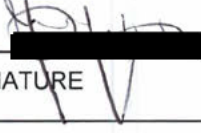


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2000/27885

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
22 Oct. 25	
DATE	SIGNATURE

In the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

and

**ANDREW LIONEL PHILLIPS
LADDIES LARK (PTY) LTD
JANVEST CLOSE CORPORATION
APVEST CLOSE CORPORATION
MAYVEST CLOSE CORPORATION
JUNVEST CLOSE CORPORATION
AUGVEST CLOSE CORPORATION
DECVEST CLOSE CORPORATION
PORTION 1 OF 245 EDENBURG CC
SUSHIMI INV (PTY) LTD
SWINGING TRADING TWISTER CC
FEBVEST CLOSE CORPORATION**

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent
Eighth Respondent
Ninth Respondent
Tenth Respondent
Eleventh Respondent
Twelfth Respondent

PORTION 1 OF 245 EDENBURG CC	Ninth Respondent
SUSHIMI INV (PTY) LTD	Tenth Respondent
SWINGING TRADING TWISTER CC	Eleventh Respondent
FEBVEST CLOSE CORPORATION	Twelfth Respondent
D MORNINGSIDE INVESTMENT (PTY) LTD	Thirteenth Respondent
STEPHEN WERNER CC	Fourteenth Respondent
MOONLITE IMPORT & EXPORT CC	Fifteenth Respondent
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	Sixteenth Respondent
THEODOR WILHELM VAN DEN HEEVER N.O.	Seventeenth Respondent
THEODOR WILHELM VAN DEN HEEVER	Eighteenth Respondent
THE MASTER OF THE HIGH COURT	Nineteenth Respondent
THE MINISTER OF JUSTICE	Twentieth Respondent

In the counter-application between:

ANDREW LIONEL PHILLIPS	First Applicant
LADDIES LARK (PTY) LTD	Second Applicant
JANVEST CLOSE CORPORATION	Third Applicant
APVEST CLOSE CORPORATION	Fourth Applicant
MAYVEST CLOSE CORPORATION	Fifth Applicant
JUNVEST CLOSE CORPORATION	Sixth Applicant
AUGVEST CLOSE CORPORATION	Seventh Applicant

DECVEST CLOSE CORPORATION	Eighth Applicant
PORTION 1 OF 245 EDENBURG CC	Ninth Applicant
SUSHIMI INV (PTY) LTD	Tenth Applicant
SWINGING TRADING TWISTER CC	Eleventh Applicant
FEBVEST CLOSE CORPORATION	Twelfth Applicant
D MORNINGSIDE INVESTMENT (PTY) LTD	Thirteenth Applicant
STEPHEN WERNER CC	Fourteenth Applicant
MOONLITE IMPORT & EXPORT CC	Fifteenth Applicant
and	
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	First Respondent
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
THEODOR WILHELM VAN DEN HEEVER N.O.	Third Respondent
THEODOR WILHELM VAN DEN HEEVER	Fourth Respondent
THE MASTER OF THE HIGH COURT	Fifth Respondent
THE MINISTER OF JUSTICE	Sixth Respondent

This Judgment is handed down electronically by circulation to the Applicant's Legal Representatives and the Respondents by email, publication on Case Lines. The date for the handing down is deemed 22 October 2025

MUDAU J :

Introduction

- [1] On 9 April 2014, the NDPP ("the State") issued this application ("the main application"), in which it seeks to rescind and set aside the restraint order against the assets of the respondents in the main application, (the Phillips Parties), pursuant to section 26 of the Prevention of Organised Crime Act, 121 of 1998 (the POCA Act). On 24 November 2015 the 1st to the 15th respondents ("Phillips parties") issued a counter-application ("the counter-application"), in which they seek, among others, a variation of the restraint order to require a replacement Curator bonis pursuant to section 54(1)(a)(v) of the Administration of Estates Act 66 of 1965 (Administration of Estates Act), the restoration of all assets seized and surrendered under the restraint order to the condition they were in on 22 December 2000, before the rescission is granted and the return of those assets to the Phillips parties. Van den Heever is cited in the counter-application in both his *nomine* officio and personal capacity. The counter-application also seeks various orders against the current curator *bonis*, Van den Heever and a variation of the restraint order as provided for under section 26(10) of POCA.
- [2] The *Curator bonis* does not oppose the relief sought in the NDPP's main application and abide the decision of this court. The Curator adopts the attitude that, the majority of the issues which arise in these proceedings are matters which must be determined between the State and the Phillips parties. In relation to the counter application of the Phillips parties it is opposed on a limited basis. A substantial portion of the relief sought is not opposed by the Curator as it pertains to issues which exist between the Phillips parties and the State, alternatively between the Curator bonis and the State. The counter application is opposed only in relation to prayers 2, 5, 6, 7, 8, 9, 10, 12.1 and 15. The Curator alleges that the relief sought in prayers 5 to 8 is unwarranted and superfluous, given that the funds had been restored to the banking accounts and remain intact. Van den Heever's position is that if any referral is ordered, it should be a referral to trial.

