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

Not Reportable
Case no: 2427/2021

In the matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	**APPLICANT**
and	
IQBAL MEER SHARMA	**FIRST DEFENDANT**
NULANE INVESTMENTS 204 (PTY) LTD	**SECOND DEFENDANT**
ISLANDSITE INVESTMENTS 180 (PTY) LTD	**THIRD DEFENDANT**
KURT ROBET KNOOP N O [In his capacity as business rescue practitioner of Islandsite Investments 180 (Pty) Ltd]	**FOURTH DEFENDANT**
JOHAN LOUIS KLOPPER N O [In his capacity as business rescue practitioner of Islandsite Investments 180 (Pty) Ltd]	**FIFTH DEFENDANT**
and	
ISSAR GLOBAL LIMITED	**FIRST RESPONDENT**
ISSAR CAPITAL (PTY) LTD	**SECOND RESPONDENT**
TARINA PATEL-SHARMA	**THIRD RESPONDENT**

Neutral citation: *NDPP v Sharma & Others* (2427/2021) [2025] ZAFSHC 291 (16 September 2025)

Coram: DE LA REY AJ

Heard: 7 August 2025

Delivered: This judgment was handed down electronically by circulating to the parties' representatives by email and released to SAFFLI. The date and time for hand-down is deemed to be 12h00 on 16 September 2025.

Summary: Prevention of Organised Crime Act 121 of 1998 – provisional restraint order – requirements for granting – scope of order must be proportionate to anticipated confiscation order – sufficient grounds established of the possibility that a trial court might grant a confiscation order - limitless value of the property sought to be restraint does not constitute an appropriate relationship between the alleged benefits and the anticipated confiscation order.

ORDER

1 The provisional restraint order granted by Naidoo J, on 2 June 2021 is amended as follows:

'By amending paragraph 1.1 to read:

1.1 Subject to paragraph 1.3 A, this order relates to realisable property as defined in sections 12 and 14 of POCA and extends to:

By inserting as paragraph 1.3A the following:

1.3A The value of the realisable property under restraint shall not exceed the combined total of:

a) R24 429 120.00, increased at the rate of the Consumer Price Index from November 2011 to date of this order.

b) R19 070 934.00, increased at the rate of the Consumer Price Index from November 2011 to date of this order.'

2 The provisional restraint order made by Naidoo J, on 2 June 2021, as amended is confirmed and made final.

3 The applicant and third to fifth defendants shall pay their own costs.

4 The first and second defendant shall pay the applicants cost proportional to its opposition to the confirmation of the restraint order, including the costs of two counsel where so used. Counsel fees shall be taxable on scale C for senior counsel and scale B for junior counsel.

JUDGMENT

De la Rey AJ

Introduction

[1] On the extended return day of a provisional restraint order granted by Naidoo J on 2 June 2021, pursuant to an *ex parte* application by the applicant, the National Director of Public Prosecutions (NDPP), in terms of s 26 of the Prevention

of Organised Crime Act 121 of 1998 (POCA), the NDPP sought confirmation of the provisional order. The first defendant, Iqbal Meer Sharma (Sharma) and second defendant Nulane Investments 204 (Pty) Ltd (Nulane), with the first to third respondents, as associated parties, seek the discharge thereof. The third defendant, Islandsite Investments 180 (Pty) Ltd (Islandsite), and the fourth (Knoop N O) and fifth (Klopper N O) defendants, for reasons apparent hereafter seek a variation of the preservation order in capping it to R24 492 120.00.[1] The provisional restraint order is wide ranging and uncapped.

[2] The defendants were indicted on two charges of fraud and one of money laundering. More specifically, the first charge of fraud relates to an amount of R24 492 120.00, which was fraudulently procured from the Free State Department of Agriculture and Rural Development (the Department) by Nulane. The second charge of fraud related to two payments of R8 800 000.00 and R10 200 000.00, respectively to Nulane's Bank of Baroda account by Pragat based on an illegitimate agreement between Nulane and Gateway Ltd in terms whereof R19 070 934.00 was paid to Gateway Ltd. The charge of money laundering relates to the laundering of the said R19 070 934.00, unlawfully obtained by Nulane through transfer from its account to the offshore account of Gateway Ltd under a false pretext of a payment due in terms of a contract between Nulane and Gateway Ltd. It is alleged that the parties shared a common purpose in executing the alleged crimes.

