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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO. 6037/2024

Of Interest

In the matter between:

SHAWN WILLIAMS N.O.

APPLICANT

and

MINISTER OF FINANCE

FIRST RESPONDENT

BONGANI MPELUZA

SECOND RESPONDENT

UNATHI NOZUKO MPELUZA

THIRD RESPONDENT

ABSA BANK LIMITED

FOURTH RESPONDENT

BLAIR ATHOLL HOMEOWNERS

ASSOCIATION NPC

FIFTH RESPONDENT

**CITY OF TSWANE METROPOLITAN
MUNICIPALITY**

SIXTH RESPONDENT

DHNESHVARIN APPAVOO N.O.

SEVENTH RESPONDENT

**NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

EIGHTH RESPONDENT

**THE MINISTER OF PUBLIC WORKS
AND INFRASTRUCTURE**

NINTH RESPONDENT

THE REGISTRAR OF DEEDS, PRETORIA

TENTH RESPONDENT

REASONS FOR ORDER

Rugunanan J

[1] On 20 January 2026, and for reasons that now follow, I granted an order dismissing with costs the application by the applicant as *curator bonis* essentially for the relief posed by the following question: Whether a court has the competence under s 42 of the of the Prevention of Organised Crime Act¹ (POCA) to confer explicit authority on a *curator bonis* to dispose of property,

¹ Prevention of Organised Crime Act 121 of 1998 (POCA).

subject to conditions, before a forfeiture order is made in respect of property subject to a preservation order.

[2] A preservation order was granted *ex parte* in this Court on 31 July 2018 under case number 2231/2018. The order related to immovable property described as Erf 5[...] Blair Atholl Extension 3, situated at 5[...] T[...] S[...] Close, Blair Atholl Estate, Lanseria, Gauteng (the property). Paragraph 2 of the order provided that:

‘The property shall be under the control of Shawn Williams of KPMG until the forfeiture order is granted or the court orders otherwise.’

[3] The property was acquired by an entity Yellow Fancy Properties (Pty) Ltd (Yellow Fancy) as registered owner and of which entity the second and third respondents are directors. The preservation order was obtained on the basis that Yellow Fancy acquired the property with funds realised by fraud and thus the proceeds of unlawful activities.

[4] By letters of curatorship issued on 3 August 2018, the applicant was duly appointed and authorised by the Master of the High Court to act as *curator bonis* of the property.

[5] Flowing from the preservation order the applicant’s founding papers enumerate a chronicle of events that culminated in a further order granted in this Court on 21 August 2018, in terms of which the property was declared forfeit to the State in accordance with s 50 of the Act (the forfeiture order).² This order specifically authorised the applicant to sell the property by private sale or auction and to pay the proceeds of the sale to any bank having a bond registered over the property, the net proceeds to be paid into the Criminal Assets Recovery Account at the Reserve Bank.

² Case No. 2231/2018.

[6] During September 2018 the second and third respondents, as applicants, launched an application for the rescission of the forfeiture order. In October 2019, they sought in addition, a joinder of Yellow Fancy as third applicant.

[7] Since the launch of the application for the rescission of the forfeiture order in September 2018, and until September 2024, the second and third respondents took no steps to enrol that application. During the said period Yellow Fancy did not pay the ownership costs in relation to the property – such costs being the accumulated homeowner’s levies, plus municipal charges, and the outstanding instalments on a mortgage bond registered in favour of ABSA Bank Ltd cited herein as the fourth respondent.

[8] September 2024 marked a turning point. The forfeiture order was still extant. Acting in accordance therewith the applicant advertised the property for sale by public auction. The auction did not proceed and the forfeiture order was rescinded by agreement. The parties to the relevant order were the second and third respondents (as first and second applicants, respectively) and the National Director of Public Prosecutions (as respondent).

[9] In his founding affidavit the applicant states that he deposes thereto on the advice of his legal representatives. In that regard he states that the legal consequence of the rescission of the forfeiture order is that the preservation order in respect of the property is revived. In heads argument, it was submitted for the applicant that the preservation order has never been challenged and remains extant. The second and third respondents (the opposing respondents) did not take issue therewith and the matter was argued on the footing that the preservation order stands.³

³ But see *Knoop NO and Others v National Director of Public Prosecutions* [2023] ZASCA 141 para 40.

