IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Appeal Case No.: AR 388/24

In the matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **APPELLANT**

and

THOSHAN PANDAY **FIRST RESPONDENT**

PRIVISHA PANDAY **SECOND RESPONDENT**

TASLEEM RAHIMAN **THIRD RESPONDENT**

SEAN CHRISTENSEN (CURATOR BONIS) **FOURTH RESPONDENT**

ORDER

On appeal from: KwaZulu-Natal Local Division, Durban (Marimuthu AJ, sitting as court of first instance):

1. The appeal is upheld with costs, including the costs of two counsel (where so employed), such costs to be taxed on Scale C.
2. The order of the court a quo dated 6 June 2023 (and the reasons delivered on 14 June 2023) is set aside and replaced with the following:

'The application for an expenses order in terms of s 26(6) of POCA is dismissed, with costs, such costs to be taxed on Scale B.'

3. There is no order as to costs in respect of the fourth respondent.

JUDGMENT

Masipa J (Harrison J and Saks AJ concurring)

Introduction

[1] This is an appeal, with leave of the court a quo, against an order granted ex tempore on 6 June 2023 by Marimuthu AJ, authorising the payment of reasonable living and legal expenses to the first, second and third respondents (the Panday respondents) from assets subject to a restraint order in terms of s 26(6) of the Prevention of Organised Crime Act 121 of 1998 (POCA).

[2] The appellant contends, in essence, that the application ought to have failed because the Panday respondents bore the onus to place before the court admissible evidence establishing compliance with the statutory jurisdictional facts that:

(a) Full disclosure was not made to the court as contemplated by POCA

(b) The restraint order that what was relied upon at the hearing included impermissible submissions from the Bar and a species of 'consensus' with Mr Sean Christensen NO, the curator; and

(c) The court a quo, in effect, abdicated its statutory responsibility to the curator.

[3] Two further issues are central to the appeal. The first is whether, in an application in terms of s 26(6) of POCA, disclosure to the curator alone is sufficient, or whether disclosure must be made to the satisfaction of the court. The second concerns the second respondent's reliance on income said to arise from Calandra Trading 592 CC (Calandra), notwithstanding that Calandra was not an applicant for expense relief and, on the appellant's case, its assets could not competently be

treated as a reservoir to fund the living or legal expenses of the Panday respondents.

Background

[4] On 29 March 2023, Chetty J granted a provisional restraint order in terms of s 26 of POCA against the Panday respondents and others. The order restrained specified realisable property and appointed the fourth respondent, Mr Sean Christensen NO, as curator bonis. Its terms required, amongst other things, disclosure by persons affected by the restraint of interests in property subject to restraint and ongoing disclosure of income and expenditure. It also contained a mechanism regulating access to restrained assets for living and legal expenses.

[5] On 16 May 2023, the Panday respondents launched an urgent application seeking the release of funds for living and legal expenses in terms of s 26(6) of POCA. It was not an application to vary the restraint order under s 26(10) of POCA. The National Director of Public Prosecutions (NDPP) opposed the application. The curator filed an answering affidavit raising material shortcomings in the disclosed information and identifying further information required to assess whether the statutory requirements were met.

[6] The appeal record reveals that the Panday respondents undertook to file a separate supplementary bundle (disclosure affidavits) for the perusal of the court. The appellant's complaint is that this supplementary bundle was never placed before Marimuthu AJ as part of the application for the expenses order, with the result that the court was not placed in possession of the evidence required to exercise the statutory power.

[7] The court a quo recorded that:

'[24] I am indebted to the parties for the detailed affidavits that have been placed before me. They were extremely useful in reaching my decision.

[25] I am alive to the fact that the Applicants and the 2nd Respondent are in constant engagement with each other and that the submissions made by the 2nd Respondent must be considered with all submissions placed before me. I am also aware that the Applicants must satisfy the court and not the 2nd Respondent to succeed with the application. I have no

reason to doubt the submissions of the 2nd Respondent regarding his engagement with the Applicants and his subsequent proposal.'

[8] That passage, properly understood, acknowledges both the correct legal position (that applicants must satisfy the court) and simultaneously reveals the difficulty that lies at the heart of the appeal: whether the court a quo, despite that acknowledgement, nonetheless made an order in circumstances where the required disclosure and proof were not placed before it in admissible form, and where the court relied materially on extra-curial engagement and the curator's proposal.

