REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-038851

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: YES/~~NO~~

4/03/2026 [redacted]

DATE SIGNATURE

In the matter between:

JULIAN MICHAEL GECELTER	39th Respondent in convention / Applicant 1 in reconvention
LANCE KAHN	40th Respondent in convention / Applicant 2 in reconvention
WENDY ANN KAHN	41st Respondent in convention / Applicant 3 in reconvention
MERVYN JEFFREY KLOTZ	42nd Respondent in convention / Applicant 4 in reconvention

and

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Respondent

IN RE:

In the *ex parte* matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Applicant
and	
MAHENDRA BENNIDEEN	First Defendant
DINISHA BENNIDEEN	Second Defendant
MICHAEL ALLEN MARTIN	Third Defendant
MANYACA VANESSA MARTIN	Fourth Defendant
ADELE BABS VORSTER	Fifth Defendant
DIRK AUVERNE VORSTER	Sixth Defendant
RITESH MAHARAJ	Seventh Defendant
SHUNMUGAM LINGA MOODLEY	Eighth Defendant
SAMUEL WALDRON THOMSON	Ninth Defendant
NICOLAS JOHANNES VAN VUUREN	Tenth Defendant
SAVANTHALAY MOODLEY	1st Respondent
DENISE JANICE THOMSON	2nd Respondent
LIONSGATE SECURITY SERVICES (PTY) LTD	3rd Respondent
LATEOTORQUE (PTY) LTD	4th Respondent
NARAFOR (PTY) LTD	5th Respondent
RENS KONTANT IN TRANSITO CC	6th Respondent

DENNIS NICOLAS JOSEPH	7th Respondent
THOLSEINATHAN SHANMOOGAN PILLAY	8th Respondent
CHRISTOFFEL JOHANNES JANSE VAN RENSBURG	9th Respondent
LEDGERTON DASCHNER	10th Respondent
CHARLOTTE DASCHNER	11th Respondent
CHANIQUE DASCHNER	12th Respondent
KK KOKETSO HOLDINGS (PTY) LTD	13th Respondent
MORNE VAN VUUREN	14th Respondent
FTS ACCOUNTANTS (PTY) LTD	15th Respondent
VUUREN PROPERTY INVESTMENTS (PTY) LTD	16th Respondent
MELISSA MERILYN RAMSAMY	17th Respondent
UNEIL BODASING	18th Respondent
AVISTHI DUKHI BODASING	19th Respondent
ASHOK SEWNARAIN	20th Respondent
ANDERSON ZITUTA N.O. **(A TRUSTEE OF ISHARA SOOKDEO FAMILY TRUST)**	21st Respondent
ASHOK SEWNARAIN N.O. **(A TRUSTEE OF ISHARA SOOKDEO FAMILY TRUST)**	22nd Respondent
KESHLIN BIJOU N.O. **(A TRUSTEE OF ISHARA SOOKDEO FAMILY TRUST)**	23rd Respondent
MANGONGWANE JACOB MEHLO N.O. **(A TRUSTEE OF ISHARA SOOKDEO FAMILY TRUST)**	24th Respondent
SHIVANI GOSAI N.O. **(A TRUSTEE OF ISHARA SOOKDEO FAMILY TRUST)**	25th Respondent

SILVER HUB INVESTMENTS (PTY) LTD	26th Respondent
RANDBURG MUNT (PTY) LTD	27th Respondent
JASPER CLIFORD JANSEN VAN RENSBURG	28th Respondent
JASPER CLIFORD JANSEN VAN RENSBURG (AS A TRUSTEE OF NAJATI TRUST)	29th Respondent
JASPER CLIFORD JANSEN VAN RENSBURG (AS A TRUSTEE OF MAJANI TRUST)	30th Respondent
JASPER CLIFORD JANSEN VAN RENSBURG N.O. (AS A TRUSTEE OF JOMAWE TRUST)	31st Respondent
JULIE MAY JANSE VAN RENSBURG	32nd Respondent
NDIVHUWO KEVIN MUDAU	33rd Respondent
SHOPO GAOHANE NELLY	34th Respondent
MATTHEW PARKER	35th Respondent
MALCOM CHARI	36th Respondent
YEUKAI EUNICE CHARI	37th Respondent
MAGEDE NICOLLA ANESU ZVICHANZII	38th Respondent
JULIAN MICHAEL GECELTER	39th Respondent
LANCE KAHN	40th Respondent
WENDY ANN KAHN	41st Respondent
MERVYN JEFFREY KLOTZ	42nd Respondent
ASAVELA GINGCANA	43rd Respondent
TIAAN EBERSOHN	44th Respondent

CAMPDEN GROUP (PTY) LTD	45th Respondent
WAYNE CHAKAUYA	46th Respondent
NICOSCAPE (PTY) LTD	47th Respondent
TICHAWONAI MUTASA	48th Respondent
IBV INTERNATIONAL VAULTS	49th Respondent

JUDGMENT

STRYDOM, J

[1] This is the anticipated return day of an order obtained *ex parte* by the National Director of Public Prosecutions ("the NDPP") against various defendants and respondents. There is further before Court an application in reconvention filed by the 39th respondent ("Gecelter"), the 40th respondent ("Kahn"), the 41st respondent ("Wendy Kahn") and the 42nd respondent ("Klotz") (the applicants in reconvention, but collectively referred to as the "four respondents" in this judgment) against the NDPP, the applicant in convention, for the setting aside of the restraint order which was obtained in the *ex parte* application. The four respondents seek further ancillary orders.