[10] During November 2024 the applicant learnt that Yellow Fancy was at some prior stage deregistered by the Commissioner of Companies and Intellectual Property Commission (the Commissioner). According to the applicant, the property has become *bona vacantia*, and its ownership technically vests in the State *qua* the Minister of Finance (the Minister), the first respondent herein. It is mentioned in heads of argument for the opposing respondents that Yellow Fancy was with effect from 28 May 2025, reinstated by the Commissioner. The disclosure was intended to support an argument that Yellow Fancy has not been joined in these proceedings. Considering that the disclosure was not properly introduced by affidavit or supported by documentary proof, nothing further needs to be said about the joinder issue.

[11] Except for delivery by the opposing respondents of a notice in terms of uniform rule 6(5)(d)(iii) from which the legal issue identified at the commencement hereof is set out, none of the other respondents have opposed the present application.

[12] For present purposes it is convenient only to have recapitulated the timeline of events aforementioned. A repetition of the events leading to the *ex parte* application for the preservation order is unneeded and so too are details of the market value of the property, the quantification of the accrued costs of ownership, and rate of erosion of the equity in the property. Such detail would have been necessary had the order for the sale of the property together with directions, as was sought by the applicant, been granted.

[13] The issue with which this Court is seized is a legal one – it being the fundamental question whether s 42 of POCA empowers the Court to grant an order authorising the applicant, as *curator bonis*, to sell property that is subject to a preservation order. The question, put in a different way, is whether sale

before forfeiture is permitted. The applicant contends that this is conceivable. The opposing respondents contend that the applicant is precluded from selling property which is subject to a preservation order and may do so only in terms of a forfeiture order. To do otherwise would be to act outside the legislated process of forfeiture applications. It would have been of immense assistance to this Court had legal argument been presented by the first and eighth respondents (the Minister and the National Director of Public Prosecutions) seeing as they are appointees of the Criminal Assets Recovery Committee constituted under s 65 of POCA. Organs of state are duty bound to assist the courts to ensure their effectiveness.⁴

[14] In argument it was correctly submitted for the applicant that there is no decided case specifically relating to s 42 on this question. I could find none. The applicant approaches the matter by relying on the Supreme Court of Appeal (SCA) decision in *Mngomezulu and Others v National Director of Public Prosecutions*⁵ (*Mngomezulu*).

[15] The first appellant in *Mngomezulu* was charged with drug-related offences in contravention of the Drugs and Drug Trafficking Act 140 of 1992 following which a restraint order was obtained *ex parte* in the High Court in accordance with s 26 of POCA. The order prohibited the appellant from dealing in any manner with certain property (immovables, bank accounts, vehicles, and works of art etc) but conferred upon the *curator bonis* ‘the power to sell assets under restraint in order to properly administer the assets under his control.’⁶ In the SCA, one of the issues raised by the appellants was that they questioned the power conferred on the curator to deal with and potentially to sell the property under restraint prior to a confiscation order being made under s 18 of POCA. The latter section

⁴ Section 165(4) of the Constitution.

⁵ *Mngomezulu and Others v National Director of Public Prosecutions (Mngomezulu)* (446/05) [2007] ZASCA 11 (16 March 2007); [2007] All SA 979 (SCA); 2007 (2) SACR 274 (SCA).

⁶ *Mngomezulu supra* at 279b and at 280c.

provides that whenever a defendant is convicted of an offence the court convicting the defendant may, on the application of the public prosecutor, enquire into any benefit which the defendant may have derived from that offence and, if the court finds that the defendant has so benefited, the court may make an order against the defendant for the payment to the State of any amount it considers appropriate, subject to the limit specified in s 18(2).

