



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Reportable

Case No: M405/2014

In the matter between:

NTHABISENG JELLY SELABE

Applicant

and

**NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS
DINGAAN DAVID SELABE**

First Respondent
Second Respondent

In re:

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

and

DINGAAN DAVID SELABE

Respondent

CORAM: HENDRICKS JP

Heard: 28 May 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are set for 10h00 on 19 June 2026.

Summary: Rescission application – POCA forfeiture order – applicant not cited or served in original forfeiture proceedings despite being the community of property spouse of the respondent therein – whether rescission available under Rule 42(1)(a) of the Uniform Rules – whether section 49 of POCA is available post-judgment – applicant not a party to original proceedings, section 49 inapplicable – non-joinder of community of property spouse whose interest was known to the NDPP constitutes erroneous granting in the absence of an affected party – section 52(1) of POCA (innocent owner) – factual dispute on papers cannot be resolved against applicant on *Plascon-Evans* – forfeiture order set aside insofar as it affects the applicant’s undivided half-share in the joint estate – matter referred for further hearing on section 52(1) innocent owner application – costs reserved.

JUDGMENT

HENDRICKS JP:

[1] This is an application for the rescission and setting aside of a forfeiture order granted by this Court on 7 June 2018 in proceedings brought by the National Director of Public Prosecutions (“the NDPP”) under Chapter 6 of the Prevention of Organised Crime Act 121 of 1998 (“POCA”).¹ The applicant, Nthabiseng Jelly Selabe, was not a party to those proceedings. She is the wife of the second respondent in the original forfeiture proceedings, Dingaan David

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

Selabe, and was married to him in community of property at the time the forfeiture order was granted. The assets forfeited by that order include a dwelling house in Majemantsho Village and a Land Rover Range Rover motor vehicle, which formed part of the joint estate. The forfeiture therefore directly and materially affected her proprietary interests.

- [2] The NDPP opposes the application. It contends, in summary, that the applicant had constructive knowledge of the forfeiture proceedings through the publication of the preservation order in the *Government Gazette*; that she was not an innocent owner of the assets but a willing participant in the unlawful activities of her husband; and that the rescission application is an impermissible attempt to bring in a late appearance under section 49 of POCA by the back door, after judgment has already been given. The second respondent, Dingaen David Selabe, did not participate in the rescission application and no appearance was entered on his behalf.

BACKGROUND

- [3] On 25 September 2014, Gura J granted an *ex parte* preservation order under section 38 of POCA in respect of assets belonging to the second respondent. The assets preserved included several motor vehicles and an immovable property, a house built by the second respondent at Majemantsho Village, Mafikeng, which was occupied by both the second respondent and the applicant as their matrimonial home. A *curator bonis* was appointed under the preservation order. The preservation order was served on the second respondent and published in the *Government Gazette* on 28

November 2014. The applicant was not cited, served, or otherwise notified of the preservation order.

- [4] On 4 February 2015, the NDPP applied for a final forfeiture order under section 48 of POCA. The application cited only the second respondent and sought forfeiture of the dwelling house and of a Land Rover Range Rover motor vehicle bearing registration number HVV 622 NW, being the two assets remaining under the preservation order. After numerous postponements, the matter came before Kgoele J (as she then was) on 30 November 2017. Kgoele J postponed the matter to 17 May 2018 and directed the NDPP to file a supplementary affidavit addressing the ownership of the land on which the house was built and explaining how the vehicle, which was still subject to a finance agreement with WesBank, could be forfeited to the State.
- [5] Following argument on 17 May 2018, this Court delivered judgment on 7 June 2018 and granted the forfeiture order. The order declared forfeited to the State under section 50(1) of POCA: (a) the Land Rover Range Rover (HVV 622 NW); and (b) the dwelling house at Majemantsho Village. In view of the fact that the house was situated on communal land owned by the Barolong Boora Tshidi Traditional Council, paragraph 5 of the order provided that "*the forfeiture of the house is subject to the exclusion of any interest of the innocent owner of the land/house*" and directed, under section 52(2) of POCA, that ownership of the land and house shall revert to the Barolong Boora Tshidi Traditional/Tribal Council, to be utilised for the benefit of the people of Majemantsho Village. Paragraph 7 of the order directed that any person whose interest in the forfeited property is affected by the order may, within 20 calendar days after

acquiring knowledge of the order, set the matter down for variation or rescission.