[2] On 24 March 2025, the NDPP obtained the restraining order ("the restraint order") pursuant to the Prevention of Organised Crime Act 121 of 1998 ("POCA"), following an alleged large-scale theft and money-laundering scheme perpetrated by the defendants (accused in the criminal trial) in this matter. The defendants are the individuals or entities who allegedly orchestrated a theft and related crimes, and the respondents are additional parties who allegedly hold assets or funds subject to restraint.

[3] The application of the four respondents is for the discharge of the restraint order granted by Sutherland DJP on 24 March 2025. The application for the discharge

was brought on an urgent basis, in terms of rule 6(12)(c). A reconsideration of the order is sought; alternatively, the return hearing is anticipated in terms of section 26(3)(c) of POCA, alternatively rule 6(8) of the Rules of Court.

[4] The notice of motion in the provisional restraint application is divided into Part A and Part B. Part A deals with the granting of the provisional order in terms of section 26 of POCA, pending a further order of this Court. In Part B an order is sought for the provisional order to be confirmed and made final pending the outcome of any proceedings for a confiscation order that may follow upon convictions in a criminal trial. Part B was postponed *sine die;* however, the affected parties could, pursuant to the terms of section 26(3)(c) of POCA, anticipate the return date on not less than 24 hours' notice.

[5] The restraint order was served on the four respondents on or about 20 June 2025.

[6] The four respondents were provided with the court process via email on 31 July 2025. A secure link to download and access the documents was also sent to the four respondents.

[7] As the order was granted, *ex parte,* Rule 6(8) further becomes applicable, which provides that any person against whom an *ex parte* order was granted may anticipate the return date upon the delivery of not less than 24 hours' notice.

[8] The subject matter of the application pertains to property listed in the schedule of assets attached to the restraint application.

[9] The NDPP avers that the property constitutes realisable property as defined in sections 14 and 16 of POCA, alternatively, constitutes affected gifts, as defined.

[10] Gecelter, Kahn, and Klotz are members of Eastgate Universal Stamp and Coins CC ("EUSC"), which entity is not a defendant or respondent in this matter. I will address the role EUSC played in this matter later in this judgment. Wendy Khan is the spouse of Kahn and not a member of EUSC. EUSC is a coin and metals trading business.

[11] The *ex parte* order, issued on 24 March 2025, appointed a *curator bonis* with the power to identify, secure, and hold assets pending the outcome of forfeiture proceedings. The order authorised the *curator bonis* to take control of funds in any bank accounts forming part of the restrained property, to freeze or otherwise hold those funds. Pursuant to this order, the *curator bonis* placed holds on numerous accounts and assets, including those of the 4 respondents.

[12] In terms of paragraph 1.47 of the *ex parte* order, the respondents were ordered to disclose to the *curator bonis* on affidavit, in terms of section 26(7) of POCA, certain information about all the property referred to in paragraph 1.47 of the order within 10 days of service of notice of the order.

[13] The four respondents' personal bank accounts remain frozen under the curator's control. Furthermore, the NDPP's papers reveal that the Respondents' personal assets, including assets acquired long before the alleged crime, have been restrained. What was restrained, according to annexure "A" to the restraint order, as far as the four respondents are concerned, was the Kahn family's residential property (Erf 8, No. 75 Nicholson Road, Sandringham, Johannesburg), registered in the name of Wendy Kahn and vehicles. Their bank accounts were frozen.

[14] Depending on whether the *ex parte* application of the applicant was brought on an urgent basis, Rule 6(12)(c) might also be applicable. This rule provides that a person against whom an order was granted in such person's absence in an *urgent application* may, by notice, set down the matter for reconsideration of the order. It should, in this regard, already be noted that it is not common cause between the parties whether the *ex parte* application was launched on an urgent basis or not. On the face of the notice of motion in the *ex parte* application, there is no prayer requesting the Court to deal with the application on an urgent basis.

[15] The four respondents' application in reconvention was brought on an urgent basis, pursuant to the terms of Rule 6(12)(c) of the Rules of Court, alternatively, Rule 6(8), alternatively, an application in terms of Section 26(3)(c) of POCA. In this application, the following relief is sought:

1. That the application should be dealt with as an urgent application.

2. Reconsideration and discharge of the restraint order granted by Sutherland DJP on 24 March 2025, alternatively, anticipation of the return day and discharge of the order.

3. That the *curator bonis* appointed under the provisional order be directed forthwith to release all assets under restraint of the four respondents, and that holds placed on their bank accounts be lifted immediately.

4. That the NDPP pay the cost of this application on an attorney and client scale in the event of opposition.

[16] *Ex parte* applications pursuant to the terms of POCA are generally moved in chambers and are presided over by the Deputy Judge President, or by a judge to whom the matter is allocated, and do not appear on any urgent court roll. In my view, these matters cannot always be regarded as urgent. In my view, the *ex parte* application was not brought by way of urgency, meaning that a reconsideration of the *ex parte* order as envisaged in Rule 6(12)(c) is not a remedy available to the respondents.

