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: 1825/2012
Heard on: 29/04/2016
Delivered on: 29/07/2016

In the matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	**APPLICANT**
And	
GESIENA MARIA BOTHA (In her capacity as executrix of the late Yolanda Rachel Botha)	**FIRST RESPONDENT**
ANGELIQUE BOTHA N.O. (in her capacity as joint trustee of the Jyba Beleggings Trust)	**SECOND RESPONDENT**

In re: Erf 3432 also known as 12 Jawno Street, Kimberley

JUDGMENT

MAMOSEBO J

[1] This is an application by the National Director of Public Prosecutions (NDPP) in terms of s 48 (1) read with s 50 of the Prevention of Organised Crime Act, 121 of 1998 (POCA), for a forfeiture order against the immovable property of the late Ms Yolanda Botha who passed away on 24 December 2014, and the value of shares held by the Jyba Beleggings Trust (the Jyba Trust) registered as T156/2010, alleged by the NDPP to be proceeds of crime (corruption) and an instrumentality of money laundering.

[2] A convenient starting point is s 53 of POCA in that the NDPP relied on it for its application. This section stipulates:

53 Forfeiture order by default

"(1) If the National Director applies for a forfeiture order by default and the High Court is satisfied that no person has appeared on the date upon which an application under section 48(1) is to be heard and, on the grounds of sufficient proof or otherwise, that all persons who entered appearances in terms of section 39(3) have knowledge of notices given under section 48(2), the Court may –

(a) Make any order by default which the Court could have made under sections 50(1) and (2);

(b) Make such order as the Court may consider appropriate in the circumstances; or

(c) Make no order."

[3] I enquired from Adv van der Linde SC, appearing for the NDPP, the reasons for relying on s 48 r/w 53 of POCA. He maintained that reference to s 53 was a typographical error. Adv Albertus SC contended that the reliance on s53 was not done erroneously because it appears also in the notice of motion. Mr Albertus submitted that the application should be

dismissed based on that basis alone. For the reasons that are discussed hereinafter this submission cannot be sustained.

[4] In ***National Director of Public Prosecutions v RO Cook Properties (Pty) Ltd; National Director of Public Prosecutions v 37 Gillespie Street Durban (Pty) Ltd and Another; National Director of Public Prosecutions v Seevnarayan*** 2004 (2) SACR 208 (SCA) at 222 e – f (para 8) Mpati DP et Cameron JA made the following remarks:

"[8] .. [T]he forfeiture process starts when the National Director applies ex parte in terms of s 38 for a preservation order. Section 38(2) of the Act provides that the High Court shall make such an order

'if there are reasonable grounds to believe that the property concerned —

(a) is an instrumentality of an offence referred to in Schedule 1; or

(b) is the proceeds of unlawful activities.'"

[5] On 29 October 2012 Olivier J granted a provisional preservation order in terms of s 38(2) of POCA preserving the immovable property Erf 3432 also known as 12 Jawno Street and the shares in the Jyba Beleggings Trust registered as T156/2010 acquired in the Trifecta Group. Johan Van Wyk of Enslins Kimberley Inc, Kimberley, was appointed as *curator bonis* to take control of the property. The first respondent, Estate Late Ms Yolanda Botha and the second respondent, Ms Angelique Botha, representing the Trust, were afforded an opportunity to oppose the application for an order forfeiting the property to the State. They were to enter an appearance in terms of s 39 (3) of POCA to be delivered to the applicant, the NDPP, **within 14 days of service**. Such appearance **must**, in terms of s 39(5) include the particulars of the address chosen for delivery of documents and in an accompanying affidavit set out (i) the identity of the person entering the appearance, (ii) the nature and extent

of her or his interest in the property, and (iii) **the basis of the defence upon which she or he wishes to rely** in opposing the forfeiture order or in having her interest excluded from forfeiture.

[6] A rule *nisi* issued returnable on 14 December 2012 calling upon the respondents to show cause, if any, why the provisional order should not be confirmed. The respondents were further called upon, in the event of opposition, to notify the NDPP within 5 days of service of their intention to oppose and to deliver answering affidavits as required by law. They were also afforded an opportunity to anticipate the return date by giving the NDPP 48 hours' notice, if so advised.

[7] In response to the above provisional order Towell & Groenewaldt Attorneys wrote a letter dated 22 November 2012 confirming their instructions to oppose the forfeiture application on behalf of the late Ms Botha only. They requested or made a suggestion that the proceedings against Ms Botha be withdrawn and only be re-instated after the criminal trial. This request was vehemently opposed by the office of the State Attorney in a letter dated 18 October 2012. Towell & Groenwaldt's letter ended by threatening to file a substantive application in the High Court should the NDPP not accede to their request. What subsequently transpired much later, is set out in para 8 (below).

[8] On 14 December 2012 Lacock J confirmed the rule *nisi* in respect of both respondents and reserved the costs for later determination. In a separate interlocutory application Williams J granted an order on 03 May 2013 that Ms Yolanda Botha file and serve her opposing affidavit on or before 30 June 2013 and, the applicant was to serve its replying affidavit on or before 20 July 2013. Ms Botha only deposed to her answering affidavit

on 29 July 2013. When the applicant filed its replying affidavit in respect of the first respondent the second respondent had not yet filed any answering affidavit.

[9] It was therefore procedurally permissible for the NDPP to seek a judgment by default in terms of s 48 r/w 53 on the basis of non-opposition by both respondents. Procedurally, there was no opposition by Ms Botha within the prescribed timeframes. The indulgence through the extension of the period within which to file the answering affidavit was granted after a substantive application was considered by the Court. There is no merit in the submission by Mr Albertus that this application should be dismissed on the basis that the NDPP relied on s 53 of POCA.

[10] The point must be highlighted at this stage that Ms Angelique Botha, the second respondent, has not entered any appearance to oppose the forfeiture order as required by s 39 (3) of POCA. As a result she could not appear when the matter was argued. It was incorrect therefore for Mr Albertus to state that he is appearing for both respondents. The heads of argument were also confined to the late Ms Botha's case.

