IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable
Case no: 619/2024

In the matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **APPLICANT**

And

SIMBA DAVID MAPHOSA **RESPONDENT**

Neutral citation: *NDPP v Maphosa* (619/2024) [2026] ZAFSHC 49 (9 February 2026)

Coram: Daffue J

Heard: 4 September 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 16h00 on 9 February 2026.

Summary: Application for forfeiture order in terms of s 50(1) of the Prevention of Organised Crime Act 121 of 1998 (POCA) in respect of several vehicles subject to a preservation order – substantial amounts paid to different dealerships – respondent made bald allegations unsupported by evidence or reason – no real, genuine or bona fide dispute of fact on papers – forfeiture order granted.

ORDER

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1 The following properties are declared forfeited to the State in terms of s 50(1) of the Prevention of Organised Crime Act 121 of 1998 (POCA):

a. a Ford Ranger with registration number JK 1[…], engine number Y[…] and chassis number A[…];
b. a Mercedes Benz with registration number JN 6[…], engine number 1[…] and chassis number W[…];
c. a Toyota Hilux with registration number JV 2[…], engine number 2[…] and chassis number A[…];
d. a Toyota Corolla with registration number FL 4[…], engine number 3[…] and chassis number A[…];
e. a Toyota Conquest with registration number HHP[…] engine number 4[...], engine number A[…], (the properties).

2 Selinah Letuka (Letuka) shall take control of the properties listed in paragraph 1 *supra* and the Unit Commander of the Provincial Organised Crime Unit (DPCI) Bloemfontein, Brigadier Ketlamoreng George Mofoyane, or a person authorised by him in writing, is ordered to hand over the aforesaid properties to Letuka to be sold by her or a person authorised by her in writing by public auction and to pay the proceeds of the sale into the Criminal Asset Recovery Account (CARA) number 80303056 established under section 63 of POCA, and held by the South African Reserved Bank.

3 Any person whose interest in any of the aforesaid properties is affected by the forfeiture order, may within 20 days after requiring knowledge of such order, set the matter down for variation or rescission by the court.

4 Letuka or a person authorised by her in writing, shall as soon as possible, but not later than 90 days of this order coming into effect, file a report with the applicant on the way they:

4.1 completed the administration of the aforesaid property mentioned above, and

4.2 complied with the terms of this order.

5 The respondent shall pay the applicant's costs of the application.

JUDGMENT

Daffue J

Introduction

[1] This forfeiture application turns on the question whether five motor vehicles belonging to one individual, purchased in cash over a period of 15 months in the total amount of nearly R2 million, represents the proceeds of unlawful activities within the meaning of the Prevention of Organised Crimes Act 121 of 1998 (POCA) and therefore, liable to be declared forfeited to the State.

The parties

[2] The National Director of Public Prosecutions (NDPP) is the applicant in this application. Mr Simba David Maphosa is cited as the respondent.

The relief sought and the opposition thereto

[3] The NDPP seeks a declaratory order in terms of s 50(1) of POCA that the following properties, which are subject to a preservation order, be forfeited to the State:

'a. a Ford Ranger with registration number JK 1[…], engine number Y[…] and chassis number A[…];

b. a Mercedes Benz with registration number JN 6[…], engine number 1[…] and chassis number W[…];

c. a Toyota Hilux with registration number JV 2[…], engine number 2[…] and chassis number A[…];

d. a Toyota Corolla with registration number FL 4[…], engine number 3[…] and chassis number A[…];

e. a Toyota Conquest with registration number HHP […], engine number 4[…], chassis number A[…], (the properties).'

[4] It is the respondent's case that the NDPP is not entitled to a forfeiture order. According to him, he is a rich businessman who could afford to purchase the properties from the proceeds of his various lawful business activities. I quote some allegations in support of his opposition of the forfeiture application *verbatim*:

(a) 'I am a silent partner in various informal businesses and also make a living by operating as a loan shark and also buy cars that are involved in accidents and other second hand cars and thereafter on-sell them. . . .'

(b) 'I make a living by being involved in many business ventures . . .'

