IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2023-130509

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

20 May 2026 SM MARITZ AJ
DATE SIGNATURE

In the matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS Applicant

and

NIKIWE QENENE First Respondent

[ID NO: 8[...]]

BETHUEL NGOBENI Second Respondent

J U D G M E N T

MARITZ AJ

A. INTRODUCTION AND OVERVIEW

[1] The National Director of Public Prosecutions ('the NDPP' or 'the Applicant') applies to this Court, in terms of section 48 of the Prevention of Organised Crime Act 121 of 1998 ('POCA'), for an order declaring forfeited to the State all properties listed in the Schedule of Assets attached to the Notice of Motion (Schedule A / Annexure A — pages 019-8 to 019-10 of the caselines record). The forfeiture application is brought subsequent to the granting of a preservation order in terms of section 38(1) of POCA, granted by the Honourable Justice Ledwaba DJP (as he then was) on 8 January 2024 in the High Court of South Africa, Gauteng Division, Pretoria. The application is founded on the allegation that those properties constitute the proceeds, and in some instances the instrumentalities, of Schedule 1 offences, namely fraud, money laundering, racketeering, and the unlawful dealing in unwrought gold contrary to the Precious Metals Act 37 of 2005.

[2] Two respondents are formally cited. The First Respondent, Nikiwe Qenene (ID: 8[...]), is an adult female traditional healer and entrepreneur residing at Erf 4[...], Beverly Hills, Evaton West Extension 4, Emfuleni Local Municipality ('the house'). She is represented by Adv L.J. Lowies. The Second Respondent, Bethuel Ngobeni, is a Zimbabwean national using a fraudulent South African identity document and the alleged kingpin of a gold-dealing syndicate operating around Carletonville and Khutsong.

[3] In addition to the respondents, Schedule A lists properties belonging to: Leon Magwaca (alias James Sigauke); Moseki Sechele; Thabo Sechele; and Bongani Khumalo. None of these four persons are cited as respondents in the forfeiture application, although they were all named as interested parties in

the preservation order (Annexure NP1, pages 019-57 to 019-61) and served with notice. A central question — addressed in Part F — is whether a forfeiture order can be granted against their assets in these proceedings, and on what basis.

[4] The Second Respondent filed a section 39 notice through Mashele Attorneys but has not filed any opposing affidavit in the forfeiture application. He is a fugitive from justice: a J50 warrant of arrest was issued on 10 December 2024, and his bail has been revoked. He is currently facing criminal charges of racketeering, money laundering, fraud, and dealing in precious metals.

B. ISSUES FOR DETERMINATION

[5] The principal issues for determination are:

5.1 Whether condonation for the First Respondent's late filing of her answering affidavit should be granted;

5.2 Whether default forfeiture against the Second Respondent should be granted;

5.3 Whether it is competent, and whether a legal basis exists, for forfeiture by default against non-respondent interested parties;

5.4 Whether forfeiture should be granted against the First Respondent's immovable property — including the contested ownership dispute between the First Respondent and Mr W.G. Mmolo;

5.5 Whether an innocent third party's property may be the subject of forfeiture;

5.6 Whether forfeiture should be granted against the First Respondent's vehicles;

5.7 Whether the preservation order's description is vague in respect of the *'furniture and valuable items'*, especially in respect of the First Respondent's possessions; and

5.8 Costs.

C. CONDONATION

[6] The First Respondent's answering affidavit was due by 27 June 2024 but was filed only on 10 September 2024 — approximately ten weeks late. She simultaneously filed a notice of application for condonation and an affidavit in support thereof (pages 019-79 to 019-80) and seeks condonation for the late filing.

[7] The applicable test requires consideration of: (a) the degree of lateness; (b) the reason for the delay; (c) the prospects of success; and (d) the prejudice to the opposing party. The overriding criterion is the interests of justice: see *Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A) at 532C*; *Brummer v Gorfil Brothers Investments (Pty) Ltd 2000 (2) SA 837 (CC) at para 3.*

[8] The explanation advanced by the First Respondent for the late filing of her answering affidavit is threefold. First, the preservation order and its attendant publicity severely crippled her business ventures, making it difficult to fund legal representation. Second, the workload commitments of her attorney and counsel meant that consultation with counsel could only be secured on 15 August 2024 (para 57, page 019-93). Third, Vardakos Attorneys wrote to the State Attorney on 6 August 2024 (Annexure NQ2, page 019-97) seeking consent for the late filing. No response was received — despite the State Attorney having written on 5 August 2024 (Annexure NQ1, page 019-96) threatening to proceed on the unopposed roll. The failure to reply to a reasonable request for consent is a matter relevant to prejudice and good faith. The Court is satisfied with the explanation provided for the late filing of the First Respondent's answering affidavit.

[9] The NDPP has demonstrated no prejudice. The matter was not enrolled on the unopposed roll, no hearing date was wasted, and the opposing papers were on record well before the hearing. The First Respondent is anxious to litigate the matter. On the question of prospects, as is demonstrated throughout this judgment, the First Respondent's opposition raises several non-trivial legal arguments that are far from hopeless. It is trite that a weak explanation can be cured by good prospects of success. In addition, at the hearing the NDPP indicated that it no longer opposes the condonation application.

[10] Accordingly, condonation is granted.

D. LEGAL FRAMEWORK

Chapter 6 of POCA

[11] POCA provides a civil *in rem* forfeiture regime that operates independently of any criminal conviction. The forfeiture machinery targets property rather than persons. Chapter 6 empowers the NDPP to seek preservation orders (section 38) and thereafter forfeiture orders (section 48). Section 50(1) requires the Court to grant a forfeiture order if it finds, on a balance of probabilities, that the property is an instrumentality of a Schedule 1 offence or the proceeds of unlawful activities. Section 52 provides a complete exclusion defence for innocent owners. Section 53 provides for forfeiture by default.

[12] The expression *'proceeds of unlawful activities'* is defined in section 1 as any property or service, advantage, benefit or reward derived, received or retained, directly or indirectly, in connection with or as a result of any unlawful activity committed by any person. The definition is wide and captures property that is indirectly derived from crime.