[17] This does not mean that the respondents could not have anticipated the return date urgently. Rule 6(8), Section 26(3)(c) and paragraph 8 of the *ex parte* order provided for a right to approach the Court on 24 hours' notice for the setting aside of the provisional restraint order. The order was granted on 24 March 2025, and the respondents were served with the provisional order on 20 June 2025. On 11 July 2025, the respondents filed a notice of opposition to the restraining order. During August 2025, the answering affidavits were filed simultaneously with an urgent application in reconvention, to be heard on 9 September 2025. The matter was postponed on this date. One of the reasons for the postponement was to obtain a special allocation from the Deputy Judge President. The allocated date was in the urgent court for the week of 8 to 12 December 2025.

[18] I already dealt with the urgency of the matter in a short *ex tempore* judgment in which I found that the matter was sufficiently urgent to be considered by the urgent court. I formed the view that the provisions allowing a 24-hour period of anticipation already indicate that this kind of matter should be heard urgently.

The relief obtained was draconian, and bank accounts were frozen. It was argued that the matter could not be heard in an urgent court, as the disclosure of assets had not been made to the satisfaction of the *curator bonis*. Further, the NDPP was still analysing the voluminous documents. This may be a consideration, but in this matter, almost six months have passed since the *ex parte* order was served on the respondents. An indefinite delay was not acceptable in this case. I was not convinced that substantial redress may be obtained at a later stage if the order is discharged in the normal course. A party whose bank accounts are frozen is placed in a compromised position. It would be difficult to deal with day-to-day financial transactions. The longer this situation prevails, the longer a party will be prejudiced. Considering this, the Court found that the matter was sufficiently urgent to be heard in an urgent court. A decision is required on whether the provisional order should be discharged or made final.

[19] As stated above, the original application was not obtained on an urgent basis. Therefore, I am going to adjudicate this matter based on an anticipated return date. This does not mean that the Court is barred from considering whether sufficient evidence was presented by the NDPP to, on a *prima facie* basis, obtain the provisional order in the first place. Full sets of affidavits, including supplementary affidavits, were exchanged, and the matter should be dealt with as an anticipation of the return date. The Court will consider whether the NDPP made out a case, on a balance of probabilities, for the grant of a final restraint order. If not, the provisional order stands to be discharged.

[20] A return date was not provided, as the matter was postponed *sine die*. It should be noted that a return date should have been provided in the notice of motion, as this is required in terms of section 26(3)(a) of POCA. Nothing turns on this, as the non-existent return date, or put differently, the unknown future date, has been anticipated. Moreover, the respondents filed an application in reconvention. Thus, I will consider whether the interim order should be discharged or made final, and, simultaneously, consider the application in reconvention.

[21] A summary of the factual matrix against which the *ex parte* order was granted should be provided.

[22] Northern Spark Refinery (Pty) Ltd ("NSR") and related entities were in the business of refining gold (hereinafter collectively referred to as the "complainants").

[23] Monies were stolen from the complainants and were unlawfully transferred to various entities, including Lateotorque (Pty) Ltd ("Lateotorque"), NL Traders (Pty) Ltd (NL Traders), Esibonga Investments (Pty) Ltd ("Esibonga"), and AMFS Solutions (Pty) Ltd ("AMFS"). (To these entities reference would be made collectively as "the intermediary entities").

[24] The unlawful activities were committed by employees and other people close to the complainants. The ten people arrested and charged with participating in these unlawful activities are the defendants in this matter.

[25] The intermediary entities paid over substantial amounts to various businesses, either to buy gold coins or otherwise. The NDPP's case is that this was done as part of a money-laundering process in contravention of POCA. Funds were paid to some respondents and to others. One of these entities was EUSC. Substantial amounts of money were paid into its bank account. Some of these funds received into EUSC's bank account were transferred to other accounts held by it.

[26] Before this Court, the four respondents did not dispute the core of the NDPP's *prima facie* case against the actual perpetrators of the theft (the defendants herein). In outline, the NDPP alleges that a group of defendants misappropriated or stole a large sum of money and then sought to launder or convert it into portable assets, such as gold coins (in particular, Krugerrands). It appears that some of the coins were melted down again into gold. Several intermediary entities were used to facilitate this conversion of stolen funds into Krugerrands. It is common cause that the intermediary entities were among the vehicles through which the stolen money was channelled. A substantial quantity of Krugerrand gold coins was purchased *prima facie* with the stolen funds, as a means of laundering the money or converting it into a safer asset. The four

respondents' case is that this happened entirely unbeknownst to them, as EUSC was in the business of selling Krugerrands and delivered value for the money received from the intermediary entities through an agent they had previously dealt with, named Mr. Sujith Sheik Amod (Mr. Sujith).