[11] The issues that come up for determination are:

11.1 Whether the property, Erf 3432 Kimberley also known as 12 Jawno Street are proceeds of unlawful activities, namely, corruption, or an instrumentality of money laundering and should be forfeited to the State under Chapter 6 of POCA.

11.2 Whether the value of the shares in the Jyba Trust are proceeds of unlawful activities, namely, corruption, or an instrumentality of money laundering and should be forfeited to the State under Chapter 6 of POCA. And

11.3 Whether any interest in the property ought to be excluded from forfeiture.

11.4 As far as the cash payment by Trifecta in the amount of R15 000.00 to Ms Yolanda Botha is concerned this aspect is dealt with below at paragraph 36.

[12] Ms Yolanda Botha, as stated earlier, has since passed away on 28 December 2014. On 22 October 2015 the Master of the High Court appointed her mother, Ms Gesiena Maria Botha, as executrix to administer her estate under Letter of Executorship Estate No 394/2015, hence her citation. The second respondent was the late Ms Yolanda Botha's niece, Angelique Botha NO, cited in her official capacity as the trustee of the Jyba Beleggings Trust who, I reiterate, has filed no opposition.

[13] The historical background is as follows. This investigation came to light as a result of a newspaper article in the Mail & Guardian dated 11 – 17 February 2011 which read:

"Ms Botha and her family received kickbacks from a company to which she assigned tenders worth R50 million when she was an official in the Northern Cape. Within a year Trifecta also renovated Ms Botha's Kimberley home for at least R500 000.00. Ms Botha has not declared either benefit to Parliament."

Members of Parliament are required to declare all 'registrable interests' and 'benefits in cash or in kind' in terms of paragraph 7(g) of the Code of Conduct for Assembly and Council Members. Parliament investigated the complaint and also relying on the obligation placed before them by s 34 of POCA reported the matter to the South African Police Services for their investigation.

[14] Ms Botha was the Head of the Department (HOD) of Social Development (Dept Soc Dev) and as such its Accounting Officer. It is common cause that she was a close friend to the late Mr Sarel Breda who died in a plane crash on 03 March 2009. Ms Botha and Mr Breda were both members of the African National Congress (the ANC). Mr Breda was a business associate of Mr Alfeus Scholtz, the Chief Executive Officer of the Trifecta Investment Holdings (Pty) Ltd, a holding company to 29 Trifecta Group of Companies.

[15] Mr Scholtz approached Mr Breda in 2005 to participate in the business of leasing office space. Mr Breda was responsible for all the operational aspects of the business. He promised Ms Botha shares in 2005, when she was an HOD, for no value or consideration and subsequently advised Mr Scholtz that the 10% shareholding in Trifecta Investment Holdings (Pty) Ltd be transferred to a trust nominated by her. The Shosholoza Trust later transferred its 10% shareholding to the Jyba Trust which held the so-called BEE component of the shareholding. The Shosholoza trust comprised the Jyba Trust and Scholtz's Casee Trust which is his family trust. The NDPP argued that Ms Botha not only introduced but also allowed material and irregular deviations from the legal procurement procedures in awarding the six (6) lease agreements in favour of the Trifecta Group. The NDPP submitted that she corruptly accepted the gratifications in exchange for the already awarded lease tenders which she should have refused.

[16] Gratification is defined in the Prevention and Combating of Corrupt Activities Act, 12 of 2004 (the PCCA Act) as:

"(a) Money, whether in cash or otherwise;

(b) Any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage;

(j) Any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage."

[17] The Trifecta Group, according to Scholtz, acquired 'well-constructed but run down' buildings within the Northern Cape Province. Malan & Pasch Building Contractors renovated the buildings which were subsequently leased to the government departments at lucrative but in fact exorbitant rates. Mr Breda negotiated the leases on behalf of the Trifecta Group of Companies. The leases were approved and signed by Ms Botha, as HOD and accounting officer of the Dept Soc Dev. The contention by the NDPP was that there was no transparency, competitiveness, fairness and cost efficiency when processing these lease agreements. This, the NDPP submitted, was not only corruptly done but Ms Botha had a clear conflict of interest which warranted that she should have recused herself from the procurement processes but never did.

[18] Section 217 of the Constitution of the Republic of South Africa 108 of 1996 as amended stipulates:

217 Procurement

"(1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for-

(a) categories of preference in the allocation of contracts; and

(b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

(3) National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented."

[19] It is the NDPP's case that when the Trifecta Group made the 10% shares available to a trust nominated by Ms Botha that was an offer of gratification to her with the aim of influencing the granting of the leases. Once the leases were granted to Trifecta her reward was in the form of the refurbishment to her home. This was in addition to the 10% shares to the Trust which she had nominated. The NDPP further submitted that the shares were a corrupt gift which the second respondent, Angelique Botha NO as trustee, was silent about why they were transferred to her as a beneficiary.

[20] In the unreported judgment of ***State v Alfeus Christo Scholtz and 11 Others*** K/S 20/2013 delivered 13 October 2015 at 24 para 66 Phatshoane J said the following:

"[66] The late Ms Botha, who was the Head of Department of Social Development (HOD) together with other functionaries were copied a letter dated 12 July 2005 which the then Northern Cape Premier , Ms E D Peters, sent to the MEC for Agriculture. Ms Botha confirmed receipt. In this letter, which came to be crucial at all stages of this trial, the Premier, inter alia, referred to Chapter 13 sub-para 13.2.4 of the Treasury Regulations promulgated in terms of the Public Finance

Management Act, 01 of 1999 (PFMA), which provided that the accounting officer of an institution may enter into lease transactions without any limitations provided that such transactions were limited to operating leases. The Premier directed, with immediate effect, that the HOD and Accounting Officer of the Department of Transport Roads and Public Works cease to enter into any lease agreements on behalf of other Provincial Departments in due observance of the PFMA and its Regulations. The Department of Transport, Roads and Public Works would advise the departments on how best and effective to utilise the available space in terms of the National Public Norms and Standards. It is common knowledge or notorious fact that an HOD holds the rank of a Deputy Director General and the most senior functionary of a department subordinate only to a Director-General in the office of a Premier."