Background

- [3] This matter has an extensive history. From the common cause facts, a restraint order compelling the surrender of assets, as contemplated by section 26 of POCA was granted against the Phillips parties at the instance of the NDPP, with effect from 22 December 2000 by the Honourable Labe J. Van den Heever was appointed as the curator bonis to Andrew Lionel Phillips, the first respondent in the main application and his associated entities and companies (the 2nd to the 15th respondents) i.e. the Phillips parties. The State initially supported through Van den Heever financing the funding through credit facilities of various expenditure associated with the restraint. It ceased doing so during or about 2005. Consequently, rates, taxes and other imposts have not been paid on the Phillips parties' properties since at least 2005 and are currently outstanding. It is common cause that, Van den Heever is yet, to make formal accounting as to his administration of the property under section 83 of the Administration of Estates Act read with section 32(2) of POCA.
- [4] Simultaneously with the restraint order, and incorporated in the order, the Court granted as indicated, inter alia, orders in terms of the following provisions of POCA: section 28(1)(a), appointing Mr Theodor Wilhelm van den Heever ("Van den Heever") as the curator bonis; section 28(3)(c), that the fees and expenditure of the curator bonis shall be paid from the proceeds of any property realised in pursuance of any confiscation order that may be made against the first respondent, failing which by the State; section 28(1)(b), that such of the first to fifth respondents who were in possession or control of any of the subject property to surrender the property into the custody of the curator bonis forthwith; and, authorising the seizure of property subject to the restraint.
- [5] Phillips was prosecuted on several criminal charges as contemplated in the restraint order. On 26 November 2008, Phillips was acquitted of these charges by the Regional Court, Johannesburg. A subsequent appeal by the State to the Supreme Court of Appeal also failed.
- [6] It has been agreed between the Phillips parties and the NDPP that the counter-application ought to be considered and determined by this Court prior to it dealing with the main application. Van den Heever, however, does not agree. He contends that the relief sought by the Phillips parties in the

counter-application is incompetent and that the court has no discretion but must rescind the restraint order.

- [7] At the outset, of the hearing, the Phillips parties requested that the counter-application be referred to trial. This is permissible under rule 6(5)(g) of the Uniform Rules. Their initial stance was that, in the alternative, if the Court is inclined to refer the counter-application to oral evidence, the Phillips parties submitted and identified several disputes, inter alia, what the current state of all the restrained property is, and who is to blame for that state and the extent of renovation that is required to return the restrained property to the Phillips parties in the condition that the property was in when it was restrained in December 2000, if this is a valid obligation on the part of one or more party to this application. These were not pursued but a referral to trial.
- [8] In as much as the State is not opposed to the referral to trial, it contends that its liability, if any, is an issue which can be determined on the papers and should be determined first. The State contends that the fact, nature and extent of the relevance of the factual issues and averred obligations intended to form the subject of the referral may only be determined within the context of first determining the issue of the competence of State liability existing in law as being sought per the relevant orders.
- [9] The State contends that there is also no legal obligation on the State to restore restrained property to the condition it was when restrained or to cover the cost of lost or damaged property and is not liable for any related costs. The state contends that rates and taxes are debts of the persons who own the properties. Van den Heever's position is that if any referral is ordered, it should be a referral to trial.
- [10] It is trite that, motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities.¹

¹ See *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at 290D–E. This was approved and followed in *African Congress for Transformation v Electoral Commission of South Africa*;

- [11] It is equally well established that if the material facts are in dispute and there is no request for the hearing of oral evidence, a final order will only be granted on notice of motion if the facts as stated by the respondent together with the facts alleged by the applicant that are admitted by the respondent, justify such an order.²
- [12] The dispute, on the main is, inter alia, whether the restraint order, renders the State liable to pay estate expenses (as opposed to curator expenses), in the light of Phillips' acquittal. Differently put, whether the State is liable for the expenses associated with the restrained property, in the absence of the restraint order. The NDPP contends that these expenses (as opposed to curator expenditure or expenses) are styled as estate expenses, and the State's liability for estate expenses, within the context of a restraint order, and as sought in the various relevant orders in Part A of the notice of counter- application is opposed by the NDPP. There is a dispute whether the omission of the wording set out in paragraph 14 of the notice of motion renders that section unconstitutional and invalid and that the wording set out in paragraph 14 should be read into section 28 of POCA.
- [13] Insofar as the issues between the Phillips parties and Van den Heever are concerned, this Court shall be called upon to determine inter alia, whether Van den Heever ought to be removed as curator bonis as contemplated by section 28(3)(a)(ii) of POCA read with section 54(1)(a)(v) of the Administration of Estates Act. Mr van den Heever denies that he should be removed. Also, whether Van den Heever is enjoined by law to account in full to the Master of the High Court (and the Phillips parties) of his administration of the restrained estate since December 2000 until he is discharged.

