affidavits filed by the applicant in its founding papers causes the respondent substantial difficulties and puts respondent in an anomalous position. The only affidavit that respondent deals with substantively is the affidavit of Smit. It is obvious from reading Smit's affidavit in the founding papers that he was not there when the events he attests to took place. It is obvious that he summarises the affidavits of persons who were involved in the relevant activities and then annexes such affidavits as the primary source of the relevant evidence. These affidavits were marked with his initials, being "JS" and then

consecutively numbered. These affidavits included *inter alia* the affidavits of Lekeka.

56. Respondent chose not to deal substantively with Lekeka's affidavit.

In respondent's answering affidavit, respondent deals with paragraphs 11 to 16 of Smit's affidavit together. Paragraphs 15 and 16 of Smit's affidavit summarises the position set out in paragraph 5 of Lekeka's first affidavit. In the relevant paragraph of respondent's answering affidavit, respondent denies living in the house where the drugs were found. Respondent, in such paragraph also denies any knowledge of the dagga and the mandrax.

57. However, in the next paragraph of respondent's answering affidavit, respondent deals with the contentions in paragraphs 17 to 19 of Smit's affidavit in the founding papers. Paragraphs 17 and 18 of Smit's affidavit in the founding papers summarises paragraph 6 of Lekeka's first supporting affidavit. In respect of these paragraphs respondent states that he notes the contents of paragraphs 17 to 19 of Smit's affidavit in the founding papers. This means that respondent has dealt with the contents of paragraphs 17 to 19 of the founding affidavit. In the context it can mean nothing less than that respondent does not dispute the contents of paragraphs 17 to 19 of Smit's affidavit. The general contention made by respondent in paragraph 2.2 of his answering affidavit, quoted above cannot assist the respondent in this context.

58. Smit's affidavit is, as already set out above, a summary of the evidence available to the applicant. The affidavits annexed to Smit's affidavit in the founding papers constitute the primary evidence in the circumstances. It is this primary evidence that the respondent is obliged to deal with in the circumstances.
59. The respondent chose not to deal with this primary evidence and dealt only with Smit's summary. This left Respondent in an anomalous position, which is that: Paragraph 5 of Lekeka's said affidavit clearly indicates that the bedroom of the respondent was being searched; in response to the relevant portion of Smit's affidavit respondent denies in his answering affidavit that he lived in that portion of the house; in paragraph 6 of Lekeka's said affidavit it is clear that whilst still in the same room, the respondent's own cupboard was searched, the steel drum was found in his cupboard and respondent produced the key from his pocket which opened such drum, where the relevant property was discovered; in noting such allegations the respondent in effect admits them.
60. The upshot of this is that at one and the same time, the respondent has denied that he lives in the relevant portion of the property and admitted that his cupboard was found in the same room that he denied living in, in which the drugs were also in fact found as well as the

relevant property. Clearly, an untenable position for the respondent to hold.

61. The respondent admitted the applicant's estimated street value of the drugs concerned being R22,600.00 (twenty-two thousand six hundred Rand). The respondent claims that he has R3,400.00 (three thousand four hundred Rand) per month on which to live and support the four dependants living with him on the premises. The amount of the property seized is in the order of R26,849.30. In these circumstances the respondent's contention that he did well over Christmas simply lacks any credibility. Such contention is not supported by any evidence at all.

62. In reply and in response to the defences raised by the respondent applicant has adduced the evidence of a police officer one Ms Finck who has lived on the same street as respondent since 1999. Ms Finck states that there is no tuck-shop run from the premises where respondent lives. She also sets out that respondent's mother lives on the same property as the respondent. That there are two brick structures on the property. That each brick structure has its own entry and that one cannot gain entry from one brick structure to the other.

63. That there is an iron shanty behind the house which is used as a storeroom and is not lived in by anyone. Ms Finck's evidence corroborates that of Lekeka. It appears from the evidence that only

respondent's extended family lives on the premises concerned. It also appears that respondent is the head of the household. In the circumstances, there can be little doubt that the drugs found inside the residence were found in the portion of the premises occupied by the respondent. It is unlikely to the extent of it being improbable that the extent of drugs found in the area of the house and in the house occupied by the respondent could have been there without him knowing about it. The drugs found in respondent's bedroom were barely concealed, being in a white plastic bag in a bowl. The dagga found in the living room was not concealed.

64. Turning to the third issue to be decided, being whether respondent adduced evidence that shed sufficient doubt on applicant's case to deprive applicant of the interim relief, which it seeks. Respondent's case consists of mere bald allegations and simple denials. If respondent ran a tuck-shop, he would surely have tax invoices from his suppliers of chicken, sweets and cigarettes. In these circumstances, respondent is obliged to adduce such evidence, bald assertions and mere denials do not put flesh on the skeleton that respondent has tried to construct.
65. In these circumstances I believe that applicant has established on a prima facie basis, on reasonable grounds, that the property was the proceeds of unlawful activity.

66. Accordingly, the *rule nisi* will be confirmed. The only outstanding issue is the issue of costs. Ordinarily cost would follow the event, but as the relief is in effect interim relief, I believe it would be appropriate to reserve the question of costs for the court that determines the forfeiture proceedings, should they be brought.

ORDER:

- 1) The rule nisi issued on the 25 January 2019 is hereby confirmed.
- 2) The costs of this application are reserved for the court deciding the forfeiture proceedings.



Lawrence Lever AJ

Appearances:

Ms Van Dyk for the applicant oio The State Attorney

Mr CF Van Heerden oio André Potgieter & Partners

Date of Hearing: 23 August 2019

Date of Judgment: 11 October 2019