- [6] The applicant is an adult female businesswoman residing at Mosiane View Village, Majemantsho, Mafikeng. She is married to the second respondent in community of property, the parties having been married on 20 October 2007. In terms of their marriage in community of property, the applicant and the second respondent share equally in all assets and liabilities constituting the joint estate. Both the house in Majemantsho Village and the Land Rover were part of that joint estate.
- [7] As alluded to, the applicant was not cited as a party to either the preservation order application or the forfeiture application. She was neither served with any process in those proceedings nor otherwise notified of them. She avers that she first learned of the forfeiture judgment when the second respondent showed her a copy of it on 18 June 2018. The NDPP's own supporting affidavit in the forfeiture proceedings, however, had identified the applicant by name as the wife of the second respondent.
- [8] The applicant, upon learning of the judgment, consulted the second respondent, who advised her that he had appointed attorneys to appeal the matter and that she should not be concerned. She was nonetheless troubled by the fact that assets forming part of the joint estate had been forfeited without her knowledge or participation. She avers that she consulted her own attorneys on 26 July 2018 and instructed them to launch the present rescission application. The Notice of Motion was filed on 31 August 2018.

- [9] The NDPP filed an answering affidavit on 21 September 2018. The second respondent filed no papers. The applicant filed a replying affidavit on 28 November 2024. The matter was set down and removed from the roll on multiple occasions between 2018 and 2024, and was ultimately heard by me on 28 May 2026. Both parties filed heads of argument; the NDPP additionally filed supplementary heads on 6 May 2026.
- [10] The applicant's case, briefly stated, is that she had a direct and material proprietary interest in the forfeited assets by virtue of her marriage in community of property to the second respondent; that the NDPP knew of her existence and her relationship to the second respondent when the forfeiture application was brought; that the failure to cite and serve her in those proceedings deprived her of the opportunity to oppose the forfeiture and to advance an innocent owner claim under section 52(1) of POCA; and that the forfeiture order, insofar as it affects her share in the joint estate, was erroneously granted in her absence within the meaning of Rule 42(1)(a) of the Uniform Rules of Court.
- [11] The applicant further contends that the house was built from legitimate funds accumulated by herself and the second respondent, including the proceeds of the sale of a previous house in Ganyesa, her income from importing and selling clothing, and the second respondent's stipend as a minister of religion and donations received in that capacity. She states that it took seven years to complete the house because it was built solely from the couple's own earnings. She maintains that she is an innocent co-owner whose interest in the joint estate should be excluded from the forfeiture order under section 52(1) of POCA.

[12] In respect of the vehicle, the applicant avers that although it was registered in the name of the second respondent, it formed part of the joint estate and was financed through WesBank with monthly instalments paid from the joint estate. She further submits that the order of Kgoele J to the NDPP to explain how a vehicle under finance could be forfeited to the State was never adequately addressed.

[13] The NDPP resists the application on the following principal grounds. First, the NDPP contends that the applicant had constructive knowledge of the preservation order by reason of its publication in the *Government Gazette* on 28 November 2014. It is submitted that the applicant's failure to take note of the Gazette publication and to enter an appearance in terms of section 39(3) of POCA was at her own risk. Second, the NDPP contends that section 49 of POCA provided the applicant with the appropriate remedy, an application for leave to enter a late appearance, and that the rescission application is in truth a section 49 application brought after judgment, which is impermissible. In terms of section 49(2), an application for leave to enter a late appearance must be brought before judgment is given. Third, the NDPP contends that the applicant was not an innocent owner but a knowing participant in the second respondent's criminal enterprise who actively harboured and abetted him after the commission of the offences. It is further averred that the applicant has been indicted as a co-accused with the second respondent in the related criminal trial. The NDPP submits that the applicant cannot claim an innocent interest in assets that are the proceeds of unlawful activities.

[14] The issues arising for determination are:

- (a) Whether the correct procedural mechanism for the application is Rule 42(1)(a) of the Uniform Rules of Court; section 54 of POCA; or both, and whether the application is timeously brought.
- (b) Whether the applicant has *locus standi* to bring the application.
- (c) Whether section 49 of POCA is available to or applicable to the applicant.
- (d) Whether the forfeiture order was erroneously granted in the absence of the applicant as an affected party.
- (e) Whether, on the papers, the applicant can establish that she is an innocent co-owner of the forfeited assets for the purposes of section 52(1) of POCA.
- (f) What is the appropriate form of relief.

[15] Rule 42(1)(a) of the Uniform Rules provides that the court may, in addition to any other powers it may have, upon application of any party affected, rescind or vary an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby. It is well established that an order is “erroneously granted in the absence” of a party when a party who has a direct and material interest in the subject matter of the proceedings was not before the court, and the court would not have granted the order in the same terms, or at all, had that party been present and had an opportunity to be heard.

