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

Not reportable
Case no: 5102/2024

In the matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **APPLICANT**

and

MADHAV VASANT DALVI **FIRST RESPONDENT**

SUSHAMA MADHAV DALVI **SECOND RESPONDENT**

ALCHEMY TEXTILES (PTY) LTD **THIRD RESPONDENT**

Neutral citation: *NDPP v Dalvi and Others* (5102/2024) [2026] ZAFSHC 295 (20 May 2026)
Coram: THOMPSON AJ
Heard: 20 November 2025
Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The time and date for hand-down is deemed to be 10h00 on 20 May 2026.
Summary: Prevention of Organised Crime Act 121 of 1998 – forfeiture order – s 50(1) – proceeds of unlawful activities – instrumentality of an offence – evidentiary burden – Lesotho Companies Act 18 of 2011 – director's interest – board resolution – money laundering.

ORDER

1 An order is granted in terms of the provisions of s 50 of the Prevention of Organised Crime Act 121 of 1998 (POCA), declaring forfeited to the state the properties listed below which are presently subject to a preservation of property order granted by this Honourable Court, under the above case number on 12 September 2024, namely:

1.1 Erf 9[…], situated at 3[…] M[…] in Ladybrand, with Title Deed number: T16[…], registered at Bloemfontein Deeds Office in the names of Sushama Madhav Dalvi with identity number: 5[…] and Madhav Vasant Dalvi with identity number: 5[…].

1.2 Erf […], Portion 2 situated at […] C[…] Street in Ladybrand, with Title Deed number: T97[…], registered at Bloemfontein Deeds Office in the names of Sushama Madhav Dalvi with identity number: 5[…] and Madhav Vasant Dalvi with identity number: 5[…].

1.3 Erf 4[…], Portion 3 situated at 1[…] P[…] Street in Ladybrand, with Title Deed number: T21[…], registered at Bloemfontein Deeds Office in the name of Alchemy Textile (Pty) Ltd with registration number: 2013/192279/07.

2 Costs of the Office of the State Attorney, which includes costs of Counsel on scale C.

3 This order will be executed under the supervision of and control of the curator *bonis*. Representatives of the applicant may accompany the curator *bonis* in order to represent the applicant’s interest in the execution of this order. The state may deal with the property as set hereunder.

4 In terms of s 42(1)*(a)* of POCA, **Johan Francois Engelbrecht (Engelbrecht) of Icon Insolvency Practitioners (Pty) Ltd (Icon)** an insolvency company, is hereby appointed as curator *bonis* subject to the applicable provisions of POCA and, save where otherwise provided in POCA, the provisions of the Administration of Estates Act 66 of 1965 (as amended), as well as supervision of the Master of the High Court.

5 After obtaining letters of curatorship the curator *bonis* shall:

5.1 assume control over the properties.

5.2 take care of the said properties.

5.3 administer the said properties and do any act necessary for that purpose.

5.4 order any person holding the properties subject to the preservation of property order, to surrender forthwith such properties into the custody of the curator *bonis*.

6 The objectives of POCA will be properly met if Engelbrecht takes control of the properties listed in paragraph 1 above, and for the said Engelbrecht or a person authorised by him in writing, to sell the properties and make the following payments:

6.1 Pay 10% of the proceeds of the sale into the Criminal Asset Recovery Account (**CARA**) number: **80303056** established under s 63 of POCA, held by the South African Reserve Bank.

6.2 Pay 10% of the proceeds of the sale into the FNB Lesotho account in the name of the Directorate on Corruption and Economic Offences with account number: 6[…].

6.3 Pay the balance to CGM Industrial (Pty) Ltd held with Standard Lesotho Bank under account number: 9[…].

7 Payment to the victims shall be deemed to be payment to the State in terms of POCA.

8 Any person whose interest in the properties concerned is affected by the forfeiture order, may within 45 days after he or she has acquired knowledge of such order, set the matter down for variation or rescission by the Court.

9 The said Engelbrecht, or the person authorised by him, shall as soon as possible, but not later than a period of 90 days of this order coming into effect, file a report with the applicant on the manner in which he:

9.1 completed the administration of the property mentioned above, and

9.2 complied with the terms of the order.

10 The Registrar of the above Honourable Court is hereby directed to publish as soon as is practicable a notice of this order in the Government Gazette.

11 The respondents' application for the exclusion of their interest in the properties is dismissed with costs.

12 In terms of s 42(2) of POCA, it is ordered that the fees of the curator *bonis* and all disbursements be paid from the forfeited property.

In terms of s 75(2) and 75(3), read with s 75(4) of the POCA, any person who intentionally refuses or fails to comply with this order shall be guilty of an offence and shall be liable on conviction to a fine or to a period of imprisonment of up to 15 years.

JUDGMENT

Thompson AJ

[1] On 12 September 2024, this Court granted a preservation order in terms of s 38(1) of the Prevention of Organised Crime Act 121 of 1998 (POCA), on an *ex parte* and urgent basis. The mentioned order involved three properties, to *wit* 3[...] M[...] Street, [...] C[...] Street and 1[...] P[...] Street in Ladybrand, Free State Province. The M[...]- and C[...] Street properties are registered in the names of the first and second respondents, whilst the P[...] Street property is registered in the name of the third respondent.

[2] In November 2024, the three affected parties filed a notice in terms of s 39(3) of POCA to oppose the relief sought against them. Additionally, and as required, the respondents also filed the necessary affidavits in terms of s 39(5) of POCA. The National Director of Public Prosecutions (the NDPP) is the applicant, and she was represented by Advocate SS Jonase on instructions of the State Attorney, Bloemfontein. The affected persons that objected to the preservation order were represented by Advocate WJ Edeling SC instructed by Barnard & Venter Inc, Ladybrand, with Lovius Block, Bloemfontein as local correspondents.