Labour Party of South Africa v Electoral Commission of South Africa; Afrikan Alliance of Social Democrats v Electoral Commission of South Africa 2024 (8) BCLR 987 (CC) at para 95. See also *Cooper and Another NNO v Curro Heights Properties (Pty) Ltd* 2023 (5) SA 402 (SCA) at para 13.

² See *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235. This case has been followed and applied on numerous occasions. See, for example, *Burnkloof Caterers (Pty) Ltd v Horseshoe Caterers (Green Point) (Pty) Ltd* 1976 (2) SA 930 (A) at 938; *John Craig (Pty) Ltd v Dupa Clothing Industries (Pty) Ltd* 1977 (3) SA 144 (T) at 149; *Tamarillo (Pty) Ltd v B N Aitken (Pty) Ltd* 1982 (1) SA 398 (A) at 430–431.

- [14] Mr van den Heever denies that he is by law enjoined to do so. Furthermore, it is also disputed whether Van den Heever has complied with the order of Khampepe J order, i.e. that he returned all cash funds standing to the credit of the Phillips parties, to their respective bank accounts. The Phillips parties contend in this regard that that the obligations of the curator *bonis* to comply with the various Court Orders must be carried out prior to the rescission of the restraint order, and that a rescission of the Court Order by the NDPP prior to compliance with the aforesaid Court Orders would defeat the very purpose of such Court Orders. This contention is meritorious.
- [15] It is also disputed whether the Phillips parties have made out a proper case to have this Court issue a declarator under section 54(4) of the Administration of Estates Act, that Van den Heever is not competent, for the duration of his lifetime, or such other period as this Court may determine. Also, whether the Phillips parties have made out a case under section 84(2) of the Administration of Estates Act, to disallow Van den Heever from being remunerated for his duties as curator *bonis*. Another bone of contention is whether the Court has an inherent power to allow a "curatorship" to endure after the proceedings against the defendant is concluded, and whether it is obliged to rescind the restraint and discharge the curator. The Phillips parties contend in this regard that there is no time limit prescribed for the discharge of the curator and that it is not appropriate for him to be discharged at this stage but to be substituted. Reliance in this regard is placed on a judgment of this court, *Mngomezulu and Another v van der Heever NO and Others*³ per Fisher J with which I am in respectful agreement therewith.
- [16] The dispute of facts in this matter is incapable of resolution on the papers, and most importantly, too wide-ranging for resolution by way of referral to oral evidence. It is trite that case ought to be made out for such a referral and a satisfactory explanation ought to be provided as to why the applicant did not institute action instead of motion proceedings and whether the applicant did not foresee the possibility of dispute of fact not capable of resolution on paper. I am satisfied that the Phillips parties presented a formidable case in this regard with

³ 2018 (1) SACR 601 (GJ) at para 40.

the request for a referral to trial. There was no serious challenge to the order that follows.

Order

[17] In the result, I therefore make the following order:

1. The counter-application issued by the respondents in the main application (i.e. the Phillips parties), under case number 2000/27855, is hereby referred to trial.
2. The Phillips parties' notice of counter-application shall stand as their simple summons.
3. The third and fourth respondents' (i.e. the curator, Theodor Wilhelm van den Heever ("Van den Heever")) answering affidavit in the counter-application and the applicant's (i.e. the National Director of Public Prosecutions ("the NDPP"), answering affidavit to the counter-application shall stand as Van den Heever and the NDPP's Notices of Intention to Defend.
4. The Phillips parties' shall be the nominal plaintiffs in the action. The Phillips parties', within 2 (two) months of this order, deliver their declaration.
5. The further exchange of pleadings of pre-trial procedures, including discovery and the request for the provision of trial particulars, shall be regulated by the Uniform Rules of Court in respect of action proceedings, and the judicial case management practices of this Court.
6. The costs occasioned by the counter-application are reserved for determination at the trial.



TP MUDAU

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

APPEARANCES

For the Applicants:	Adv Paul Strathern SC and Adv William Coetzee Instructed by National Prosecuting Authority
For the Respondents:	Nigel Redman SC, Isabel Goodman SC and Adv Zaytoen Cornelissen Instructed by Shaheed Dollie Inc Attorneys
For Third and Fourth Respondents:	Adv Etienne Theron SC Instructed by De Vries Incorporated
Date of Hearing:	20 October 2025
Date of Judgment:	22 October 2025