[21] The learned Judge continued at para 67:

"[67] On May 2005 a Chief Director Norms and Standards of the National Treasury issued the Practice Note Number SCM 2 of 2005 to, inter alia, all accounting officers of the National Departments and chief financial officers of Provincial Departments on Supply Chain Management (SCM): Threshold values for procurement of goods and services by means of petty cash, verbal/written price quotations and competitive bids. It required accounting officers and/or authorities to invite competitive bids for all procurement of goods and services above the threshold of R200 000.00. It further stipulates, for instance, that competitive bids should be advertised in at least the Government Tender Bulletin and other appropriate media should an accounting officer/authority deem it necessary to ensure greater exposure to potential bidders; should it be impractical to invite competitive bids for specific procurements, e.g in urgent or emergency cases or in a case of a

sole supplier, the accounting officer/authority may procure the required goods or services, in accordance with Treasury Regulation 16A6.4 by other means, such as price quotations or negotiations. The reasons for deviating from inviting competitive bids should be recorded and approved by the accounting officer/authority or his/her delegate."

[22] Based on the aforementioned, it is unquestionable that Ms Botha had intimate knowledge of the Supply Chain Management or the National Treasury Regulations hence the NDPP's submission that the gratification to Botha was made in order to ensure that the lease agreements were awarded to the Trifecta Group and overlook other potential bidders on terms which favoured the Trifecta Group. This was done despite the fact that the result contravened the Supply Chain Management and National and Provincial Treasury Regulations to the prejudice of government.

[23] Ms Botha was the owner of the property at 12 Jawno Street, Kimberley. She acquired it at R705 000.00 through a mortgage bond which was granted by ABSA Bank. She needed to renovate this house and Mr Breda, having been made aware of her plight, advised her to approach Mr Scholtz who, not surprisingly, agreed to assist her financially. Although Ms Botha stated in the criminal trial and to Parliament that she resorted to Mr Scholtz for a loan to renovate her said immovable property since her application to the bank was unsuccessful the following factors are inconsistent with that contention:

23.1 Ms Botha's application to ABSA Bank was only made in May 2011, months after the parliamentary investigation had commenced and the renovation had been completed;

23.2 Repayment of the loan to the Trifecta Investment Holdings was done only after the parliamentary investigation;

23.3 The loan certificate was only issued on 28 February 2010, after the parliamentary investigation commenced, and recorded that Y Botha owed the Trifecta Group R262 943.00;

23.4 Angelique Botha (Botha's niece and trustee in the Jyba Trust) was appointed in 2006 at Trifecta as liaison conduit between Trifecta and government departments;

23.5. Ms Botha resigned only in May 2009 as HOD to become a Member of Parliament;

23.6 Renovations to Ms Botha's house commenced in September 2009 to September 2010 and were done by the Trifecta Group of companies' contractor, Pasch & Malan;

23.7 The spurious written agreement between Mr Scholtz and Ms Botha was only entered into 6 months after the renovations had already commenced;

23.8 Ms M Buizer, a former office manager at Trifecta Investment Holdings for the period 2005 to 2010 deposed to an affidavit in which she claimed that Scholtz instructed her to allocate the costs of Ms Botha's renovations to the Mogambos Building, a building owned by the Trifecta Group. **At no stage was it indicated to her that the amount utilised for the Botha renovations was a loan** as she would have followed a different procedure when capturing those amounts. This aspect is supported by Ms Pretorius at para 27 below.

[24] In the purported loan agreement between the Trifecta Group and Ms Botha it was recorded that she admitted and signed for a loan to the total amount of R500 000 however the total costs towards renovations of her property were ultimately estimated at **R1 169 069.49** (as it appears on the table provided by Mr Sean White and as argued by Mr Van der Linde).

Mr Albertus recorded the figure in his heads of argument as **R1 265 611.99**. Mr Malan, the contractor who conducted the renovations, stated *"nadat enkele korreksies op 21 Junie 2011 aangebring is was my beraming van totale koste* **R1 232 128.09**." Ms Botha confirmed to Parliament that the figure submitted by Mr Malan of just over R1.2 million was correct. Despite the differences in these figures, the amount remains in excess of R1 million rand and exceeds the R500 000.00 by more than 100% of what was set out in the spurious loan agreement purportedly entered into in March 2010. The NDPP submitted that the correct amount of the loan, computed by its witness, Mr White, should be accepted as the lesser sum of **R1 169 069.49.**

[25] The NDPP argued that the mere fact that the so-called loan was reflected in the Trifecta books "after the fact" is indicative thereof that the conduct of Ms Botha and the Trifecta Group was not *bona fide* and genuine. In other words, a false entry was made. Ms Botha repaid a portion of the so-called loan on 09 April 2011 by utilising her Government Employees Pension Fund in the amount of **R371 054.66** and a further **R40 000.00** was paid on 28 April 2011. This means that only a total amount of **R411 054.66** was repaid. She therefore still owed Trifecta in excess of **R800 000.00** excluding interest.

[26] It is interesting to note that Ms Falck, the witness who allegedly appended her signature to the last page of the purported loan agreement between Mr Scholtz and Ms Botha, was not present when they both signed the alleged agreement in Cape Town. She was presented with an already signed document by Mr Scholtz and signed it in confirmation that the signature appended on the document, to her knowledge and belief, was Mr Scholtz's. She was requested by him to verify it as such.

[27] The Trifecta Group auditor, Ms Anneke Pretorius, a partner at Vos, Steyn, Van Zyl Inc deposed to an affidavit on behalf of the NDPP (having been afforded indemnity as a witness in terms of s 204 of the Criminal Procedure Act, 51 of 1977). According to her as at 28 March 2011, a year after the purported loan agreement had been concluded on 10 March 2010, she was unaware of the loan between Ms Botha and Trifecta when she was confronted with parliamentary questions. There was no record or accounting of the loan in the company books. She confirmed that the amount was initially allocated as an 'expense' but changed and reflected as a 'loan' after the parliamentary enquiry. According to her this conduct constitutes an irregularity which is reportable to the Independent Regulatory Board of Auditors (IRBA). There were no specific terms regulating the repayment of the purported loan and the consequences of failure to pay.

