

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

Reportable: NO
Of interest to other Judges: NO
Circulate to Magistrates: NO
Case no: **900/2024**

In the matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

And

MOEKEPI RAMOLAHLOANE

1st Respondent

MOJELA BENJAMIN LEKULO

2nd Respondent

Coram: JP DAFFUE J
Heard: 31 OCTOBER 2024
Delivered: 27 MARCH 2025

This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 09H00 on 27 MARCH 2025.

Summary: Application for forfeiture order in terms of section 50(1) read with section 53 of the Prevention of Organised Crime Act 121 of 1998 (POCA) in respect of nine properties subject to a preservation order. A forfeiture order was granted by default in respect of seven properties. Two vehicles were confiscated from an alleged major role player in the illicit gold mining and gold trade industry in the Free State. These vehicles are respectively registered in the names of the two respondents who applied for the exclusion of their interest in the properties in terms of section 52 of

POCA. The court held that they did not prove the legitimacy of the acquisitions on a balance of probabilities. A forfeiture order also granted in respect of the two vehicles.

ORDER

1 The following properties, subject to a preservation of property order granted on 22 February 2024, are declared forfeit to the State in terms of section 50(1) read with section 53 of the Prevention of Organised Crime Act 121 of 1998 (POCA):

- a. an amount of R254 600 (the cash);
- b. fixed property described as erf 1[...] under title deed number T69[...], situated at [...] N[...] Street, Doorn in Welkom registered in the name of Lekulo George Lekulo with identity number 6[...];
- c. fixed property described as erf 5[...] under title deed number T16[...], situated at 7[...] S[...] Street, Riebeeckstad in Welkom registered in the name of Lekulo Investments Holdings (Pty) Ltd registration number 2007[...];
- d. fixed property described as erf 5[...] under title deed number T16[...], situated at 5[...] S[...] Avenue, Riebeeckstad in Welkom registered in the name of Lekulo Investments Holdings (Pty) Ltd registration number 2007[...];
- e. a Jeep Grand Cherokee with registration number FLF[...], engine number EC3[...] and chassis number 1C4[...];
- f. an Audi A3 with registration number HDZ[...], engine number CJS[...] and chassis number WAU[...];
- g. an Audi A5 Coup Quattro S-Tronic (RS5) with registration number HJM[...], engine number CFS[...] and chassis number WUA[...];
- h. a BMW 3 series, registration number CSG[...], engine number 250[...] and chassis number WBA[...]; and

i. a Toyota Hilux, registration number HKC[...], engine number 1GD[...] and chassis number AHT[...].

2. This order shall be executed under the supervision and control of the curator bonis and representatives of the applicant may accompany the curator bonis in order to represent the applicant's interest in the execution of this order and the State may deal with the property as set hereunder.

3. In terms of section 42(1)(a) of POCA, Johan Francois Engelbrecht (Engelbrecht) of Icon Insolvency Practitioners Pty Ltd (**Icon**) an insolvency company, is hereby appointed as curator bonis subject to the applicable provisions of POCA and, save where otherwise provided in POCA, the provisions of the Administration of Estates Act 66 of 1965 (as amended) as well as supervision of the Master of the High Court.

4. After obtaining letters of curatorship the curator bonis shall:

- a. assume control over the property;
- b. take care of the said property;
- c. administer the said property and do any act necessary for that purpose;
- d. order any person holding property subject to the preservation of property order to surrender forthwith such property into the custody of the curator bonis.

5. The objectives of POCA will be properly met if Engelbrecht takes control of the property listed in paragraph 1 above. The Unit Commander of the SAPS Safe Guarding Unit, Bloemfontein must hand the property listed in paragraphs 1 (e) to 1 (i) above to Engelbrecht and the said Engelbrecht or a person authorised by him in writing shall sell this property as well as sell the property listed in paragraphs 1 (b) to 1 (d) and pay the proceeds of the sale into the Criminal Asset Recovery Account (CARA) number 8[...] established under section 63 of POCA, held by the South African Reserve Bank. ABSA shall transfer the cash listed in paragraph 1.1 held in the ABSA SAPS suspense account into the CARA 80303056 as detailed above.

6. Any persons whose interest in the properties concerned is affected by the forfeiture order, may within 20 days after they have acquired knowledge of such order, set the matter down for variation or rescission by the court.