[13] The concept of *'instrumentality of an offence'* means property concerned in the commission of an offence. The link between the crime and the property must be *'reasonably direct'*, and the employment of the property in the

commission of the offence must be *'significant and not merely incidental'*: *National Director of Public Prosecutions v R O Cook Properties (Pty) Ltd 2004 (2) SACR 208 (SCA) ('Cook Properties') at para 26*; *National Director of Public Prosecutions v 37 Gillespie Street Durban (Pty) Ltd 2004 (2) SACR 208 (SCA)*. The bank accounts of the Sechele brothers, used to receive, move, and conceal cash proceeds from gold dealing, are instrumentalities in the clearest sense.

Onus and Standard of Proof

[14] The NDPP bears the onus of proving on a balance of probabilities that property is the proceeds or instrumentality of unlawful activities: *Cook Properties supra* at para 13. The application is civil in nature, and no criminal conviction is required: *National Director of Public Prosecutions v Swart* (unreported, per Leach J, cited with approval in the NDPP's heads at para 60). The Court assesses all the evidence on the record, including the answers to the preservation application.

Proportionality

[15] '*Proportionality*' is a governing constitutional principle. Section 25(1) of the Constitution prohibits the arbitrary deprivation of property. A forfeiture order that would constitute such an arbitrary deprivation must be refused. The Constitutional Court, in *National Director of Public Prosecutions v Mohunram and Another 2007 (4) SA 222 (CC)* (*'Mohunram'*), established the authoritative single evaluative standard at paras 74–75:

> *'To my mind, there should be only one evaluative standard applicable to all the offences that fall within the ambit of the forfeiture provisions of POCA. That standard simply involves asking the question whether the forfeiture of the property concerned is, in all the circumstances of the case (including the nature and seriousness of the offence), disproportionate... The onus of establishing that all the requirements for a forfeiture*

> *order in terms of section 50 of POCA — including that of proportionality — have been met, rests on the NDPP throughout.'*

[16] The Court in *Mohunram* at para 75 continued: *'It is the task of the court to ensure that the deprivation of property that will result from a forfeiture order is not arbitrary. The proportionality assessment is a legal one, based on an evaluation of all the relevant factors in the full factual matrix of the particular case.'* The Court accordingly applies the single evaluative standard. The *'significant disproportionality'* formulation in *Prophet v National Director of Public Prosecutions 2006 (1) SA 38 (SCA) ('Prophet')* at para 37, while respected, is superseded by *Mohunram* as the higher court's later pronouncement. The primary purpose of forfeiture is to remove the incentive for crime, eliminate the means of crime, and advance justice by depriving those involved in crime of the property concerned: *Cook Properties supra* at para 18. The State is constitutionally permitted to use forfeiture to induce vigilance in property owners and to require them to account for the stewardship of their property: *ibid*; *First National Bank of SA Ltd t/a Wesbank v Commissioner, SARS and Another 2002 (4) SA 768 (CC) ('FNB') at paras 49–52* (constitutional framework for property deprivation). A further relevant question is whether forfeiture would have *'more than the necessary remedial effect'*: *Geyser v NDPP (SCA) at para 31.*

The Innocent Owner Exclusion — Section 52

[17] Section 52 of POCA provides that the Court shall exclude any interest in property from the operation of a forfeiture order if satisfied that the claimant: (a) acquired the interest legally and for fair value; and (b) neither knew nor had reasonable grounds to suspect that the property was the proceeds of unlawful activities or would be used in the commission of an offence. The exclusion is mandatory — not discretionary — where the conditions are proved on a balance of probabilities. The *'ought to have known'* standard is objective: *National Director of Public Prosecutions v Parker 2006 (1) SACR 284 (SCA) ('Parker') at paras 16–18.*

Section 53 — Forfeiture by Default

[18] Section 53 empowers the Court to grant a forfeiture order by default — an order that could have been made under section 50(1) — where: (a) no person has appeared on the date the section 48(1) application is to be heard; and (b) all persons who entered appearances under section 39(3) have knowledge of the notices given under section 48(2). The provision enables the Court to act where interested parties, having had proper notice, have chosen not to participate.

Clarity of Court Orders

[19] A court order must be clear and unambiguous: *Eke v Parsons [2015] ZACC 30; 2016 (3) SA 37 (CC) ('Eke v Parsons')* at para 29; *Hulisani Viccel Sithangu v Capricorn District Municipality (593/2022) [2023] ZASCA 151 ('Sithangu')* at para 16. An order that delegates to enforcement officials an undefined discretion to determine which assets are to be seized is legally vulnerable and risks unconstitutional arbitrary deprivation.

E. THE SECOND RESPONDENT — FORFEITURE BY DEFAULT

[20] The Second Respondent is a Zimbabwean national who fraudulently obtained a South African identity document, as confirmed by the Department of Home Affairs investigation (NDPP's heads paras 36–54, pages 019-164 to 019-169; Annexure MM1 to the supporting affidavit of WO Kgomotso Galetlole in the preservation application). The identity was obtained in Nelspruit through misrepresentation, contravening sections 49(1)(a) and 49(14) of the Immigration Act 13 of 2002. Home Affairs notices to cancel the fraudulently obtained identity documents were issued and not responded to (NDPP's heads of argument paras 51–54, pages 019-168 to 019-169).

[21] The Second Respondent's section 39 notice was deposed to by his attorney, Mr Andreas Nicholas Joubert, and not by the Second Respondent himself.

The NDPP raises a well-founded point *in limine* in this regard (founding affidavit paras 94–98, page 019-39; NDPP's heads paras 13–19, pages 019-160 to 019-161). A section 39 notice must contain full particulars of: (a) the identity of the person giving the notice; (b) the nature and extent of that person's interest in the property; (c) whether the person intends to oppose forfeiture or seek exclusion; (d) whether the property is admitted or denied as an instrumentality or proceeds of crime; and (e) if exclusion is sought, the basis therefor (preservation order para 13, page 019-60). None of these requirements is properly satisfied in the Joubert affidavit. An attorney who has no personal knowledge of the relevant facts cannot swear positively to them.