[16] Section 28(1)(a)(i) of POCA covers the appointment of a *curator bonis* in respect of property subject to a restraint order and provision is made *inter alia* that a High Court that has made a restraint order may authorise the curator ‘to perform any particular act in respect of any of or all the property to which the restraint order relates’. In dismissing the appeal the SCA held that the section, interpreted according to its ordinary meaning, ‘empowers a High Court to authorise a curator to, *inter alia* sell property.’⁷ In adopting a broadened approach to the interpretation of the section, the court, per Streicher JA, reasoned:⁸

‘In terms of s 33 the powers conferred upon the High Court by sections 26 to 31, or upon a *curator bonis* appointed in terms of s 28 are to be exercised “with a view to making available the current value of realisable property for satisfying any confiscation order made or which might be made”. For the reasons that follow that purpose is not defeated by the provision entitling the *curator bonis* to sell or encumber the restrained property “in order to properly administer the assets under his control” and “to pay any expenses related to restrained assets, which would ordinarily be carried by the estate”.

The *curator bonis* was entrusted with the administration of virtually the entire estate of the appellants. Such administration would include the maintenance of the restrained property and the payment of expenses in respect thereof. The appellants conceded that in order to properly administer the property entrusted to him the curator would have to incur expenses but submitted that those expenses should be borne by the State. However, s 28(3)(c) provides that a court which made an order contemplated in ss (1)(b),

⁷ *Mngomezulu supra* para 10.

⁸ *Mngomezulu supra* at 280c-281a.

“may make such order relating to the fees and expenditure of the *curator bonis* as it deems fit, including an order for the payment of the fees of the *curator bonis* –

- (i) from the confiscated proceeds if a confiscation order is made; or
- (ii) by the State if no confiscation order is made.”

Again the appellants were constrained to argue for a restrictive interpretation of the phrase “such order . . . as it deems fit”. However, the phrase would not have been used if the intention was that the curator’s expenses up to the time that a confiscation order was made could only be recovered from the State. Furthermore, the appellants will be benefited by the payment of “expenses related to the restrained assets, which would ordinarily be carried by the estate out of any assets under restraint”. In the circumstances it is unlikely that the legislature intended to exclude an order that the curator’s expenses relating to the restrained assets may be recovered from the restrained assets themselves.

The legislature, by using the phrase “such order . . . as it deems fit” clearly intended to confer a wide discretion on the High Court as to the source from which the curator could recover his expenditure in respect of the administration of the property entrusted to him. There is no reason why the High Court in the exercise of that discretion should not, in order to enable the *curator bonis* to properly administer the realisable property entrusted to him, authorize him to utilise the liquid assets in the estate or to turn non-liquid assets into liquid assets to the extent that there are insufficient liquid assets. It may be that the value of the realisable property will as a result diminish but the purpose of allowing the curator to utilize and alienate assets is to restrict that diminution in value.’

[17] Elsewhere in the judgment Streicher JA, commented:⁹

‘Confirmation that a *curator bonis* appointed in terms of s 28 may be authorised to alienate or utilize property which he has been appointed to administer is to be found in the Administration of Estates Act 66 of 1965. Section 32(2) of POCA provides that save as is otherwise provided in Chapter 5, ie sections 12 to 36 thereof, the provisions of the Administration of Estates Act shall with the necessary changes apply in respect of a *curator bonis* appointed under the Chapter. Section 80 of the Administration of Estates Act provides as follows:

⁹ *Mngomezulu supra* at 282c-d and 282g.

“80(1) No natural guardian shall alienate or mortgage any immovable property belonging to his minor child, and no tutor or curator shall alienate or mortgage any immovable property which he has been appointed to administer, unless he is authorized thereto by the Court or by the Master under this section or, in the case of a tutor or curator, by any will or written instrument by which he has been nominated.”

[18] And in summing up, the learned judge holds:

‘For these reasons I am of the view that a High Court may in terms of s 28(1)(a) authorize a *curator bonis* appointed in terms of that section to alienate property under restraint in order to properly administer the assets under his control.’