7. The said Engelbrecht or person authorised by him shall as soon as possible, but not later than within a period of 90 days of this order coming into effect, file a report with the applicant on the manner in which he:

- a. completed the administration of the property mentioned above, and
- b. complied with the terms of this order.

8. The registrar of the court is hereby directed to publish as soon as is practicable a notice of this order in the Government Gazette.

9. The respondents' applications for the exclusion of their interests in the respective properties are dismissed with costs.

10. In terms of section 42 (2) of POCA the fees of the curator bonis and all disbursements shall be paid from the forfeited property.

11. In terms of section 75(2) and 75(3), read with section 75(4) of POCA, any person who intentionally refuses or fails to comply with this order shall be guilty of an offence and shall be liable on conviction to a fine or to a period of imprisonment of up to 15 years.

JUDGMENT

Daffue J

Introduction

[1] On 22 February 2024 this court granted a preservation order under s 38(1) of the Prevention of Organised Crime Act 121 of 1998 (POCA) on an *ex parte* and urgent basis. It involved nine different properties, including immovable properties, movable properties and cash. In March 2024 two affected persons filed notices in terms of s 39(3) of POCA to oppose the relief sought against them. They also filed the requisite affidavits in terms of s 39(5).

[2] On 3 July 2024 the National Director of Public Prosecutions (the NDPP) brought an application under s 48 of POCA for an order declaring the properties subject to the preservation order forfeit to the State. It is alleged that the properties are the proceeds of unlawful activities, specifically theft, contravention of ss 4 and 5 of the Precious Metals Act 37 of 2005 and ss 4, 5 and 6 of POCA, dealing with money laundering, assisting another to benefit from the proceeds of unlawful activities and the acquisition, possession or use of proceeds of unlawful activities respectively. Answering and replying affidavits were filed and the forfeiture application was eventually argued on 31 October 2024.

The parties

[3] As mentioned, the NDPP is the applicant in this application. She was represented by Adv SN Khumalo on instructions of the State Attorney. The first affected person that objected to the preservation order and who is cited as the first respondent in these proceedings is Mr Moekepi Ramolahloane. He was represented by Adv LMA Mofokeng. Mr Mojela Benjamin Lekulo, the other affected person, cited as the second respondent, was represented by Adv F Dlamini, instructed by Wesi Attorneys Inc, Bloemfontein.

The relief sought and the opposition thereto

[4] In the forfeiture application the applicant seeks an order in terms of s 50(1), read with s 53 of POCA to declare the following properties which are presently subject to a preservation order as mentioned above forfeit to the State:

- 'a. an amount of R254 600 in cash;
- b. fixed property situated at [...] N[...] Street, Doorn in Welkom registered in the name of Lekulo George Lekulo;
- c. fixed property situated at 7[...] S[...] Street, Riebeeckstad in Welkom registered in the name of Lekulo Investments Holdings (Pty) Ltd;
- d. fixed property situated at 5[...] S[...] Avenue, Riebeeckstad in Welkom registered in the name of Lekulo Investments Holdings (Pty) Ltd;
- e. a Jeep Grand Cherokee with registration number and letters FLF[...] engine numbers EC3[...] and Chassis numbers 1C4[...];
- f. an Audi A3 with registration numbers HDZ[...], engine numbers CJS[...] and Chassis numbers WAU[...];

- g. an Audi A5 Coup Quattro S-Tronic (RS5) with registration number HJM[...], engine numbers CFS[...] and Chassis numbers WUA[...];
- h. a BMW 3 series, registration number CSG[...], engine numbers 250[...] and Chassis numbers WBA[...]; and
- i. a Toyota Hilux, registration number HKC[...], engine numbers 1GD[...] and Chassis numbers AHT[...].

[5] It is the first respondent's case that the aforesaid Toyota Hilux with registration number HKC[...] (the Toyota Hilux) should be released to him as the applicant is not entitled to a forfeiture order. According to him he is a rich businessman, conducting various businesses, who purchased the Toyota Hilux for R604 735.82 with money that he was lawfully entitled to where after the vehicle was registered in his name. On his version Mr Lekulo George Lekulo (Lekulo) approached him in 2019 and requested a loan from in order to buy a bakkie which he needed for private and business purposes. It is recorded that Lekulo should not be confused with Mojela Benjamin Lekulo, cited as the second respondent in these proceedings. Lekulo undertook to pay back the loan upon receipt of outstanding payments from several projects ran by him, *inter alia* involving the Matjhabeng municipality. Instead of lending the money to Lekulo to allow him to buy his own bakkie, the first respondent offered to buy the bakkie and register it in his own name as security. Lekulo would then have the use of the bakkie and once he has paid back the purchase price to the first respondent, he would become owner thereof. Lekulo accepted the offer and indicated that he required a 2019 Toyota Hilux Legend 5.0 model.