Issues

[9] The following issues arise:

(a) Whether the application was properly one under s 26(6) of POCA (ie release for reasonable living and legal expenses), or whether it invoked s 26(10) of POCA (variation of a restraint order), and the significance of that distinction.

(b) Whether the Panday respondents discharged the onus of proving the jurisdictional facts in terms of s 26(6) of POCA on the papers, applying motion proceedings principles.

(c) Whether, and to what extent, shortcomings in disclosure could be cured in reply.

(d) Whether disclosure to the curator can substitute for disclosure to the court, and whether the court a quo's approach undermined the statutory scheme.

(e) Whether assets or income associated with Calandra could competently be relied upon to fund the Panday respondents' expenses.

(f) Whether the court a quo impermissibly abdicated its statutory function to the curator when it authorised payment in a manner that effectively made the curator the decision-maker on reasonableness and need.

Statutory framework

[10] POCA establishes an elaborate mechanism designed to preserve property pending criminal proceedings and, where appropriate, to facilitate confiscation. The restraint scheme is stringent. Relief permitting access to restrained property for expenses is exceptional and tightly controlled.

[11] Section 26 of POCA establishes a tightly controlled statutory scheme governing restraint orders. The appeal turns on the proper place of s 26(6) of POCA within that scheme. Section 26(6) of POCA provides that a restraint order may make provision for reasonable living and legal expenses:

'(6) Without derogating from the generality of the powers conferred by subsection (1), a restraint order may make such provision as the High Court may think fit-

(a) for the reasonable living expenses of a person against whom the restraint order is being made and his or her family or household; and

(b) for the reasonable legal expenses of such person in connection with any proceedings instituted against him or her in terms of this Chapter or any criminal proceedings to which such proceedings may relate,

if the court is satisfied that the person whose expenses must be provided for has disclosed under oath all his or her interests in property subject to a restraint order and that the person cannot meet the expenses concerned out of his or her unrestrained property.'

[12] Section 26(10) of POCA, by contrast, empowers a court to vary or rescind a restraint order on application. It provides as follows:

'(10) A High Court which made a restraint order-

(a) may on application by a person affected by that order vary or rescind the restraint order or an order authorising the seizure of the property concerned or other ancillary order …'

[13] Two features are immediately apparent. Firstly, s 26(6) of POCA is framed in language that makes the court's power conditional upon the court being satisfied of two linked requirements, that full disclosure under oath of all interests in restrained property and the inability to meet expenses out of unrestrained property. Secondly, s 26(10) of POCA concerns variation/rescission of the restraint order (or ancillary orders) and is conceptually distinct from the jurisdictional pre-conditions in s 26(6) of POCA. The court a quo was therefore required to determine whether the threshold requirements of s 26(6) of POCA had been met.

The nature of motion proceedings, onus, and the evidentiary burden

[14] This matter was brought on motion. The Panday respondents, as applicants a quo, carried the onus to establish the facts entitling them to the discretionary relief they sought. It is trite that in motion proceedings, affidavits serve both as evidence

and as the mechanism by which issues are defined. The well-known formulation in *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Government of the Republic of South Africa and Others*[1] is apposite, affidavits must define the issues and place the material facts before the court; a party is not entitled to leave the court or opponent to forage through annexures to construct its case. An undertaking to provide documents later does not constitute evidence. An applicant must ensure that all material necessary to justify the relief sought is properly before the court at the time the discretion is exercised. That approach was reiterated in *National Director of Public Prosecutions v Zuma*,[2] where the Constitutional Court stated that:

'… [A] party cannot be expected to *trawl through annexures*… [T]o speculate on the possible relevance ...' (My emphasis.) (Footnote omitted.)

[15] The principles set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*[3] govern disputes of fact where final relief is sought in motion proceedings, the version of the respondent (together with admitted facts) generally prevails unless it is so far-fetched or untenable that it can be rejected on the papers. These principles matter here for two reasons. First, the jurisdictional facts in s 26(6) of POCA had to be proven on affidavit, not by assertion, implication, or counsel's submission.[4] Second, where the curator and NDPP raised concrete, documentary concerns about non-disclosure and inconsistencies, the applicants a quo were required to deal with them fully and candidly if they wished the court to be 'satisfied' within the meaning of s 26(6) of POCA.