[3] It is apparent that the R19 070 934.00 allegedly laundered as set out in count three of the indictment also forms the subject matter of count 4 of the indictment. The R19 070 934.00 thus formed part of the R24 492 120.00 paid by the Department to Nulane.

[4] After having been discharged on all the counts by the trial court,[2] the Supreme Court of Appeal (SCA) in *S v Thabethe and Others (Thabethe),*[3] in a

---

[1] During argument it was submitted that this amount could be increased at the rate of the CPI from November 2011 to date of order.
[2] *S v Thabethe and Others* [2023] ZAFSHC 126.
[3] *S v Thabethe and Others* 2025 ZASCA 88; [2025] 3 All SA 333 (SCA) *(Thabethe).*

comprehensive judgment overturned the findings of the trial court and ordered that the defendants may be retried for the same offences in respect of which they were acquitted on 21 April 2023, as if they had not previously been arraigned, tried and acquitted: provided that the trial commence before a different judge.

[5] It is trite that in considering whether to confirm the provisional restraint order, a court need only be satisfied that there are reasonable grounds for believing that a confiscation order may be made upon conviction.[4] This Court thus does not pronounce on the guilt or innocence of any party nor make any findings on disputes emanating from the papers. The trial court is not restricted to making a confiscation order in relation only to the offences of which the offender has been convicted but also from any criminal activity which the court finds to be sufficiently related to the offences.[5]

[6] In *Thabethe* the first to third defendants were cited as the fourth, fifth and seventh respondents. Having considered the totality of the evidence led in the court *a quo*, the SCA in *Thabethe* made the following significant findings in relation to the defendants (respondents in the appeal):

'Prima facie the evidence shows a carefully planned scheme, in which the respondents pursued a common purpose to defraud the Department and launder the proceeds. . .

There is accordingly direct *prima facie* evidence that Worlds Window, Nulane (and its director, the fourth respondent) and the sixth respondent (who instructed Deloitte) are involved in the fraud [of] the Department referred to in count 2 of the proceedings, and that the proceeds, derived from that fraud, were laundered almost immediately after each payment by the Department . . .

Prima facie, therefore, the State established common purpose based on a prior agreement, which may be inferred from the facts; or active association and participation by the respondents in a common criminal design, with intention of committing the offences alleged in the indictment.'[6]

[4] *National Director of Public Prosecution v Kyriacou* [2003] ZASCA 95; [2003] 4 All SA 153 (SCA); 2004 (1) SA 379 (SCA); 2003 (2) SACR 524 (SCA) (*Kyriacou*) para 10.

[5] *Kyriacou* para 11.

[6] *Thabethe* paras 55, 56 and 57.

[7] Following the judgement in *Thabethe*, third defendant and fourth and fifth defendants (in their capacity as business rescue practitioners of Islandsite) did not during argument oppose the confirmation of the provisional restraint order but sought a variation of the order to the effect that it should not remain uncapped, and that it should be capped in the amount of approximately R24 984 240.00 being the initial payment made by the Department to Nulane.

[8] Sharma in his capacity as director and sole shareholder of Nulane together with the associated entities being the first to third respondents, did not, irrespective of the findings in *Thabethe* concede that the provisional order should be confirmed and reiterated its initially held defence that Sharma had no control of Nulane and no involvement or knowledge of its dealings, despite the fact that he was the sole shareholder and director of Nulane at all relevant times.

[9] Considering the very low threshold the applicant needs to establish, the findings in *Thabethe* puts paid to any argument that there are no reasonable grounds for believing that the court which convicts may make a confiscation order.[7] The provisional order thus stands to be confirmed, and the only question left is whether it should be capped or not.

Limited or limitless restraint:

[10] It is trite that the primary object of a confiscation order is not to enrich the State but rather to deprive the convicted person of ill-gotten gains.[8] Section 18(1) of POCA reads:

'1 Whenever a defendant is convicted of an offence the court convicting the defendant may, on application of the public prosecutor, enquire into any benefit which the defendant may have derived from –

(a) that offence;

(b) any other offence of which the defendant has been convicted at the same trial; and

(c) any criminal activity which the court finds to be sufficiently related to those offences.'

---

[7] Section 18 of the Prevention of Organised Crime Act 121 of 1998 (POCA).