[6] In August 2019 the first respondent went to McCarthy Motors in Pretoria and purchased a black Toyota Hilux Legend 5.0 for the amount of R604 735.82. I accept, insofar as there is no evidence to that effect, that Lekulo did not even accompany the first respondent when he concluded the deal. The first respondent took delivery of the Toyota Hilux where after he handed same to Lekulo who failed to make any payments to the first respondent during all these years. At a stage the Toyota Hilux was confiscated by the South African Police Service (SAPS) while it was in Lekulo's possession and/or under his control. Consequently, it is the first respondent's case that there are no reasonable grounds to conclude that the Toyota Hilux form part of the proceeds of unlawful activities. Also, all criminal charges against Lekulo under

case number RC109/2022 were withdrawn in the Welkom Regional Court on 18 March 2024.

[7] It is the second respondent's case that the Audi A5 Coup Quattro S-Tronic (RS5) with registration number HJM[...] (Audi A5) does not form part of the proceeds of unlawful activities. According to him he paid the purchase price of the Audi A5 from monies derived from his business, as well as from his wife and others. He purchased the vehicle from Automania in Kyalami, Gauteng at the purchase price of R485 940.00 which was paid in several payments from as little as R17 825 to R250 000 over a period from 6 August 2018 to 4 September 2018.

[8] I shall during the evaluation of the evidence deal in more detail with the parties' allegations. It is recorded that the applicant is entitled to a forfeiture order in respect of all the other properties referred to above. Nobody lay any claim thereto. The applicant made a proper case and should be granted relief by default. Consequently, the court's attention is required only pertaining to the transactions relating to the Toyota Hilux and the Audi RS 5.

Legislation and authorities

[9] Section 50(1) of POCA stipulates that the High Court shall, subject to s 52, make an order applied for under s 48(1) if it finds on a balance of probabilities that the property concerned is either (a) an instrumentality of an offence referred to in schedule 1, or (b) the proceeds of unlawful activities, or (c) is property associated with terrorist and related activities. The applicant's case is not that the properties are associated with terrorist and related activities.

[10] In *National Director of Public Prosecutions v Moyane*¹ the court held that a respondent bears an evidentiary burden to show that the proceeds used to purchase the property emanated from a legitimate source. Section 52 of POCA places an *onus* on the party seeking to exclude the interest from the operation of the order to show that such interest has been legally acquired. The first two subsections read as follows:

'(1) The High Court may, on application-

¹ (474/2021) [2022] ZASCA 79 (31 May 2022) para 29.

(a) under section 48 (3); or
 (b) by a person referred to in section 49 (1),
 and when it makes a forfeiture order, make an order excluding certain interests in property which is subject to the order, from the operation thereof.

(2) The High Court may make an order under subsection (1), in relation to the forfeiture of the proceeds of unlawful activities, if it finds on a balance of probabilities that the applicant for the order-

(a) had acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of that interest; and
 (b) where the applicant had acquired the interest concerned after the commencement of this Act, that he or she neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities.’

There is indeed a duty on such party to adduce evidence pertaining to the legitimacy of the acquisition. Therefore, the respondents need to support their allegations with proof if they want their veracity to be accepted as tenable.²

[11] POCA defines proceeds of unlawful activities as any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived. Property is described as money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof. Unlawful activity means any conduct which constitutes a crime or which contravenes any law whether such conduct occurred before or after the commencement of POCA and whether such conduct occurred in the Republic or elsewhere.

[12] It is clear that the unlawful activity need not have been committed by the holder or owner of the property, but it is sufficient for it to have been committed. The guilt or wrong-doing of the owner or possessor is of no relevance to these proceedings as recorded in *National Director of Public Prosecutions and Another v Mohamed NO*.³ In *National Director of Public Prosecutions and Another v RO Cook*⁴

² *National Director of Public Prosecutions v EJ Herandien* (22898/2018), unreported judgment delivered on 17 March 2021.