[27] Crucially, many of those Krugerrand purchases were made through EUSC, the business operated by Respondents 39, 40, and 42. The NDPP's founding affidavit and annexures document payments flowing from the intermediary entities into accounts associated with EUSC, followed by the delivery of Krugerrand coins. For example, the NDPP's papers show that Lateotorque and related companies transferred funds that were ultimately used to buy gold coins from EUSC. What is disputed is the value of the gold coins provided, if compared to the amounts received. The Respondents, in their answering papers, do not contest these transactions. They acknowledge that the cited payments were *prima facie* made and that EUSC fulfilled those orders by selling and delivering Krugerrands. Indeed, it is a matter of record that EUSC (and similarly, other dealers selling gold coins) was used as a source of Krugerrands for the laundering scheme, a scheme, the respondents allege, they were not aware of. The respondent alleged that EUSC purchased the Krugerrands from Rand Refinery and sold them to Mr. Sujith at a markup of only ,08% on the purchase price. Accordingly, it was denied that the payments constituted affected gifts as contemplated in sections 12, 14, and 16 of POCA. It was denied that the four respondents were in possession of realisable property, as defined in POCA.

[28] Thus, to obtain a final restraint order, the NDPP had to show, on a balance of probabilities, that the four respondents received *affected gifts* which *constituted realisable property*.

<u>The legislative framework</u>

[29] Restraint orders fall within the ambit of Chapter 5 of POCA, which deals with civil recovery of property. All proceedings under Chapter 5 are civil, not criminal, and depend on the outcome of the criminal case. Chapter 5 proceedings run parallel with the criminal case.

[30] It speaks for itself that the finalisation of criminal proceedings may take years to be finalised. Accordingly, the proceeds of crime should be secure pending the finalisation of the criminal proceedings.

[31] The primary objective of POCA is to ensure that criminals do not benefit from their crimes by removing their ill-gotten gains. It achieves this, in turn, by providing for the restraint, confiscation, and forfeiture mechanisms under chapters 5 and 6 of the POCA.

[32] Chapter 5 of POCA, which is relevant for the present proceedings, provides for the mechanism whereby a defendant's benefit derived from crime is confiscated and forfeited to the State.

[33] To this end, section 18(1) of POCA empowers a court that has convicted a defendant to enquire into any benefit which may have been derived from the conviction offences. If such a court finds that a defendant has benefited from the convicted offences, it may, in addition to the sentence, make an order against such a defendant for the payment of an amount to the State. This is referred to as a confiscation order under POCA.

[34] Section 25 of POCA deals with cases in which restraint orders may be made. Section 25 provides as follows:

"(1) A High Court may exercise the powers conferred on it by section 26(1)-

(a) when-

(i) a prosecution for an offence has been instituted against the defendant concerned;

(ii) either a confiscation order has been made against that defendant or it appears to the court that there are reasonable grounds for believing that a confiscation order may be made against that defendant; and

(iii) the proceedings against that defendant have not been concluded; or

(b) when-

(i) that Court is satisfied that a person is to be charged with an offence; and

(ii) it appears to the court that they are reasonable grounds for believing that a confiscation order may be made against such person.

> *(2) where the High Court has made a restraint order under subsection 1(b), that court shall rescind the restraint order if the relevant person is not charged within such period as the court may consider a reasonable."*

[35] As section 25 refers to a defendant, the use of this word in this section should be further scrutinised as a defendant is defined in section 12 of POCA. A *"defendant"* means *"a person against whom a prosecution for an offence has been instituted, irrespective of whether he or she has been convicted or not, and includes a person referred to in section 25 (1)(b)"*

[36] Thus, a defendant, as defined, is not only a person against whom a prosecution has been instituted but also a person referred to in section 25(1)(b). The definition of *"defendant"* in Chapter 5 of POCA cross-references to this section, which provides that a High Court may exercise the powers conferred on it by section 26(1) (the making of a restraining order). Section 25(1)(b), quoted hereinbefore, provides that a defendant includes a person in relation to whom a court is satisfied that such person is to be charged with an offence, and it appears to the court that there are reasonable grounds for believing that a confiscation order may be made against such person.

[37] In this matter, it is undisputed that ten people were charged and would fall in the category of defendants as defined. Accordingly, section 26 can be applied to them as charged persons. This was not disputed by the four respondents in this Court. Section 26 can also be applied to persons who fall in the category of the broader definition of *"defendant"*. Proof would be required that there exist reasonable grounds for believing that a confiscation order may be made against such persons.

[38] Consequently, section 25 deals with defendants as defined.

[39] Section 26 specifically addresses the power to obtain restraint orders in court. Section 26(1) of the POCA provides that the NDPP may, by way of an *ex parte* application, apply to a competent High Court for an order prohibiting <u>any person</u>, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property to which the order relates.

It is important to note that section 26 does not limit its applicability to *"defendants"* but provides that a restraining order may be obtained against any person. For purposes of this application, it may include the four respondents if the requirements of the section are proven.

[40] A restraining order can only be made in respect of "*realisable property*". Section 26(2) provides that a restraining order may be made:

> "*(a) In respect of such realisable property as may be specified in the restraint order and which is held by the person against whom the restraint order is being made;*
> *(b) in respect of all realisable property held by such person, whether it is specified in the restraint order or not;*
> *(c) in respect of all property which, if it is transferred to such person after the making of the restraint order, would be realisable property.*

[41] Consequently, the next question for consideration is whether the four respondents, who undoubtedly fall within the category of "*any persons*" referred to in section 26(1), hold "*realisable property*" as defined in section 14 of POCA.