[16] Section 54(1) of POCA provides a separate and specific statutory mechanism for rescission of a forfeiture order. It reads: “A *person whose interest in property is affected by a forfeiture order may apply*

to the High Court for an order varying or rescinding the forfeiture order not later than 20 days after the person concerned has acquired knowledge of the forfeiture order.” Paragraph 7 of the forfeiture order itself replicated this 20-day requirement.

- [17] The Notice of Motion in the present application was filed on 31 August 2018. The applicant avers that she first acquired knowledge of the forfeiture order on 18 June 2018. The Notice of Motion was therefore filed some 74 days after, well outside the 20-day period in section 54(1). To the extent that the applicant relies on section 54, the application is out of time and she would require condonation, which has not been sought in express terms in the founding affidavit.
- [18] The applicant is, however, not confined to section 54 and may rely on Rule 42(1)(a). POCA does not expressly exclude the general rescission jurisdiction of the High Court under the Uniform Rules of Court. POCA proceedings are civil proceedings and the ordinary rules of civil procedure govern them to the extent not displaced by POCA. Where a person was never a party to proceedings at all, was never cited, served, or before the court in any capacity, Rule 42(1)(a) operates independently of any limitation period that POCA may impose on those who were parties or who received notice of the proceedings. The 20-day period in section 54 does not preclude a Rule 42(1)(a) application by someone who had no participation in the original proceedings whatsoever. The delay of approximately 74 days before filing, and the longer delay in prosecuting the application to finality, are nonetheless factors relevant to the exercise of this Court's discretion.
- [19] Section 49(1) of POCA permits a person who did not enter an appearance in terms of section 39(3), that is, a person served with

a preservation order who failed to enter an opposition to the forfeiture application, to apply for leave to enter a late appearance. The remedy is expressly confined by section 49(2) to applications brought before judgment is given. The present application was launched after judgment.

[20] Section 49 applies to a person who received notice of the proceedings, (whether by service of the preservation order under section 39(3) or otherwise), but failed to enter an appearance in time. The applicant here was never a party; was never served with the preservation order; and was never placed in a position where she could have entered an appearance in terms of section 39(3). Section 49 regulates persons who were, at least constructively, within the scope of the proceedings. The applicant was entirely outside those proceedings. The NDPP's submission that this is a disguised section 49 application conflates two distinct situations and is, with respect, without merit. Rule 42(1)(a) is the appropriate mechanism.

[21] Insofar as locus standi is concerned, the applicant's standing is beyond dispute. She is the community of property spouse of the second respondent. The legal consequence of a marriage in community of property is the creation of a joint estate in which both spouses share equally. All assets and liabilities forming part of that joint estate belong jointly to both spouses, irrespective of in whose name the asset is registered or whether only one spouse was the active party to the transaction by which the asset was acquired. The house in Majemantsho Village and the Land Rover were both acquired during the subsistence of the marriage in community of property and accordingly formed part of the joint estate. The

forfeiture of these assets therefore directly extinguished the applicant's undivided half-share interest in them.

- [22] Section 39(3) of POCA requires that the applicant for a forfeiture order give notice of the application to every person known to have an interest in the property. The NDPP's supporting deponent in the original proceedings had expressly referred to the applicant as the wife of the second respondent. The NDPP accordingly knew, or ought to have known, that the applicant had an interest in the subject matter of the forfeiture application by virtue of the community of property marriage. The failure to give her notice as required by section 39(3) was a breach of the statute and a procedural irregularity of substance.
- [23] Having regard to the applicant's undivided half-share in the joint estate, and to the statutory obligation on the NDPP to give notice to all persons with an interest in the forfeited property, I am satisfied that the forfeiture order was erroneously granted, insofar as it concerned the applicant's half-share, in her absence. The applicant was an affected party who had a direct proprietary interest in the forfeited assets. She was not before the court. She was not afforded an opportunity to oppose the forfeiture or to claim the protection of section 52(1) as an innocent co-owner. The requirements of Rule 42(1)(a) are accordingly satisfied.
- [24] The question of *Government Gazette* publication does not assist the NDPP in this regard. The Gazette publication of the preservation order may well have been sufficient notice to the second respondent and to any member of the general public with an interest in the property. It does not, however, constitute adequate notice to a specific identified individual who had been named in the NDPP's

own papers as the wife of the respondent and who had a legal interest in the property by reason of a registered marriage in community of property. The statutory obligation in section 39(3) is to give notice to “*every person known to have an interest in the property*”, a specific, targeted obligation. Gazette publication serves the purpose of notifying unknown interested parties. It does however not displace the obligation to notify known ones. I am therefore not persuaded that the applicant can be fixed with constructive knowledge sufficient to defeat her Rule 42(1)(a) application.

