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 (IN BUSINESS RESCUE)	**THIRD DEFENDANT**
KURT ROBERT KNOOP NO	**FOURTH DEFENDANT**
JOHAN LOUIS KLOPPER NO	**FIFTH DEFENDANT**
(fourth and fifth defendants cited in their capacities as business rescue practitioners of the third defendant)	
ISSAR GLOBAL LTD	**FIRST RESPONDENT**
ISSAR CAPITAL (PTY) LTD	**SECOND RESPONDENT**
TARINA PATEL-SHARMA	**THIRD RESPONDENT**

Neutral citation: *NDPP v Sharma and Others* (2427/2021) [2025] ZAFSHC 381 (28 November 2025)

Coram: Daffue J

Heard: 3 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 13h00 on 28 November 2025.

Summary: Two applications for leave to appeal – the one by the National Director of Public Prosecutions, the applicant in the application for a restraint order, and the other by

the third defendant company and its business rescue practitioners – leave to appeal granted to Supreme Court of Appeal to the applicant as well as the third to fifth defendants.

ORDER

1 Leave to appeal is granted to the applicant in the main application, to wit the National Director of Public Prosecutions, to appeal to the Supreme Court of Appeal against the orders and judgment of De la Rey AJ handed down on 16 September 2025.

2 Leave to appeal is granted to the Supreme Court of Appeal to Islandsite Investments 180 (Pty) Ltd (in business rescue) and its business rescue practitioners, cited as third to fifth defendants in the main application, to appeal against the amended orders 1.3A(a) and (b) handed down by De la Rey AJ on 16 September 2025 and the amended order of 30 September 2025.

3 Costs of both applications for leave to appeal shall be costs in the respective appeals.

JUDGMENT

Daffue J

[1] De la Rey AJ confirmed and made final a provisional restraint order issued by Naidoo J on 2 June 2021, after having made certain amendments to the provisional restraint order. The order of 16 September 2025 was later amended which amendment was communicated to the parties on 30 September 2025. The applicant in the main application, the National Director of Public Prosecutions (the NDPP), seeks leave to appeal the orders and judgment of De la Rey AJ to the Supreme Court of Appeal. She *inter alia* relies on the fact that the proposed appeal would have a reasonable prospect of success. Also, that there is a compelling reason why the appeal should be heard, namely that the question in issue is an important one which has not been directly addressed by either the Supreme Court of Appeal or the Constitutional Court.

[2] A few days after the filing of the NDPP's application for leave to appeal, Islandsite Investments 180 (Pty) Ltd (in business rescue) (Islandsite) and its two business rescue

practitioners, cited as third to fifth defendants in the main application, also filed an application for leave to appeal. They are of the view that the issues relied upon do not require the attendance of the Supreme Court of Appeal and therefore seek leave to appeal to the full bench of this Division.

[3] In the absence of De la Rey AJ whose acting stint has come to an end, these two applications have been allocated to me. I received the parties' heads of argument and considered the oral arguments presented to me on 3 November 2025. I wish to reiterate that I am mindful of the fact that I do not sit as a court of appeal on the judgment and orders of De la Rey AJ and will try my best to deal with the matter as if I was the presiding judge.

[4] The application was argued on the MS-Teams platform. When it was called, I noticed that Mr H Potgieter was also present in the meeting. I enquired about his presence, whereupon he informed me that he was appearing for the first and second defendants who also intended to file an application for leave to appeal. He was aware that condonation would have to be sought for late filing. However, he made it clear that his clients rely on the same arguments as the third to fifth defendants represented by Messrs A Bham SC and LVR van Tonder and that they would abide by my judgment. For the record, the first and second defendants' application for leave to appeal was forwarded to my secretary during the MS-Teams meeting. Bearing in mind Mr Potgieter's concession, it is accepted that his clients will not proceed with a separate application for leave to appeal and in the process waste unnecessary time and judicial resources.

[5] The test for leave to appeal has recently been restated in *Ramakatsa and others v African National Congress and Another*[1] and I quote:

'The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.'

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[1] *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 31 para10.

[6] Mr G Budlender SC, who appeared with Ms K Kollapen on behalf of the NDPP, emphasised that the money-laundering carried on by the defendants is self-evidently part of the large Islandsite money-laundering scheme, to wit in round figures in the amount of R522 million. It is common cause that an amount of R522 million flowed through the Islandsite Absa Bank account between November 2011 to July 2012. Wallis JA, the scribe of the Supreme Court of Appeal judgment in *Knoop and Another NNO v Gupta (Tayob Intervening),*[2] described some examples of the Islandsite scheme in paragraph 136 of the judgment. He continued:

'The image of a washing machine or spin dryer springs to mind when looking at these bank statements, with money coming in from group companies and going out almost immediately to other group companies in enormous quantities on virtually a daily basis.'[3]

[7] Mr Budlender pointed out that the Supreme Court of Appeal made the following finding about money laundering in *S v Thabethe and Others*:[4]

'It is not necessary to analyse the evidence on each of these counts in detail. *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.'