[42] "*Realisable property*" is defined in section 14 of POCA to mean:

> *"(a) any property held by the defendant concerned; and*
> *(b) any property held by a person to whom that defendant has directly or indirectly made any affected gift."*

[43] The first observation is that *realisable property* refers to any property held by a defendant, not only property derived from the proceeds of crime. At the confiscation order stage, a court would consider benefits received from offences and determine which portion of *the realisable property* stands to be confiscated, provided that the person is a defendant as defined.

[44] *Realisable property* further includes property held by a person to whom the defendant has directly or indirectly made any *affected gift*.

[45] Thus, any property of a defendant constitutes *realisable property.* As far as other persons are concerned, who are not defendants, their property would also be regarded as *realisable property,* depending on whether any property is held

by a person to whom a defendant has directly or indirectly made any *affected gift*.

[46] As section 14 refers to a *defendant,* the definition of "*defendant*" yet again becomes relevant, as a restraining order can only be made if any property is held by a defendant, or if a defendant has directly or indirectly made an affected gift to a person.

[47] It is the NDPP's case that the defendants (individuals who have been criminally charged) in this matter indirectly made *affected gifts* to the four respondents. The flow of funds went from the defendants, through the four intermediary companies, to EUSC. Then, from EUSC, indirectly, to the four respondents, as three of them were members of the close corporation that constituted EUSC.

[48] EUSC has not been indicted in this matter and is not even a respondent. The case made out by the NDPP is not that EUSC is a "*defendant*" (as defined) in this matter. If EUSC were to be classified as a defendant, it would have made a huge difference to its position, as then the question relating to the affected gift would have become superfluous, as *realisable property* includes "*any property held by a defendant.*"

[49] That this would be the position is clear, having regard to the definition of "*defendant*" in section 12 of POCA, as alluded to hereinabove.

[50] It was not properly explained why EUSC is not a defendant. EUSC was not even cited as a respondent. It was only stated that EUSC might be charged later. Does this render EUSC as a defendant as defined? The Court must be satisfied that EUSC would be charged with an offence. The mere possibility, or allegation on behalf of the NPPA, that EUSC might be charged, would not be sufficient. The only inference that can be drawn is that at the stage when the *ex parte* order was sought, the NDPP was not satisfied that it had sufficient evidence to obtain the conviction of EUSC. This is still the position, having regard to the further affidavits filed.

[51] It was argued that EUSC knew, or reasonably must have known, that the funds flowing into its bank account were the proceeds of crime and were being

laundered. This argument was underpinned by evidence pointing to large sums of money paid into the EUSC account, whereby EUSC's turnover became substantially higher than usual, and by the use of a middleman or agent.

[52] This Court is not satisfied that EUSC, on the evidence before the Court, would be charged with an offence and that there are reasonable grounds for believing that a confiscation order would be made against EUSC. The Court should not speculate about this. If the evidence against EUSC was so strong it begs the question why EUSC was not charged and was not cited in these proceedings as a defendant. Moreover, the case of the NDPP is premised on the basis that EUSC received *"affected gifts"* from the defendants, and that the four respondents, indirectly, received same.

[53] This would mean that EUSC is not a "*defendant*" as contemplated in section 14. EUSC falls in the category of "*a person*" to whom a defendant has directly or indirectly made an *affected gift* as contemplated in section 14(1)(b) of POCA.

[54] The NDPP did not allege that the four respondents were involved in the theft or that they knew the funds used to buy the coins were illicit. They have been cited as civil respondents (property holders) rather than as defendants. Unlike the first ten defendants (who face criminal prosecution), the four respondents are not accused of fraud, theft, or money laundering or any other crime themselves. Nowhere in the NDPP's affidavits are these respondents said to have had actual knowledge of the criminal source of the funds. It was stated that there are reasonable grounds to infer that they knew the funds originated from an illicit source.

[55] It was argued that it could not be inferred on reasonable grounds that the four respondents knew that the funds paid to EUSC were proceeds of crime. The four respondents maintained that they acted in good faith and had no reason to suspect that the funds used by the tainted entities to purchase coins from EUSC through the entities of Mr. Sujith, 702 Jewellers, and Oro Diamante were proceeds of crime.

[56] The four respondents are not charged with any offence. On the evidence currently before the Court, the Court is not satisfied that the four respondents

would be charged or that a confiscation order may be made against them. Thus, the four respondents are not to be regarded as defendants. The Court will consider whether a defendant indirectly made an *affected gift* to the four respondents, via EUSC. If so, any property held by the four respondents becomes *realisable property*.

[57] The only evidence before the Court is that large sums of money were paid to EUSC by the intermediary entities. Mr. Sujith or his businesses did not make the payments, but he bought the gold coins. Currently, these intermediary entities are not defendants in the sense that they have been charged. On the evidence before the Court, however, it is alleged that these entities were created by the defendants to launder illicit funds. The four respondents did not refute this. Consequently, the Court is satisfied that the intermediary entities were used to launder funds to third parties. In my view, these intermediary entities can, in any event, be regarded as *defendants* as defined.