(c) 'I also make a living by renting some accommodation facilities in Welkom. . . .'

As proof of the last allegation above the respondent attached a confirmatory affidavit and lease agreement at a monthly rental of R1 400 with one so-called subtenant, to wit Mr Shau, a minor employed by Harmony Gold.

[5] The respondent stated the following in dealing with allegations that he had purchased his motor vehicles in cash:

(a) '. . . the reality of many black township entrepreneurs or self-employed South Africans make use of cash that has been derived lawfully. To give an example pertaining to me, being a loan shark requires that I should have cash in my possession. . . .'

(b) 'The deponent being a black person must know or ought to know about the township economy which includes gambling, loan shark and buying second hand cars and on-selling them after refurbishing them.'

(c) 'The deponent in the founding affidavit conveniently ignores the existence of the black economy which exclusively makes use of cash . . .'

(d) 'For an example these cars have been acquired over a period of more than five years . . . To acquire cars to the value of just over two million in approximately five years is not astronomical in today standard of living. Similarly the reference to the effect that my bank account shows deposits of more than R1 447 930.00 in cash from 2016 to 2021 of which is a period of approximately five years does not without more indicate that the deposits alluded to were proceeds of crime.'

(e) 'The allegation that I have accumulated an amount of R3 984 590 during a period of approximately five years is also not out of the ordinary since my loan shark business and the buying of damaged cars and on-selling them involve a substantial amount of money . . .'

(f) 'The township economy is replete with examples of dealing with cash including the well-known phenomenon of stock-fell used by many communities in the black township. I was involved with a stock fell during the relevant period when I acquired the property in question. The deponent in the founding affidavit in support of the preservation order being a black man ought to known these but presumably ignores such economic reality.'

[6] A written loan agreement dated 10 June 2019 is relied upon in terms whereof the respondent borrowed money from a foreigner in the amount of R350 000. No proof is provided to show that the capital amount of the loan has been obtained legally; also, that the amount of R350 000 was actually paid over to the respondent. More importantly, there is no proof that the loan has been repaid in six instalments of R58 900 as allegedly agreed upon, or at all.

Common cause facts

[7] On 8 February 2024 this court granted a preservation order in terms of s 38(1) of POCA after having considered an urgent *ex parte* application. The order involved the aforesaid five motor vehicles. On 1 March 2024 the preservation order was published in the *Government Gazette*. *Ex facie* the return of service of the Deputy Sheriff of Vereeniging, this order was personally served on 19 February 2024 on the respondent at his residential address in Orange Farm. This address is reflected in the registration certificates of his vehicles.

[8] The respondent belatedly filed a notice in terms of s 39(3) of POCA to oppose the relief sought against him and the requisite affidavit in terms of s 39(5). These documents were misfiled in the office of the State Attorney and did not come to the attention of the NDPP at that stage.

[9] On 14 May 2024 the NDPP brought an application under s 48 of POCA for an order declaring the properties subject to the preservation order forfeited to the State. It is alleged that the properties are the proceeds of unlawful activities, specifically theft, contravention of ss 4 and 5 of the Precious Metals Act 37 of 2005 and ss 4, 5 and 6 of POCA, dealing respectively with money laundering, assisting another to benefit from the proceeds of unlawful activities and the acquisition, possession or use of proceeds of unlawful activities. On 23 May 2024 the forfeiture application was heard on an unopposed basis whereupon the forfeiture order as requested was granted.

[10] An application for rescission of the forfeiture order followed. Although it was opposed, rescission was eventually granted on 27 February 2025. Notwithstanding the success achieved by the respondent, Hefer AJ remarked in paragraph 27 of the judgment that the respondent's explanation relating to his residential address was 'blatantly untruthful'. The learned judge also stated in paragraph 37 that, notwithstanding rescission of the forfeiture order, 'the preservation order still stands.' Therefore, and by agreement between the parties, the NDPP was called upon to file her replying affidavit in response to the respondent's aforesaid affidavit. This has been done. Heads of argument have been filed, and I was called upon to consider the forfeiture application on the merits based on the documents presented to me.

