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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:2024/110053

DOH: 24 June 2025

DECIDED: 21 July 2025

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED.

SIGNATURE:

DATE: 21 July 2025

In the matter between:

KELEBOGILE PRECIOUS PHUMO

First Applicant

WOMEN AGAINST POVERTY AND HUNGER (PTY) LTD

Second Applicant

And

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

ORDER

1. The respondent or their attorneys are directed to serve forthwith, the order dated 30 September 2024 together with a copy of this judgment to the remaining 8 respondents cited in paragraph 4 of the order of 30 September 2024, within 15 days from date of this order. In the event they had been so served, the respondent must immediately file the necessary returns of service.
2. Should the 8 respondents wish to react to that order, they must do so in line with the time frames set out in that order.
3. The costs of the present motion will be costs in the cause.

JUDGMENT

Bam J

1. The applicants brought the present motion by way of urgency for reconsideration of the order granted by this Court on 30 September 2024 (the order) per Motha J. The application was heard during the urgent motion court of the week of 24 June 2025, with the respondent resisting the relief sought by the applicants. The order was granted *ex-parte* (without notice to the respondents) for preservation of certain property, as provided for in Section 38 of the Prevention of Organised Crime Act¹, POCA, which reads:

'38 Preservation of property orders

(1) The National Director may by way of an *ex parte* application apply to a High Court for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property.

¹ Act 121 of 1998.

- (2) The High Court shall make an order referred to in subsection (1) if there are reasonable grounds to believe that the property concerned-
- (a) is an instrumentality of an offence referred to in Schedule 1;
 - (b) is the proceeds of unlawful activities;...

2. I commence by introducing the parties.

Parties

3. The first applicant, Ms Kelebogile Precious Phumo, is an adult person currently residing at 1[...] B[...] C[...] Street, Coral Ridge, Pomona, Kempton Park, Gauteng. The second applicant is Women Against Poverty and Hunger, (Pty) Ltd, WAPH, a company duly incorporated in terms of South African laws, with registration number 2022/793401/07. Its principal place of business, according to the applicants, is 6 [...] B[...] C[...] Street, Coral Ridge, Pomona, Kempton Park, Gauteng. The first applicant is a director of the second applicant. She has deposed to the affidavit for reconsideration on behalf of herself and the second applicant.

4. The respondent is the National Director of Public Prosecutions; it is established in terms of the National Prosecuting Act, Act 32 of 1998.

Background

5. The facts leading to the order of 30 September are largely common cause. The respondent's case is set out in the affidavit deposed to by Adv Nicole Irene Peters, a Deputy Director, in the respondent's employ, supported by the affidavit deposed to by Mr Enock Tumisang Modikoe, a Senior Financial Investigator who is also in the employ of the respondent. The respondent's case relied, in part, on the investigation carried out by the National Consumer Commissioner, NCC and led by Ms Mpho Khunou (Khunou). Ms Khunou had provided a report and a sworn statement to the respondent's Mr Modikoe, detailing her analysis of the activities of the applicants which led her to conclude that there was reasonable belief that the

applicants were conducting a multiplication or pyramid scheme, in contravention of section 43(3)² and 43(4)³ of the Consumer Protection Act⁴. CPA.

6. Ms Khunou's investigations were further bolstered by the investigation carried out by Ms Reshanda Anita Brown, (Brown), a Senior Financial Analyst at the Financial Intelligence Centre, FIC. Brown provided a report and a sworn statement to the respondent, confirming the outcome of her analysis of several bank accounts held in the name of WAPH, Ms Phumo and various individuals connected to them. Brown came to the conclusion that there was a reasonable belief that the monies held in the various bank accounts constituted proceeds of unlawful activities and that the bank accounts were instrumentalities of various offences set out in Schedule 1 of POCA, namely, theft, fraud and money laundering.

