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

CASE NO: 2024-075087

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVIEWED: YES/NO

DATE 14 November 2025

SIGNATURE

In the matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

and

PRETTY SHANDUKANI

First Respondent

**(In her capacity as director of
Preldon Construction (Pty) Ltd)**

In re: **CERTAIN TOYOTA HILUX DC 2.4 GD-6 WITH REGISTRATION NO: F[...] 5[...] N[...] G[...]**

JUDGMENT

RAUBENHEIMER AJ:

Introduction

[1] The applicants were successful in an application for a preservation order in

terms of Section 38(1) of the Prevention of Organised Crime Act, No 121 of 1998 (POCA). The order was in respect of four immovable properties, known as, Erf 6[...] L[...] Ext 22, City of Ekurhuleni, Johannesburg; Erf 2[...] S[...] H[...] W[...] Estate, City of Tshwane, Pretoria; Holding 4[...] I[...] Agricultural Holidays, Midvaal Local Municipality, Pretoria; Erf 3[...] L[...] T[...] Ext 9, Makhado Local Municipality, Limpopo and a Toyota Hilux Double Cab 2.4 GD-6 with registration no F[...] 5[...] N[...] G[...], herein after respectively referred to as “the vehicle”. The respondent only opposed the preservation order in respect of the vehicle.

[2] The current application is for the forfeiture of all the assets. It is common cause that the preservation application in respect of the immovable properties was not opposed. It is also common cause that the forfeiture application in respect of the immovable properties is likewise not opposed.

[3] Before the court is the opposed application for the forfeiture of the vehicle.

Facts

[4] Serious allegations of maladministration and corruption arose at the National Lotteries Commission (NLC). As a result, the President issued Proclamation No. R. 32 of 2020, in terms of which the Special Investigations Unit (SIU) was directed to investigate any offence that was committed between 1 January 2014 and the date of publication of this Proclamation, or before 1 January 2014 or after the date of publication of this Proclamation, and is relevant to the schedules mentioned therein.¹

[5] During the investigation, numerous offences were identified involving a vast and intricate network of entities and complex systems and structures to hide and obscure the wrongdoing.

[6] The investigations revealed that the immovable properties and the vehicle were paid for in cash, which was linked to grants allocated by the NLC.

[7] The applicant brought an *ex parte* application for the preservation of the

¹ Proc R32 GG 43885 of 6 November 2020.

immovable properties and the vehicle. The order was granted on 27 July 2024 and served on the interested parties on 23 August 2024, to which the respondent filed a notice to oppose the granting of the forfeiture order. Thereafter, the preservation order was published in the Government Gazette on 29 November 2024.

[8] On 12 September 2024, the respondent filed an affidavit in terms of section 39(5) of POCA and 13 September 2024, launched an urgent application for the release of the properties from preservation which was settled on the basis that the properties would remain under preservation.

[9] The *curator bonis*, appointed in terms of the preservation order, submitted his first report on 16 September 2024, and the applicant launched its forfeiture application on 10 February 2025. The second report by the *curator bonis* was submitted on 31 March 2025.

[10] Application for a court date for the forfeiture application was made on 13 May 2025, and the matter was set down for hearing on 13 October 2025.

[11] When the matter was heard on 13 October 2025, the respondent raised the point that it was entitled to answer to the allegations contained in the founding affidavit in the forfeiture application of 10 February 2025. The applicant opposed this position on the basis that the respondent had the opportunity to do so during the forfeiture application and had to file an affidavit disclosing its defence. Accordingly, the applicant contends that the respondent failed to disclose its defence and should not be permitted to do so at this stage of the proceedings.

Issues

[12] The applicant raised several issues as to why the court should not entertain the contention of the respondent that it should be permitted to file an affidavit in answer to the founding affidavit of the forfeiture application.

[13] The first issue raised by the applicant was whether a respondent who failed to disclose the basis of his defence as required by section 39 of POCA should be permitted to advance a defence during the forfeiture stage of the proceedings. The

applicant's position is that POCA does not provide for the filing of such an affidavit.

[14] In support of its contention, the applicant relies on section 39(5) of POCA which provides as follows:

“(5) An appearance under subsection (3) shall contain full particulars of the chosen address for the delivery of documents concerning the further proceedings under this Chapter and shall be accompanied by an affidavit stating:

- (a) full particulars of the identity of the person entering the appearance;
- (b) The nature and extent of his or her interest in the property concerned; and
- (c) the basis of the defence upon which he or she intends to rely in opposing a forfeiture order or applying for the exclusion of his or her interests from the operation thereof.”