[11] The background to the litigation needs to be dealt with briefly. Project PAPPA G was implemented to deal with unlawful activities pertaining to illegal gold mining, the theft of unwrought gold, the melting thereof and the selling thereof to gold smuggling syndicates. The scope and seriousness of the illegal goldmining industry have been documented in the papers before me. Although the respondent denies any illegality and/or involvement with illicit gold mining activities, he was arrested following an

entrapment procedure and charged, although the charges were later withdrawn against him. It is his case that the charges were withdrawn since the entrapment in terms of s 252A of the Criminal Procedure Act 51 of 1977 was unlawful and violated established protocol. I shall not consider this issue herein, bearing in mind the provisions of POCA and the authorities to which I shall refer hereunder.

[12] The following facts presented by the NDPP in respect of the respondent's financial transactions are largely common cause. I shall deal with the respondent's acquisition of properties in chronological order. Where there is disagreement, I shall point that out. The respondent is born on 17 October 1993, which means that he turned 23 in October 2016. At that stage he was a client of First National Bank (FNB) as is apparent from the bank statements presented by the NDPP. This remained the case throughout the investigations. He was employed at a tuck shop till about March 2016.

[13] In October 2016, at the age of 23, he declared himself to be self-employed. When a warning statement was taken from him much later, he refused to provide details of his employment and or the address from where his activities were conducted. A perusal of his personal bank statements confirms that there are no records of any salary or drawings from a business or businesses indicated as income.

[14] Attorney MJ Willemse of Haasbroek-Willemse Inc (Willemse) made a statement, relied upon by the NDPP. A certain Marilize Naudé (Naudé) worked for him in the conveyancing department. The respondent made four payments with the intention to purchase several immovable properties. One was 2[…] L[…] Street, Doorn, Welkom (Erf 5[….] Welkom). The four payments were:

a. R322 890 in cash on 21 June 2016;
b. R95 000 in cash on 24 October 2016;
c. R55 000 by way of an EFT, originating from cash deposits on 24 October 2016; and
d. R100 000 in cash on 27 October 2016.

[15] Naudé committed the offences of fraud and theft. Willemse established that only R100 000 was deposited into his trust account, but on another client's name. Naudé issued false receipts for the payments received by her. Eventually the respondent issued summons against Willemse and Naudé in the Free State High Court. On 5 October 2021 an order by agreement was made in terms whereof judgment was granted in his favour for R472 890. At that stage the firm of attorneys, DV Inc, acted for the respondent and this firm later attended to the transfer of Erf 5[…], Welkom in the name of the respondent.

[16] Also in 2016, the late Mr Lebona and his wife sold their property situated at 4 Ferdinand Street, Bedelia, Welkom to the respondent. Mrs Lebona made an affidavit to relate what occurred. She knew the respondent as Themba Jackson, he also being a member of her church congregation. They sold their house for R150 000 cash. The respondent paid the purchase price but did not take transfer of the property into his name. He made improvements to the property and a few months later, on 22 June 2017, the property was transferred directly from them to a certain Mr Sentso. The property was sold for R520 000 and the date of sale is reflected in the official records as 18 November 2016. Mrs Lebona emphatically stated that Mr Sentso did not buy the house from them, but from the respondent. However, the documentation presented in the form of a deed of sale and proof of registration of transfer indicates a direct transaction between the Lebonas and Mr Sentso. Upon registration of transfer, the firm of attorneys, Neumann and Van Rooyen, paid over R471 510 to the respondent, being the balance purchase price. They acted on the written instructions of the late Mr Lebona.

