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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Numbers: 2025/055555; 2021/4094; SS 79/2022

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

23 May 2025

In the matter between:

2025/055555

In the matter between:

VINCENT GEORGE SMITH

Applicant

And

TREVOR HILLS

First Respondent

**NATIONAL DIRECTOR OF PUBLIC
PROSECTIONS**

Second Respondent

(1st Respondent cited as in his capacity as
the *curator bonis* of the Applicant)

2021/4094

In re: *Ex Parte* application between:

**NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

Applicant

And

VINCENT GEORGE SMITH

First Defendant

EURO BLITZ 48 (PTY) LTD

Second Defendant

BRUMILDA DOREEN SMITH

First Respondent

VINCENT GEORGE SMITH N.O.

First Respondent

(In his capacity as trustee of Vincent G
Smith Family Trust (IT 2987/2004))

In the Application for a Restraint Order in terms
of Section 26 of Act 121 of 1998

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 23 May 2025.

Restraint order in terms of s26 of Prevention of Organised Crime Act 121 of 1998 -
Application for provision of reasonable legal expenses in terms of s 26(6) -
Application dismissed for inadequate disclosure.

JUDGMENT

MUDAU, J

[1] This is an application for the release of funds in terms of s 26 (6) of the Prevention of Organised Crime Act¹ ("POCA") for legal expenses in the applicant's criminal trial set down to proceed in this Court on 2 June 2025 under case number SS 79/2021, in accordance with the estimate annexed to the founding affidavit, and limited to an amount of R 2 000 000.00. (two million rand). The applicant brings the application on an urgent basis pursuant to rule 6 (12) of the Uniform Rules of Court. The application relates to two immovable properties – Erf 2[...] Florida Lake Township, registered under Title Deed T[...] with the Johannesburg Deeds Registry as well as SS Woodpecker, Unit 2[...] registered under Title Deed S[...] with the Pretoria Deeds Registry. The properties in issue are the subject of a preservation order granted on 2 April 2021 in this Court (per Matojane J, as he then was) under case number 2021/4094. It is trite that in urgent applications, an applicant must set out explicitly the circumstances on which he relies that render the matter urgent and the reason why he claims that he cannot be afforded substantial relief at a hearing in due course.²

[2] The application is opposed by the second respondent. The first respondent, the *curator bonis*, filed a notice to abide but, importantly, an affidavit setting out relevant facts for the Court's consideration in dealing with this application. POCA has been introduced inter alia, to combat organised crime, money laundering and criminal gang activities, to prohibit racketeering and to provide for a range of related measures. One of its purposes is to prevent criminals benefiting from the proceeds of their crimes. In this regard, Chapter 5 of POCA provides for the restraint³, confiscation⁴ and realisation⁵ of property in consistent with the stated objectives.

Background facts

¹ 121 of 1998.

² *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137.

³ Part 3 of chapter 5 of POCA

⁴ Part 2 of chapter 5 of POCA.

⁵ Part 4 of chapter 5 of POCA.

[3] The facts are largely common cause. The applicant was arrested and charged on 2 October 2020 on allegations of corruption, fraud and money laundering in terms of POCA, as well as offences relating to the Tax Administration Act.⁶ As indicated above, on 2 April 2021, the National Director of Prosecution (“NDPP”) successfully brought an application to restrain the applicant’s properties in terms of the provisions of s 26 of POCA. The effect of the order is to restrain the applicant from dealing with the relevant properties and to safeguard them to satisfy a possible confiscation order to the value of R46 817 636, 36 in this matter.

[4] The applicant’s case is that while he initially appointed attorneys of his own choice to represent him in his criminal trial, he could not afford said attorneys and thereafter applied for Legal Aid. His application for Legal Aid was dismissed and his appeal is currently under consideration. In addressing the question of urgency, the applicant’s version is that he was only informed of the possibility of an application of this nature on 17 March 2025 by the Honourable Mlambo JP. He could only raise the fees to instruct his attorneys for purposes of a substantive application for a postponement as well as this application on 7 April 2025. On 14 April 2025, the Honourable Ismail J granted the application and ordered that this application must be brought by 20 April 2025. Ismail J then postponed the matter to 2 June 2025 for trial.

[5] The urgent application in *casu* was launched and served on the respondents on 17 April 2025 on the normal urgent roll on Thursday, to be heard on the following Tuesday. The respondents were given the opportunity to respond and file papers. In this regard he approached family and friends who, despite earlier indications that they would not be able to fund his trial, managed to obtain an amount of R 300 000.00 to prepare and prosecute these applications for postponement of the trial, release of the property under restraint and appeal of the application for legal aid funding. The applicant estimates and has taken advice that his legal fees for a term in the High Court would amount to approximately R 2 070 000.00 including VAT, which he submits is reasonable if consideration is had to the fees required by his erstwhile attorneys, which were substantially higher and the admissible fees on a taxed basis.

⁶ 28 of 2011.