[15] The applicant consequently relies on section 39 (5)(c) in support of its contention that at the preservation stage the respondent is obliged to disclose not only its defence but also the factual basis and the supporting evidence of its defence against forfeiture. Furthermore, when papers are exchanged in the forfeiture stage, the respondent is not permitted to answer to the allegations contained in the founding affidavit, as the founding affidavit is effectively a replying affidavit to the section 39(5) affidavit, which in turn, according to the applicant, amounts to an answering affidavit.

[16] Counsel for the applicant submitted during oral argument that, between the preservation stage and the forfeiture stage, the applicant conducts investigations that introduce new evidence not contained in the founding affidavit of the preservation application. This new evidence is contained in the founding affidavit of the forfeiture application.

[17] The second issue raised by the applicant is that compliance with section 39 of POCA is a prerequisite to obtaining *locus standi* at the forfeiture stage. The applicant relies on subsection (3) for support of this contention, which provides as follows:

“Any person who has an interest in the property which is subject to the preservation of property may enter an appearance giving notice of his or her

intention to oppose the making of a forfeiture order or apply for an order excluding his or her interest in the property concerned from the operation thereof.”

[18] The applicant therefore, contends that the respondent did not comply with subsection (3) and therefore does not have legal standing in the forfeiture application.

[19] The respondent argues that the interpretation of subsection (3) as contended for by the applicant is untenable as it infringes the right of the respondent to a fair trial as guaranteed by section 34 of the Constitution.

[20] Compliance with section 39 is achieved by mere compliance with subsection (3), which requires an interested person to enter an appearance by giving notice of intention to oppose the making of a forfeiture order or an order excluding his or her interest in the property concerned from the operation of the forfeiture order.

[21] The mentioned notice of intention to oppose must contain full particulars of an address appointed for the receipt of documents in respect of further proceedings. The notice shall be accompanied by an affidavit containing full particulars of the identity of the person entering the appearance, the nature and extent of his or her interest in the particular property, and the basis of his or her defence to the forfeiture application.

[22] The “basis of the defence” does not include the full evidentiary material relied on by the respondent. The requirement dealing with the provision of the name and address in subsection (5) requires a respondent to provide “full particulars” in respect of those requirements. No such reference is present in the “basis of defence” requirement.

[23] The respondent contends that it had complied with these requirements by firstly filing a notice of intention to oppose containing an address where it will accept delivery of further documents.

[24] Secondly, it filed an affidavit in terms of section 39(5) that was deposed to by the director of the respondent, in which it asserts its interest in the vehicle by stating that the respondent is the owner of the vehicle. This afforded the respondent *locus standi*.

[25] The affidavit further avers that the respondent's defence to the forfeiture is that the vehicle was purchased in the ordinary course of the respondent's business, with the purchase being financed by the respondent's associate companies.

[26] The respondent contended that in respect of the disclosure of its basis of defence, it is not obliged to disclose the full particulars of the evidentiary material it relies on. Rather, it is merely obliged to disclose the factual and legal justification for its opposition to the forfeiture.

Discussion

[27] The issues to be determined are *locus standi* and disclosure of the "basis of the defence".

[28] I deal with the issue of interest first. Interest is defined broadly in section 1 of POCA as including any right.² The definition should be interpreted widely in accordance with section 39(2) of the Constitution, in a manner that promotes the spirit, purport, and objects of the Bill of Rights including section 25 of the Bill of Rights. An unduly restrictive interpretation of "interest" runs the risk of leading to arbitrary deprivation of rights.³

[29] The application was instituted through two distinct applications, each supported by its own Notice of Motion and founding affidavit. The preservation application was launched on 5 July 2024, while the forfeiture application was launched on 10 February 2025.

[30] The respondent entered an appearance on 6 September 2024 and filed the section 39(5) affidavit together with the Notice to Oppose. In this affidavit, the

² 121 of 1998.

³ *Mohunram and Another v National Director of Public Prosecutions and Another* [2007] ZACC 4.

respondent clearly and unequivocally asserted its interest in the vehicle. The respondent has consequently satisfied the *locus standi* issue.