[17] Immediately after payment of the R471 510 into his FNB bank account, the respondent transferred R477 600 to M de Wet and Associates. On 1 December 2016 the respondent signed an offer to purchase Erf 59[...], also known as 5[…] J[…] Street, Welkom. In providing his personal details, he stated that he was self-employed, but instead of providing his income tax number as requested, he incorrectly mentioned the

following: ‘R240 000-00 p.a.’ The respondent purchased the property for R900 000 cash. The ledger account of Jawitz Estates with M De Wet and Associates shows that between 30 January 2017 and 7 July 2017, a total amount of R1 009 550 was paid into the trust account. It reflects the payment of R477 600 referred to above, as well as four other bank payments of R100 000, R120 000, R40 000 and R5 000 respectively, as well as a cash deposit of R140 000 and an amount paid by Jawitz Eiendomme of R76 950. According to the respondent’s bank statement at FNB during this period, a total amount of R531 950 could not be identified. Therefore, the respondent had additional cash in that amount which is not reflected in his bank account. On 19 October 2017, Erf 952 was eventually registered in the name of the respondent. On 17 August 2022, less than a year later, he sold the property for R1 030 000 to a certain Mr Duwayo.

[18] Having dealt with the immovable properties involving the respondent, it is now time to consider the transactions pertaining to the five vehicles, the subject of the forfeiture application. I emphasise that contrary to the respondent’s version, these vehicles were not purchased over a period of five years, but from 23 October 2019 to 27 January 2021, being a period of about 15 months.

[19] On 23 October 2019, a Ford Ranger with registration number JK 12 MS GP was purchased from Vereeniging Auto for R650 000 in cash. No credit agreement was entered into. The vehicle was registered in the respondent’s name as owner and title holder. The respondent’s bank statements from 3 January 2019 to 3 January 2020 do not reflect any payments to the motor dealer. There was just not nearly enough money in the account to settle the purchase price.

[20] On 11 July 2020 the respondent purchased a Toyota Corolla with registration number FL 4[…] from We Buy Cars (Pty) Ltd in the amount of R141 500. It was paid for in cash. No credit agreement was entered into. The vehicle was registered in the respondent’s name as owner and title holder. The respondent’s FNB account shows cash deposits from Automated Deposit Teller (ADT) machines to enable respondent to settle the purchase price. The respondent failed to explain these cash deposits.

[21] The Mercedes Benz AMG with registration number JN 6[…] was purchased on 15 October 2020 by the respondent for R658 700 from Northcliff Exclusive Cars. Again, it was paid for in cash. No credit agreement was entered into. The respondent's bank statements reveal seven transactions totalling R1 078 700 paid to Northcliff Exclusive Cars, whilst this amount was accumulated earlier through cash deposits into his account. These payments to Northcliff Exclusive Cars were made from 25 September 2020 to 16 October 2020, *ie* within a period of 21 days. The respondent failed to explain these cash deposits.

[22] On 10 November 2020, the respondent purchased a Toyota Conquest with registration number HHP […] for R51 400 from We Buy Cars. It was paid for in cash, and no credit agreement was entered into. The vehicle was registered in the respondent's name as owner and title holder.

[23] The fifth vehicle, a Toyota Hilux with registration number JV 2[…] was purchased on 27 January 2021 for R460 00 in cash from Easy Auto Fin Cars. The respondent paid the purchase price as follows:

a. on 8 January 2021 in the amount of R25 000 by making use of Smartapp;
b. on 13 January 2021 in the amount of R135 000 by making use of Smartapp; and
c. on 26 January 2021 in the amount of R300 000 by way of a cash deposit at FNB Southgate Mall into Easy Auto Fin Cars account.

The respondent relied on seven cash deposits from ADT machines into his account on the same day, to wit 13 January 2021, to pay the R135 000 on that day. The vehicle was registered in the respondent's name as owner and title holder.

[24] During the period 2016 to 2021 the respondent's bank account received cash deposits in the amount of R1 447 930 without any audit trail. It is alleged by the NDPP that he had possession of and/or caused cash to be physically transported 270 times to

an ADT machine for those funds to be deposited into his FNB bank account. The extracts from the respondent's bank accounts relied upon by him and attached to the answering affidavit serve as proof of the numerous ADT cash deposits into his bank account which he failed to explain.