[6] In accordance with the restraint order, the applicant states he submitted monthly statements regarding his personal assets and liabilities, the latest of which was submitted in April 2025. He confirms that the pension from his annuity amounts to R 88 459.00 per month after tax deductions, and that he further earns R 7 500.00 per month from the rental of his property. His actual expenses amount to R 77 545.00 per month as set out in detail in Annexure VGS 6, leaving him with a surplus of approximately R 18 415.00 per month, which he says is totally inadequate to fund his trial for the anticipated whole term. In the founding affidavit, the applicant states that the statement relied upon (VGS 5) “constitutes a full disclosure of all assets relating to the determination of the value of realisable property” held by himself.

[7] Regarding disclosure, it is common cause that the restraint order (VGS 2) requires the following:

“DISCLOSURE BY DEFENDANTS AND/OR RESPONDENTS

1.37 In terms of section 26(7) of the POCA, the defendants and respondents are hereby ordered to disclose to the *curator bonis* on affidavit in such form as the curator bonis may determine forthwith, and in any event by no later than within 10 days of service of notice of this order, a description and the whereabouts of:

1.37.1 all the property (as defined in section 1 read with section 12(2) of the POCA), whether or not it has been physically surrendered into the possession or otherwise placed under the effective control of the curator bonis, and in the case of property that has not yet been surrendered to the curator bonis, the whereabouts of such property;

1.37.2 all the property which, according to the present knowledge of the 1st and 2nd defendants and respondents is to be transferred to the 1st and 2nd defendants at any time;

1.37.3 Any and all affected gifts as defined in sections 12(1) and 16 of the POCA, made by any of the defendants, together with the name and address of the donee;

1.38 The 1st and 2nd defendants and respondents are further ordered to disclose to the *curator bonis* in an affidavit, as soon as they come to know of it, the nature and the whereabouts of any property which they may hereafter come to learn is to be transferred to any defendant at any time;

1.39 The 1st and 2nd defendants and respondents are further required, on or before the 7th day of each month, to provide the *curator bonis* under oath with monthly income and expenditure statements together with supporting documentation.”

[8] Significantly, the restraint order makes provision for the release of funds for the payment of legal expenses in the following terms:

“1.42 The court may order the release of realisable property within the control of the *curator bonis* if the 1st and/or 2nd defendant or respondents satisfies the court that

1.42.1 he/she has made full disclosure to the *curator bonis* under oath of all his/her interests in property subject to restraint; and

1.42.2 he/she cannot meet the expenses concerned out of his/her unrestrained property.”

[9] On the question of urgency, the NDPP contended that the applicant received notice of the restraint order on 25 February 2021, which is 4 years 2 months prior to this application being filed. The applicant filed his first monthly income and expenditure statement as required by the order during May 2023, which is 2 years 3 months after the order was granted. On 17 March 2025, Mlambo JP informed the applicant of an application for the release his assets as a viable option, which was 1 month before the filing of this application. The applicant’s attorneys of record, BDK received instructions on 7 April 2025, and yet no explanation is provided as to what transpired in the 3 weeks between 17 March 2025 and 7 April 2025.

[10] Whilst the criticism by the NDPP regarding the delay in the launch of this application is not unfounded, there is however an overriding consideration in enrolling the application as urgent. In South Africa, the right to have a trial begin and conclude without unreasonable delay is a constitutional right enshrined in the Bill of

Rights. In terms of s 35 (3)(d) of the Constitution every accused person has a right to a fair trial, which includes the right to have their trial begin and conclude without unreasonable delay. The right to a fair trial also includes the right to choose and be represented by a legal practitioner (s 135 (1) (f)). The decision by this court has an impact on these fundamental rights. It is however trite that the right embodied in s 35(3)(f) of the Constitution does not mean that an accused is entitled to the legal services of any counsel he or she chooses, regardless of his or her financial situation⁷.

The applicable law

[11] Section 26 (6) of POCA provides:

“Without derogating from the generality of the powers conferred by subsection (1), a restraint order may make such provision as the High Court may think fit—
(a) for the reasonable living expenses of a person against whom the restraint order is being made and his or her family or household; and
(b) for the reasonable legal expenses of such person in connection with any proceedings instituted against him or her in terms of this Chapter or any criminal proceedings to which such proceedings may relate
if the court is satisfied that the person whose expenses must be provided for has disclosed under oath all his or her interests in property subject to a restraint order and that the person cannot meet the expenses concerned out of his or her unrestrained property”. [Emphasis added]

[12] The applicant, as the NDPP pointed out, has an insurmountable difficulty. The NDPP points out that since the restraint order was granted, the applicant has not filed any application for living and legal expenses. The NDPP contends, “on his own admission, the applicant could meet his expenses from unrestrained assets”. The NDPP asserts that if the applicant had saved R 18 505 per month for the last 4.5 years since his arrest, he could have had R 999 270 available towards his legal expenses. The NDPP contends that, whilst the applicant’s assets were restrained – “he continued with exorbitant monthly expenses. He pays R 11 550 on credit cards

⁷ Fraser v Absa Bank Ltd (National Director of Public Prosecutions As *Amicus Curiae*) 2007 (3) SA 484 (CC) para 67.