[31] Not only did the respondent assert its interest in the vehicle, but it also provided the basis for the interest in the vehicle (purchase in the normal course of business) as well as financing of the purchase (obtained from its affiliate companies). This constitutes the disclosure of material facts (*facta probanda*) as required by section 39(5).

[32] In *Jowell v Bramwell and Others*, the aspect of material facts to be contained in the affidavit were explained as follows:⁴

“...(T)he plaintiff is required to furnish an outline of its case. This does not mean that the defendant is entitled to a framework like a cross-word puzzle in which every gap can be filled by logical deduction. The outline may be asymmetrical and possess rough edges not obvious until actually explored by evidence. Provided the defendant is given a clear idea of the material facts which are necessary to make the cause of action intelligible, the plaintiff will have satisfied the requirements.”

[33] There is consequently no obligation on the respondent to disclose any evidence (*facta probantia*) supporting its defence in the notice of intention to oppose in terms of section 39(5).⁵

[34] The evidence in support of the basis of the defence is disclosed in the answering affidavit filed in response to the founding affidavit in the forfeiture application.⁶

[35] During oral argument, counsel for the applicant argued that the founding affidavit in the forfeiture application effectively serves as a replying affidavit to the respondent’s notice to oppose and the accompanying affidavit. Accordingly, the

⁴ *Jowell v Bramwell-Jones and Others* 1998 (1) SA 836 (W) at 913.

⁵ *Khosana and Others v National Director of Public Prosecutions* (5759/2009) [2011] ZAFSHC 214 Par 26.

⁶ *Kruger Organised Crime and Proceeds of Crime Law in South Africa* 2 ed (LexisNexis, Durban 2013) at 121.

respondent is not permitted to file a further replying affidavit. This is an untenable proposition.

[36] The applicant did not approach the two processes as one but as two separate processes, each with a separate Notice of Motion and founding affidavits.

[37] The preservation and forfeiture process are civil processes,⁷ focused on the property used to commit an offence,⁸ therefore, the normal rules in respect of motion proceedings should be applicable.⁹

[38] This is clear from the provisions of section 62 of POCA. Section 62(1) authorises the Rules Board for Courts to make rules for the proceedings in the High Court dealing with the Civil Recovery of Property.

[39] Section 62(2) of POCA states that, where no such rules have been made, the provisions of the Supreme Court Act¹⁰ and the rules made in terms of that act, and the rules made in terms of section 6 of the Rules Board of Courts of Law Act¹¹ applies with the necessary changes to a hearing in terms of Chapter 6 of POCA, except insofar as the rules are inconsistent with the procedures of Chapter 6.

[40] The effect of section 62(2) is that the normal rules applicable to the Motion procedure in respect of the exchange of affidavits are applicable to the forfeiture application.¹²

Relief

[41] The applicant prays for the forfeiture of the motor vehicle on the basis that the respondent did not comply with the provisions of section 39(5) of POCA and that the respondent is not entitled to file any further affidavits in opposing the forfeiture application.

⁷ Section 37 (1) of Act 121 of 1998.

⁸ *Bobroff and Another v National Director of Public Prosecutions* All SA 1 (SCA); 2021 (2) SACR 53 (SCA) (3 May 2021) para 10.

⁹ *National Director of Public Prosecutions v Kyriacou* [2003] 4 All SA 153 (SCA) par 10. *National Director of Public Prosecutions v Seleane and Others* [2003] 3 All SA 102 (NC) paras 3 & 4.

¹⁰ Act 59 of 1959.

¹¹ Act 107 of 1985.

¹² *Kruger Supra* at 117.

Order

[42] Consequently, the following order is made:

1. The application for the forfeiture of the motor vehicle is dismissed with costs on scale B.
2. The respondent is to file its answering affidavit to the founding affidavit in the forfeiture application within the time period as prescribed in Rule 6 of the Superior Court Rules.

**E RAUBENHEIMER
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Electronically submitted

Delivered: This judgment was prepared and authored by the Acting 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 of the judgment is deemed to be **14 November 2025**

APPEARANCES:

For the Plaintiffs:

Adv Pelser SC
Instructed by Nettavani Attorneys

For the First Respondent:

Adv Wilson
Instructed by State Attorney

Date of the hearing:

15 October 2025

Date of Judgment

14 November 2025