[25] Section 52(1) of POCA entitles any person whose interest in forfeited property is affected, to apply for an order excluding that interest from the forfeiture order on the grounds that he or she is an innocent owner. The section provides an important protection for persons who, although connected to the forfeited property, had no knowledge of or involvement in the unlawful activities that gave rise to the forfeiture.

[26] The Constitutional Court confirmed in *National Director of Public Prosecutions v Mohamed NO and Others*² that POCA’s Chapter 6 forfeiture regime is constitutional and that the standard of proof in forfeiture proceedings is a balance of probabilities.³ The Court emphasised that the provisions protecting innocent owners, including section 52, are integral to the constitutional validity of the regime, since without them the forfeiture of innocent parties’ assets would constitute an unjustifiable limitation of their property rights.

² *National Director of Public Prosecutions v Mohamed NO and Others* 2002 (4) SA 843 (CC).

³Section 50(1)(a) of POCA requires the court to make a forfeiture order if the court finds on a balance of probabilities that the property concerned is the proceeds of unlawful activities, or that the property was used or is intended to be used in the commission of an offence.

[27] In the present case, the innocent owner question was not determined in the original forfeiture proceedings because the applicant was not a party. Paragraph 5 of the forfeiture order, however, already recognised the problem. It expressly directed that *“the forfeiture of the house is subject to the exclusion of any interest of the innocent owner of the land/house.”* The innocent owner contemplated in paragraph 5 was the Barolong Boora Tshidi Traditional Council, which owned the land. The order directed, under section 52(2) of POCA, that ownership of the house shall revert to the Traditional Council. What the order did not address, because the applicant was not before the court, was the applicant’s own innocent co-owner claim under section 52(1) in respect of her undivided half-share of the joint estate.

[28] The applicant contends that the assets were built and acquired from legitimate income. Her account is detailed. She provides supporting documentation and a coherent chronological narrative. The sale of a previous house in Ganyesa; the purchase of the stand and building material; the seven-year construction period consistent with funding from ordinary earned income; and the combined church and business income of the household. The NDPP’s answering affidavit denies these averments and asserts that the applicant was a knowing participant in the criminal enterprise, that she harboured the second respondent, and that she has been indicted as a co-accused in the criminal trial.

[29] This is a genuine factual dispute. In motion proceedings, where the parties’ versions of the facts are irreconcilably in conflict, the court must decide the matter on the respondent’s version of the facts, unless that version is so far-fetched or clearly untenable that it may

be rejected on the papers. *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*.⁴ On that approach, I must apply the NDPP's factual version. The NDPP's version is that the applicant was aware of and complicit in her husband's criminal activities.

[30] However, even on the NDPP's version, the innocent owner question cannot be resolved on these papers. The applicant's indictment as a co-accused in the criminal proceedings is not a conviction. An indictment reflects a decision by the prosecutorial authority that there is a prima facie case. It does not constitute evidence of guilt and creates no presumption against the applicant in these civil proceedings. The innocent owner defence under section 52(1) is a question of fact that depends upon proof that the applicant had no knowledge of, or involvement in, the unlawful activities that produced the proceeds. On the papers before me, the NDPP has done no more than make a bare assertion that the applicant was involved, backed by the fact of an indictment. That is insufficient to establish, on motion papers, that she was not an innocent owner.

[31] The applicant's detailed account of the legitimate sources of funding for the house and vehicle, supported by annexures, has not been answered with corresponding documentary evidence by the NDPP. A bare denial and a reference to an indictment, without more, does not render the applicant's version "so far-fetched or clearly untenable" as to be rejected on the papers. It follows that on the papers as they stand, and applying the principles in *Plascon-Evans*, it has not been established that the applicant lacks an innocent owner interest in the forfeited assets.

⁴*Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634–635.

[32] Insofar as the delay in launching this application is concerned, the following. The application was filed on 31 August 2018 and the matter was heard on 28 May 2026, a period of nearly eight years. The applicant has not provided a comprehensive explanation for the delays between the successive set-downs and removals from the roll. This is a consideration that weighs against her in the exercise of this Court's discretion.