[22] The Second Respondent filed no opposing papers to the forfeiture application. He has absconded. A J50 warrant was issued and his bail was revoked. The material evidence against him stands wholly uncontested and, in fact, much of it is corroborated by his own admissions in his section 38 affidavit filed through Mashele Attorneys on 26 March 2024 — wherein he admitted dealing in unwrought gold (para 10.32.5.1) and admitted his romantic relationship with the First Respondent and their shared child (para 11.50) — positions confirmed in the NDPP's heads at paras 29–30. It is noteworthy, in the context addressed below, that the Second Respondent's admission of his relationship with the First Respondent in that affidavit stands in direct contrast to the First Respondent's denial of any such relationship.

[23] The Court is satisfied on a balance of probabilities, on the uncontested evidence, that the Second Respondent's immovable properties (Erf 2[...], House 2[...], K[...] Street, Khutsong South, Khutsong and Erf 4[...]2, Khutsong Ext 2, Khutsong, Merafong Municipality) and the furniture and valuable items thereat, all acquired with cash proceeds from the unlawful dealing in unwrought gold, constitute proceeds of unlawful activities within the meaning of POCA. The Court is also satisfied that the red Mazda CX-5 (K[...]), originally registered in his name and subsequently transferred to the First Respondent (founding affidavit para 10.10, page 019-14), was acquired with the proceeds of crime. A forfeiture order in respect of the Second Respondent's listed assets is appropriate under sections 50(1) and 53 of POCA.

F. NON-RESPONDENT INTERESTED PARTIES — DEFAULT FORFEITURE (SECTION 53)

Jurisdiction: Whether forfeiture could be ordered against persons not cited as respondents

[24] A threshold question of importance arises: can this Court grant a forfeiture order in respect of properties belonging to Leon Magwaca, Moseki Sechele, Thabo Sechele, and Bongani Khumalo, none of whom are cited as respondents? Their assets appear in Schedule A (pages 019-8 to 019-10), and they are identified as *'interested parties'* (founding affidavit para 25, page 019-17).

[25] The answer lies in the distinct architecture of Chapter 6 of POCA. The Act does not require interested parties to be cited as respondents in the traditional sense of motion proceedings. The operative mechanism is as follows: (a) the preservation order names all persons with an interest in the property; (b) those persons are served and given notice through publication in the Government Gazette; (c) they are given the opportunity to enter appearances under section 39(3) and to oppose forfeiture or apply for exclusion; and (d) if they do not appear and oppose, the Court may grant a forfeiture order by default under section 53.

[26] The preservation order granted by Justice Ledwaba DJP (as he then was) on 8 January 2024 (Annexure NP1, pages 019-57 to 019-61) specifically names all the interested parties at paras 3 and 10. The Government Gazette notice (Annexure NP2, page 019-65, Government Gazette No 50182, 23 February 2024) addresses all of them at their known addresses, setting out their rights and time limits in detail. Service was effected on 8 February 2025 on all interested parties at their residential addresses (founding affidavit para 30, page 019-18). They have had every opportunity to participate and have chosen not to do so.

[27] The Court is satisfied that it has jurisdiction to grant forfeiture orders by default against all non-respondent interested parties who received proper notice, entered no valid section 39 appearances, and filed no opposing papers. The First Respondent did not raise any serious objection to the granting of forfeiture orders by default against the non-respondent interested parties, save for stating that they were not cited as parties to these proceedings. Section 53 of POCA is directly applicable to the non-respondent interested parties. The Court deals with each one of these non-respondent interested parties as follows.

(a) Leon Magwaca (alias James Sigauke)

[28] Leon Magwaca is a Zimbabwean national and biological sibling of the Second Respondent, confirmed by DNA analysis at the Forensic Science Laboratory (founding affidavit paras 7, 33.4, pages 019-13 and 019-19). He also fraudulently acquired a South African identity document and used it to open bank accounts and purchase immovable property with the proceeds of dealing in unwrought gold (founding affidavit para 33.6, page 019-20). He has been arrested, charged, and has made court appearances in connection with racketeering, money laundering, fraud, and dealing in precious metals (para 33.8, page 019-20).

[29] No valid section 39 notice was filed by Magwaca. No opposing papers were filed to the forfeiture application. The evidence establishing his connection to the syndicate and the tainted provenance of his property is uncontested. The property at Erf 6[...] (Khutsong Ext 3) and the furniture and valuable items thereat are the proceeds of his unlawful dealings. A default forfeiture order is appropriate.

(b) Moseki Sechele and Thabo Sechele

[30] Moseki Sechele and Thabo Sechele are brothers and confirmed members of the syndicate (founding affidavit para 8, page 019-13). They opened bank accounts with the proceeds of unwrought gold dealing and used those

accounts as instrumentalities of money laundering (NDPP's heads para 64, page 019-171). They were arrested alongside other syndicate members (para 33.8, page 019-20).

[31] The specific items in issue are: (a) furniture and valuable items belonging to Moseki Sechele at Erf 5[...], 1[...] P[...] Street, Carletonville (item 14, Schedule A, page 019-10); (b) R83,450 in cash in exhibit bag PA4500165459 (item 15); and (c) R8,000 in cash in exhibit bag PA400647003 (item 15, Schedule A, page 019-10, and founding affidavit paras 10.15–10.16, pages 019-14 to 019-15). Neither Thabo nor Moseki Sechele entered a section 39 appearance or filed any opposing papers. The uncontested evidence establishes the tainted nature of these assets. A default forfeiture order is appropriate.

(c) Bongani Khumalo

[32] Bongani Khumalo is identified as a person within the syndicate's circle whose assets were preserved (Schedule A items 12–13, page 019-9). His assets consist of furniture and valuable items at Portion 11 of Erf 7[...] (2[...] M[...] Street, Oberholzer Ext 1) and Portion 159 of Erf 4[...] (Carletonville Ext 9). No section 39 notice was filed and no opposition was entered. On the uncontested evidence, a default forfeiture order in respect of his identified assets is appropriate.