Interpretation and the centrality of 'court satisfaction'

[16] The proper approach to statutory interpretation requires consideration of text, context, purpose and background. The purpose of s 26(6) of POCA is to balance, on the one hand, the preservation of property for possible confiscation and, on the

[1] *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) at 323F-325B.

[2] *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA) para 47.

[3] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) *(Plascon-Evans)* at 634E-635C.

[4] *AM Moolla Group Ltd and Others v The Gap Inc and Others* 2005 (6) SA 568 (SCA) para 31 and *Van Heerden and Another v National Director of Public Prosecutions and Another* [2015] ZAWCHC 96 at para 50 and 56.

other, the constitutional and practical necessity that an affected person is not rendered destitute or unable to mount a defence but only where the statutory gatekeeping requirements are met. In *Naidoo and Others v National Director of Public Prosecutions and Another*[5] the Constitutional Court held as follows:

'As the Supreme Court of Appeal noted, the provisions of the statute, particularly s 26(1), read with s 12 and s 14, permit restraint orders to be made only against realisable property held by the person against whom the order is made, and not against realisable property held by any other person. In my view, the reading the Supreme Court of Appeal gave to s 26 struck the correct legislative and constitutional balance.' (footnote omitted.)

The Constitutional Court has repeatedly stressed that the disclosure requirement is not ornamental. In *National Director of Public Prosecutions v Elran*,[6] Cameron J explained that:

'[81]… [D]isclosure therefore ought to be precisely tailored to the statute's requirements. In its absence, the court cannot make an order.

[82] So, in my view, 'shall not' means what it clearly says. The provision creates threshold preconditions without the fulfilment of which the court cannot exercise the s 44(1) power. The threshold preconditions of need and disclosure are both cumulative ('and') and interlinked, since a court cannot determine need ('cannot meet') without the information required to be disclosed. The main judgment appears to accept that the requirement of need in s 44(2)*(a)* is a minimum threshold. Yet the clear wording of the provision, and the interlinking of the two requirements, shows that both constitute preconditions.'

Furthermore, need and disclosure are interlinked because the court cannot determine inability to meet expenses without the information meant to be provided through disclosure.

[17] In *Fraser v Absa Bank Ltd (National Director of Public Prosecutions as Amicus Curiae)*,[7] the Constitutional Court confirmed that the statutory question is whether the court is satisfied that the person has disclosed under oath all interests in property subject to the restraint order and cannot meet the expenses from

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[5] *Naidoo and Others v National Director of Public Prosecutions and Another* [2011] ZACC 24; 2012 (1) SACR 358 (CC) (*Naidoo*) para 23.

[6] *National Director of Public Prosecutions v Elran* [2013] ZACC 2; 2013 (1) SACR 429 (CC) *(Elran)*.

[7] *Fraser v Absa Bank Ltd (National Director of Public Prosecutions as Amicus Curiae)* [2006] ZACC 24; 2007 (3) SA 484 (CC) para 55.

unrestrained property. The emphasis on the court's satisfaction is not incidental, it is the mechanism by which judicial oversight is preserved.[8] The enquiry is whether those facts exist in fact on the material before the court,[9] not whether the court subjectively believed them to exist.

[18] Against that background, if disclosure is made only to the curator and not placed before the court in admissible form, the judicial discretion in s 26(6) of POCA is hollowed out. The discretion is not the curator's, it is the court's. If the court is not placed in a position to evaluate the disclosure and inability to pay from unrestrained property, that is, in substance, the end of the matter. In the absence of the promised supplementary bundle, which was amplified by the failure to draw the court a quo's attention to the affidavit filed in the main proceedings, the jurisdictional fact of full disclosure did not exist on the material properly before the court. The court a quo could not objectively have been satisfied that the statutory requirement had been met.

Was this a s 26(6) application or a s 26(10) variation?