[8] *National Director for Public Prosecutions v Ramlutchman* [2016] ZASCA 202; 2017 (1) SACR 343 SCA at para 7.

[11] Section 18(2) states:

'2. The amount which a court may order the defendant to pay to the State under subsection (1) –

(a) shall not exceed the value of the defendants proceeds of the offences or related criminal activities referred to in that subsection, as determined by the court in accordance with the provisions of this chapter; or

(b) if the court is satisfied that the amount which might be realised as contemplated in s 20(1) is less than the value referred to in paragraph *(a)*, shall, not exceed an amount which in the opinion of the court might be so realised.'

[12] Thus, the amount for which a confiscation order may be made is restricted to the lesser of (a) the monetary value of the proceeds of the offences or related criminal activity or (b) the net value of the sum of the defendant's property and certain defined gifts (called 'affected gifts') made by the defendant.

[13] In summary, it is Islandsite's case that the value of the offences on which it might be convicted relates to the amount of R24 492 120.00 being the initial and only payment from the Department paid to Nulane following the Worlds Window letter. Furthermore, that the R19 070 934.00 that was subsequently paid from Nulane's Bank of Beroda account to Gateway Ltd which forms the subject matter of counts 3 and 4, respectively, forms part of the initial payment and as such should not be considered as a separate benefit. Hence it is its case that the restraint order should be capped at R24 492 120.00.

[14] The NDPP, premised largely on the fact that at the time of the alleged money laundering an amount of R522 382 617.56 flowed through the bank account of Islandsite and as such by applying the presumptions as set out in s 22(3) of POCA, the full R522 382 617.56 constitutes the proceeds of crime and thus a benefit as stipulated in s 18(1)*(c)*, sought confirmation of the uncapped restraint order.

[15] In *National Director of Public Prosecutions v Rautenbach and Another*

(*Rautenbach*),[9] Navsa JA et Ponnan AJA held:

'In the Act there is no express limitation placed on the extent of a provisional restraint order. Sections 26 (1) and (2) are couched in broad terms, which ultimately leaves it to the discretion of the court to decide the ambit and extent of the restraint order. Section 26(3)(a) provides for a return day on which an affected person may show cause why the restraint order should be set aside. Furthermore, a person affected by a provisional order is entitled, in terms of s 26(10)(a) of the Act, to apply to the same High Court that made the initial order to vary or rescind the order on the following bases:

"(i) that the operation of the order concerned will deprive the applicant of the means to provide for his or her reasonable living expenses and cause undue hardship for the applicant; and

(ii) that the hardship that the applicant will suffer as a result of the order outweighs the risk that the property concerned may be destroyed, lost, damaged, concealed or transferred; ..."

There are thus statutory safeguards to prevent overreaching and abuse. However, it would be offensive to justice if the effect of a restraint order was disproportionate to the contemplated future conviction and confiscation order. . . '

[16] If there is no express limitation placed on the exact extent of the provisional order the question is whether the unlimited provisional restraint order could be considered disproportionate to the contemplated future conviction and confiscation order that might follow.

[17] The movement of large amounts of money to and from the Islandsite account is apparently justified as inter-company loans and on the ground that Islandsite had a so-called 'treasury function'. This explanation was put forth in rebuttal of the presumptions in s 22(1) and (3).

[18] In *Thabethe*,[10] the court raised numerous questions relating to the so-called inter-company loans, then relates it back to the initial payment by the Department to Nulane's bank account in stating:

---

[9] *National Director of Public Prosecutions v Rautenbach and Another* [2004] ZASCA 102; [2005] 1 All SA 412 (SCA); 2005 (4) SA 603 (SCA); 2005 1 SACR 530 (SCA) (*Rautenbach*) paras 86-87.

[10] *Thabethe* para 97.

'. . . Neither was it disputed that the sum of R24 984 240 was moved by way of numerous transactions into the bank accounts of various companies associated with Nulane and Gateway, through layers of transactions, in which Islandsite and its financial manager, Ms Ronica Ragavan, the eighth respondent, played a prominent role. Where appropriate, we refer to Ms Ragavan as 'the eighth respondent'. As is shown below, this was done to distance the funds from their criminal source – the fraud on the Department.