[28] What is further inexplicable is that the expenses for the Botha property renovations were channelled by the Trifecta Group on the Supplier Detailed Ledger through another project known as "Magambos", a building owned by the Trifecta Group situated in the Northern Cape, and thus creating the impression that it was a Trifecta Group project. If there was nothing untoward pertaining to this loan and the renovation, why would it be necessary to conceal it under the Magambos project if not for obfuscation? In addition why was the extensions and refurbishments not preceded by a proper loan agreement instead of putting the cart before the horse, so to speak. Mr Van der Linde submitted that this was a money-laundering scheme but Mr Albertus' explanation was that the costs of the renovations were not disguised but were captured incorrectly. Counsel did not elaborate by whom the incorrect capturing was done. There is no

merit in the latter submission. Malan & Pasch, contractors, were directed by Mr Scholtz to renovate Ms Botha's property with no limit to the budget. By parity of reasoning that explains why the contractor was not confined to R500 000.00 but over a million rand which was fully paid for by the Trifecta Group was outlaid.

[29] Ms Botha deposed to an affidavit on 04 February 2013 disclosing the basis of her defence to the forfeiture order, "PM10". Her interest related to the immovable property only. She said the following pertaining to the Jyba Trust:

"Since I am neither a beneficiary nor a trustee in the Jyba Trust, I have no legal interest therein and as such am not affected by the provisional preservation or any forfeiture order which the applicant may later seek in respect thereof."

She further stated: *"Since I was advised that there would be no benefit for me, either financial or otherwise, to oppose the finalisation of the provisional order in respect of the immovable property, I did not oppose the confirmation of the provisional order in respect of the immovable property on the return day."*

The Oranje Hotel Upington Lease Agreement

[30] Ms Botha's explanation pertaining to the Upington lease agreement (the Oranje Hotel) was that she and Mr Holele, as the Chief Financial Officer, wrote a letter to the Provincial Tender Board dated 28 March 2006 requesting the Board's approval to enter into the lease agreement with the Trifecta Group. The Board purported to approve the request by letter dated 24 March 2006 (there must be a mistake with the date of the 24th appearing on YRB 13). The Board, however, remarked that Ms Botha has already approved the request as the HOD on 29 March 2006.

Notwithstanding the premature and irregular approval by Ms Botha the Board, evidently misled, misguidedly "ratified" her flawed approval. The publication for this lease was in the Gemsbok newspaper only, pursuant to the scheme devised by Mr Breda and Ms Botha. See below.

[31] The NDPP, on the Oranje Hotel Building project, submitted that it was not only irregular but also incorrect for Ms Botha to introduce Mr Breda to Ms Vosloo, an official in the department who was also a member of the committees, that Mr Breda was the owner of the Oranje Hotel Building. According to "PMT 11" the parties to the lease agreement were the Trifecta Trading 434 Property 5 (Pty) Ltd, Registration 2006/004455/07, represented by Mr Breda and The Northern Cape Province (Dept Soc Dev) represented by Ms Botha in her capacity as the HOD. The Trifecta Group purchased the building on 03 March 2006 but it was only registered in the name of Trifecta Trading 434 Property 5 (Pty) Ltd on 03 July 2006. Of significance is that the lease agreement had already been entered into between Ms Botha and Mr Breda on 20 March 2006. The flawed agreement was further concluded even before Ms Vosloo submitted her proposals to Ms Botha for approval. What is further disturbing and was deflected by Ms Botha is that although the commencement date was 01 May 2006, the building was not ready for occupation until 01 December 2006 and in the meantime the Trifecta Group was paid for the period of non-occupation. In essence, the Trifecta Group fraudulently sold to the Department something that they did not have.

The Springbok Lease Agreement

[32] The Springbok lease agreement, Trifecta Trading 434 (Pty) Ltd, was the sole bidder. Its bid was found to be invalid. Ms Botha granted

permission for a fresh tender bid for one week in three newspapers. She relied on Clauses 16A6.3(c) and 16A6.4 of the Northern Cape Supply Chain Management policy which stipulate:

"16A 6.3 The Accounting Officer or Accounting Authority must ensure that –

(c) bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the Accounting Officer or the Accounting Authority may determine;

16A 6.4 If in a specific case it is impractical to invite competitive bids, the Accounting Officer or Accounting Authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the Accounting Officer or Accounting Authority."

Ms Botha admitted that she entered into the lease agreement with the Trifecta Group for the Van Riebeeck Building on 03 November 2006. She denied having changed the annual escalation rate from 8% to 9.5% and stated that it was the recommendation of the Bid Evaluation and Bid Adjudication Committees. She however acknowledged changing in her handwriting the lease period from five (5) years to 120 months [10 years] with an option to renew for another 120 months [10 years] adding that *'it makes sense since it will provide institutional stability for the department.'* The NDPP further pointed out, correctly in my view, that although the lease agreement was entered into with the Trifecta Group on 03 November 2006 the building was only purchased by the Trifecta Group on 19 July 2007.

The Kuruman Lease Agreement

[33] Ms Botha admitted having signed the Kuruman Lease Agreement (Summerdown Place) entered into with the Trifecta Group on behalf of the Provincial Government on 14 November 2006. She maintains that she was approached with a revision request by the Bid Adjudication Committee to change the lease period from 5 to 10 years and the annual escalation rate from 8% to 9.5%, provided that the Trifecta Group installed an alarm system. On this aspect the NDPP stated that Ms Botha unlawfully interfered with the functioning of the Bid Adjudication Committee. This submission cannot be validly gainsaid.

The Douglas Lease Agreement

[34] In as far as the Douglas Lease Agreement is concerned (the Keur and Geur building) Ms Botha claimed that although the Department only needed 205m² she ultimately agreed with the Shosholoza Trust, which was the sole bidder, for 400m². She averred that the additional space could be utilised as a Reception Area, Conference Facility and a Registry. She is the one who recommended to the Bid Adjudication Committee to conclude the lease with the Shosholoza Trust. The NDPP submitted that Ms Botha once again unlawfully interfered with the functioning of the Bid Adjudication Committee and unlawfully ignored the Committee's recommendations. I agree.