Summary on default forfeiture

[33] The Court is satisfied in respect of all non-respondent interested parties that: (a) the preservation order was validly granted; (b) all interested parties received proper notice; (c) none filed valid section 39 appearances or opposing papers; (d) the uncontested evidence establishes on a balance of probabilities that the assets constitute proceeds of Schedule 1 offences; and (e) given the seriousness and sustained nature of the organised criminal enterprise, forfeiture is not disproportionate. Default forfeiture orders will be issued accordingly.

G. THE FIRST RESPONDENT'S IMMOVABLE PROPERTY SITUATED AT ERF 4[...] BEVERLY HILLS, EVATON WEST, EXTENSION 4, EMFULENI LOCAL MUNICIPALITY

The Competing Factual Narratives

[34] Three competing narratives regarding the ownership of the house require careful examination. These are as follows:

34.1 **The First Respondent's case:** she began renting the house from Mr Wageng George Mmolo ("Mmolo" or "Mr Mmolo") in December 2007 at R500 per month. She paid faithfully for over a decade, gaining Mmolo's trust. Between 2017 and 2018, they agreed verbally to convert the arrangement to a sale at R100,000, payable in monthly instalments of R5,000 from her traditional healing income. The written Deed of Sale (Annexure NQ1 to her supplementary affidavit, pages 019-197 to 019-205) was signed on 17 May 2021, recording the purchase price as *'already paid.'* Transfer was effected by H.R. Munyai Attorneys. She states the property was transferred into her name on 25 November 2022 (supplementary affidavit para 12.4, page 019-211). A neighbour affidavit from Violet Nonthunzelo Matyia (Annexure NQ2 to the First Respondent's supplementary affidavit) confirms her occupation since 2007.

34.2 **The NDPP's case:** the seller who appeared in the transaction used a fraudulently doctored identity document bearing Mmolo's name, ID number, and particulars, but a different photograph and a forged signature (founding affidavit paras 48–55, pages 019-30 to 019-31; Annexure NP4 — Mmolo's handwritten statement, pages 019-69 to 019-72). The transaction was therefore *void ab initio* — the First Respondent never acquired valid title, and the house must be treated as proceeds of crime because it was fraudulently obtained.

34.3 **Mmolo's position:** in his statement (Annexure NP4/NP5, pages 019-69 to 019-72, noted with the caveat about the NDPP's confused annexure numbering raised by the First Respondent at her answering affidavit paras 46–47, page 019-92), Mmolo states: he never sold his house; the identity document used in the sale bore his name and number but a different photograph; the signature on the sale documents is not his; he did not give anyone permission to use his particulars to sell his house; and he desires a police investigation into the matter. The authentic Mmolo identity document (Annexure NP7/the green ID, page 019-75) confirms his genuine identity (ID: 6[...], born 1969-01-30). The LexisNexis Deeds Office report (pages 019-73 to 019-74) shows Erf 4[...] registered in the name of MMOLO WAGENG GEORGE, purchase price R8,000, registration date 1998/03/31, title deed TL35997/1998.

The Relationship between the First and Second Respondents — The Contested Evidence

[35] Before addressing the question of whether the property of an innocent third party could be forfeited under POCA, it is necessary to address the evidence regarding the relationship between the First and Second Respondents, as this evidence bears, to a limited extent, on the question of the First Respondent's knowledge in the context of the section 52 defence.

[36] The First Respondent, in her answering affidavit at para 22.1, expressly denies that she is in a romantic relationship with the Second Respondent. This denial is repeated in her heads of argument at para 41. However, the Second Respondent, in his section 38 affidavit filed through Mashele Attorneys on 26 March 2024, expressly admitted to being in a romantic relationship with the First Respondent and to their having a shared child together (para 11.50 of that affidavit). These two positions are directly contradictory. Notably, in the First Respondent's supplementary affidavit, filed on 19 March 2024, she further states that the relationship had ended and that she is currently in a relationship with another person. The First Respondent

therefore does not deny that a relationship of some nature existed but contends that it has since concluded.

[37] The NDPP attached photographs to the founding affidavit, which it contends depict the First and Second Respondents together in what is described as a romantic context. It is stated in the founding affidavit that these photographs were taken nine days before the Second Respondent's arrest. At the hearing, Counsel for the First Respondent raised an objection to the admissibility of the photographs, submitting that they constitute inadmissible evidence and ought to be struck from the record, on the following grounds: there is no evidence as to when the photographs were taken; there is no evidence to confirm that the persons depicted are indeed the First Respondent and the Second Respondent; there is no affidavit from the photographer or any other person who can confirm the circumstances under which the photographs were taken; and accordingly the photographs have no evidentiary value and cannot prove any romantic relationship between the First Respondent and the Second Respondent.

[38] Having considered the matter, the Court is of the view that, although the photographs are disputed and their admissibility is contestable for the reasons articulated by Counsel for the First Respondent, it is ultimately unnecessary to make a definitive ruling on this evidentiary objection. This is so for two reasons. First, regardless of the photographs, the Second Respondent himself admitted under oath to the relationship, and that admission remains unretracted and uncontested — the Second Respondent having since absconded and filed no further papers. Second, and more importantly, the Court does not place significant reliance on the existence or nature of the personal relationship between the First and Second Respondents as a determinative factor in the section 52 analysis. The critical question under section 52, addressed further below, is whether the First Respondent knew or ought to have known that specific property was funded by criminal proceeds — a question that is answered by reference to the specific financial transactions, not by reference to the personal relationship *per se*. The Court

accordingly does not strike the photographs, but nor does it place any material reliance upon them.

Whether the Property of an Innocent Third Party could be forfeited under POCA

[39] This question strikes at the jurisprudential foundations of Chapter 6 of POCA. POCA targets tainted property — property derived from or used in crime. Its *in rem* character means that it attaches to the property, not to the wrongdoer. But the property must itself be tainted: it must constitute proceeds derived from unlawful activities or be an instrumentality employed in the commission of an offence.