[19] It appears from *Mngomezulu* that a High Court is empowered to authorise a *curator bonis* to sell property by making ‘such order . . . as it deems fit’ (s 28(3)(c)) so that practical efficacy may be given to a restraint order which authorises a curator ‘to perform any particular act in respect of any of or all the property to which the restraint order relates’ (s 28(1)(a)(i)). The judgment intimates that this power may be exercised prior to a confiscation order being made.

[20] Contending that s 28(1) and s 42(1) of POCA are nearly identical, the applicant attempted to align the words ‘to do any act necessary’ (s 42(1)(a)(iii)) with the wide discretion conferred in *Mngomezulu*, to the words, ‘such order . . . as it deems fit’ (s 28(3)(c)).¹⁰ From the applicant’s perspective, equivalence or

¹⁰ Quoted in relevant part sections 28 and 42 read:

‘28 Appointment of a *curator bonis* in respect of property subject to a restraint order

(1) Where a High Court has made a restraint order, that court may at any time –

- (a) Appoint a *curator bonis* to do, subject to the directions of the court, any one or more of the following on behalf of the person against whom the restraint order has been made, namely –
 - (i) to perform any particular act in respect of any of or all the property to which the restraint order relates;
 - (ii) to take care of the said property; and
 - (iii) where the said property is a business or undertaking, to carry on, with due regard to any law which may be applicable, the business or undertaking;
- (b) order the person against whom the restraint order has been made to surrender forthwith, or within such period as that court may determine, any property in respect of which a *curator bonis* has been appointed under paragraph (a), into the custody of that *curator bonis*.’

‘42 Appointment of *curator bonis* in respect of property subject to a preservation of property order

(1) Where a High Court has made a preservation of property order, the High Court shall, if it deems appropriate, at the time of the making of the order or at a later time –

uniformity in meaning would achieve the result sought by him for this Court to grant an order authorising him to dispose of the property before a forfeiture order is made. In my view *Mngomezulu*, correctly decided on its own facts, does not assist the applicant in aligning the respective sections for achieving the desired equivalence in meaning.

[21] In *Mngomezulu*, s 33 of POCA presented the starting point to the enquiry which ultimately unpacked the legal framework for holding that the High Court has a wide discretion to confer upon a *curator bonis* the authority to alienate property under restraint. The section deals with the powers of the High Court and a *curator bonis* and it includes *inter alia* powers to be exercised ‘with a view to making available the current value of realisable property for satisfying any confiscation order made or which might be made’ (s 33(1)(a)).

[22] To be noted is that restraint orders are dealt with in s 26 of POCA. That section together with s 33 is included in Chapter 5, Part 3. Preservation of property orders, on the other hand, are dealt with in s 38 under Chapter 6, Part 2. Chapter 6, which comprises in total of parts 1, 2, 3, and 4, does not include a provision similar to s 33(1)(a). The omission by the Legislature from Chapter 6, Part 2 of a provision similar to s 33(1)(a) appears to be deliberate. Absent the appropriate statutory mechanism, s 42(1)(a)(iii) cannot be aligned with s 28(3)(c), and the uniformity in interpretation for which the applicant contends, is insupportable.

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- (a) appoint a *curator bonis* to do, subject to the directions of that High Court, any one or more of the following on behalf of the person against whom the preservation of property order has been made, namely –
 - (i) to assume control over the property;
 - (ii) to take care of the said property;
 - (iii) to administer the said property and to do any act necessary for that purpose; and
 - (iv) where the said property is a business or undertaking, to carry on, with due regard to any law which may be applicable, the business or undertaking; and
 - (b) order any person holding property subject to the preservation of property order to surrender forthwith, or within such period as that Court may determine, any such property into the custody of the *curator bonis*.’

[23] More than that, in *Mngomezulu*, it was reasoned that the power to alienate movable and immovable property of a minor is one that a *curator bonis* would normally require in order to fully administer his ward's estate, hence the Legislature probably intended to empower the High Court to confer this power on a *curator bonis* appointed in terms of s 28 of POCA. This must be understood in the context of the judgment having made specific reference to s 32 of POCA, which section renders the Administration of Estates Act (the Estates Act) applicable to Chapter 5.¹¹ Section 32 specifically states that the provisions of the Estates Act shall apply in respect of a *curator bonis* appointed under Chapter 5. Chapter 6 does not include a provision similar to s 32. It cannot therefore be presumed that the Legislature intended to empower the High Court to confer the power of alienation on a *curator bonis* appointed in terms of s 42.