7. In addition to contravening the provisions of the CPA, it was the respondent's case that the applicants violated the provisions of the Banks Act⁵, in that they conducted the business of a bank, without being licensed to do so. The business of a bank is described in the Bank's Act as:

- '(a) the acceptance of deposits from the general public (including persons in the employ of the person so accepting deposits) as a regular feature of the business in question;
- (b) the soliciting of or advertising for deposits; and
- (c) the utilisation of money, or of the interest or other income earned on money, accepted by way of deposit as contemplated in paragraph (a)'

8. In terms of Section 18A of the Banks Act, no person shall conduct the business of a bank unless such person is a public company and is registered as a

² (3) A multiplication scheme exists when a person offers, promises or guarantees to any consumer, investor or participant an effective annual interest rate, as calculated in the prescribed manner, that is at least 20 per cent above the REPO Rate determined by the South African Reserve Bank as at the date of investment or commencement of participation, irrespective of whether the consumer, investor or participant becomes a member of the lending party.

³ (4) An arrangement, agreement, practice or scheme is a pyramid scheme if— (a) participants in the scheme receive compensation derived primarily from their respective recruitment of other persons as participants, rather than from the sale of any goods or services; or (b) the emphasis in the promotion of the scheme indicates an arrangement or practice contemplated in paragraph (a).

⁴ Act 68 of 2008.

⁵ Act 94 of 1990.

bank in terms of this Act. Section 18A (2) provides that any person who contravenes a provision of subsection (1) shall be guilty of an offence.

The order of 30 September 2024

9. After considering the respondent's case, the court granted the preservation order. In terms of paragraph 4 of the order, the respondent undertook to cause notice of the order, together with the documents supporting the application, to be served by the Sheriff on all the respondents mentioned therein, whose bank accounts had been preserved by the order. I summarise the terms of the order and the names of the people who had to be served:

1. An amount of R 661 928⁶ and accrued interest, held in WAPH's ABSA account ...1[...]
2. Amount of R 945 635, held in WAPH's Nedbank account ... 5[...]
3. An amount of R 178 756, held in the name of K P Phumo's FNB account ...3[...]
4. An amount of R 1 505 07, held in K P Phumo's ABSA acc ...3[...];
5. An amount of R 2 366, held in K P Phumo's Capitec Acc ...6[...]
6. An amount of R 4 008, held in K P Phumo's Capitec Account ... 0[...]
7. An amount of R2 08 394, held in Itumeleng Thai's Nedbank account ...9[...]
8. An amount of R 1 831, held in Thulisiwe Mbambo' Capitec account ...0[...]
9. An amount of R 36 089 held in Busisiwe Primrose Horacio's Capitec account ... 5[...]
10. An amount of R 4 822 held in Nomsa Mbalati' Capitec ... 3[...]
11. An amount of R 4 695, held in Nomakhosi Zwane's Capitec account ...4[...]
12. An amount of R 2 45 794, held in Gugu Cele's Capitec account 4[...]
13. An amount of R 236 709 95, held in Mpho Patsa Mokoena's Capitec account...1[...]

⁶ Cents have been omitted.

14. An amount of R 21 153, held in Agnes Mofokeng' Capitec account ...2[...]

Summary of the parties' contentions before this court

10. The main point taken by the applicants in their founding papers was that the applicants had not been properly served. In their heads of argument and for the first time, the applicants raised three further points. They are: Service was effected after the preservation order had already expired; that of the 10 people mentioned in the order, the respondent merely served two, namely, the applicants, and even then at the wrong address, hence the contention that even the applicants were not served at all;. Finally, it was submitted that even if the respondent may be able to demonstrate that the order had been served on the respondents as set out in the court order, it was not served as soon as practicable after it had been granted, as directed in the order.