The Kimberley Lease Agreement

[35] Ms Botha had the following to say regarding Floors 5, 6 and a portion of Floor 7, Du Toitspan Building, Kimberley Lease Agreement: The Department needed offices for new staff, she claimed. She says that she consistently acted within the recommendations of the Bid Evaluation committee. She signed the lease agreement on 25 April 2007. As regards

Floors 9, 10 and 11 Du Toitspan Building, Kimberley, she maintained that additional space was required to accommodate officials relocating from the Provincial Headquarters. She says: "*I presently do not have access to the documents surrounding the acquisition of the additional space on floors 9, 10 and 11 in the Du Toitspan Building, but would imagine that the necessary procurement processes would have been followed in order to secure the additional space.*"

The NDPP correctly pointed out that the escalation rate of this lease agreement signed by Ms Botha exceeded what the Bid Adjudication Committee sanctioned. Ms Botha's actions were again clearly devious.

[36] Having had regard to the entire evidence and the relationship between Trifecta, the late Mr Breda, and the late Ms Botha, I am satisfied that the R15 000 was a payment corruptly made to Ms Botha. The reasons for my finding are the following:

36.1 The money was paid in cash and not by cheque or electronically transferred to leave a paper trail. If nothing was untoward the payment would have been so made out to the ANC.

36.2 As Phatshoane J found at para 202 of her judgment the account details of the ANC were already known to Trifecta when the R15 000 was paid. There was therefore no reason for Trifecta to pay the money directly to her. Phatshoane J in the said para 202 remarked:

"*Mr Herman Willemse, called by Ms Botha, knew of only two donations that Mr Breda made to the ANC. One was late in 2008 and the other in that morning of his death. Both these donations were made electronically to the ANC Provincial Fundraising Account. It is therefore strange that R15 000.00 was delivered by hand to Ms Botha.*"

36.3 Phatshoane J continued as follows in para 204 – 208:

"[204] Ms Potgieter, a branch treasurer of the ANC, explained that donations received by a branch are reported at the next meeting of the branch and recorded. She testified that every rand and cent received must be accounted for. Through their training which had been offered by the provincial treasurer they know they have to note their income and expenditure.

[205] Mr Scholtz intimated that the R15 000.00 was recorded as an expense in the financial records of Trifecta but could not specify where that had been recorded save to state that he did not go back to search whether it was recorded as a donation or left as an ordinary expense in the books. Mr White could not find that the amount R15 000.00 had been recorded anywhere in the Trifecta's financial records.

[206] In my view it is probable that the R15 000.00 was not intended for the ANC coffers but for Ms Botha. It is probable that Willemse did not record the money because it was simply not given to him. I am also satisfied that the letter purporting to be from the ANC, thanking Trifecta for the donation, was manufactured to justify the cash payment that Mr Malan brought to Ms Botha. According to Mr Scholtz Maggie Buizer was an employee of Trifecta Holding (accused No 3). He cannot exculpate himself because he was the controlling mind of Trifecta when the cash was paid to Botha. The payment goes back to the leases that Ms Botha concluded for the benefit of Trifecta and was corruptly given with this mind.

[207] I am satisfied that the State proved its case beyond a reasonable doubt on the main count 8. The accused's version that they were not involved in any corrupt relationship cannot reasonably possibly be true.

[208] In the result: Mr Scholtz (accused No 1), accused No 2, No 3, No 4, No 5, No 6, and No & are found guilty of corruption on the main Count 8."

[37] Ms Botha was accused No 8 in the criminal trial. In Counts 1 – 5 she was charged with the offence of the contravention of the Public Finance Management Act 1 of 1999; Count 6 of corruption, Counts 8, 9, 10, 11, 12 and 13 of fraud and Count 34 of money laundering. Although she was not convicted due to her untimely death counsel for the NDPP urged that it is permissible for a Court dealing with a POCA forfeiture application to have regard to adverse findings made in a criminal trial. He specifically identified what Phatshoane J held in the unreported judgment in ***State v Alfeus Christo Scholtz and 11 Others*** K/S 20/2013 delivered 13 October 2015 at paras 87 – 89, 119, 120, 124 – 127, 134, 138, 143, 147, 154, 160 – 199 and 201 – 206. Mr Albertus protested that the criminal proceedings may still be the subject of an appeal. From the premise that Ms Botha was legally represented and had already closed her case after testifying and having called witnesses to testify on her behalf in the criminal proceedings there was a prima facie case against her. The criminal trial was at the stage of argument on merits when she passed away. I upheld the submissions by the NDPP's counsel. Mr Albertus made the following submission: *"There is nothing implausible about the deceased's testimony that Breda was a man of philanthropic bent and that his* ***donation*** *of the 10% shares to a trust to be nominated by the deceased, was purely an act of generosity."*

This submission goes against the very grain of a corrupt-free society. An inexplicable donation to a person occupying a position of power, authority and influence makes it highly undesirable and even unlawful, particularly where laws, regulations, rules and policies were willy-nilly broken and ignored.

[38] What the above submission does not disclose is succinctly captured in Phatshoane J's judgment at para 188:

"Jyba Trust holds 10% shares in the Trifecta's umbrella company, Trifecta Investment Holdings, accused No 2. Its trustees are Ms Angelique Botha and Mr Ettienne Jacques Naude. It has five capital and income beneficiaries nominated by Ms Botha. It is common cause that these beneficiaries are related to her in that they are her brother's and sister's children. She could not give any plausible explanation concerning this nepotism except to say that Angelique Botha was already working for Trifecta and all the beneficiaries had to work hard to earn their benefits."