[40] Mmolo's house was not derived from any unlawful activity of his. It was an RDP housing subsidy allocation registered in his name in 1998 at R8,000 (page 019-73). It is pristinely innocent property. The fraud perpetrated against him — the use of his identity by a person who impersonated him to transact with the First Respondent — does not convert his innocent property into tainted property within the meaning of POCA. POCA does not authorise the forfeiture of the property of an innocent victim of identity fraud in circumstances where that property has not been derived from or used in any crime committed by that victim.

[41] The constitutional framework reinforces this conclusion. In *FNB v Commissioner, SARS supra*, the Constitutional Court established the comprehensive test under section 25(1): the deprivation must be authorised by law of general application; it must not be arbitrary (there must be *'sufficient reason'* for the deprivation in its relationship to its purpose); and, in the case of expropriation, compensation must be paid. To appreciate the constitutional dimensions of the present case, it is necessary to identify what the NDPP's *void ab initio* argument actually entails. If the transaction by which the house was purportedly sold to the First Respondent was void from the outset — because the person who purported to sell it fraudulently impersonated Mmolo — then the registered transfer to the First Respondent was equally invalid.

Mmolo therefore never ceased to be the registered owner, and the house remains his. On that scenario, the NDPP invites this Court to forfeit the property of a person who: (a) acquired the property legitimately; (b) committed no offence; (c) was himself a victim of identity fraud; and (d) used the property in connection with no crime whatsoever. There is no *'sufficient reason'* for such a deprivation. The forfeiture of Mmolo's innocent, crime-free property — on the basis of a fraud perpetrated against him by third parties — would constitute precisely the arbitrary deprivation that section 25(1) of the Constitution prohibits.

[42] If Mmolo is the true registered owner of the property, this Court cannot grant a forfeiture order in respect of it in these proceedings. POCA forfeiture is not a mechanism to resolve civil ownership disputes between private parties. Mmolo's remedies lie in the civil law of property, in the criminal prosecution of those who used his identity fraudulently, and — if he wishes to establish his right to occupy the property — in an application for eviction of whoever may be in occupation. He retains all these rights. They are entirely separate from and unaffected by this forfeiture application.

The NDPP's *'Blow Hot and Cold'* Problem

[43] The NDPP's case regarding the house is fundamentally self-contradictory. On the one hand, Schedule A and the Notice of Motion treat the house as the First Respondent's property (targeting it as her asset — items 6 and 11, page 019-9). On the other hand, the NDPP relies on Mmolo's statement to argue that she never owned the property. The First Respondent correctly articulates the logical dilemma: either (i) the house is her property — in which case the NDPP must prove the purchase funds were criminal proceeds — or (ii) the house is Mmolo's — in which case a forfeiture order against the First Respondent's purported interest is inapplicable and Mmolo's innocent property cannot be forfeited (answering affidavit paras 38.1–38.3, pages 019-90 to 019-91; First Respondent's heads of argument paras 17–22, pages 019-123 to 019-124).

[44] A party cannot approbate and reprobate. An applicant must identify its case with sufficient clarity to allow the respondent to meet it: see generally *Growthpoint Properties Ltd v Macrobert Incorporated 2014 (4) SA 237 (SCA) at para 14*. The NDPP's oscillation between these two positions renders the application, insofar as it concerns the house, materially defective.

[45] The Court notes additionally that the founding affidavit's initial response to the First Respondent's section 39 papers — at para 1 of the section headed *'The Applicant has read the Respondent's first affidavit*' (page 019-21) — proceeded on the premise that the First Respondent was the occupant, saving only the characterisation of her occupancy as unlawful. Paragraph 18 of the founding affidavit — which the First Respondent characterises as an admission of lawful purchase (answering affidavit para 18, page 019-85; First Respondent's heads para 15, page 019-123) — sets out the section 38(2) preservation test in terms that at least acknowledge the existence of a claimed lawful purchase without explicitly denying it. The NDPP's subsequent and more robust *void ab initio* argument (developed most fully in the replying affidavit, pages 019-100 to 019-112, and in the founding affidavit's responses to the section 39 papers at paras 48–58, pages 019-30 to 019-32) came after the First Respondent had already framed her defence around the initial papers. This procedural history exacerbates the *'blow hot and cold'* problem.

Assessment on the Merits — Section 52 and Innocent Owner

[46] Even if the Court were to set aside the ownership paradox and treat the First Respondent as the *de facto* owner who must establish the section 52 exclusion, the Court would find in her favour. The three conditions — legal acquisition, fair value, and absence of knowledge — are each addressed below.

46.1 **Legal acquisition:** the First Respondent produced a Deed of Sale (Annexure NQ1, pages 019-197 to 019-205) bearing the apparent signature of Mmolo. Transfer was effected through a conveyancing attorney. If someone impersonated Mmolo throughout this process —

including at the Deeds Registry — the First Respondent was a victim of that fraud, not its perpetrator. She dealt with someone she had known as her landlord since December 2007, having paid rent to him faithfully for over ten years. Nothing in the circumstances would have alerted a reasonable person in her position to suspect that she was dealing with an impersonator. The *bona fide* purchaser for value who has been deceived by a fraudulent seller is a recognised victim in our law, not a wrongdoer.

46.2 **Fair value:** R100,000 for an RDP property originally allocated for R8,000 in 1998, occupied and improved over a decade, is reasonable fair value in the context of the informal township property market. The NDPP has not suggested undervalue.