11. From the respondent's side, their attack was directed at demonstrating that the applicants had failed to make a case for urgency. In addition to denying the assertions made by the applicants in their papers, the respondents submitted that the order directed that any application for reconsideration be made within 8 days after the person wishing to apply for reconsideration becomes aware of the order; that while the applicants had been served by the sheriff on 25 February 2025, they took steps towards reconsideration only on 3 June (way more than three months after service) and the application proceeded, as already mentioned only on 24 June. In the second instance, the respondent submitted that the applicants' contention that the order was not served as soon as practicable after it was made, is not a matter that was before the court when the order was made. As such it is not a matter for reconsideration. The respondent further submitted with reference to case law, that the applicants had failed to make a case for reconsideration; that in any event, the applicants had left the case that was placed before the court for issuing the preservation order undisturbed.

Analysis

12. I hold the view that urgency is no longer an issue between the parties as the merits for reconsideration were argued in full. I would however, caution the applicants regarding the manner in which they decided to approach the court. It is trite that the touchstone for urgency is whether an applicant will be afforded substantial redress at a hearing in due course⁷. An applicant therefore is enjoined to set out explicitly why it claims it cannot be afforded substantial redress in a hearing in due court. In their founding papers, the applicants do not make such a case at all. Their only basis for urgency is that there is a pending forfeiture application.

13. The applicants further deserve censure for failing to set out their case in their founding papers and choosing to make a new case in the replying affidavit and in their Heads of Argument. I will return to this issue later in this judgment.

14. I do not agree with the applicants that they were not properly served or at all, and for that reason, their application must be upheld. Firstly, the Sheriff has confirmed service upon the two applicants by way of returns. Secondly, any prejudice the applicants may argue has been watered down substantially, if not completely erased, by their own delay after service in February. Linked to this point is the submission about the duty to make full and frank disclosures when a party approaches court on an ex- parte basis. This duty is mentioned for the first time in the applicants' Heads of Argument to buttress the point that the applicants were never properly served because service took place at the wrong address. The assertion, it must be pointed out, is not substantiated in any way.

15. It is submitted that, in providing an incorrect address for the two applicants, the respondent failed to make full and frank disclosures when they took the preservation order. But this would be a rigid application of rules. The applicants were served, at what the founding papers suggest is the registered office of the second applicants. Again, apart from raising the point for the first time in their heads or argument, and thus denying the respondent the opportunity to deal with it, the applicants do not point to any prejudice as a result of being served at what they say is the wrong address. The Constitutional Court in *Eke v Parsons*:

⁷ Rule 6 (12) (b); *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011), paragraph 6.

[39]...Without doubt, rules governing the court process cannot be disregarded. They serve an undeniably important purpose. That, however, does not mean that courts should be detained by the rules to a point where they are hamstrung in the performance of the core function of dispensing justice. Put differently, rules should not be observed for their own sake. Where the interests of justice so dictate, courts may depart from a strict observance of the rules. That, even where one of the litigants is insistent that there be adherence to the rules. Not surprisingly, courts have often said “[i]t is trite that the rules exist for the courts, and not the courts for the rules”.

[40] Under our constitutional dispensation, the object of court rules is twofold. The first is to ensure a fair trial or hearing. The second is to “secure the inexpensive and expeditious completion of litigation and . . . to further the administration of justice”. I have already touched on the inherent jurisdiction vested in the superior courts in South Africa. In terms of this power, the High Court has always been able to regulate its own proceedings for a number of reasons, including catering for circumstances not adequately covered by the Uniform Rules, and generally ensuring the efficient administration of the courts’ judicial functions.’⁸

16. I again add that any prejudice the applicants may want to assert is watered down substantially by their own delay in launching their application for reconsideration. It must accordingly be rejected.

17. On the point that service was effected long after the preservation order had expired, and that there is no application for forfeiture pending before the court, the point lacks merit. The applicants make the point in their founding affidavit that their application is urgent because of a pending forfeiture application. In any event, the order was published on 1 November 2024 and application for forfeiture was made on 30 January 2025. The application is filed on Caselines, albeit incorrectly labelled as an application for preservation. Section 40 (a) makes plain that a preservation order:

⁸ (CCT214/14) [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) (29 September 2015), paragraphs 39-40.