[39] The learned Judge continued at para 190:

"Mr Scholtz deposed to an answering affidavit in opposition to the application by the trustees of Shosholoza Trust referred in the preceding paragraph. At para 31.5 thereof he declares:

'Although the Shosholoza Trust was registered as a shareholder of 55% of the shares in the first respondent [accused No 2 in this case], ***the Shosholoza Trust represented by the deceased [Mr Breda] had, to my personal knowledge, in 2005 undertaken to transfer a 10% shareholding in the first respondent to the nominee of Yolanda, who was a close friend of the deceased and influential in political circles.*** *She had not yet nominated the entity to which the shares should be transferred at the time of the deceased's death, and hence the reference to the "YB Trust" ["YB" stands for Yolanda Botha] in the spreadsheet. That 10% shareholding is also reflected in the organogram, annexure "CS3" which I had handed to and discussed with the first applicant at our meeting in March 2009, and was at no time queried or disputed by any of the applicants.'"*

[40] What is also noteworthy is the finding by Phatshoane J at para 200 in relation to the shares:

"When Mr Scholtz effected the transfer of the shares he knew that Ms Botha had been the HOD. A powerful position from which she even sneered at her MEC's admonition. Mr Scholtz was keenly aware of the value of the relationship established between Mr Breda and his influential friend in the political circles, Ms Botha. It makes no sense that he transferred the 10% shares to Ms Botha's nominated trust without enquiring who the beneficiaries were. I am sceptical that he was keen to further a BEE empowerment project as he sought to portray. My overall view is that Mr Scholtz and his relevant accused entities corruptly benefited Ms Botha."

[41] Mr Albertus submitted that should I be inclined to consider the Judgment by Phatshoane J, then I must also look at the evidence of Ms Vosloo and Mr Holele because they exculpate Ms Botha. Phatshoane J recorded the following at paras 124 and 125:

"[124] A memo dated 23 October 2006 was directed to Ms Botha. The memo was signed by Mr F Mouton, the Chairperson of the BEC and recommended on 30 October 2006 by Mr Holele, the Chairperson of the BAC. The memo set out the comparison between the two bidders based on points scored for the price and equity ownership. In total Trifecta scored 97.16 out of 100 whereas TEB 54.15. The memo proposes that the Trifecta bid be accepted and that two aspects be negotiated with the proprietor viz: the lease period of five years with an option to renew for another five years (60 months) and the installation and maintenance of the electronic alarm system. Ms Botha approved this memo on 30 October 2006 and wrote on the memo in longa manu: 'With proviso that

the lease period be extended to 10 years (120 months) with an option to renew for another 10 years and a 9.5% annual escalation.' Mr Holele does not know why Ms Botha increased the escalation rate. He intimated that the committee was uncomfortable with the increase in the lease period and the escalation rate. They sought advice from an official of the Provincial Treasury, Ms Phillia Potgieter, who sat in their meeting. Ms Botha could not say why she increased the annual escalation rate to 9.5% when the service provider had offered 8% save to give a lengthy evasive response. She ended saying that this was also to give institutional stability in Kuruman. How the escalation will bring institutional stability escapes me because deviousness was evident.

[125] Ms Vosloo directed a letter dated 31 October 2006 to Ms Botha, headed ***"Rationale for recommending a five year lease period instead of 10 years in respect of office accommodation."*** *Ms Vosloo intimated that Ms Phillia Potgieter, the manager supply chain at Provincial Treasury, reported at the meeting of the BAC that the MEC for Finance and Economic Affairs was critical of the 10 or 15 year leases and that it was concluded at the Provincial Treasury that the leases in excess of five year period are to be discouraged. This much was confirmed by Ms Potgieter. Therefore, Ms Vosloo says that the BAC deemed it necessary to propose a five year lease period with an option to renew for another five years. Ms Botha testified that she was not bound by the MEC's comment. Ms Botha was drifting towards becoming a law unto herself. Be that as it may, by way of a memo dated 06 November 2006, six days later, Ms Vosloo directed a letter to Ms Botha headed: 'Revised decision regarding the lease period by the BEC based on the new evidence.' It boils down to this: Trifecta submitted their financier's conditions for financing the purchasing of the leased property. The financier prescribed a minimum period of 10 year lease. Ms Vosloo then states:*

'Based on this evidence the Bid Adjudication Committee recommends that the lease period of ten (10) years offered by Trifecta Trading 434 Property (Pty) Ltd be accepted. The previous recommendation of five year lease period is hereby revoked. In order to facilitate installation of an electronic alarm system the annual escalation is to increase from 8% to 9.5%."

It is evident that the BEC and BAC had become malleable, conformist and shirked their accounting responsibilities.

[42] Mr Holele deposed to an affidavit dated 19 April 2012 and stated in para 7.5 thereof that: *"I do not know why Botha increased the escalation to 9.5% and noted the increase of the lease period to ten years, similar to the lease period for the building in Springbok."*

[43] Ms Botha's excuse was that the 10% shareholding in the Trifecta Investment Holding was a donation made by Mr Breda to nominee/s of her choice which could be any person or entity. She says it was not specified to what class or kind the nominee should belong. She then exclusively nominated her relatives as trust beneficiaries: Angelique Botha (the second respondent), Jacqueline Louisa Botha, Nicole Yolanda Mariska Arlow, Anthony Christopher Arlouw and Adea Tama Botha. The trustees were Ms Angelique Botha N.O and Mr Etienne Jacques Naudé N.O, an attorney. She denied any link between her duties as accounting officer of the then Dept Soc Dev and Mr Breda's donation. According to her the first lease agreement was entered into in 2006 and Mr Breda's undertaking for that donation only took effect during April 2009, after she had already left the department.

[44] Ms Botha's explanation ignores the fact that the donation by Mr Breda was not disclosed to parliament until being extracted and prodded to do so through parliamentary questions during March 2011.

It is my finding that the shares directly or indirectly benefitted Ms Botha personally because her relatives (nieces and nephews) received the rewards from the Trifecta Group. This was a benefit derived as a result of her political influence and her position as the Head of Department. She only selectively approved applications by the Trifecta Group to the detriment of other competitors and government and contrary to the prescripts in s 217 of the Constitution of the Republic of South Africa Act, 108 of 1996.

[45] Section 3 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 (the PCCA Act) stipulates:

"Any person who, directly or indirectly-

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,

in order to act, personally or by influencing another person so to act, in a manner-

(i) that amounts to the-

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to-

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules,

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of the offence of corruption."