So, far from being the 'death knell' to the State case, prima facie the evidence of Messrs Rankuoatsana and Zama established the movement of the funds from the Department to Nulane's Bank account, from which they were rapidly transferred from one account to another through the cash focus system, and through layers of artificial transactions set out in Count 3. Islandsite and Ms Ragavan played a pivotal role in the co-ordination of these transactions, which were designed to distance the funds from their criminal source – the fraud on the Department – and to make detection of the source as difficult as possible. This, prima facie, is a typical case of money laundering as contemplated in s 4(1) of the POCA. The relevant respondents should not have been acquitted on Count 3.'[11]

[19] The provisional restraint order cast a wide net in relation to realisable property as defined in s 14 of the Act and besides the property specifically listed in the schedule of known assets which includes movable and fixed assets of Sharma, Islandsite, Issar Capitol and Tarina Patel-Sharma, it includes all other property held by defendants, all property held for and on behalf of defendants, shareholding/membership interest of defendants in any company/close corporation, property held by Issar Global and Tarina Patel-Sharma, all property held by any legal representative of any defendant in trust or another way, all realisable property that might be transferred to defendants and respondents and all affected gifts received by defendants.

[20] The property under restraint falls within the definition of 'property' as defined in s 26(2) of POCA, which details with the type of property in respect of which restraint orders may be made:

'A restraint order may be made -

(a) in respect of such realisable property as may be specified in the restraint order and which is held by the person against whom the restraint order is being made;

[11] *Thabethe* paras 21 and 98.

(b) in respect of all realisable property held by such person, whether it is specified in the restraint order or not;

(c) in respect of all property which, if it is transferred to such person after the making of the restraint order, would be realisable property.'

[21] The SCA noted in *Rautenbach*[12] that:

'Where the requirements of the Act have been met a Court is called upon to exercise a discretion as to whether a restraint order should be granted, and if so, as to the scope and terms of the order, and the proper exercise of that discretion will be dictated by the circumstances of the particular case. The Act does not require as a prerequisite to the making of a restraint order that the amount in which the anticipated confiscation order might be made must be capable of being ascertained, nor does it require that the value of property that is placed under restraint should not exceed the amount of the anticipated confiscation order. Where there is good reason to believe that the value of the property that is sought to be placed under restraint materially exceeds the amount in which an anticipated confiscation order might be granted, then clearly a court properly exercising its discretion will limit the scope of the restraint (if it grants an order at all), for otherwise the apparent absence of an appropriate connection between the interference with property rights and the purpose that is sought to be achieved - the absence of an "appropriate relationship between means and ends, between the sacrifice the individual is asked to make and the public purpose that [it] is intended to be served" - will render the interference arbitrary and in conflict with the Bill of Rights.'

[22] The question is thus whether, considering the charges, the value of the benefits and the value of the assets currently under restraint, the unrestricted provisional order represents an appropriate connection between the purpose in securing enough assets to satisfy a possible confiscation order and the ongoing interference of the parties' property rights.

[23] One cannot turn a blind eye to the events following the granting of the provisional order in considering whether the final order should remain unlimited. The defendants' assets have been under the provisional restraint order since 2 June

---

[12] *Rautenbach* para 56.

2021. More than four years later, as evidenced by the curators' latest report[13] the total value of the assets under restraint amounts to R81 137 640 (market value) and R47 236 834 (forced sale value). The assets under restraint includes all the assets as listed in the NDDP's schedule of assets as mentioned above plus more. The assets so restraint belongs to Iqbal Sharma, Islandsite, Issar Global and Tarina Patel Sharma. Nulane has been deregistered and any assets in its name would in any event befall the State. Islandsite has been under business rescue since prior the launching of the restraint application. It remains uncertain whether the curator would be able to secure any further assets as none, appear from the curator's report. There appears to be offshore bank accounts that have remained inaccessible since the granting of the provisional order end it seems unlikely that it would at this time still have any significant balances.

[24] Even if there are reasonable grounds to believe that a court might find that the moment the R24 984 240.00 from the bank account of Nulane which was transferred by way of numerous transactions in which Islandsite played a role, and as such it became part of a much larger scheme in which Islandsite in its capacity as a so-called holding company with a 'treasury function' played a pivotal role and that the movement of R522 382 617.56 in the Islandsite account, by virtue of the presumption in s 22(1) and (3), became sufficiently related to the offences in counts 2, 3 and 4 it is unclear how and to what extent the defendants had derived substantial benefits, save for the benefits already under restraint, therefrom.

