

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Case No: 168/2018

Before the Honourable Justice **AF JORDAAN**

On the **09th** day of **MARCH 2018**

In the ex parte application of:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS Applicant

In re: an application in terms of section 38 of the Prevention of Organised Crime Act, Act 121 of 1998, for the preservation of certain property described in "**Annexure A**"

Having considered the notice of motion and the other documents filed of record and having heard Counsel for applicant,

IT IS ORDERED THAT:

1. An order is granted in terms of section 38 (2) of the Prevention of Organised Crime Act, 121 of 1998 (**POCA**) preserving certain property described as:
 - 1.1 The remaining extent of the farm Krynaauws Lust 275, district Vrede, Free State Province, measuring: 4439,5122 (four thousand, four hundred and thirty nine comma five one two two hectares).
 - 1.2 Money not exceeding an amount of R40 360 154-98 which constitutes proceeds of crime in the following bank accounts held individually or by companies described in Annexure A to the draft order. The immovable and the movable property mentioned above are hereinafter referred to as "**the property**".
2. In terms of section 38 (2) of **POCA** and subject to the provisions of this order, all persons with knowledge thereof are prohibited from disposing of, further encumbering, dissipating, interfering with, attaching or selling in execution,

diminishing the value of or dealing in any other manner with **the property** to which this order relates.

3. Notwithstanding the provisions of this order, any person who has financial obligations in respect of any of the property is ordered to fulfil such obligations, including any obligations relating to installment payments and all interest accruing in respect of such obligations, pending the finalisation of the forfeiture proceedings unless such person(s) signs a consent to judgment in favour of the applicant.
4. In terms of section 42 of **POCA**, **Eugene Nel** of Vesticraft, located as Suite 8, 2nd Floor, Block C, Town Bush Office Park, 460 Town Bush Road Montrose, Pietermaritzburg is appointed as *curator bonis* over **the property** (the *curator bonis*). The *curator bonis* shall have all such powers, duties and authority as provided for in **POCA** and in this order.
5. The *curator bonis* is authorised to assume control of the property and do any and all things necessary to preserve the property while the order is in force.
6. Any person who holds **the property** is directed in terms of section 42(1)(b) of **POCA** to surrender **the property** forthwith into the custody of the *curator bonis*, failing which any member of the South African Police Services or other agency if the facts render it necessary or appropriate is hereby authorised, on the instruction of the *curator bonis*, to seize the relevant property and place it in the custody of the *curator bonis*.
7. The *curator bonis* must file a report with the Registrar of this Honourable Court within 40 days of the granting of the preservation order which report shall contain an inventory of the property taken into his custody in terms of this order, in which report he shall set out the steps that have been taken by him to give effect to this order, and make any further recommendations as he may deem fit regarding any other steps he might be required to take in order to give effect to the order. The *curator bonis* must file supplementary reports containing additional relevant information as and when such reports become necessary.
8. The fees and expenditure of the *curator bonis* must, in terms of section 42(2) of **POCA** be paid from the forfeited property. In the event of no forfeiture order being granted, then such fees and expenditure must be paid by the State, provided further that interest on expenditure incurred by the *curator bonis* shall be paid by the State at the prime lending rate of the major financial institutions from the date of expenditure until the date of final payment.
9. The *curator bonis* shall have such powers, duties and authority as provided for or implied in **POCA** and such further powers as are specified or implied in this Order including but not limited to, the following:
 - 9.1 to take all reasonable and lawful steps to discover any facts relating to any of the property and to locate it with the view of achieving the

object of this order, read in the context of POCA and, in particular, section 339(1) thereof;

- 9.2 to require any interested party to make full disclosure under and in terms of this order and to provide such further and specific information as the *curator bonis* considers relevant to any fact that has been disclosed, which authority shall be exercised with the view of achieving the objects of this order, read in the context of **POCA** and in particular, Sections 42 and 43 of **POCA**;
 - 9.3 to deal with any funds in any banking accounts forming part of the **property** and is accordingly authorised to hold the necessary signing powers on such accounts and to give directions to banking institutions, and other persons in control of any of those funds regarding the utilisation of such funds;
 - 9.4 to inspect, copy and analyse all documents held by or on behalf of the interested parties or any data on any computer software or hardware used by the interested parties with the view of tracing and locating, as may be necessary, the **property**;
 - 9.5 to make enquiries from the interested parties as well as their respective accountants or auditors and pursuant to such enquiries inspect, copy and analyse all relevant documentation relating to the affairs of the interested parties and any other entities in which the interested parties have an interest, with a view of tracing the **property**;
10. The Registrar of Deeds is directed to endorse the title deed of the immovable property specified in paragraphs 1 *supra*, with the following restrictions, namely, that the property shall not, without the consent of this Court:-
 - 10.1 be mortgaged or otherwise encumbered;
 - 10.2 be attached or sold in execution; or
 - 10.3 vest in the Master of the High Court, or the trustee or liquidator of the insolvent estate of the owner, if the estate of the owner should be sequestrated or liquidated.
 11. The applicant shall in terms of section 39 of POCA, as soon as practicable after the making of the Preservation Order, cause a notice of this order including Annexure "A" hereto, to be published in the Government Gazette.
 12. The applicant shall cause notice of this Preservation Order together with the copies of the papers used in support of this application, to be served on:
 - 12.1 Kamal Vasram, [...] Shimbali Sands, residing at [...] N. Road, Sunninghill, Johannesburg;