[46] The NDPP argued that the making of the 10% shareholding available to Ms Botha was an offer of gratification to her in order to influence her to grant the said leases to the Trifecta Group. A further reward to her came in the form of the renovation of her home. The gratification was hidden. Counsel submitted that this was also a money-laundering devise by the Trifecta Group because the money was hidden through another project to avoid detection as the so-called loan agreements were drawn up much later as a subterfuge. The concealment is confirmed by the fact that Ms Pretorius, the Trifecta Group Accountant, did not know about the loan and it was not even reflected in the company's accounting records. When it was belatedly recorded it was initially reflected as the Trifecta Group's expense in the amount of R500 000.00 but later the word "expense" was changed to "loan" after a parliamentary enquiry. This was a deception.

[47] ***Section 13 of the PCCA Act: Offences in respect of corrupt activities relating to procuring and withdrawal of tenders*** stipulates that:

"(1) Any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, as-

(a) an inducement to, personally or by influencing any other person so to act-

(i) award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or

(ii) upon an invitation to tender for such contract, make a tender for that contract which has as its aim to cause the tenderee to accept a particular tender; or

(iii) withdraw a tender made by him or her for such contract; or

(b) a reward for acting as contemplated in paragraph (a) (i), (ii) or (iii),

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders.

(2) Any person who, directly or indirectly-

(a) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or the benefit of another person, as-

(i) an inducement to, personally or by influencing any other person so to act, award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or

(ii) a reward for acting as contemplated in subparagraph (i); or

(b) with the intent to obtain a tender in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, gives or agrees or offers to give any gratification to any person who has made a tender in relation to that contract, whether for the benefit of that tenderer or for the benefit of any other person, as-

(i) an inducement to withdraw the tender; or

(ii) a reward for withdrawing or having withdrawn the tender,

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders."

[48] In ***Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency, and Others*** 2014 (1) SA 604 (CC) at 616 C – E (para 27) Froneman J's remarks are instructive:

"[27] There is a further consideration. As Corruption Watch explained, with reference to international authority and experience, deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a threefold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences."

[49] It is clear to me that there was gratification towards Ms Botha by the Trifecta Group. The amounts paid by the Trifecta Group for the renovations were to benefit Ms Botha personally, directly or indirectly, and were never meant to be a loan. I accept the correct amount of the renovations to be **R1 169 069.49**. It is also my view that Ms Botha's relationship, firstly with Mr Breda and subsequently with Mr Scholtz and the Trifecta Group went beyond a normal client/supplier relationship and redounded to the detriment of the Department. The Trifecta Group should not have assisted Ms Botha financially as there are registered financial institutions responsible for funding. Her submission that the bank had declined her application should also be taken with a pinch of salt. It

cannot serve as justification for her to approach the Trifecta Group for financial assistance. In fact the Trifecta Group should have steered clear of the stated arrangement for at least three reasons: (a) A reputable financial institution is alleged to have found her not to be credit worthy; (b) she was in a highly conflictual and compromised situation; and (c) she was vulnerable and prone to corrupt influences. It has also been established beyond doubt that she only approached a banking institution after the parliamentary enquiry and the renovations were already underway. Altering records or agreements takes careful planning and is therefore a serious malfeasons.

[50] Ms Botha was the HOD and hence the Accounting Officer. The phrase commonly used is that "the buck stopped with her." She tried to portray a picture of being bound by what the Bid Evaluation Committee and the Bid Adjudication Committee recommended whereas she had not disclosed the corrupt relationship between herself and Mr Breda to them. Besides, she had the ultimate power to approve or disapprove the recommendations. She, as the accounting officer, bore the responsibility to ensure that prescripts are not compromised or contravened before appending her signature to any document. She was on the take.

[51] At the risk of repetition but in summary:

(a) Ms Botha had a direct conflict of interest regarding the lease agreements;

(b) Her family stood to benefit from the 10% Jyba Trust shares;

(c) The so-called 'donation' of the shares by Mr Breda, a very close friend and a member of the ANC together with Ms Botha, must be assessed together with the fact that the same Mr Breda advised Ms

Botha to seek financial assistance from the Trifecta Group (Mr Scholtz) for the renovations of her home;

(d) Ms Botha and Mr Breda had become part and parcel of the same team: Team "A". Ms Botha purported to represent the Department and Mr Breda the Trifecta Group. In fact and in truth they were representing themselves. After Mr Breda's death and knowing that she had already awarded tenders to the Trifecta Group she should have declined the offer for the 10% shares by Mr Scholtz. This suggestion does not mean that she would thereby have exculpated herself. The rot had already set in and was far advanced.

[52] I am satisfied that the NDPP has succeeded in proving that this was gratification and amounted to corruption and money laundering. Under the circumstances, as Japhta J pronounced in ***National Director of Public Prosecutions v Elran*** 2013 (1) SACR 429 (CC); 2013 (4) BCLR 379 (CC); [2013] ZACC 2 (Elran) at para 22:

"*At the outset we must remind ourselves of the nature of the legislation we are concerned with. POCA was enacted in pursuit of legitimate and important government purposes of combating serious organised crime and preventing criminals from benefiting from the proceeds of their crimes.*"

[53] The submission by Mr Albertus that the government is benefitting from the leases is far removed from reality. Mr Trevor Sean White, Director at PricewaterhouseCoopers (PWC) Advisory Services (Pty) Ltd, was appointed by the Department of National Treasury on 24 January 2012 to investigate allegations of fraud and corruption between the Dept of Soc Dev & Pop Dev and Trifecta Investment Holdings (Pty) Ltd and related companies. According to Mr White in his sworn statement the total actual

prejudice in relation to the lease agreements already paid to the Trifecta Group as at 31 January 2012 was R26 681 835.37 which represents an amount which was not due and payable to the Trifecta Group and was to the prejudice of the Department and/or SASSA. He explained that the sum of R26 681 835.37 escalates on a monthly basis as the Department or SASSA continue to pay the Trifecta Group and will reach an amount of R57 402 266.49 if the leases reach their full term.