[19] The relief sought and granted was for living and legal expenses from restrained assets. That is the terrain of s 26(6), read with s 44 of POCA. To the extent that the founding papers made oblique reference to variations of the restraint order, the application was not pleaded with the precision required in motion proceedings as identify with clarity which part of the order was to be varied, on what factual basis, and with what evidentiary foundation.[10] Section 26(10) of POCA is not a residual safety-valve permitting a court to bypass the jurisdictional requirements of s 26(6) of POCA. Nor can s 26(10) of POCA be invoked by implication where the pleaded case and the order granted are quintessentially relief in terms of s 26(6) of POCA. On the papers, the case must stand or fall under s 26(6) of POCA.

Did the Panday respondents discharge the onus of full disclosure to the court?

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[8] *Elran* paras 37-38.
[9] *Elran* 31.
[1010] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* [2004] ZACC 15; 2004 (4) SA 490 (CC) para 27.

[20] The statutory requirement of POCA is that ‘all interests in property subject to a restraint order’, must be disclosed ‘under oath’, and in such a manner that the court can be ‘satisfied.’ It follows that the applicants a quo bore the duty to place before the court the disclosure evidence on which they relied upon. The record reflects that the Panday respondents stated that their disclosure affidavits would be incorporated and undertook to file a separate bundle marked ‘disclosure affidavits’ for the perusal of the court. The NDPP’s complaint is that the promised bundle did not form part of the papers served before Marimuthu AJ when the expenses order was granted. In an application in terms of s 26(6) of POCA that is fatal. Without the disclosure evidence before it, the court cannot perform the statutory enquiry. A litigant cannot satisfy a jurisdictional fact by promising later compliance. That is particularly so where the statute conditions the power on the court being ‘satisfied’ at the time it makes the order.

[21] The curator’s answering affidavit did not merely raise peripheral queries. It identified concrete instances of incomplete disclosure and sought specific, corroborated information (including up-to-date financial statements, bank and management accounts, and explanations on oath concerning corporate structures and transfers). These were not trivial matters, they went to the heart of whether the applicants had disclosed all interests in property subject to restraint and whether unrestrained property existed to meet expenses. The NDPP likewise raised substantial concerns, including the basis on which the first respondent claimed to service bond instalments on a property owned by a trust in circumstances suggesting a loan account, concerns about companies said to be dormant, and anomalies such as similarity in payslips across different entities and the continued payment of a ‘salary’ in circumstances where the relevant rental property had been sold, and a cellular phone account for a liquidated company. In terms of the principles of motion proceedings, such contentions required a direct and comprehensive answer on affidavit, supported by documentation where appropriate. The applicants bore the onus, it was not for the NDPP or curator to disprove disclosure.

[22] The Panday respondents’ case, as advanced on appeal, is that they were entitled to address shortcomings in reply, particularly where the curator invited the

disclosure of further information. That submission cannot be accepted as a complete answer. Even where itis permissible to deal with new matter in reply, the foundational jurisdictional facts in applications for final relief must be established in the founding papers. However, in this case, the replying affidavit was delivered one day before the hearing, which only amplified the prejudice to the NDPP. The Constitutional Court in *Elran*,[11] underscored the rigour of the disclosure requirement and the consequence of its absence. It is in that context that the argument that 'nothing stops' an applicant from making out a case in reply is misconceived, motion proceedings are regulated by the rules, and the evidentiary burden lies on the applicant seeking final relief. In any event, the appellant's point is not merely that an attempt was made to add material in reply, but that the court a quo was still not presented with the complete disclosure evidence (including the promised supplementary bundle) that would allow it to be 'satisfied' in terms of s 26(6) of POCA.

[23] It was submitted that a further affidavit bearing a court stamp existed but did not form part of the appeal bundle and could not be assumed to have been before Marimuthu AJ. Even if such a document exists, it cannot assist the Panday respondents unless it was part of the record upon which the court a quo relied on. An appeal is determined on the record. A party cannot, by suggestion or inference, improve its case on appeal by reference to documents not properly shown to have served before the court a quo.[12] Moreover, it was submitted that the affidavit stamped on 28 April 2023 in the main (restraint) proceedings was not filed in the application and, in any event, even if accepted, it pre-dated the curator's answering affidavit and therefore could not have dealt with the curator's material complaints. On either premise, it does not answer the central difficulty that the court a quo was not placed in possession of admissible evidence sufficient to satisfy it that full disclosure had been made.