[33] However, the record shows that the matter has been postponed and removed from the roll on multiple occasions since 2018, with set-down dates in 2019, 2020, 2021, 2022, 2023, 2024, and finally 2026. This protracted history of successive postponements is not attributable solely to the applicant. The NDPP filed supplementary heads of argument as recently as 6 May 2026, and the applicant filed a replying affidavit as recently as November 2024, both of which indicate that both parties have been active in the prosecution of the matter. The delays, though regrettable, are not of the nature that would disentitle the applicant to relief in circumstances where her underlying claim is meritorious. The prejudice to the NDPP from the delay is primarily the accumulation of curator bonis fees, which is a consideration that will need to be addressed in any further proceedings but is not a ground to refuse rescission.

[34] The applicant seeks full rescission of the forfeiture order of 7 June 2018. I do not consider that full rescission is the appropriate relief in the circumstances. The forfeiture order was properly granted as regards the second respondent's interests. The second respondent did not participate in these proceedings and has not sought to impugn the forfeiture order on his own behalf. The granting of a full rescission of the order would undo the forfeiture in its entirety,

including the portion that affects the second respondent's half-share, which was the subject of contested proceedings in which he was represented by counsel and had a full opportunity to oppose.

- [35] The appropriate relief is more limited. The forfeiture order must be set aside only to the extent that it forfeits the applicant's undivided half-share in the joint estate without affording her the opportunity to advance an innocent owner claim under section 52(1) of POCA. To achieve this, the matter must be referred for a further hearing at which the NDPP is to bring a formal application under section 52 of POCA, joined by the applicant, for a determination of the applicant's interest in the forfeited assets and whether that interest is to be excluded from the forfeiture on the grounds that she is an innocent co-owner.
- [36] In this regard, paragraph 5 of the forfeiture order itself already contemplated an innocent owner exclusion in respect of the immovable property. That exclusion was directed in favour of the Barolong Boora Tshidi Traditional Council and addressed the question of land ownership under section 52(2). What was not addressed was the applicant's own section 52(1) claim. The further hearing directed by this order will address that gap.
- [37] Pending the outcome of the section 52 hearing, it is appropriate that the existing preservation order and such portions of the forfeiture order as remain operative be kept in place, in order to prevent dissipation of the assets. The *curator bonis* accordingly continues to hold and administer the forfeited assets pending the finalisation of the section 52(1) proceedings. I record, however, that the matter of the vehicle (HVV 622 NW) requires particular attention in those

proceedings in light of the question raised by Kgoele J and the finance position addressed at the time of the original hearing.

COSTS

[38] The question of costs is not straightforward. The applicant has succeeded in obtaining the limited relief of rescission as to her half-share and a referral for a section 52(1) hearing. The NDPP has partially succeeded in defeating the claim for full rescission. The success is therefore not wholly on either side. In the circumstances, I consider it appropriate to reserve the question of costs to the section 52(1) hearing, where the costs of both these proceedings and the further hearing may be dealt with in a consolidated manner.

ORDER

[39] Resultantly, the following order is made:

1. The judgment and order of this Court dated 7 June 2018 in case number M405/2014 ("the forfeiture order"), insofar as it declares the forfeited assets to be forfeited to the State without recognition of and without affording the applicant an opportunity to advance a claim under section 52(1) of the Prevention of Organised Crime Act 121 of 1998 in respect of her undivided half-share in the joint estate arising from the community of property marriage between the applicant and the second respondent, is rescinded and set aside.
2. The National Director of Public Prosecutions is directed, within 60 days of the date of this order, to enroll a hearing under

section 52 of the Prevention of Organised Crime Act 121 of 1998 in which:

- 2.1 the applicant, Nthabiseng Jelly Selabe, is cited and duly served as a party; and
 - 2.2 the Court is to make a determination as to whether and to what extent the applicant's interest in the forfeited assets is to be excluded from the operation of the forfeiture order on the grounds that she is an innocent owner within the meaning of section 52(1) of POCA.
3. Pending the finalisation of the section 52 proceedings contemplated in paragraph 2 above, the preservation order granted by this Court on 25 September 2014 under section 38 of POCA shall remain operative in its terms, and the curator bonis appointed thereunder shall continue to hold and administer the forfeited assets in accordance with the preservation and forfeiture orders, subject to any direction this Court may give in the section 52 proceedings.
4. The question of costs, including the costs of this application and the section 52 proceedings directed in paragraph 2, is reserved for determination by the Court seized with the section 52 hearing.



R D HENDRICKS
JUDGE PRESIDENT
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

**For the Applicant:
Instructed by:**

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Mothusi Marumo Attorneys,
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**For the First Respondent:
Instructed by:**

Ms. Mahlafore
State Attorney, Mahikeng

For the Second Respondent:

No appearance