Legislation and authorities

[25] Chapter 6 of POCA deals with civil recovery of property in ss 37 to 62 thereof. Although the chapter provides for forfeiture of the proceeds of crime, it is not conviction based and may be invoked even in the absence of a prosecution as confirmed in *National Director of Public Prosecutions and Another v Mohamed NO.*[1] The unlawful activity does not have to be committed by the holder or owner of the property, but it is sufficient for it to have been committed. The guilt or wrongdoing of the owner or possessor is of no relevance to these proceedings. This conclusion is supported by the wording of s 50(4) of POCA which reads as follows:

'(4) The validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.'

[26] Section 50(1) of POCA stipulates that the High Court shall, subject to s 52, make an order applied for under s 48(1) if it finds on a balance of probabilities that the property concerned is either (*a*) an instrumentality of an offence referred to in Schedule 1, or (*b*) the proceeds of unlawful activities, or (*c*) is property associated with terrorist and related activities. *In casu*, the NDPP relies on sub-sec 50(1)*(b)* only.

[27] In *National Director of Public Prosecutions v Moyane*[2] (*Moyane*) the Supreme Court of Appeal held that Monyane's version was far-fetched and that he 'failed to raise real, genuine and bona fide disputes of fact in relation to the source of funds used to finance the acquisition of the vehicle'. This was concluded based on the totality of the evidence and in particular Monyane's failure to produce any documentation in the form

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[1] *National Director of Public Prosecutions and Another v Mohamed NO* 2002 (2) SACR 196 (CC) para 16.
[2] *National Director of Public Prosecutions v Moyane* [2022] ZASCA 79 paras 15-20 and 28-32.

of invoices, book entries, contracts or financial statements in support of his allegation that he lawfully earned the monies used to pay the purchase price of the vehicle in that case.

[28] A respondent bears an evidentiary burden to show that the proceeds used to purchase the property emanated from a legitimate source. Section 52 of POCA places an *onus* on the party seeking to exclude the interest from the operation of the order to show that such interest has been legally acquired. The first two sub-secs read as follows:

'(1) The High Court may, on application-

(a) under section 48 (3); or

(b) by a person referred to in section 49 (1),

and when it makes a forfeiture order, make an order excluding certain interests in property which is subject to the order, from the operation thereof.

(2) The High Court may make an order under subsection (1), in relation to the forfeiture of the proceeds of unlawful activities, if it finds on a balance of probabilities that the applicant for the order-

(a) had acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of that interest; and

(b) . . .'

There is indeed a duty on such party to adduce evidence pertaining to the legitimacy of an acquisition. Therefore, respondents need to support their allegations with proof if they want their versions to be accepted as tenable.

[29] The following definitions in POCA are applicable:

a. 'proceeds of unlawful activities', as 'any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived.'

b. ‘property’ is described as ‘money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof.’

c. ‘unlawful activity means any conduct which constitutes a crime or which contravenes any law whether such conduct occurred before or after the commencement of POCA and whether such conduct occurred in the Republic or elsewhere.’

[30] In *National Director of Public Prosecutions and Another v RO Cook*[3] the court, having to determine whether property formed part of proceeds of unlawful activities, held as follows:

‘Bearing in mind that the objective of the Act is to render forfeit the returns that might accrue from unlawful activity, we consider that the 'connection' the definition envisages requires some form of consequential relation between the return and the unlawful activity. In other words, the proceeds must in some way be the consequence of unlawful activity.’[4]

[31] The term, ‘unlawful activities’, as envisaged in POCA does not refer to any contraventions of the law which do not amount to criminal conduct. The Supreme Court of Appeal held in *Bobroff and Another v the National Director of Public Prosecutions*[5] as follows:

‘. . . The purpose of s 50(1) of the POCA, as read with the definition of ‘proceeds of unlawful activities’, in the context of the known developments worldwide in relation to transnational crime, is to strip offenders of the proceeds of their crime wherever they may retain it.’[6]

Later in the judgment the court made the following statement:

“Where proceeds of crime have been laundered with the very purpose of disguising the origin and identity thereof, they may be mixed with other assets which may not be the proceeds of crime, and they may be converted into other forms of asset which technically are not direct proceeds of crime. In the case of