³ 2002 (2) SACR 196 (CC).

the court, having to determine whether property formed part of proceeds of unlawful activities, held as follows:

‘Bearing in mind that the objective of the Act is to render forfeit the returns that might accrue from unlawful activity, we consider that the ‘connection’ the definition envisages requires some form of consequential relation between the return and the unlawful activity. In other words, the proceeds must in some way be the consequence of unlawful activity.’

[13] The term, ‘unlawful activities’, as envisaged in POCA does not refer to any contraventions of the law which do not amount to criminal conduct. In this regard the Supreme Court of Appeal held in *Bobroff and Another v the National Director of Public Prosecutions*⁵ as follows:

‘... The purpose of s 50(1) of the POCA, as read with the definition of ‘proceeds of unlawful activities’, in the context of the known developments worldwide in relation to transnational crime, is to strip offenders of the proceeds of their crime wherever they may retain it.’

Later in the judgment the court made the following statement:⁶

‘Where proceeds of crime have been laundered with the very purpose of disguising the origin and identity thereof, they may be mixed with other assets which may not be the proceeds of crime, and they may be converted into other forms of asset which technically are not direct proceeds of crime. In the case of money, this would typically be the case. The definition of the concept in s 1 of POCA therefore includes ‘any property representing property so derived’. In *Botha*, a corrupt relationship existed between Ms Botha, at the time the head of the Northern Cape Department of Social Services and Population Development, and Trifecta Investment Holdings (Pty) Ltd (Trifecta). Trifecta executed and paid for renovations to Ms Botha's family home. The renovations cost R1 169 680,49. After Ms Botha had died, the NDPP sought to recover the value of the benefit as proceeds of crime from her estate, in terms of s 48(1) and s 50 of POCA. The Constitutional Court held that the amount paid by Trifecta in respect of the renovations represented the proceeds of crime, in the hands of Ms Botha, and ordered, in terms of s 50(1)(b), that an amount equivalent to the benefit received be paid from Ms Botha's estate to the state.’

⁴ 2004 (2) SACR 208 (SCA) para 72.

⁵ (194/20) [2021] ZASCA 56; [2021] 3 All SA 1 (SCA); 2021 (2) SACR 53 (SCA) (3 May 2021) para 17.

⁶ *Ibid* para 40; the court's reference to Botha is to the judgment in *National Director of Public Prosecutions v Botha NO and Another* 2020 (1) SACR 599 (CC) (2020 (6) BCLR 693; [2020] ZACC 6).

[14] Kruger,⁷ with reference to international experts on the topic of money laundering, makes the following comments:⁸

‘Money laundering can be described as “the manipulation of illegally acquired wealth in order to obscure its true source or nature”. It entails disguising the origins of money obtained through crime so that the funds appear to have been obtained legally. The funds are made to appear legal through a single transaction or a series of transactions. Thus is the money acquired by unlawful means made useful. As Bourne puts it:

“Criminals, and in particular organised crime syndicates engaged in a variety of unlawful activities such as drug trafficking, fraud, embezzlement, theft and smuggling of vehicles, weapons and works of art, are faced with a problem how to disguise, protect and legitimise the dirty money generated from their illegal activities”

[15] An aspect that needs to be dealt with is the first respondent’s point *in limine*. According to him Lt Col BJ Skota (Skota) was part of the criminal investigations *in casu* and was well aware of the confiscation of the properties concerned. Skota not only made a statement in respect of his involvement, but furthermore took down the first respondent’s statement and administered the oath as commissioner of oaths. This according to the first respondent is a contravention of the regulations issued under the Justices of the Peace and Commissioners of Oaths Act 16 of 1963. Consequently, he submitted, relying on ss 33 and 35(5) of the Constitution that the evidence obtained must be excluded as its acceptance would be detrimental to the administration of justice. There is no merit in the point taken as Skota acted in his official capacity as a member of SAPS. In any event, the first respondent repeated the allegations contained in the statement under oath in these proceedings.

An evaluation of the evidence

[16] This being opposed motion procedure, the trite principles applicable to the adjudication of factual disputes has been set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*.⁹ In order to establish whether a real, genuine and *bona fide* dispute of fact exists the following *dictum* in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* must be adhered to by respondents:¹⁰

⁷ A Kruger, *Organised Crime and Proceeds of Crime Law in South Africa*, 3rd ed p 55.

