



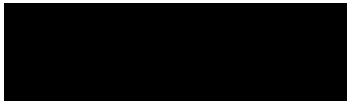
**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2024-110053

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED.
- (4) Date: 26 November 2025

Signature: _



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

JUDGMENT

NYATHI J

INTRODUCTION

- [1] This is an urgent application for reconsideration of a preservation of property order granted on 30 September 2024 in terms of section 38 of the Prevention of Organised Crime Act 121 of 1998 (“POCA”). The order froze the bank accounts of the applicants.
- [2] The applicants contend that the preservation order has expired and/or lapsed in terms of section 40 of POCA, was not properly served in terms of section 39, and that their constitutional rights have been infringed.
- [3] The respondent opposes the application, raising preliminary points including lack of urgency.

URGENCY

- [4] The applicants remain subjected to the consequences of a preservation order that has expired. They cannot access their bank accounts, resulting in ongoing prejudice to their business and constitutional rights.
- [5] The test of urgency is whether substantial redress can be obtained in due course. As held in *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo*¹ and *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*,²

¹ 2016 (4) SA 99 (GP)

² [2011] ZAGPJHC 196

where constitutional rights are infringed and prejudice is ongoing, urgency is established.

[6] I am satisfied that the matter is urgent.

APPLICABLE LEGAL PRINCIPLES

[7] Section 40 of POCA provides that a preservation order expires 90 days after publication in the Government Gazette unless a forfeiture application is pending.

[8] Notice of the order was published on 1 November 2024. The order therefore expired on 30 January 2025. No forfeiture application was filed.

[9] Service was defective. The applicants were only notified on 21 February 2025, after expiry of the order, and at an address not linked to them.

[10] The respondent's delay in publication and service is unexplained. This conduct mirrors that criticised in *NDPP v Lethopa and Others* [2025] ZAGPPHC 249, where similar failures led to the setting aside of preservation and forfeiture proceedings.

[11] Ex parte applications require utmost good faith. As emphasised in *Schlesinger v Schlesinger*³ and *NDPP v Braun*,⁴ material facts must be disclosed and procedural safeguards strictly observed. The respondent failed in this duty.

ANALYSIS

[12] The preservation order expired by operation of law on 30 January 2025.

[13] Even if it had not expired, the respondent's failure to serve notice "as soon as practicable" under section 39 renders the order constitutionally defective.

[14] The applicants' rights to property, trade, and fair hearing have been infringed. The respondent's conduct falls short of the heightened standard expected of a public litigant.

[15] The respondent's opposition is without merit and constitutes an abuse of process.

COSTS

[16] In *NDPP v Lethopa (supra)*, punitive costs were awarded against the NDPP for similar conduct.

³ 1979 (4) SA 342 (W)

⁴ 2009 (6) SA 501 (WCC)

[17] The respondent's failure to act timeously and constitutionally warrants a punitive costs order.

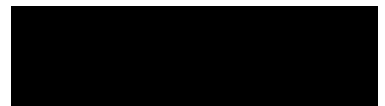
ORDER

[18] Accordingly, the following order is made:

18.1 The preservation of property order dated 30 September 2024 is **reconsidered and set aside.**

18.2 The respondent is ordered to release the applicants' bank accounts forthwith.

18.3 The respondent is ordered to pay the costs of this application on an attorney and client scale, including the costs of counsel on scale B



J.S. NYATHI

Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 02 September 2025
Date of Judgment: 26 November 2025

On behalf of the Applicant: Ms. Kotze
Instructed by: Maseya Attorneys

On behalf of the Respondents: Mr. Matambela
Instructed by: State Attorney, Pretoria.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 26 November 2025.