and overdrafts. R 16 500 on groceries, R 7 200 on rent (this whilst he has his own property), R 8 100 on a domestic helper and garden services, R 2 098 on a cell phone, R 2 000 for clothing, R 1480 for DSTV, R 899 for Wi-Fi, petrol at R 5 500 (the applicant is unemployed), over R 9 000 in respect of medical fees, R 1 000 for his tithe and R 3 200 in respect of printing”.⁸

[13] The NDPP points out that, “in the absence of an earlier application for legal expenses, or a legitimate explanation as to how his legal expenses was funded since his arrest, the NDPP can infer that the applicant had funds at his disposal which is not under restraint, at least from when the rule nisi was granted, until when this application was filed”.⁹

[14] In his affidavit, the first respondent points out that: “[F]or the 8 (eight) month period in 2023 between May 2023 and January 2024, the applicants' total expenses amount to R 300,718.00 (three hundred thousand seven hundred and eighteen Rand). During this same period the applicant's total income was R 322,476.00 (three hundred and twenty-two thousand four hundred and seventy-six Rand)”.¹⁰

[15] The first respondent further points out that: “[F]or the 12 (twelve) month period between January 2024 and January 2025, the applicant's total expenses amount to R 793,367.00 (seven hundred and ninety-three thousand three hundred and sixty-seven Rand) and the applicant's total income for this same period was R 847,571.00 (eight hundred and forty-seven thousand five hundred and seventy-one Rand).”¹¹ Furthermore that: “[F]or the 3 (three) month period between January 2025 and March 2025 the applicant's total expenses amount to R 337 993.00 (three hundred and thirty-seven thousand nine hundred and ninety-three thousand Rand) and the applicant's total income for this same period was R 383 836.00 (three hundred and eighty-three thousand eight hundred and thirty-six thousand Rand).”¹²

⁸ AA para 55.1.

⁹ AA para 58.

¹⁰ AA para 28.1.

¹¹ AA para 8.2.

¹² AA para 28.3.

[16] As the last nail in the coffin, the Curator points out significantly that: “[T]he applicant's income and expenses as disclosed by him have increased exponentially between the period May 2023 to March 2025. The applicant has failed however to provide a declaration of the increase in his income and/or expenses or supporting documents in support of this increase”.¹³

[17] The applicant did not file a replying affidavit to the respondents answering affidavits. Accordingly, there is no real and genuine dispute on the facts before me. In what has become known as the “*Plascon-Evans* rule”, referred to by the Constitutional Court in *Democratic Alliance in re Electoral Commission of South Africa v Minister of Co-operative Governance and Traditional Affairs*¹⁴ as follows:

“The Plascon-Evans rule is that an application for final relief must be decided on the facts stated by the respondent, together with those which the applicant states and which the respondent cannot deny, or of which its denials plainly lack credence and can be rejected outright on the papers”.¹⁵

[18] In exercising its discretion under section 26 (6), a court must satisfy itself of the following jurisdictional facts – as summarised by Rogers J (as he then was) in *Van Heerden and Another v National Director of Public Prosecutions and Another*:¹⁶

“(i) that the person whose expenses must be provided for has disclosed under oath all his or her interests in property subject to a restraint order; and (ii) that the person cannot meet the expenses concerned out of his or her unrestrained property. These jurisdictional facts differ in formulation from those laid down in s 44 (2) of POCA. In particular, s 26 (6) does not state that the person must have submitted a sworn and full statement of all his or her assets and liabilities; what he must fully disclosed under oath are all his or her interests in property subject to a restraint order. However, and because the court must also be satisfied that the person cannot meet the expenses in question from unrestrained property, a full disclosure of unrestrained property is necessarily required. Furthermore, a court is unlikely to be able properly to

¹³ AA para 29.

¹⁴ [2021] ZACC 30; 2022 (1) BCLR 1 (CC).

¹⁵ Id at para 40 fn 15. See also *Ayres v Minister of Justice and Correctional Services* [2022] ZACC 12; 2022 (5) BCLR 523 (CC); 2022 (2) SACR 123 (CC) at para 15 fn 12.

¹⁶ [2015] ZAWCHC 96.

exercise its discretion under S26 (6) unless it also has full information concerning the person's liabilities.¹⁷

[19] In the absence of a full disclosure this Court cannot exercise a proper discretion for the reasons set out by the respondents alluded to above. I am not satisfied that Mr Smith made a full and frank disclosure of his restrained and unrestrained assets. In the result, the application stands to be dismissed with costs.

Order

[20] Application is dismissed with costs.

T P MUDAU

Judge of the High Court,
Johannesburg

Appearances

For the Applicant: Adv. Cronje Kriel

Instructed by: BDK Inc.

For the 1st Respondent: No appearance

For the 2nd Respondent: Adv. Suna de Villiers

Instructed by: NDPP

Date of Hearing: 07 May 2025

Date of Judgment: 23 May 2025

¹⁷ Id at para 50.