[58] The Court must now consider whether the NDPP has shown that the four respondents indirectly received *affected gift/s.*

[59] *"Affected gift"* is defined in section 12 of POCA and means any gift—

> *"(a) made by the defendant concerned not more than seven years before the fixed date; or*
>
> *(b) made by the defendant concerned at any time if it was a gift-*
>
> *(i) of property received by that defendant in connection with an offense committed by him or her or any other person; or*
>
> *(ii) of property, or any part thereof, which directly or indirectly represented in that defendant's hands property received by him or her in that connection…"*

[60] A *"gift"* becomes *"affected"* if it is proceeds of crime. But what constitutes a *"gift"?*

[61] A *"gift"* is defined in section 16 of POCA as follows:

> *"(1) For the purposes of this chapter, a defendant shall be deemed to have made a gift if he or she has transferred any property to any person directly or indirectly*

for a consideration the value of which is significantly less than the value of the consideration supplied by the defendant.

(2) For the purposes of section 20(2), the gift which a defendant is deemed to have made shall consist of that share in the property transferred by the defendant which is equal to the difference between the value of that property as a whole and the consideration received by the defendant in return."

[62] There is no evidence that any of the defendants directly transferred *affected gifts* to the four respondents. It is a common cause that property, whether affected or not, was directly transferred to EUSC. Whether what EUSC received constituted *affected gifts* would depend on the value of the quid pro quo EUSC provided in exchange for the payments.

[63] The 39th, 40th, and 42nd respondents were members of EUSC. As they stood to benefit from any gifts made to EUSC, the Court would accept that, if such gifts were made, they indirectly received them.

[64] The position of the wife of the 40th respondent, Ms. Wendy Kahn, is on a different footing. If EUSC received an *affected gift,* it was not proven that she indirectly received an *affected gift.* There is insufficient evidence of money flowing from EUSC to Ms. Khan. This would mean that the NDPP has failed to make out a case against her that she indirectly received an *affected gift.*

[65] To ascertain whether the 39th, 40th and 42nd respondents indirectly received *"affected gifts"* it should be considered whether it could be deemed that a defendant made a *gift* to EUSC by transferring property to a defendant against payment received, whilst the value of the payment was significantly higher that the value of what was purchased. Only if the counter consideration was significantly less than the payment, then the difference between the payment and the counter consideration would constitute a *gift.* Without evidence of this comparison, it would not be possible to find that a payment represents a *gift.*

[66] The NDPP carries the onus to present evidence of any alleged *affected gift* (particularly that the EUSC gave no or inadequate value in return) and the duty of full disclosure in provisional restraint applications under POCA. In restraint applications involving third-party recipients (respondents) of alleged *affected*

gifts, the NDPP cannot obtain a provisional restraint merely by showing that money flowed from a defendant to a third party, without evidence of a lack of proper value given in return.

[67] It is therefore clear that the core foundational allegation which had to be proven by the NDPP on the papers at the provisional order stage, would be that EUSC, and indirectly the four respondents, firstly received "*gifts*" as defined in Section 16 of POCA and secondly that such gifts were "*affected*" as defined by Section 12 of POCA, in that it constitutes property received by a defendant in connection with an offence. The value of the *affected gift* then had to be established from the NDPP's papers relating to EUSC. To the extent that any of the respondents received an *affected gift*, realisable property belonging to such respondent would be restrained to the value of the *affected gift.*

[68] On behalf of the four respondents, it was submitted that it was not proven that any such *affected gifts* were received by EUSC or any of the respondents 39 to 42, directly or indirectly, from the defendants.

[69] The Court was referred to the judgment of the Supreme Court of Appeal in *Procopos v NDPP* 2009 (1) SACR 468 (SCA*),*[1] where it was found that where a defendant obtained money connected to an offense, the mere flow of that money from such defendant to a respondent does not in itself constitute an *affected gift*. It first must be established whether the flow of money from such defendant to such respondent, in fact, was a *gift* as defined in Section 16 of POCA, in that the respondent did not give proper value to such defendant for the monies so received. The position therefore simply is that if the receipt of money by the respondents cannot be established as an *affected gift*, and if so what the value of such *affected gift* was, then the relevant respondent will not be proven to be in possession of any *realisable property* in terms of Section 14 of POCA and that no property of such respondent will therefore be subject to restraint.

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[1] *Procopos v NDPP* 2009 (1) SACR 468 (SCA).

[70] If EUSC gave full or market-related value back to the accused, then the transfer is not an "*affected gift*"; EUSC, in that scenario, is more akin to a *bona fide* purchaser or an intermediary, rather than a gratuitous beneficiary of the crime.

[71] In *Procopos, supra*, the SCA held in paragraph 35 that the NDPP "*has to show*" that the person against whom the order is to be made received an "*affected gift*". It outlined three elements that must be shown before the deeming provision in Section 16 can operate: (1) a transfer of property from the defendant to the third party; (2) some form of consideration or value given by that third party to the defendant (if any) in return; and (3) proof that such counter-consideration (by the respondent) was worth significantly less than the value of the property transferred (by the defendant). Only if these facts are established can the Court conclude that the third party received an undervalued, crime-tainted gift ("*affected gift*"), making their property "*realisable*" under POCA.

[72] The only facts at the time placed before court at the provisional stage was the flow of the amounts from Lateotorque; NL Traders and Esibonga to the accounts of EUSC without evidence relating to the flow of monies out of the account of EUSC to Rand Refineries, from where gold coins were purchase, to establish whether the value given indirectly to the defendants in terms of Krugerrands purchased was "*significantly less than the value of the consideration supplied by the Defendant".* (Section 16 of POCA).