⁸ *Ibid.*

⁹ 1984 (3) SA 623 (A) at 635 C.

¹⁰ 2008 (3) SA 371 (SCA) para 13.

'A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.' (emphasis added)

[17] I shall start with the version of the first respondent in response to that of the applicant pertaining to the Toyota Hilux. It is recorded that the first respondent failed to attach a confirmatory affidavit by Lekulo in the forfeiture application to confirm his version. However, Lekulo did file an affidavit in support of first respondent's opposition of the preservation order. Therein he stated that the vehicle was seized from him, that 'it remain (sic) his [the first respondent's] property since I am failing to pay him after he brought (sic) it for me after I undertook to pay him back.' It is improbable that Lekulo was having financial challenges in 2018 and 2019, bearing in mind the uncontested evidence that he was purchasing immovable and movable properties for cash during that period. I deal with this aspect later herein.

[18] First respondent's version is so far-fetched and untenable that it can be rejected as false. Logic dictates that Lekulo would at least accompany his friend to the motor vehicle dealership in Midrand to ensure that the best possible deal be

clinched. First respondent did not even have knowledge of what was owing or would become owing to Lekulo and when the funds would be available to enable him to settle his debt. There is no record of any legitimate business which would allow Lekulo to make sufficient profit to pay his friend. No terms of the transaction are recorded. The vagueness of the allegations is overwhelmingly showing a lack of credibility. The purchase of the Toyota Hilux occurred in September 2019. Lekulo needed the vehicle for his personal and business use. In November 2021 Skota and his team confiscated no less than five vehicles from Lekulo, to wit a Jeep, the Audi A5 which I will deal with later, a BMW, an Audi A3 and the Toyota Hilux. By then Lekulo has not paid a cent to first respondent, but he was allowed by the first respondent to remain in possession of the Toyota Hilux.

[19] First respondent tried to convince me, with the assistance of his major son who manages his businesses, that the cash takings of his businesses were not deposited into the various business bank accounts, but used to load R50 and R100 notes into an ATM for withdrawal of ATM customers. He relied on a lease agreement with Spark ATM Systems. Capitec Bank reimbursed him (or his company) in respect of withdrawals by ATM customers. The applicant presented proof through the testimony of Mr Govender, an expert having access to the NCR ATLEOS system, who investigated the particular ATM software. His affidavit is attached as annexure BS 10 to the founding affidavit. The ATM machine was in perfect working condition during the period 2 to 4 September 2019, contrary to the first respondent's version that it was broken down. It has to be accepted, as alleged by the applicant, that the first respondent's son made a false statement in this regard. Much more can be said about the use of the ATM machine to load money, but I believe the record speaks for itself.

[20] Much can also be said about the manner in which the first respondent settled the purchase price of the Toyota Hilux. I shall refrain from getting into detail. His company, Mascodor 107 (Pty) Ltd (Mascodor) paid R554 735.83 to the dealership on 6 September 2019 and the first respondent personally paid the balance of R50 000 on the same day. The first respondent had sufficient money in his personal account to pay the purchase price in one lump sum, but elected to transfer money to Mascodor to make the above payment. The payment notification to the dealership indicates the Mascodor payment to be from LTK Bottle Stores CC, which is trading

as Pilgrim Filling Station, another business of the first respondent. R200 000 was indeed transferred from LTK Bottle Stores' account to Mascodor's account to facilitate the payment. Clearly, the first respondent had no reason to transfer the money from his one business account to the other. Instead of LTK Bottle Stores transferring money directly to the dealership, it was channelled via Mascodor. First respondent found nothing wrong with this procedure, but there was clearly an attempt to mislead the source of the payment by indicating that it was from LTK Bottle Stores.

[21] The first respondent failed to present his companies' financial records for the relevant period, *ie* the 2020 financial year. The transaction took place in September 2019 which fell in the 2020 financial year. He did however attach the SARS' assessments for income tax in respect of him personally as well as Mascodor and LTK Bottle Stores for the 2019 financial year as annexures A1, A2 and A3 to the answering affidavit, but not the returns of income filed with SARS. Mascodor's taxable income was R7 150. LTK Bottle Stores made a loss of R102 827. On his version there must be records showing that cash was taken out of the tills of his businesses and for what purpose. I also have in mind the companies' returns of income filed with SARS and the Value Added Tax (VAT) returns. These documents would go a long way to show that these companies indeed earned sufficient legitimate income to make the aforesaid payments. Surely the turnover figures in the VAT returns would be of assistance. The failure to present these documents in light of the totality of the evidence allows me to make a negative deduction against the first respondent.