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[3] *National Director of Public Prosecutions and Another v RO Cook* 2004 (2) SACR 208 (SCA).
[4] Ibid par 72.
[5] *Bobroff and Another v the National Director of Public Prosecutions* [2021] ZASCA 56; [2021] 3 All SA 1 (SCA); 2021 (2) SACR 53 (SCA).
[6] Ibid para 17.

money, this would typically be the case. The definition of the concept in s 1 of POCA therefore includes 'any property representing property so derived."'[7]

[32] The Constitutional Court held in *National Director of Public Prosecutions v Botha NO and Another*[8] that the amount paid by Trifecta in respect of the renovations of the late Ms Botha's family home represented the proceeds of crime in the hands of Ms Botha, and ordered that an amount equivalent to the benefit be paid from her estate to the State.[9]

[33] Kruger,[10] with reference to international experts on the topic of money laundering, makes the following comments:

'Money laundering can be described as "the manipulation of illegally acquired wealth in order to obscure its true source or nature". It entails disguising the origins of money obtained through crime so that the funds appear to have been obtained legally. The funds are made to appear legal through a single transaction or a series of transactions. Thus is the money acquired by unlawful means made useful. As Bourne puts it:

"Criminals, and in particular organised crime syndicates engaged in a variety of unlawful activities such as drug trafficking, fraud, embezzlement, theft and smuggling of vehicles, weapons and works of art, are faced with a problem how to disguise, protect and legitimise the dirty money generated from their illegal activities"'.[11]

[34] This being opposed motion procedure, the trite principles applicable to the adjudication of factual disputes has been set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd.*[12] In order to establish whether a real, genuine and *bona fide*

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[7] Ibid para 40.
[8] *National Director of Public Prosecutions v Botha NO and Another* [2020] ZACC 6; 2020 (1) SACR 599 (CC).
[9] Ibid paras 106, 111 and 131.
[10] A Kruger *Organised Crime and Proceeds of Crime Law in South Africa* 3 ed (2024).
[11] Ibid at 55.
[12] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 635C.

dispute of fact exists, the following *dictum* in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* (*Wightman*) must be adhered to by respondents:[13]

'A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.' (Emphasis added.)

Evaluation of the evidence and submissions by the parties

[35] The respondent submitted that the preservation order had lapsed insofar as the NDPP brought the forfeiture order outside the period of 90 days as prescribed by s 40(*a*) of POCA. His counsel submitted that the NDPP applied for the forfeiture order more than 90 days after the preservation order was granted. The respondent is wrong. The period of 90 days starts to run from date of publication of the preservation order in the Government Gazette. In this case it is 1 March 2024. After hearing the application, I became aware of the recent judgment of the Supreme Court of Appeal in *The National*

[13] *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) para 13.

Director of Public Prosecutions v Gcaba.[14] I am bound by the majority judgment with which I respectfully agree. The forfeiture application was issued within the 90-day period. I am satisfied that the preservation order was still in force in terms of s 40(*a*) when the forfeiture application was issued. The forfeiture application was thus pending before expiry of the 90 day period. No service of the forfeiture application took place as the NDPP believed that the preservation order was not opposed. Fact of the matter is that the respondent became aware thereof on 24 June 2024 when his attorney was informed accordingly by the State Attorney. Thereafter he successfully applied for rescission. Hefer AJ held in his judgment that the preservation order was still in force when he issued the order. Consequently, the parties continued with the further litigation on that basis. We often find that persons in similar situations as the respondent leave their known addresses without any trace whatsoever. If this reality is not appreciated, numerous preservation orders will lapse all the time. In any event, if a preservation order lapses, the NDPP may always institute a fresh application once new information is obtained and then proceed with steps to obtain forfeiture.

[36] The version presented by the NDPP pertaining to project PAPPA G in the form of affidavits by the undercover police agent, Mr Makata, Brigadier Mafoyane and Mr Mradla**,** a senior financial investigator at the Asset Forfeiture Unit, points in one direction only. The respondent is regarded as a major player in the illegal mining and gold trade industry. Investigations since the beginning of 2016 revealed that he and other targets have been involved in illegal mining and gold trading activities. The period of their investigations coincide with the respondent's accumulation of wealth since the age of 23 which he failed to explain.