46.3 **Absence of knowledge:** the NDPP's attribution of knowledge to the First Respondent rests primarily on her relationship with the Second Respondent. However, whatever the true nature of that relationship — and the Court has addressed the conflicting evidence on this point above — the maintenance she received from him was for their daughter Rose, a legal obligation running from the Second Respondent to provide for his child. More critically, the NDPP has not traced any specific criminal proceeds into the house purchase. The purchase price of R100,000 was paid in monthly instalments of R5,000 from the First Respondent's own income (supplementary affidavit paras 12.3–12.4, pages 019-210 to 019-211). The NDPP has not produced evidence identifying any specific cash payment towards the house purchase as having derived from the gold syndicate. The mere existence of a financial or personal relationship with the Second Respondent — for purposes of child maintenance — does not, without more, establish that the First Respondent knew or ought to have known that the house purchase funds were criminal proceeds: *Parker supra* at paras 16–18. Crucially, the NDPP does not allege and has never alleged that the house was used as an instrumentality of any offence (correctly noted by the First Respondent at para 26.2 of her supplementary affidavit, page 019-220, and in the heads at para 37, page 019-126). The case rests entirely on the *'proceeds'* ground.

Proportionality — The House

[47] Even if the section 52 defence were to fail — which for the reasons above it does not — the proportionality assessment mandated by *Mohunram supra* would preclude forfeiture. The relevant circumstances are these: (a) the house is the primary and sole residence of the First Respondent and her minor daughter Rose, born 26 September 2007; (b) no alternative accommodation has been offered; (c) the First Respondent has not been charged with any offence; (d) the NDPP has not established that the purchase price was funded by criminal proceeds; (e) the house was not an instrumentality of any crime; and (f) forfeiture would render an uncharged woman and her daughter homeless. These are circumstances in which forfeiture of the house would be grossly disproportionate, serving no legitimate POCA purpose proportionate to the devastation it would cause.

Conclusion on the House

[48] For all the foregoing reasons, the application for forfeiture of Erf 4[...], Beverly Hills, Evaton West Extension 4, is dismissed for the following reasons:

48.1 If Mr Mmolo is the true registered owner of the property, his innocent property cannot be forfeited under POCA in these proceedings. He retains all civil remedies, including an application for eviction should he wish to vindicate his occupation rights.

48.2 If the First Respondent is the owner through the registered transfer she asserts, she is entitled to the exclusion of her interest under section 52 of POCA: the NDPP has not proved on a balance of probabilities that the R100,000 purchase price derived from criminal proceeds, and the First Respondent has established on reasonable grounds that she acquired the property in good faith, for fair value, and without knowledge of any criminal connection in the purchase itself.

48.3 In either scenario, forfeiture of the house would be inappropriate and legally unsustainable. The uncertainty of registered ownership, the innocent ownership defence, and the proportionality considerations all individually and cumulatively preclude forfeiture.

48.4 The preservation order in respect of Erf 4[...] and the furniture and valuable items thereat is discharged.

H. THE FIRST RESPONDENT'S MOTOR VEHICLES

The Black Land Rover Range Rover Evoque — J[...]

[49] The black Land Rover Range Rover Evoque (‘the Range Rover’) (listed in Schedule A, item 7, page 019-9, ownership date 14 January 2021) was purchased by the First Respondent from a dealership in The Glen on 14 January 2021. The Court notes that the Schedule of Assets describes the vehicle as '*grey*', whereas Counsel for the First Respondent submitted at the hearing that the correct colour of the vehicle is '*black*'. This discrepancy is immaterial: the vehicle is readily and unambiguously identifiable by its registration number J[...], which is correctly reflected in the Schedule of Assets, and no confusion or prejudice arises from the misdescription of colour. The First Respondent states the purchase comprised: an EFT payment of R460,000; two cash deposits totalling R375,000; and a Hyundai Tucson trade-in for R185,000 (supplementary affidavit paras 21.2–21.4, pages 019-215 to 019-216).

[50] The First Respondent admits receiving R180,000 in cash from the Second Respondent, who told her it was gambling winnings from G-bet or Betway — that he had won more than a million rand (para 21.4, page 019-215). She does not concede that this money was criminal proceeds. However, the NDPP's founding affidavit at para 78 (page 019-35) states that investigations

with G-bets revealed no winnings in favour of the Second Respondent during the relevant period, and that his bank accounts showed no such winnings. This specific factual averment — that there were no gambling winnings — is not adequately answered. The First Respondent relies only on her belief in the Second Respondent's account, without any corroborating documentation.

[51] More significantly, the founding affidavit at para 77 (page 019-35) discloses that the Hyundai Tucson, which the First Respondent traded in for R185,000, was originally purchased and owned by the Second Respondent from 17 July 2017, with ownership transferred to the First Respondent only on 1 December 2020 — six weeks before the Range Rover purchase. The Hyundai was therefore originally the Second Respondent's asset, acquired with criminal proceeds, and then passed to the First Respondent shortly before the Range Rover purchase. The R185,000 trade-in value was itself proceeds of crime — tainted property through which criminal value was transferred into the Range Rover acquisition.

[52] On a balance of probabilities: (a) the admitted R180,000 cash contribution from the Second Respondent constitutes proceeds of the gold syndicate — there were no gambling winnings to account for it; and (b) the Hyundai Tucson trade-in (R185,000) originated from the Second Respondent's criminal assets. These two components together account for R365,000 of the total purchase consideration. Whether the remaining EFT payment of R460,000 and cash deposits of R375,000 were entirely from legitimate sources is not proved — the First Respondent produced no financial records to corroborate income of this magnitude. On the totality of the evidence, the Range Rover is proceeds of unlawful activities. The partial exclusion application in respect of R185,000 is refused, since the Hyundai trade-in was itself tainted property. The Range Rover shall be forfeited.

[53] On proportionality: the Range Rover is a luxury vehicle substantially funded by criminal proceeds. Its forfeiture removes a material benefit of crime, serves the deterrent purpose of POCA, and is not disproportionate relative to the nature and extent of the criminal enterprise. The forfeiture of the Range Rover

does not render the First Respondent homeless or destitute — she retains her house and household contents.

The Grey Nissan Navara — K[...]