[22] It has been proven in many cases dealing with POCA that criminals make use of their friends, relatives and associated companies to hold property on their behalf in order to pull the wool over the eyes of other parties such as SARS, the Reserve Bank and/or SAPS. The ATM machine utilised by the first respondent was a valuable washing machine to clean the dirty money loaded into it. First respondent and his son's attempts to show that legitimate money was loaded did not impress me, given the totality of the facts in this case.

[23] It is mind-boggling that a person such as Lekulo would need cash to purchase a vehicle when two years later he was in possession of five vehicles and the keys of

further vehicles which could not be confiscated at the time. If he became so wealthy in that time, his friend would have known it and claimed his money. This did not happen. It is the NDPP's case that Lekulo has accumulated wealth in excess of R4 million. This is uncontested as is the fact that Lekulo is not opposing the relief sought against him. The five vehicles found in the first respondent's possession or under his control were bought in the period from 2014 to 2019 for an accumulative amount of R2 293 141. When Lekulo was arrested, the keys of all the vehicles were in his possession and he admitted to be the owner thereof. The SAPS investigation is telling.

[24] It is alleged by the applicant that Lekulo is a known criminal. His criminal profile in respect of illicit mining and dealing in unwrought gold is damning. He was convicted for being in illegal possession of gold in 1994 and 1995. In 2008 he was convicted for illegal traffic in gold. It is not clear what the final outcome of the two cases of illegal mining brought against him in 2021 in the regional court will be, although it is alleged by first respondent that these had been withdrawn in the absence of a *prima facie* case. It is emphasised that the standard of proof in this civil application is much lower than required in a criminal matter where the State has to prove its case beyond reasonable doubt.

[25] Project PAPPAGE was implemented to deal with unlawful activities pertaining to illegal gold mining, the theft of unwrought gold, the melting thereof and the selling of gold to gold smuggling syndicates. The uncontested version presented by the NDPP pertaining to project PAPPAGE in the form of affidavits by the police agent, Skota and Mr Mradla of the Asset Forfeiture Unit points in one direction only. Lekulo is regarded by them as a kingpin in the illegal mining and gold trade industry. Investigations since the beginning of 2016 revealed that Lekulo and other targets have been involved in illegal mining and gold trading activities.

[26] Lekulo and other targets purchased several properties by paying in cash, the proceeds of illegal activities according to the SAPS investigations. In October 2019, the time that he allegedly did not have money to buy a vehicle according to first respondent, Lekulo purchased 7 Nyala Street in Welkom at a purchase price in excess of R700 000 in cash. Lekulo's personal bank account and associated business accounts at no point held sufficient funds to conclude his cash deals. It is

unnecessary to deal with the uncontested evidence. I shall return to Lekulo's involvement later herein.

[27] I shall now consider the version of the second respondent in relation to that of the applicant pertaining to the Audi A5. On the face of it the second respondent's version is confirmed by his wife and others. But he failed to heed the warning sounded in *Wightmann* quoted above. Save for the say-so of him and his witnesses, no proof has been presented of the actual source of the monies paid over from time to time to the car dealer.

[28] The second respondent alleged that the Audi A5 was bought as his and his wife's personal asset. It is not explained why three separate cash payments, totalling R42 800, were made on the same day. What is clear is that his brother, Lekulo was involved, although the allegation is made that the money came from legitimate cash sales. There is no indication on the deposit slip who made the initial payment of R20 000. It is merely alleged that the money was obtained from a loan of R20 000 granted by the stockvel to second respondent's wife. The payment by Baile Trading of R100 000 is confirmed by Mr De Vos. The lack of detail is worrisome. No contract has been attached to show the total remuneration payable. Furthermore, there is no record that the second respondent's co-director was aware of and consented to the payment and/or that the payment was recorded in Lekulo Investments' books as a loan to second respondent. Mr Makgisa, who allegedly paid back a loan granted to him, is the same person that was involved in the purchase of the Audi A3 referred to later herein. His involvement in dubious transactions makes it difficult to believe this version.