[73] Whilst it was not alleged that no value was given in return for payment, no analysis is found of the value EUSC provided in exchange for the monies deposited in EUSC's bank account. The witness Mankwe, on behalf of the NDPP, states that he detected a pattern of transactions which he then sets out, which "pattern" supports the version of the Respondents 39; 40 and 42 in that when deposits were received, *"a portion or the whole amount will be transferred to Rand Refinery".* For purposes of the application, a proper investigation and analysis of the EUSC bank accounts and transactions should have been conducted by the NDPP (Asset Forfeiture Unit (AFU)) during the course of an AFU investigation, which started in 2022. An investigation of the books of Rand

Refinery would have indicated the extent of the money paid in exchange for Kruger Rands.

[74] It appears from Mankwe's supporting statement that he alleges that he found some discrepancies, for instance, relating to what he considers an apparent 2% markup on the cost price in favour of EUSC and not the 1% alleged by Respondent Lance Kahn (40th Respondent). It should be stated that it is clear that a proper audit of the books of EUSC by the NDPP (AFU) should have been conducted. The 39th, 40th, and 42nd respondents, on behalf of EUSC stated that they in fact, invited the NDPP to do such reconciliation. However, the NDPP chose to approach this Court on an *ex parte* basis on the 24th of March 2025 with no proof that Respondents 39 to 42 received any "*affected gifts*" directly or indirectly from the Defendants. The important fact is that nowhere in the founding papers filed on behalf of the NDPP is any mention made of the business structure and functioning of EUSC, the flow of money from EUSC once it was received from the mentioned front companies, and the purchase of Krugerrands on behalf of the said companies as facilitated by Mr. Sujith.

[75] Under South African law, the threshold the NDPP must meet for a restraint order is lower than that required for eventual confiscation; the NDPP need not prove the accused's guilt or benefit beyond a reasonable doubt at this interim stage. In *NDPP v Rautenbach* 2005 (4) SA 603 (SCA*),*[2] the SCA explained that it is plain from the language of POCA that the court is not required to satisfy itself that the defendant is probably guilty of an offence, and that he or she has probably benefited from the offence in order to grant a restraint. Instead, it suffices if there are reasonable grounds to believe a confiscation order may be made against the defendant in the future. In practical terms, this means that, for a defendant's own assets, the NDPP needs only to show that there is a pending or imminent prosecution and a reasonable likelihood that the accused might be convicted and found to have benefited from the crime. See the case of *NDPP v Kyriacou* 2004 (1) SA 379 (SCA),[3] which set the standard that

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[2] *NDPP v Rautenbach* 2005 (4) SA 603 (SCA).

[3] *NDPP v Kyriacou* 2004 (1) SA 379 (SCA).

confirmation of a restraint requires a *prima facie* case or reasonable grounds for a possible confiscation order, rather than final proof of guilt.

[76] However, when extending a restraint to third-party respondents on the basis of *affected gifts*, the NDPP bears the onus of proving the existence of the gift itself. This Court cannot simply assume that any transfer of funds to a third party is a tainted gift; it must be satisfied (at least on the evidence before it) that the statutory criteria for an "*affected gift*" are met. Thus, the NDPP must present facts establishing, *prima facie*, that the third party received the property without giving proper value in return. If the NDPP fails to provide such evidence, the Court has no basis to classify the third party's assets as "*realisable property*" under Section 14(1) (b).

[77] The Court will accept that the NDPP demonstrated that the criminal docket contains compelling evidence against the defendants, to the effect that they committed crimes of theft and/or money laundering and that a confiscation order would follow.

[78] Before this Court, the issue of whether the provisional restraint order was granted on reasonable grounds against the defendants, on the belief that a confiscation order would be granted, was not seriously contested. The contentious issue was whether it was shown, on a *prima facie* basis, that the four respondents indirectly received *affected gifts*. This could only be shown by comparing the value of that which was received with the value of that which was given in return.

[79] It is the NDPP's case that EUSC, linked to the four respondents, received approximately R1.4 billion from four intermediary companies. It was argued that the only inference that could be drawn, on a balance of probabilities, was that there existed a relationship between the intermediary entities and EUSC and its members. It was argued that the Court must accept that the four respondents were aware of the money-laundering scheme, and that the allegation that Mr Sujith was the person with whom they exclusively dealt should be rejected. It was submitted that the four respondents' versions amount to a bare denial and that they are not innocent. Further, they were, in fact, part of the syndicate that

received proceeds from criminal activities and laundered money by purchasing Krugerrands from Rand Refinery.

[80] Much was made of Mankwe's evidence that, once funds were received from the intermediary entities, they were transferred to an EUSC call account, and then smaller amounts were transferred back to the original account from which the money was received. It was argued that this evinces the hiding of funds as part of a money-laundering scheme. It is unclear how moving funds among accounts within the same entity could be described as "hiding" or "laundering" funds. The origin of the funds can be determined by tracing their source. All these transactions would be traceable and would reflect on bank statements. Moreover, EUSC is not cited as a defendant or a respondent in this application. No order was sought to restrain any property of EUSC. The reason for this was never properly explained in the papers or during the argument before this Court.