[25] The profound impact of the unrestricted restraint order on all the parties, but especially Islandsite cannot be ignored. The very purpose of business rescue is to facilitate the rehabilitation of a company,[14] and maximise the likelihood of the company continuing to exist on a solvent basis. What possible purpose can the business rescue achieve if Islandsite is effectively, by virtue of the unlimited restraint, prevented from ever achieving this goal. The granting of the s 133 order, allowing the asset forfeiture proceedings, effectively denies Islansite any breathing space whilst

[13] Dated 11 September 2024.
[14] Section 128 of the Companies Act 71 of 2008.

attempting rehabilitate it.[15] This factor and the continued unlimited restraint order make any possible business rescue unachievable. It is not inconceivable that further appeals and the finalisation of a new trial as envisaged in *Thabethe*, may be a long way off.

[26] The movement of R522 382 617.56 through the Islandsite account was an incidental finding during investigation. The money laundering charge against Islandsite relates purely to the alleged laundering of the R19 070 934.00 unlawfully obtained by Nulane through transfer from its account to the offshore account of Gateway Ltd under a false pretext of a payment due in terms of a contract between second defendant and Gateway.

[27] Besides the inordinate period of the restraint, I am not convinced that, as the indictments currently stands, there is an appropriate relationship between the limitless value of the property sought to be restraint and the anticipated confiscation order. On the facts of this case, keeping the restraint order limitless would be offensive to justice and punitive in nature.

[28] Accepting that the movement of the R24 984 240.00 or part thereof constituted the proceeds of criminal activity in the hand of each party, means the direct benefits amounts to R24 984 240.00 in the hands of Sharma and Nulane, and R19 070 934.00 in the hands of Islandsite. Limiting the restraint to the total of these amounts increased at the rate of the Consumer Price Index would in this Court's opinion represent an appropriate relationship between the asset value sought to be restraint and an anticipated confiscation order.

[29] Because of the interrelated nature of the alleged crimes however one cannot apportion specific benefits to specific parties and the restraint order will thus cover all the parties.

[30] It follows that the restraint order is capped as set out in the order.

[15] *Ergomode (Pty) Ltd v Jordaan NO and Others* [2024] ZASCA 10 para 33.

Costs

[31] Although Islandsite made no formal tender and this Court was urged to, irrespective of any success on its part, still grant cost against it, the fact remains that its stance on a capped restraint has been known for a long time and there is no reason why the NDPP and Islandsite could not have agreed thereto long before the hearing of this application. Both the NDPP and Islandsite achieved a measure of success, and I deem it fair and just that both parties shall pay their own cost. Sharma and Nulane shall however be liable to pay the NDPP's cost in opposing the confirmation of the *rule nisi,* proportionally to its opposition.

[33] In the result the following orders are granted:

1 The provisional restraint order granted by Naidoo J, on 2 June 2021 is amended as follows:

'By amending paragraph 1.1 to read:

1.1 Subject to paragraph 1.3 A, this order relates to realisable property as defined in sections 12 and 14 of POCA and extends to:

By inserting as paragraph 1.3A the following:

1.3A The value of the realisable property under restraint shall not exceed the combined total of:

a) R24 429 120.00, increased at the rate of the Consumer Price Index from November 2011 to date of this order.

b) R19 070 934.00, increased at the rate of the Consumer Price Index from November 2011 to date of this order.'

2 The provisional restraint order made by Naidoo J, on 2 June 2021, as amended is confirmed and made final.

3 The applicant and third to fifth defendants shall pay their own costs.

4 The first and second defendant shall pay the applicants cost proportional to its opposition to the confirmation of the restraint order, including the costs of two counsel where so used. Counsel fees shall be taxable on scale C for senior counsel and scale B for junior counsel.

[redacted]

H E DE LA REY

ACTING JUDGE OF THE HIGH COURT

Appearances

For the applicant:	G Budlender SC with K Kollapen
Instructed by:	The State Attorney, Bloemfontein
For the first and second defendants and respondents:	H Potgieter
Instructed by:	Forbay Attorneys, Pretoria c/o Gcasamba Incorporated, Bloemfontein
For the third to fifth defendants:	A Bham SC with LVR van Tonder
Instructed by:	Smit Sewgoolam Incorporated, Johannesburg c/o Mcintyre Van der Post Bloemfontein.