[54] The grey Nissan Navara (Schedule A, item 8, page 019-9) has an ownership date of 3 November 2023 in the NDPP's papers — a date that requires explanation. The First Respondent states the vehicle was actually acquired from Star Nissan, Vereeniging, on 8 September 2021 (supplementary affidavit para 22.2, page 019-216). The 2023 date reflects the date the vehicle was retransferred back into the First Respondent's name after the Second Respondent — during an argument in 2022 or 2023 — unilaterally transferred it into the name of one Michael Motale, a person the First Respondent had never met (para 22.7, page 019-217). This extraordinary conduct is corroborated by Motale's own statement, which forms part of the preservation application papers, confirming that he had no knowledge of the vehicle being registered in his name and had never purchased it (founding affidavit para 80, page 019-36).

[55] The entire purchase price of the Navara — R300,000 deposited by the First Respondent from money received from the Second Respondent, plus R398,000 transferred directly from the Second Respondent's Standard Bank account (total: R698,000) — came from the Second Respondent (paras 22.3–22.5, pages 019-216 to 019-217). The First Respondent made no personal financial contribution. The Navara was funded entirely by the criminal proceeds of the gold syndicate. That the Second Respondent subsequently transferred it to Motale's name (while it remained in the First Respondent's physical possession) demonstrates precisely the asset concealment behaviour described in the NDPP's papers: hiding assets through third parties (founding affidavit para 55, page 019-31).

[56] The section 52 exclusion is unavailable. The First Respondent contributed nothing from her own resources. She received R300,000 in cash from the Second Respondent specifically for this purchase — a sum that, on any

reasonable assessment, she ought to have realised was not from a legitimate source for a man with no evident lawful income. The Navara shall be forfeited.

The White Mazda CX-3 — L[...]

[57] The white Mazda CX-3 (Schedule A, item 9, page 019-9, ownership date 26 May 2023) was registered in the First Respondent's name as a gift from the Second Respondent to their daughter R[...] on her 16th birthday, with the understanding that it would be transferred to R[...] when she turned 18 (supplementary affidavit paras 23.2–23.3, pages 019-218 to 019-219). It is a Code 3 rebuilt vehicle with water damage and is accordingly of limited value. It was funded entirely by the Second Respondent.

[58] The fact that the vehicle was intended as a gift for R[...] does not alter its tainted provenance. No defence under section 52 is available: the First Respondent contributed no funds from legitimate sources and received a vehicle purchased by the Second Respondent with criminal proceeds. The Court has sympathy for R[...]'s position as a minor child whose gift is forfeited, but the proportionality balance — noting that the house (her home) is being protected, and that the vehicle is of limited monetary value — does not preclude forfeiture of this relatively low-value asset. The white Mazda CX-3 shall be forfeited.

The Red Mazda CX-5 — K[...]

[59] The red Mazda CX-5 (Schedule A, item 10, page 019-9) was previously owned by the Second Respondent and transferred to the First Respondent on 21 September 2015. The First Respondent claims to have contributed R85,000 from her own money (supplementary affidavit para 24.5, page 019-219) and states that the vehicle bears her nickname *'Nkanyamb'* (tornado). No documentary evidence of the R85,000 contribution is produced.

[60] The red Mazda CX-5 is included in the Second Respondent's forfeiture order (para 2.1(d) of the order below) given its provenance in his name. Even if it is

treated as the First Respondent's property, its acquisition from the Second Respondent — originally with criminal proceeds — and the absence of any corroborated personal contribution means the section 52 exclusion is not available. The vehicle shall be forfeited.

I. FURNITURE AND VALUABLE ITEMS — VAGUENESS

[61] Schedule A, item 11 (page 019-9), lists *'furniture and valuable items at address erf 4[...], house no 4[...], Beverly Hills, Evaton West, Extension 4, Emfuleni Local.'* No particularised list is provided. No criteria are specified for identifying a *'valuable item.'* The relief clause in the Notice of Motion is similarly vague.

[62] The First Respondent's vagueness objection is legally well-founded and is supported by two directly applicable authorities. In *Sithangu v Capricorn District Municipality [2023] ZASCA 151 at para 16*, the Supreme Court of Appeal confirmed that court orders must be clear, precise, and unambiguous to be enforceable. In *Eke v Parsons [2015] ZACC 30; 2016 (3) SA 37 (CC) at para 29*, the Constitutional Court reaffirmed the same requirement. The absence of specificity in a forfeiture order creates the precise constitutional mischief against which these authorities warn: unlimited discretion in enforcement officials to determine which items in a home to seize.

[63] The NDPP's replying affidavit (pages 019-100 to 019-112) references an inventory compiled by Ryncor Auctioneers, transmitted to the First Respondent's attorneys on 7 March 2024. An inventory communicated informally to attorneys cannot cure a defective court order. The order must be clear on its face. An inventory not formally incorporated into the Notice of Motion and not attached as a schedule is not a substitute for a properly particularised order.

[64] Furthermore, having concluded that the house at Erf 4[...] shall not be forfeited, the question arises whether the household contents within it are independently forfeitable. The NDPP has not: (a) identified specific items of

furniture as having been purchased with criminal proceeds; (b) alleged that any household items at the First Respondent's house were instrumentalities of any offence; or (c) quantified the value of any specific items. In the absence of a properly particularised list, specific allegations of criminal provenance, and a legally enforceable description, the Court is not prepared to grant a forfeiture order in respect of the *'furniture and valuable items'* at the First Respondent's house. The order would be unenforceable and unconstitutional.

[65] Forfeiting unspecified household contents from the primary residence in which the First Respondent and R[...] are to remain — having already dismissed the house forfeiture — would serve no legitimate POCA purpose and would be grossly disproportionate. The application in respect of item 11 of the Schedule of Assets (the First Respondent's furniture and valuable items) is dismissed.

J. COSTS

[66] The outcome is mixed. The First Respondent succeeds in resisting forfeiture of the house and household contents — the most significant aspects of the application affecting her directly. She fails in respect of the four vehicles (Range Rover Evoque, Nissan Navara, Mazda CX-3, and the Mazda CX-5). The NDPP succeeds in obtaining forfeiture of those vehicles and obtains default orders against the non-respondent interested parties and the Second Respondent.