‘shall expire 90 days after the date on which notice of the making of the order is published in the Gazette unless-

(a) there is an application for a forfeiture order pending before the High Court in respect of the property, subject to the preservation of property order;’

18. As to the submission that the preservation order was not served as soon as practicable after it was made, I again point to the lack of prejudice and point out that this submission is not raised to underscore any prejudice, given the applicants’ delay in reaching this court after service, but solely to foment delay in finalising the matter.

19. With regard to the failure to serve upon the remaining 8 respondents mentioned in the order, it must be noted that the challenge was raised for the first time in the applicants’ Heads of Argument. Thus, even if the respondent wished to challenge it, they were not afforded the opportunity to do so. It is trite that an applicant must make their case in the founding affidavit and stand or fall by it⁹. Having said that, I was unable to locate the returns of service pertaining to the remaining 8 respondents in the entire file. This is a matter of grave concern, given that the respondent has already soldiered on with the application for forfeiture.

20. Undoubtedly, the remaining 8 respondents have a direct and substantial interest in this litigation, given that their bank accounts were preserved, hence the respondent undertook to serve upon them.

Merits for reconsideration

21. The applicants sought to make a case built on the requirements of an interdict as a basis for reconsideration of the order. They made submissions suggesting, *inter alia*, violation of Constitutional rights on the basis that the *ex-parte* order was not served upon them prior to the NPA obtaining the ‘interim order.’ In their heads of argument they sought a setting aside of the ‘expired preservation order’. For the rest, the applicants confirmed the evidence placed before this court leading to the

⁹ *Gold Fields Limited and Others v Motley Rice LLC, In re: Nkala v Harmony Gold Mining Company Limited and Others* (48226/12) [2015] ZAGPJHC 62; 2015 (4) SA 299 (GJ); [2015] 2 All SA 686 (GJ) (19 March 2015), paragraph 121; *Director of Hospital Services v Mistry* (272/77) [1978] ZASCA 126 (9 November 1978).

preservation order whilst asserting that the monies in the bank accounts are legitimate; that if the respondent wishes to confirm such legitimacy, they must call each and every one of their 85 000 members to come to court and testify. The applicants made no attempt to deny the charge that they are engaged in a multiplication scheme and the fact that the first applicant engages in theft, fraud and money laundering, asserting that they are in the business of buying and selling groceries to their members. The applicants made the statement that the parties have been in and out of court on the same issues, and that since the preservation was rescinded in the last application heard in this court in June 2025, this court too should follow the same route.

22. The respondent wasted no time in asking that the application for reconsideration be dismissed on the basis of failure to make a case. I am of the view that any order on the merits of this matter must be made following demonstration of service on all respondents. Also, it is about time that the issues between the parties are solved once and for all. I do not accept that it would be in the interests of justice to rescind or set aside the preservation order, at least, not on the basis of what is set out in the applicants' founding papers. Thus, I intend to issue an order which will direct the further conduct of this matter.

Order

1. The respondent or their attorneys are directed to serve forthwith, the order dated 30 September 2024 together with a copy of this judgment to the remaining 8 respondents cited in paragraph 4 of the order of 30 September 2024, within 15 days from date of this order. In the event they had been so served, the respondent must immediately file the necessary returns of service.

2. Should the 8 respondents wish to react to that order, they must do so in line with the time frames set out in that order.

3. The costs of the present motion will be costs in the cause.

N.N BAM (Ms)
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

Date of Hearing: 24 June 2025

Date of Judgment: 21 July 2025

Appearances:

Counsel for the Applicant: Adv A Kotzé

Instructed by: Maseya Attorneys
c/o Rikhotso T.H Attorneys & Associates
For the respondent: Adv T Matambela

Instructed by: State Attorney
Pretoria