[37] It has been shown in many cases dealing with POCA that criminals make use of their friends, relatives and associated companies to hold property on their behalf to pull the wool over the eyes of other parties such as the South African Revenue Service (SARS), the Reserve Bank and/or the South African Police Service. *In casu*, the properties are registered in the respondent's name and by using a Gauteng address.

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[14] *National Director of Public Prosecutions v Gcaba* [2026] ZASCA 4 paras 27-30, 34-35 and 37-38.

The properties were registered in the Gauteng province and not in the Free State, although it is apparent from the papers that the respondent is actually resident in Welkom. I shall consider the various transactions mentioned above[15] without repeating these in any detail to show that the respondent in many instances acted likewise.

[38] *In casu*, the respondent paid several huge amounts on different occasions which were supposed to be paid into the trust account of Haasbroek-Willemse Inc. Only the amount of R322 890 paid on 21 June 2016 was earmarked for a specific property transaction. The reason for payment of the remainder, to wit R250 000 paid by way of three separate transactions within three days from 24 to 27 October 2016, remains unclear. The only reasonable inference to be made from these and other payments by the respondent is that he intended to 'wash' dirty money. I come to this conclusion due to his failure to take the court in his confidence to explain the source thereof.

[39] The property transaction in respect of the Lebona couple's property is a prime example of money laundering. The respondent purchased their immovable property but did not take transfer into his name. Instead, he improved the property and then caused a deed of sale to be concluded between the Lebonas and Mr Sentso who became the transferee and registered owner. The respondent did not present any proof of the origin of the R150 000 cash utilised to pay the Lebonas and failed to provide proof as to the amount of improvements made in respect of the property and the origin of the cash used for improvements. The conveyancers paid the net selling price – not to the Lebonas as could be expected, bearing in mind the deed of sale – but to the respondent as instructed by Mr Lebona. This shows how the Lebonas perhaps inadvertently assisted in concealing the identity of the respondent as the owner and the person who sold the property to Mr Sentso. A clear case of money laundering.

[40] The respondent utilised the amount of R471 510 received in respect of the Lebona transaction to purchase Erf 59[...] Welkom. He made several cash payments to ensure that the purchase price of R900 000 be paid whereafter he received registration

[15] Refer to the information under the heading: Common cause facts paras 7-24 above.

of transfer. Again, there is no explanation pertaining to the source of the monies. Five years later, on 17 August 2022, this property was sold to a third party for R1 030 000. The property was thereafter registered in the purchaser's name. Obviously, the NDPP could not apply for a preservation order in respect of this immovable property, or the property which was transferred to Mr Sentso.

[41] I repeat that the respondent confirmed being the owner of the five vehicles mentioned above and did not deny that these vehicles were purchased in cash on the dates mentioned from the various businesses. The vehicles were purchased over a period of 15 months; not five years as the respondent averred. The total purchase price amounted to R1 961 600.

[42] I have also indicated that it is common cause that the respondent accumulated wealth of R3 984 590 during the five-year period from 2016 to 2021. I agree with the NDPP's submission that this is a typical *modus operandi* of illegal gold smuggling syndicate members, an aspect vehemently denied by the respondent. However, he does not deny that he accumulated wealth of R3 984 590 during this period and that he received the cash deposits in the amounts referred to above. These deposits were unexplained. I am not prepared to accept the respondent's version that it is a feature of the black economy that people rely on cash. This is a gross generalization. We are not dealing with a street vendor or even tuckshop owner that deals with relatively small amounts of money. As mentioned, the respondent's payments referred to above were made during the period that coincides with the period of investigation of the Pappa G Project by Brigadier Mafoyane and his team.

[43] Automated teller machines (ATM's), frequently utilised by the respondent, were valuable washing machines to clean the dirty money loaded into it. The respondent's attempts to show that legitimate money was loaded into the ATM machines did not impress me, given the totality of the facts in this case.