In paragraph 56 the court continued and I paraphrase:

'There is accordingly direct *prima facie* evidence that . . ., Nulane (and its director, the fourth respondent) . . . are involved in the fraud on the Department . . . and that the proceeds, derived from that fraud, were laundered almost immediately after each payment by the Department to Nulane, in which Islandsite and Ms Ragavan played a central role. . .'[5]

[8] Mr Budlender criticised the finding that the 'movement' of R522 million was an 'incidental' finding. He submitted that the finding overlooked the question whether the money-laundering of R522 million was a criminal act 'sufficiently related' to the alleged offences of the defendants or more precisely, whether the criminal court may find that it was such.

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[2] *Knoop and Another NNO v Gupta (Tayob Intervening)* [2020] ZASCA 163; [2021] 1 All SA 726 (SCA); 2021 (3) SA 88 (SCA).
[3] *Ibid* para 137.
[4] *S v Thabethe and Others* [2025] ZASCA 88; [2025] 3 All SA 333 (SCA); 2025 (2) SACR 335 (SCA) para 55.
[5] *Ibid* para 56.

[9] Mr Bham on behalf of the third to fifth defendants, and the business rescue practitioners in particular, disputed the submissions by Mr Budlender. He contended that the fraud allegedly committed involved in round terms R25 million and R19 million respectively and that only these amounts can be restrained. On his version, the restraint of any larger amount would amount to 'double counting'. I accept that the Supreme Court of Appeal may find that the business rescue practitioners' submissions are inconsistent with the judgment of the Supreme Court of Appeal in *S v Shaik*.[6]

[10] It is reasonably possible that the Supreme Court of Appeal would find that this Court erred in not granting a restraint order in respect of R522 million. In doing so, there is a reasonable possibility that the Supreme Court of Appeal may find that the Prevention of Organised Crime Act 121 of 1998 (POCA) does not contemplate that money which is the proceeds of crime may be released from restraint to assist the alleged offender, Islandsite *in casu*, allowing it in the process breathing space whilst the business rescue practitioners attempt to rehabilitate the company.

[11] Bearing in mind the circumstances, there is a reasonable possibility that the Supreme Court of Appeal would find that the defendants have not placed sufficient evidence before the court to displace the presumption in s 22(3) of POCA and that an uncapped provisional restraint order would be appropriate as *inter alia* obtained in *National Director of Public Prosecutions v Kyriacou*.[7]

[12] Having considered the parties' submissions, I am satisfied that there is a reasonable prospect that the Supreme Court of Appeal would find that this court erred in the following respects:

a. for failing to consider whether the criminal court may find that Islandsite's alleged unlawful money-laundering of more than R522 million is criminal activity which is 'sufficiently related' to the offence with which the defendants are charged with specific reference to s 18(1)*(c)* of POCA;

b. it failed to consider whether the criminal court may include the proceeds of the money-laundering scheme in a confiscation order which it makes;

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[6] *S v Shaik* [2007] 2 All SA 150 (SCA); see also the judgment of *National Director of Public Prosecutions v Madhoe and Others* [2024] ZAKZDHC 88; 2025 (1) SACR 377 (KZD).

[7] *National Director of Public Prosecutions v Kyriacou* [2003] ZASCA 95; [2003] 4 All SA 153 (SCA); 2004 (1) SA 379 (SCA); 2003 (2) SACR 524 (SCA) paras 13-16.

c. it failed to consider whether the restraint order should include the proceeds of the money-laundering, so that the criminal court would be able to decide whether they should be confiscated and make an effective order in that regard.

[13] A finding that the NDPP's application for leave to appeal should be granted, negates any prospects of success pertaining to the application for leave to appeal by the third to fifth defendants. However, I am satisfied that it is in the interest of justice that leave should be granted to them to appeal to the Supreme Court of Appeal to prevent a multiplicity of appeals. If the NDPP's appeal is dismissed, the Supreme Court of Appeal may find that the realisable property under restraint should be limited to R24 984 240 together with the CPI from November 2011 to date of the order in relation to the first and second defendants and R19 070 934 together with CPI from November 2011 to date of the order in relation to the defendants. Consequently, although contradictory in nature, the two applications for leave to appeal should both be granted to be heard by the Supreme Court of Appeal. The costs of the applications shall be costs in the appeals.

Order

[14] In the result, the following order is made:

1 Leave to appeal is granted to the applicant in the main application, to wit the National Director of Public Prosecutions, to appeal to the Supreme Court of Appeal against the orders and judgment of De la Rey AJ handed down on 16 September 2025.

2 Leave to appeal is granted to the Supreme Court of Appeal to Islandsite Investments 180 (Pty) Ltd (in business rescue) and its business rescue practitioners, cited as third to fifth defendants in the main application, to appeal against the amended orders 1.3A(a) and (b) handed down by De la Rey AJ on 16 September 2025 and the amended order of 30 September 2025.

3 Costs of both applications for leave to appeal shall be costs in the respective appeals.

[redacted]

J P DAFFUE

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:	H Potgieter
Instructed by:	Forbay Attorneys, Pretoria c/o Gcasamba Inc, Bloemfontein.
For the third to fifth defendants:	A Bham SC with LVR van Tonder
Instructed by:	Smit Sewgoolam Inc, Johannesburg c/o McIntyre Van Der Post, Bloemfontein