[81] It was argued that the evidence of Mankwe revealed that the applicants benefited from unlawful activities. Investigations revealed that the intermediary entities transferred funds to EUSC. AMFS transferred over R800 million, Lateotorque transferred approximately R290 million and Esibonga transferred approximately R230 million to EUSC. Overall, it was argued that EUSC received proceeds of unlawful activities in the amount of approximately R1.4 billion.

[82] The applicants do not dispute in their papers that EUSC received the money. The case of the four respondents is that the value was provided for the cash received by delivery of Kruger Rands. It is not admitted that the four respondents received any money.

[83] There is insufficient evidence regarding the value of what EUSC supplied to the defendants. The assertion that the invoices supplied by the respondents, representing EUSC, do not equal the amount received by EUSC would not be sufficient to determine whether there was a significant difference between the value of receipts and the value of supplies. The mere proof of the flow of funds would not be sufficient. This Court must be satisfied that a *gift* was made which constituted an *affected gift.* The statement made by Mankwe in his affidavit on

behalf of the NDPP that the amount received by EUSC of approximately R1.4 billion does not reconcile with or correlate with the value of coins delivered falls short of showing that a gift was made. Moreover, that would ignore the version of the four respondents that they supplied Kruger Rands to the value of the money received, less a small percentage.

[84] Further affidavits filed on behalf of the NDPP, namely the supplementary affidavit of Maphumulo and the supporting affidavits of Skosana and Rankuoatsana, revealed that the four respondents did not disclose all the bank accounts linked to them, and that there are additional suspicious transactions linked to them. It was argued that they did not make full disclosure as required by the provisional order. It was further shown that the four respondents have accounts they have not revealed to the *curator bonis.* All of this may be true, but this does not prove the receipt of an *affected gift.* Without such evidence a restraint order could not have been made.

[85] It was argued that the NDPP's answering affidavit, supplementary affidavit and supporting affidavits entail persuasive evidence that the four respondents indeed received proceeds of unlawful activities. It was further submitted that EUSC, through its representatives, not only received but also used the proceeds of unlawful activities by purchasing gold coins in an attempt to conceal them. The question remains, however, whether the payments constituted *gifts.*

[86] In *NDPP v Tshamase and Others* 2023 JDR 3004 (ECP)[4] The NDPP had obtained a provisional restraint order in a corruption case (involving a municipality's transport project) not only against the accused officials, but also against certain close corporations and trusts linked to them. Those entities (the respondents) were, in effect, third parties who had received or held stolen funds. On the return date, the court found that the NDPP's evidence fell short of proving that those respondent entities held "*affected gifts.*" Dreyer AJ emphasized that the NDPP must prove, on a balance of probabilities, that a particular respondent received an affected gift from the defendant to confirm a

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[4] *NDPP v Tshamase and Others* 2023 JDR 3004 (ECP).

restraint. Ultimately, the High Court discharged the provisional restraint against several third-party entities, expressly holding that the NDPP failed to show on a balance of probabilities that [those entities] received an affected gift from any defendant.

[87] In other words, without facts demonstrating a gratuitous or undervalued transfer, those respondents' assets could not lawfully be restrained under Section 26. This case is a clear authority that the NDPP cannot simply infer an *affected gift* from the receipt of funds – it must present facts from which the Court can conclude (even *prima facie*) that the recipient supplied significantly less value in return. If the NDPP provides no such facts, the provisional restraint (even if initially granted *ex parte*) is liable to be discharged for lack of an essential jurisdictional element.

[88] I find that the NDPP failed in its attempt to prove to the court that EUSC did not give value to the defendants herein, to such an extent that it could be found that such value was significantly less than the value of the consideration emanating from the defendants. Indirectly, the same would apply to the three respondents. As decided by the Supreme Court of Appeal in the matter of *Procopos*, *supra,* it is not good enough for the NDPP to prove that tainted monies flowed indirectly to a respondent without proving that no reciprocal reasonable value was given by such respondent to a defendant. The provisional restraint order, therefore, stands to be set aside by this Court, and the relief sought in the application in reconvention should be granted.

[89] I am not of the view that a punitive cost order, as requested on behalf of the four respondents, is unwarranted. A cost order must follow the result.

[90] The following order is made:

1. The usual forms of notice and service be dispensed with and the matter be heard as one of urgency in terms of Rule 6 (12) of the Uniform Rules of Court, as well as in terms of clause 8 of the Order of Sutherland DJP in the matter.

2. The Order of Sutherland DJP dated the 24 of March 2025, and the provisional Restraint Order granted in terms of the said Order is hereby discharged, and the said Order is set aside relating to the 39th, 40th, 41st, and 42nd Respondents.

3. The Curator Bonis appointed under the provisional Restraint Order is hereby directed to forthwith release all assets of the 39th to the 42nd Respondents under restraint, and any holds still in place on the bank accounts relating to Respondents 39 to 42 or the related entity Eastgate Universal Stamp and Coins CC.

4. The Applicant (Respondent in reconvention being the NDPP) to pay the cost of the 39th to 42nd Respondents.

[redacted]

R. STRYDOM

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Heard on:	09 & 10 December 2025
Delivered on:	04 March 2026

Appearances:

For the Applicant:	Adv. P. Louw
	Adv. N. Tuntulwana
Instructed by:	The National Prosecution Authority
For the 39th, 40th, 41st and 42nd Respondent:	Mr. P. du Plessis
Instructed by:	BDK Attorneys