The role of the curator and abdication of judicial responsibility

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[11] *Elran* para 129.
[12] *Minister of Land Affairs and Agriculture and Others v D and F Wevell Trust and Others* [2007] ZASCA 153; 2008 (2) SA 184 (SCA) para 50.

[24] The language in s 26(6) of POCA is unequivocal, the power exists only if the court is satisfied with the disclosure and inability to meet expenses from unrestrained property. The discretion is a judicial discretion, to be exercised by the court on evidence properly before it. If an applicant could satisfy s 26(6) of POCA by making disclosure only to the curator, and by relying on the curator's opinion or proposal, the statutory design would be subverted. Judicial oversight would be replaced by administrative endorsement. The court would be reduced to confirming that the curator is content. That is not what the statute permits.

[25] This is why the appellant's 'end of the matter' submission has force, where disclosure is not made to the court (or, at minimum, placed before the court in admissible form), the court cannot reach the satisfaction required by s 26(6) of POCA, and the exercise of its discretion does not arise. The approach adopted by the court a quo, relying on constant engagement between curator and applicants and giving decisive weight to the curator's proposal impermissibly shifts the locus of satisfaction away from the court. In a statutory scheme that is "narrowly and finely crafted",[13] that shift cannot be justified.

[26] The appellant submits that the court a quo abdicated its function by authorising payments in a manner that effectively left it to the curator to determine amounts and the reasonableness of those amounts, notwithstanding that POCA requires the court to be satisfied of the jurisdictional facts and to exercise the discretion judicially. Courts may, in appropriate circumstances, incorporate agreements or draft orders, but only where the order is competent and the statutory requirements are satisfied. Even where parties agree, the court must be satisfied that the order accords with the law.[14]

[27] Here, the NDPP did not agree. More importantly, even the curator's support could not cure a failure to comply with jurisdictional requirements. It is not competent to grant relief on the strength of consensus where the statute requires the court's satisfaction on evidence of full disclosure and inability to pay from unrestrained assets. The appellant also relied on authority cautioning against courts deferring to

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[13] *Elran* para 77.
[14] *Eke v Parsons* [2015] ZACC 30; 2016 (3) SA 37 (CC) paras 25-26.

experts in a manner that substitutes the expert's decision with that of the courts. In *BNS Nominees (RF) (Pty) Ltd and Another v Arrowhead Properties Ltd*,[15] the court cautioned against abdication under the guise of deference. That principle applies *a fortiori* where the statute entrusts the decision to the court itself.

Consequence of inadequate disclosure: the discretion does not arise

[28] The Constitutional Court in *Elran*,[16] made plain that disclosure and need are "cumulative and interlinked" and that the point of disclosure is to enable the court to determine whether the applicant cannot meet expenses from unrestrained property. Where disclosure is lacking, the court cannot be satisfied and has no discretion to grant the order.

[29] The appellant's argument is not a formalistic insistence on paperwork. It is the statutory mechanism itself. If the court is not furnished with the disclosure evidence under oath, it cannot determine the existence and extent of unrestrained property, it cannot evaluate need, and cannot lawfully exercise its discretion. The 'need' submission cannot be used to invert the scheme so that need defeats disclosure. POCA requires both.

Application of *Plascon-Evans* and the proper approach to disputes on the papers

[30] Even assuming some disclosure material was before the court a quo, the curator and NDPP raised disputes and concerns of substance. In terms of *Plascon-Evans*, those disputes could not simply be brushed aside by reliance on the absence of argument that the respondents 'do not have expenses'. The statutory enquiry is not whether people generally have living expenses, it is whether the applicants have disclosed all interests in restrained property and cannot meet the expenses from unrestrained property.

[31] In addition, the 'no trawling through annexures' principle underscores the appellant's complaint, being that the applicants a quo were required to put up a

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[15] *BNS Nominees (RF) (Pty) Ltd and Another v Arrowhead Properties Ltd* 2023 (1) SA 478 (GJ) para 59.

[16] At paras 82 and 98-102.

coherent case, with the evidence clearly identified and placed before the court. The court a quo was not required to reconstruct the applicants' case from scattered schedules, references and implied incorporation, especially where a specific supplementary bundle was promised but not produced.