- 12.2 Soo Young Jeon, residing at S. Drive, Sunningdale, Johannesburg;
- 12.3 Ronica Ragavan, residing at [...] B. Street, Rooikruiskraal, Centurion;
- 12.4 Vargafield (Pty) Ltd, 2012/101734/07 with registered place of business at 27 Voortrekker Road, Vrede, Free State;
- 12.5 Chandrama Prasad, residing at [...] V. Road, Vrede, Free State;
- 12.6 Linkway Trading (Pty) Ltd with registration number 2007/009012/07, and registered place of business at 1064 16th Road, Midrand, Gauteng;
- 12.7 Aerohaven Trading (Pty) Ltd with registration number 2008/014743/07, and registered place of business at 106A 16th Road, Midrand, Gauteng;
- 12.8 MK Investments (Pty) Ltd whose registration number and registered place of business is unknown.
- 12.9 Stanlib Bedford Gard with registration number unknown and registered place of business at 17 Melrose Boulevard, Melrose Arch, Gauteng.
- 12.10 The Registrar of Deeds, Bloemfontein, 85 Nelson Mandela Road, Free State;
- 12.11 Any other person who becomes known to the Applicant as having an interest in the property.

ENTRY OF APPEARANCE TO OPPOSE FORFEITURE ORDER

- 13. Any person who has an interest in **the property** and who intends:
 - 13.1 to oppose the application for an order forfeiting **the property** to the State; and
 - 13.2 to apply for an order excluding his or her interest from the forfeiture order in respect of **the property**;
 - 13.3 must enter an appearance giving notice of such an intention in terms of Section 39(3) of **POCA**.

14. Any person under paragraph 13 above, who intends opposing an order forfeiting **the property** to the State shall, in terms of Section 39(4) of **POCA**, deliver a notice to the Applicant of such intention:
 - 14.1 in the case of a person upon whom service is effected in terms of **POCA**, within 14 days after such service;
 - 14.2 in the case of all other persons, within 14 days after the date upon which notice of his order is published in terms of paragraph 11 above.
15. An appearance in terms of paragraph 13 above must, in terms of Section 39(5) include full particulars of the address chosen for the delivery of documents concerning further proceedings in this matter, and must be accompanied by an affidavit setting out:
 - 15.1 full particulars of the opposing party's identity;
 - 15.2 the nature of extent of his or her interest in the property; and
 - 15.3 the basis of the defence upon which he or she intends to rely on in opposing the forfeiture application or in seeking to have his interest excluded from the forfeiture order;
 - 15.4 whether he or she admits or denies that the property concerned is an instrumentality of an offence referred to in Schedule 1 of **POCA**, and the basis for such defence.

APPLICATION FOR RECONSIDERATION

16. Any person who is affected by the order may on good cause shown, apply for reconsideration. Such application shall be made:
 - 16.1 in instances where the person is able to justify the application on grounds of urgency, upon 3 days notice to the Applicant (or such shorter period as the Court may determine on good cause shown);
 - 16.2 in other instances, upon at least 7 days notice to the Applicant and all other persons identified in this order as being persons who may have an interest in the property;
 - 16.3 not later than 8 days after the person applying for reconsideration becomes aware of the existence of the order, or within such further period as the court may consider reasonable, bearing in mind the underlying principles of **POCA**.
17. Any person unsuccessfully opposing the Application shall pay the costs occasioned by such opposition.

18 The remaining extent of the farm Krynaauws Lust 275, district Vrede, Free State Province, measuring: 4439, 5122 (four thousand, four hundred and third nine comma five one two two hectares).

BY ORDER OF TIDS COURT

COURT REGISTRAR

STATE ATTORNEYS

ANNEXURE A TO COURT ORDER DATED 18 JANUARY 2018

1. RECIPIENTS OF PAYMENTS

1. An amount of R40 360 154-98 which was paid to Estina Pty Ltd with registration number 2008/015033/07 with the following Standard Bank of South Africa account numbers [...] and First National Bank account numbers [...] and further transferred into the following bank accounts held individually or by companies mentioned below or in any fund or account held by or on behalf of them.:
 - 1.1 KAMAL VASRAM - an amount of **R4 023 721.28** paid into the following FNB bank account: [...] - FNB [...] and FNB [...];
 - 1.2 CHANDRAMA PRASAD - an amount of **R465 264.16** whose bank account details are currently unknown and who is foreign national with passport number [...];
 - 1.3 VARGAFIELD (PTY) LTD 2012/101734/07 an amount of **R16 469 526.10** and is currently under liquidation whose bank account details presently unknown;
 - 1.4 AEROHAVEN TRADING (PTY) LTD 2008/014743/07 - an amount of **R73 277-24** whose bank details are currently unknown;
 - 1.5 MK INVESTMENTS (PTY) LTD - an amount **R1 71 046.20** paid into the following FNB Bank account number [...] and whose registered place of business is currently unknown;
 - 1.6 LINKWAY TRADING (PTY) LTD 2007/009012/07 an amount **of R157 320.00** paid into the following NEDBANK account [...];
 - 1.7 STANLIB BEDFORD GARD - a property financing company whose registration and banking details are unknown an amount of R1900000-00

The immovable and the movable property mentioned above are referred to as "the property".

BY ORDER OF THIS COURT

COURT REGISTRAR

STATE ATTORNEYS