[29] There is a huge question mark over the Smiley Kids transaction and the involvement of the second respondent's sister-in-law relating to the payment of R250 000. Contrary to what the second respondent alleged, the constitution attached as annexure BEN5 indicates that a close corporation was registered in 2014, but the registration number reflects the number '07' which denotes that it is a company. As submitted by the applicant in reply, this number indeed belongs to a private company which name was later changed to Allite Guesthouse of whom second respondent's wife is the director. The payment of R250 000 was made in 2018, but the non-profit company was only registered two years later. No proof has been provided of an

agreement between the two sisters, in particular that the sister-in-law purchased a 25% shareholding from the second respondent's wife. Also, no paper trail has been presented to show the flow of funds to the sister-in-law who allegedly received money from divorce proceedings. Furthermore, the payment reference indicates payment by Smiley Kids which must be clearly wrong if the relevant parties can be believed. The applicant's version that this inscription is yet another example of pulling wool over the eyes of others is accepted as correct. In fact, the money coming from different sources without proof that there was *quid pro quo* for the payments is indicative of several money laundering techniques, some of which I mentioned above, to wit to hide the source of the funds and to distort the true ownership thereof.

[30] It is not in dispute that the second respondent and Lekulo are brothers. If this vehicle was really the property of the second respondent – we know it is registered in his name – there is no explanation why it was in possession and under control of Lekulo at the time of confiscation. Although the second respondent denies that the vehicle was purchased on behalf of Lekulo while using proceeds of unlawful activities, his failure to explain why his brother was in possession of the vehicle is telling. The probabilities are overwhelming: the Audi A5 was purchased with proceeds of unlawful activities.

[31] Lekulo and the second respondent are business partners. Retrolex 156 CC (Retrolex) trades as Georgies Butchery and Pub. Although the second respondent holds a 100% interest in the close corporation, Lekulo is a signatory to the bank account of Retrolex. That would not be so if he was not acutely involved in the business. The Audi A3, which was confiscated from Lekulo, was bought in Cape Town from a Mr Thorpe in 2018 for R204 000. Cash in the form of R200 bank notes was paid. Mr Makgisa, who made a statement in this case and on whose evidence the second respondent relied as indicated above, stated that he, one Mhana and the second respondent went to Cape Town to do the deal. According to Thorpe the three men who made contact with him to clinch the deal had told him that they own a pub in Welkom. This vehicle was registered in Lekulo's name on 27 June 2018, but on 8 October 2018 ownership was transferred to Mothae John Lekulo, a relative of Lekulo. The second respondent did not deal with these allegations at all and these must be accepted as common cause.

[32] Lekulo Investments Holdings (Pty) Ltd (Lekulo Investments) is the registered owner of two immovable properties subject to the preservation order. There is no application that its interest in the properties be excluded from the operation of the order. On 8 October 2018 it purchased the two immovable properties in Solomon Street, Riebeeckstad for R500 000 each in cash. The two properties were registered in its name on 20 February 2019. Lekulo and the second respondent are the directors of Lekulo Investments and each holds a 50% shareholding in the company. The applicant pointed out that no cash withdrawals were made from Lekulo Investments' bank account during the time when payment in the total amount of R1 million was made, alleging that the properties were probably not purchased with legitimate income. Again, the second respondent failed to deny these allegations which must be accepted as common cause. This is a further reflection on his uncreditworthiness.

Conclusion

[33] The evidence in its totality provides much context to the applicant's version that Lekulo is a kingpin in the illegal mining and gold dealing industry. The factual matrix in this case is a classic example of how money laundering takes place. In my view the applicant proved that Lekulo, with the assistance of first and second respondents and others, had manipulated his illegally acquired wealth in order to obscure its true source or nature. The origin of the money obtained from criminal activities was disguised so that the funds or the proceeds thereof appear to have been obtained legally.

[34] I conclude that the applicant is entitled to forfeiture orders by default pertaining to all seven properties mentioned in the preservation order and in annexure X to the notice of motion in the forfeiture application. Furthermore, the respondents have failed to show on a balance of probabilities that their respective interests in the two vehicles should be excluded from the operation of the order. An order as requested, amended to read more clearly, shall be issued.