[24] To sum up, my sense is that there is no material parity between Chapter 5 and Chapter 6 of POCA. They are distinct forfeiture regimes. In *National Director of Public Prosecutions and Another v Mohamed NO and Others*¹² the Constitutional Court explained:

‘Chapter 5 (comprising ss 12 - 36) provides for the forfeiture of the benefits derived from crime but its confiscation machinery may be invoked only when the “defendant” is convicted of an offence. Chapter 6 (comprising ss 37 - 62) provides for forfeiture of the proceeds of and instrumentalities used in crime, but is not conviction based; it may be invoked even when there is no prosecution.’

[25] A restraint order under Chapter 5 has the effect of stripping a defendant of control or use of restrained assets pending the conclusion of imminent criminal proceedings.¹³ A preservation order under Chapter 6 is invoked

¹¹ *Mngomezulu supra* para 18.

¹² *National Director of Public Prosecutions and Another v Mohamed NO and Others* [2003] ZACC 4; 2003 (4) SA 1 (CC) para 16.

¹³ *Phillips v National Director of Public Prosecutions* 2003 (6) SA 447 (SCA) at 453F.

independently of pending criminal proceedings and its purpose is to preserve assets pending a forfeiture application under a civil forfeiture regime.¹⁴ The clear exclusion from Chapter 6 of provisions similar to s 32 and s 33(1)(a) as are contained in Chapter 5, must be viewed from that perspective.

[26] Turning to the issue raised in these proceedings, I am unable to hold that the legislative scheme in Chapter 6, specifically s 42(1)(a)(iii) , of POCA permits an expansive interpretation to confer on this Court a wide discretion to grant the applicant, as *curator bonis*, the authority to alienate or dispose of the property that is subject to the preservation order. I have the impression that a *curator bonis* may only dispose of property once a forfeiture order takes effect, and that he is obliged to do so in accordance with the directions of the Criminal Assets Recovery Committee.¹⁵

[27] A final word on costs.

[28] In the period until September 2024, the founding affidavit indicates that the applicant met and engaged with the second respondent on behalf of Yellow Fancy to pay the ownership costs that were steadily accumulating. The second respondent informed him that he was working on the matter and if the costs were not paid by December 2022 he would consent to the sale of the property. On account of the enduring history of the matter, the opposing respondents contended that the applicant's conduct over a period of several years was dilatory and unreasonable and that he should be ordered to pay punitive costs on an attorney and own client scale. Save for raising the issue in their heads of argument, and in their rule 6(5)(d)(iii) notice, the opposing respondents did not directly address it in an answering affidavit setting out fully the factual considerations and circumstances that would, with cogent justification, inform

¹⁴ *National Director of Public Prosecutions v Biru* [2024] ZAECPHC 33 para 23.

¹⁵ See s 65 read with s 56 and 57(1)(c) of POCA.

this Court's discretion. On the papers before me I am not persuaded that there is sufficient material that justifies the scale of costs contended for. The usual order on the party and party scale applies.

[29] Having already granted the order of 20 January 2026, I need make no further order.

M. S. RUGUNANAN
JUDGE OF THE HIGH COURT

Appearances:

For the Applicant: *D Marais*, Instructed by Kern and Partners c/o Netteltons, Makhanda (Ref. I Pienaar), email: ilze@netteltons.co.za

For the Second and Third Respondents: *L Ndinisa*, Instructed by Makhanya Attorneys c/o Mili Attorneys, Makhanda (Ref D Mili), email: dmili@itsnet.co.za

cc: NN Dullabh & Co, Attorneys for Eighth Respondent (Ref M Wolmarans), email: marius@dullabhs.co.za

Date heard: 13 November 2025

Order granted: 20 January 2026

Reasons: 28 April 2026 – delivered by email at 09h30.