Proportionality

[54] The NDPP submitted that Ms Botha's mother, Ms Gesiena Maria Botha, as the executrix of her estate failed to file any substantive application to exclude any of her interest, material or otherwise. As a result, there is no evidence of her homelessness which she claims blandly. The property was utilised as the late Ms Botha's primary residence. The executrix has also not shown that she is an innocent owner as envisaged in s 52 (2A) of POCA where first, she would have to show that she acquired the interest legally and for a legitimate consideration, the value of which is not significantly less than the value of that interest and, neither knew nor had reasonable grounds to suspect that its acquisition was derived from proceeds of crime. Differently put, she did not raise the innocent owner defence. See ***National Director of Public Prosecutions v RO Cook Properties (Pty) Ltd; National Director of Public Prosecutions v 37 Gillespie Street Durban (Pty) Ltd and National Director of Public Prosecutions v Seevnarayan*** 2004 (2) SACR 208 (SCA) at 226i – 227c. It is my view that there is no evidence that shows that either Ms Botha's mother or her surviving siblings will not be able to acquire or provide alternative accommodation. There is also no information placed before me that Ms Botha's mother's monthly income was insufficient to lease another property or book into an old age or retirement home.

[55] In considering the effect of the forfeiture of the immovable property I had regard to, among others: That the late Ms Botha secured a mortgage bond of R705 000 for the property in favour of Absa Bank in respect of which she has repaid Absa Bank the amount of R739 927.48 through monthly instalments.

[56] The NDPP, relying on the Windeed Automated Evaluation Report, "JS2", estimated the value of the property at R1 770 000.00. Ms Botha disagreed with that estimation and attached a letter from Alex Thornhill Properties, an estate agency that estimated the current value of property to be in the region of R2.5 million. Thornhill qualified the estimation in its letter dated 18 January 2013 marked "YRB 1" that it is not an accredited valuator and the amount of R2.5 million, inclusive of 6% commission, is only an estimate. The NDPP erroneously accepted the value of R2.5 million as market-related. It emphasised that the relief it seeks is to dislodge the value of the Trifecta Group funded renovations from the hands of Ms Botha, her estate, as well as the shares from her relatives.

[57] In my view the 6% commission claimed by the estate agent cannot be part of the value of the property and must therefore be deducted from its value. Six per cent (6%) of R2.5 million rand, rounded off, amounts to R416 000.00. I am therefore prepared to accept that the best way of arriving at the proper value of the property, given that the evaluation was not done professionally by Alex Thornhill Properties, is to add the figure arrived at by the NDPP (R1.770 000.00) to the figure given by the estate agent R2.5 million less 6% to arrive at R2 084 000.00 and divide the two amounts by two to arrive at R1 927 000.00.

[58] In any event, Van Heerden AJ sounded a note of caution in ***Mohunram and Another v National Director of Public Prosecutions and Another (Law Review Project as Amicus Curiae)*** 2007 (4) SA 222 (CC) at 257G that in considering whether or not a forfeiture order will be disproportionate, it is not necessary to conduct the "financial exercise". I nevertheless conducted it because the figures were provided. The learned Judge quoted the following at 256B para 86 from *Van der Walt* ***Constitutional Property Law*** *(Juta, Cape Town, 2005) at 195:*

"[T]he property rights of those who were actually involved in crime may be lost through forfeiture, but by and large this is not necessarily unjust or unreasonable, as such loss would mostly be justifiable in the normal way by describing the forfeiture as an exercise of the police power that merely has to satisfy the requirements in s 25(1) in establishing a proper balance between the public purpose of the deprivation and the interests of the affected person."

[59] I am mindful of the fact that the primary purpose of forfeiture is to remove the incentive for crime and not necessarily to punish the offender. See ***National Director of Public Prosecutions and Another v Mohamed NO and Others*** 2002 (4) SA 843 (CC). The property in this case however, is the proceeds of corruption and money-laundering. I therefore find that the property ERF 3432 Kimberley also known as 12 Jawno Street, Kimberley, as well as the value of the shares allotted to the Jyba Trust stands to be forfeited to the State.

[60] In the result, the following order is made:

It is ordered that:

1. The immovable property owned by the estate of the late Ms Yolanda Rachel Botha, Estate No 394/2015 situate at Erf 3432,

also known as 12 Jawno Street, Kimberley, is declared forfeited to the state in terms of ss 48(1) and 50(1)(b) of the Prevention of Organised Crime Act 121 of 1998 (POCA).

2. **The shares in the Jyba Beleggings Trust registered as T156/2010 are declared forfeited to the state in terms of ss 48(1) and 50(1)(b) of the Prevention of Organised Crime Act 121 of 1998 (POCA).**
3. **Ms Gesiena Maria Botha, in her capacity as the executrix, and any other person who has financial obligations in respect of the immovable property is ordered to fulfil such obligations pending finalisation of the forfeiture proceedings unless she (the executrix) signs a consent to judgment in favour of the National Director of Public Prosecutions (NDPP).**
4. **The curator bonis, Johan Van Wyk of Enslins Kimberley Inc, Kimberley, appointed by this court on 26 October 2012, is authorised and directed to:**
   - **4.1 As soon as possible, but not later than 20 weekdays of this Order, and after publication in the Government Gazette, sell the said immovable property on public auction or by private sale;**
   - **4.2 To sign all registration documents relating to the immovable property and or transfer of the shares;**
   - **4.3 Cause the proceeds of the property, less incidental expenses thereto, to be deposited into the Criminal Assets Recovery Account;**
   - **4.4 File and serve his Final Report within 90 days from date of this order setting out what he has done;**
   - **4.5 The report in 4.4 and the Government Gazette in 6 (below) must be filed on the file of the Court (Case No 1825/2012).**

5. **The applicant is ordered to serve a copy of this order on the respondents.**
6. **The applicant is ordered to publish, as soon as possible, a notice of this order in the Government Gazette.**

MAMOSEBO J
NORTHERN CAPE DIVISION

For the applicant:	Adv H van der Linde SC
Instructed by:	The State Attorney, Kimberley
For the 1st respondent:	Adv A Albertus SC
Instructed by:	Towell & Groenewaldt Attorneys