Order

[35] The following order is made:

1. The following properties, subject to a preservation of property order granted on 22 February 2024, are declared forfeit to the State in terms of section 50(1) read with section 53 of the Prevention of Organised Crime Act 121 of 1998 (POCA):

- a. an amount of R254 600 (the cash);
- b. fixed property described as erf 1489 under title deed number T6927/2021, situated at 7 Nyala Street, Doorn in Welkom registered in the name of Lekulo George Lekulo with identity number 6[...];
- c. fixed property described as erf 5012 under title deed number T16[...], situated at 7[...] S[...] Street, Riebeeckstad in Welkom registered in the name of Lekulo Investments Holdings (Pty) Ltd registration number 2007[...];
- d. fixed property described as erf 5[...] under title deed number T16[...], situated at 5[...] S[...] Avenue, Riebeeckstad in Welkom registered in the name of Lekulo Investments Holdings (Pty) Ltd registration number 2007[...];
- e. a Jeep Grand Cherokee with registration number FLF[...], engine number EC3[...] and chassis number 1C4[...];
- f. an Audi A3 with registration number HDZ[...], engine number CJS[...] and chassis number WAU[...];
- g. an Audi A5 Coup Quattro S-Tronic (RS5) with registration number HJM[...], engine number CFS[...] and chassis number WUA[...];
- h. a BMW 3 series, registration number CSG[...], engine number 250[...] and chassis number WBA[...]; and
- i. a Toyota Hilux, registration number HKC[...], engine number 1GD[...] and chassis number AHT[...].

2. This order shall be executed under the supervision and control of the curator bonis and representatives of the applicant may accompany the curator bonis in order to represent the applicant's interest in the execution of this order and the State may deal with the property as set hereunder.

3. In terms of section 42(1)(a) of POCA, Johan Francois Engelbrecht (Engelbrecht) of Icon Insolvency Practitioners Pty Ltd (**Icon**) an insolvency company, is hereby appointed as curator bonis subject to the applicable provisions of POCA and, save where otherwise provided in POCA, the provisions of the Administration of Estates Act 66 of 1965 (as amended) as well as supervision of the Master of the High Court.

4. After obtaining letters of curatorship the curator bonis shall:

- a. assume control over the property;
- b. take care of the said property;
- c. administer the said property and do any act necessary for that purpose;
- d. order any person holding property subject to the preservation of property order to surrender forthwith such property into the custody of the curator bonis.

5. The objectives of POCA will be properly met if Engelbrecht takes control of the property listed in paragraph 1 above. The Unit Commander of the SAPS Safe Guarding Unit, Bloemfontein must hand the property listed in paragraphs 1 (e) to 1 (i) above to Engelbrecht and the said Engelbrecht or a person authorised by him in writing shall sell this property as well as sell the property listed in paragraphs 1 (b) to 1 (d) and pay the proceeds of the sale into the Criminal Asset Recovery Account (CARA) number 80303056 established under section 63 of POCA, held by the South African Reserve Bank. ABSA shall transfer the cash listed in paragraph 1.1 held in the ABSA SAPS suspense account into the CARA 80303056 as detailed above.

6. Any persons whose interest in the properties concerned is affected by the forfeiture order, may within 20 days after they have acquired knowledge of such order, set the matter down for variation or rescission by the court.

7. The said Engelbrecht or person authorised by him shall as soon as possible, but not later than within a period of 90 days of this order coming into effect, file a report with the applicant on the manner in which he:

- a. completed the administration of the property mentioned above, and
- b. complied with the terms of this order.

8. The registrar of the court is hereby directed to publish as soon as is practicable a notice of this order in the Government Gazette.

9. The respondents' applications for the exclusion of their interests in the respective properties are dismissed with costs.

10. In terms of section 42 (2) of POCA the fees of the curator bonis and all disbursements shall be paid from the forfeited property.

11. In terms of section 75(2) and 75(3), read with section 75(4) of POCA, any person who intentionally refuses or fails to comply with this order shall be guilty of an

offence and shall be liable on conviction to a fine or to a period of imprisonment of up to 15 years.

JP DAFFUE J

Appearances

For applicant: Adv SN Khumalo

Instructed by: State Attorney
Bloemfontein

For first respondent: Adv LMA Mofokeng

Instructed by: Wesi Attorneys Inc
Bloemfontein

For second respondent: Adv F Dlamini

Instructed by: Wesi Attorneys Inc
Bloemfontein