The Calandra issue

[32] Calandra was not an applicant for expense relief in the court a quo. It was common cause on the papers that Calandra is a juristic person and that its assets formed part of the restrained estate in terms of the restraint order. In *Naidoo,*[17] the Constitutional Court held that:

'… [I]t is not a plausible interpretation that access can be given to property held by a person other than the person against whom the restraint order was made.'

The mechanism under s 26(6) of POCA is tied to the person against whom the restraint order is made. The purpose, as explained by Cameron J in *Naidoo*,[18] includes discouraging defendants from hiding assets by donating them away.

[33] On the appellant's case, the attempt to source living expenses for the second respondent from interest or income said to be associated with Calandra is inconsistent with *Naidoo*. Even if interest accrued on Calandra's funds, that interest accrued to Calandra. Absent a proper legal foundation and full disclosure demonstrating entitlement, the court a quo could not competently treat Calandra's Trading's assets as available to pay the Panday respondents' expenses. This concern is sharpened by the factual complaints recorded by the NDPP that Calandra's relevant rental property had been sold, yet a salary was purportedly paid for the 'management' of a rental enterprise said to have become dormant. Without full disclosure and objective evidence, the court a quo could not be satisfied that such payments were lawful, necessary, and properly sourced within the confines of the restraint scheme. The reliance on Calandra Trading's assets was impermissible and contrary to binding authority.

Further evidence on appeal

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[17] *Naidoo* para 20.
[18] *Naidoo* paras 29–31.

[34] The Panday respondents foreshadowed an application to lead further evidence that was said to relate to procedural challenges in compiling the record and setting down the appeal rather than substantive merits. The ordinary test for further evidence on appeal is stringent. In this matter, however, such evidence would not alter the dispositive legal conclusion: the validity of the expenses order depends on whether, on the record before the court a quo, the jurisdictional facts in s 26(6) of POCA were established. Procedural difficulties on appeal cannot retroactively supply jurisdictional facts that were not proven when the order was granted.

Conclusion

[35] In summary:

(a) The Panday respondents bore the onus to establish, on admissible evidence in the motion papers, that they had disclosed under oath all interests in restrained property and could not meet reasonable living and legal expenses from unrestrained property.

(b) They undertook to file a supplementary 'disclosure affidavits' bundle for the court's perusal. The record does not demonstrate that this was placed before the court a quo in the expenses application in a manner enabling the statutory satisfaction required by s 26(6) of POCA.

(c) The curator's answering affidavit raised material instances of incomplete disclosure and required further specific information. The attempt to cure disclosure in reply did not validly establish the foundational jurisdictional facts for final relief, and in any event did not place the court in possession of the full disclosure evidence under oath.

(d) The statutory discretion is vested in the court. Disclosure to the curator cannot substitute for disclosure to the court. Reliance on constant engagement with the curator and the curator's proposal undermined the court's statutory responsibility and, in effect, amounted, to an abdication of the court's function.

(e) Calandra was not an applicant for expense relief. Treating its assets or income as available to fund the Panday respondents' expenses is inconsistent with the dicta in *Naidoo*[19] and the individualised character of the restraint/expense mechanism.

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[19] *Naidoo* paras 23 and 26.

[36] The appeal must therefore succeed.

Order

[37] The following order is made:

1. The appeal is upheld with costs, including the costs of two counsel (where so employed), such costs to be taxed on Scale C.
2. The order of the court a quo dated 6 June 2023 (and the reasons delivered on 14 June 2023) is set aside and replaced with the following:
   'The application for an expenses order in terms of s 26(6) of POCA is dismissed with costs, such costs to be taxed on Scale B.'
3. There is no order as to costs in respect of the fourth respondent.

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MASIPA J

I agree

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HARRISON J

I agree

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SAKS AJ

APPEARANCE DETAILS:

Matter heard on:	24 October 2025
Judgment delivered on:	23 January 2026
For the appellant:	Mr G Marcus SC Ms K Saller
Instructed by:	The State Attorney KwaZulu-Natal, Durban
For the 1st, 2nd & 3rd respondent:	Mr J E Howse SC
Instructed by:	Kershnie Govender Attorneys, Durban North.