[67] Given the mixed outcome, and the submissions by Counsel for both parties at the hearing requesting that each party bear its own costs, the Court is inclined to grant such a costs order. No costs order is made against the non-respondent interested parties and the Second Respondent in respect of the default proceedings, save that the NDPP's costs of obtaining the default orders shall rank as a first charge against the forfeited assets before distribution to the Criminal Assets Recovery Account.

K. THE ORDER

In the result, the following order is made:

1. **Condonation**

1.1 Condonation for the late filing of the First Respondent's answering affidavit is granted.

2. **Forfeiture — Second Respondent (Bethuel Ngobeni)**

2.1 The following properties of the Second Respondent are declared forfeited to the State in terms of sections 50(1) and 53 of POCA:

(a) Erf 2[...], House No 2[...], K[...] Street, Khutsong South, Khutsong;

(b) All furniture and valuable items at the address listed in (a) above, as itemised in the inventory prepared by Ryncor Auctioneers (Pty) Ltd;

(c) All furniture and valuable items at Erf 4[...]2, House No 4[...]2, Khutsong Ext 2, Khutsong, Merafong Municipality as itemised in the inventory prepared by Ryncor Auctioneers (Pty) Ltd; and

(d) The red Mazda CX-5 with licence number K[...] (ownership date 21 September 2015; previously registered in the Second Respondent's name).

3. **Forfeiture — Leon Magwaca (alias James Sigauke)**

3.1 The following properties of Leon Magwaca are declared forfeited to the State in terms of sections 50(1) and 53 of POCA:

(a) Erf 6[...], House No 6[...], Khutsong Ext 3, Khutsong, Merafong City;

(b) All furniture and valuable items at the above address, as itemised in the Ryncor inventory.

4. **Forfeiture — Moseki Sechele and Thabo Sechele**

4.1 The following properties of Moseki Sechele and Thabo Sechele are declared forfeited to the State in terms of sections 50(1) and 53 of POCA:

(a) All furniture and valuable items of Moseki Sechele at Erf 5[...], House No 5[...] / 1[...] P[...] Street, Carletonville Extension 16, Oberholzer Extension 1, Carletonville, as itemised in the Ryncor inventory;

(b) Cash in the amount of R83,450 contained in exhibit bag number PA4500165459;

(c) Cash in the amount of R8,000 contained in exhibit bag number PA400647003.

5. **Forfeiture — Bongani Khumalo**

5.1 The following properties of Bongani Khumalo are declared forfeited to the State in terms of sections 50(1) and 53 of POCA:

(a) All furniture and valuable items at Portion 11 of Erf 7[...], 2[...] M[...] Street, Oberholzer Ext 1, as itemised in the Ryncor inventory;

(b) All furniture and valuable items at Portion 159 of Erf 4[...], Carletonville Extension 9, Carletonville, as itemised in the Ryncor inventory.

6. **Forfeiture — First Respondent's Vehicles**

6.1 The following properties of the First Respondent (Nikiwe Qenene) are declared forfeited to the State in terms of section 50(1) of POCA:

(a) The black Land Rover Range Rover Evoque with licence number J[...] (ownership date 14 January 2021);

(b) The grey Nissan Navara with licence number K[...] (retransferred into the First Respondent's name on 3 November 2023);

(c) The white Mazda CX-3 with licence number L[...] (ownership date 26 May 2023).

6.2 The application for a partial exclusion of R185,000 from the forfeiture of the Range Rover Evoque is refused.

7. **Dismissal: First Respondent's House and Household Contents**

7.1 The application for forfeiture of Erf 4[...], House No 4[...], Beverly Hills, Evaton West Extension 4, Emfuleni Local Municipality is dismissed.

7.2 The application for forfeiture of the furniture and valuable items at Erf 4[...] (item 11 of Schedule A) is dismissed.

7.3 The preservation order in respect of Erf 4[...], Beverly Hills, Evaton West Extension 4, and the furniture and valuable items thereat, is discharged with immediate effect.

7.4 For the avoidance of doubt, nothing in this order affects the rights of Mr Wageng George Mmolo (ID: […]) to approach any competent court for appropriate civil relief in respect of Erf 4[...], Evaton West Extension 4, including but not limited to an application for eviction of any unlawful occupant of the property.

8. **Control and Realisation of Forfeited Assets**

8.1 Ryncor Auctioneers (Pty) Ltd, as the appointed auctioneers, is authorised to take control of all assets forfeited in terms of this order and to sell them by auction or private treaty.

8.2 The net proceeds of sale shall be paid into the Criminal Assets Recovery Account established in terms of section 63 of POCA (account number 8[...] held at the South African Reserve Bank, Vermeulen Street, Pretoria).

8.3 In terms of section 56(2) of POCA, ownership of all forfeited property vests in the State from the effective date of this order.

9. **Costs**

9.1 Each party shall bear its own costs in respect of the forfeiture application.

9.2 No separate costs order is made against the non-respondent interested parties or the Second Respondent in respect of the default forfeiture proceedings. The Applicant's costs of obtaining the default orders shall rank as a first charge against the respective forfeited assets before the net proceeds are paid to the Criminal Assets Recovery Account, such costs to be on a party and party scale, including the costs of Counsel on scale B.

10. **Variation and Rescission**

10.1 Any person whose interest in the forfeited property is affected by this order may, within 20 days of acquiring knowledge of this order, apply to this Court in terms of section 48(3) of POCA for the variation or rescission of the order on good cause shown.

BY ORDER

SM MARITZ AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Appearances on behalf of parties:

Attorneys for the Applicant:	The State Attorney, Pretoria
Counsel for the Applicant:	Adv DL Phahlane

Attorneys for the First Respondent:	Vardakos Attorneys c/o Burger Huyser Attorneys
Counsel for the First Respondent:	Adv LJ Lowies
For the Second Respondent:	Unrepresented (Default of Appearance)
Date of Hearing:	12 May 2026
Date of Judgment:	20 May 2026