[44] On the respondent's version he generated vast sums of income without being registered as taxpayer and/or having paid over income tax on his taxable income. He has no accounting system and/or failed to provide his financial statements to the court. He has no bookkeeping system to keep track with the finances of his various businesses. I refer to what the Supreme Court of Appeal stated in *Moyane*.[16] This is highly improbable. His version is far-fetched and is rejected as false. He failed to adhere to the warning of the Supreme Court of Appeal in *Wightman*[17] in that he did not deal at all in any meaningful way with the serious allegations made by the NDPP.

[45] The respondent's vague version does not assist his case at all. His counsel submitted that the issue for determination by the court is 'whether traditional black business should be recognised by our Courts as a legitimate source of income or of doing business instead of the conventional methods of dealing with money through bank accounts'. His submission, also relying on the informal sector, that 'black Africans' (his words) are running informal businesses and do not keep financial records, does not impress me. The respondent failed to present financial records, such as income and expenditure statements and/or returns of income and/or Value-Added Tax (VAT returns) filed with SARS. He refers to himself as a loan shark but is apparently not registered in accordance with the National Credit Act 34 of 2005. Bearing in mind his vast income streams, he should have registered as income taxpayer and even for VAT. This is apparently not the case. The documents referred to herein would go a long way to show that the respondent indeed earned sufficient legitimate income to make the various payments. The failure to present documentary proof considering the totality of the evidence is telling. A negative inference should be drawn against the respondent.

[46] I emphasise that the respondent failed to explain the source of his income stream which allowed him to purchase the above properties. The evidence in its totality provides much context to the NDPP's version that the respondent is a major role player in the illegal mining and gold dealing industry. The factual matrix *in casu* is a classic

[16] Footnote 2.
[17] Footnote 13.

example of how money laundering takes place. In my view, the NDPP has proven that the respondent, with the assistance of others, had manipulated his illegally acquired wealth to obscure its true source or nature. The origin of the money obtained from criminal activities was disguised so that the funds or the proceeds thereof appear to have been obtained legally.

[47] The application shall succeed. The NDPP as the successful party is entitled to her costs.

Order

[48] The following order is made:

1 The following properties are declared forfeited to the State in terms of section 50(1) of the Prevention of Organised Crime Act 121 of 1998 (POCA):

a. a Ford Ranger with registration number JK 1[…], engine number Y[…] and chassis number A[…];

b. a Mercedes Benz with registration number JN 6[…], engine number 1[…] and chassis number W[…];

c. a Toyota Hilux with registration number JV 2[…], engine number 2[…] and chassis number A[…];

d. a Toyota Corolla with registration number FL 4[…], engine number 3[...] and chassis number A[…];

e. a Toyota Conquest with registration number HHP […], engine number 4[…], engine number A[…], (the properties).

2 Selinah Letuka (Letuka) shall take control of the properties listed in paragraph 1 supra and the Unit Commander of the Provincial Organised Crime Unit (DPCI) Bloemfontein, Brigadier Ketlamoreng George Mofoyane, or a person authorised by him in writing, is ordered to hand over the aforesaid properties to Letuka to be sold by her or a person authorised by her in writing by public auction and to pay the proceeds of the

sale into the Criminal Asset Recovery Account (CARA) number 80303056 established under section 63 of POCA, and held by the South African Reserved Bank.

3 Any person whose interest in any of the aforesaid properties is affected by the forfeiture order, may within 20 days after requiring knowledge of such order, set the matter down for variation or rescission by the court.

4 Letuka or a person authorised by her in writing, shall as soon as possible, but not later than 90 days of this order coming into effect, file a report with the applicant on the way they:

4.1 completed the administration of the aforesaid property mentioned above, and

4.2 complied with the terms of this order.

5 The respondent shall pay the applicant's costs of the application.

JP DAFFUE

JUDGE OF THE HIGH COURT

Appearances

For the Applicants: B Somaru
Instructed by: State Attorney, Bloemfontein.

For the Respondent: D Bojosi
Instructed by: S Nkuna Attorneys c/o Blair Attorneys, Bloemfontein.