[3] The forfeiture order is sought in terms of s 50(1) of POCA, subject to the provisions of s 52, in that on a balance of probabilities the properties in question are instrumentalities of an offence referred to Schedule 1 and the proceeds of unlawful activities. The applicant accordingly seeks an order declaring the properties which are currently subject to the preservation order, forfeited to the State.

Companies involved in forfeiture application

[4] CGM Industrial (Pty) Ltd (CGM), Presitex Enterprise (Pty) Ltd (Presitex) and United Clothing (Pty) Ltd (United) are companies duly registered and incorporated under the laws of Lesotho whose main business activities are mainly the manufacturing of textiles. The said companies are collectively known as the CGM Group of Companies (CGM Group). The first respondent, Madhav Vasant Dalvi (Dalvi), is a director of the CGM Group. At all relevant times, Adrian Ci-Ta Chang (Adrian) and Solandra Inc. (Solandra) were the original shareholders of both CGM and Presitex.

[5] The third respondent, Alchemy Textiles (Pty) Ltd (Alchemy), is a South African registered company with its main purpose to assist the CGM Group to buy textile accessories in South Africa. The second respondent and wife of the first respondent, Sushama Madhav Dalvi (Sushama), and Sharmala Roya (Roya) are and were at all relevant times directors and shareholders of Alchemy.

3[...] M[...], Ladybrand; and [...] C[...] Street, Ladybrand

[6] As mentioned above, the first and second respondents (Dalvi and Sushama) are the registered owners of the M[...]- and C[...] Street properties. The said respondents served their s 39(3) notice and s 39(5) affidavit(s) on the applicant on 29 October 2024 as well as an answering affidavit to the forfeiture application on 17 February 2025.

[7] The highwater mark of the first and second respondents' case or opposition to the forfeiture order in respect of the two properties is encapsulated in the Board Resolution (the Resolution) annexed to the papers as Annexure B17. In a nutshell, it is averred by the respondents that in 2012 when CGM and Presitex were facing tax disputes with the Lesotho Revenue Authority (LRA) the main shareholder Solandra abandoned the company and the remaining shareholder Adrian fled to Taiwan, leaving Dalvi to manage the aftermath. As a result of the above, the respondents allege that the two mentioned properties were awarded to Dalvi as part of a performance related

bonus for sorting out the CGM Group's tax related issues.

[8] The applicant vehemently disputes the validity of the Resolution and contends that when Dalvi became the sole director of the CGM Group in 2015 he embarked on activities that were in conflict with the CGM Group and were designed to benefit him and those close to him.

1[...] P[...] Street, Ladybrand

[9] Alchemy is the registered owner of the property situated at 1[...] P[...] Street, Ladybrand. It is Alchemy's case that this property was bought by it through payments received in the normal course of its business by rendering various services to *inter alia* the Edcon Group and through the renting of trucks. Alchemy claims that its bank statements show the flow of funds and provided proof of payment for the property, which transaction reflects on its bank account.

[10] On the other hand, the applicant contends in support of the forfeiture order that Alchemy concluded an unlawful Selling Agent Agreement (SAA) with Presitex on 1 August 2017, to enable it to purchase the 1[...] P[...] Street property. According to the applicant, Alchemy did not render any of the services stipulated in the SAA entered into with Presitex, nor was there a valid resolution passed by Presitex and/or the CGM Group to conclude the SAA with Alchemy. Based on the aforesaid, the applicant contends that the SAA was unlawful and a tool created by Dalvi and Sushama to defraud Presitex and CGM and thereby siphon funds into Alchemy in South Africa. According to the applicant Alchemy received M60,179,391.00 in terms of the unlawful SAA despite having rendered no services. Amounts of M1,193,963.23 and M221,592.91 from Presitex, and a further M1,399,486.24 from CGM, were used to facilitate the purchase of the 1[...] P[...] Street property. The aforesaid amounts were received from the CGM Group shortly before the 1[...] P[...] Street property was purchased.

Legislation and authorities

[11] Section 50(1), read with s 48(1) and s 53 of POCA, sets out the jurisdictional requirements for a forfeiture order as follows:

'The High Court shall, subject to section 52, make an order applied for under section 48(1) if the Court finds on a balance of probabilities that the property concerned-

(a) is an instrumentality of an offence referred to in Schedule 1;

(b) is the proceeds of unlawful activities; or

(c) is property associated with terrorist and related activities.'

As alluded to herein above, the applicant relies on (a) and (b) above, alleging that the properties were the proceeds of unlawful activities and/or are instrumentalities of an offence.

[12] It is trite that the applicant bears the onus of establishing that the respondents had committed or undertaken unlawful activities, that the properties were connected to the commission or suspected commission of an offence, and that the properties were obtained, derived or received in connection with or as a result of *any* unlawful activity carried out by the respondents.[1]

[13] In *National Director of Public Prosecutions v Moyane*,[2] the court held that a respondent bears an evidentiary burden to show that the proceeds used to purchase the property emanated from a legitimate source. Section 52 of POCA places an *onus* on the party seeking to exclude the interest from the operation of the order to show that such interest has been legally acquired. There is indeed a duty on such party to adduce evidence pertaining to the legitimacy of the acquisition. Therefore, the respondents need to support their allegations with proof if they want their veracity to be accepted as tenable.[3]

[14] Against the above setting, I will now turn to deal with the evidence.

An evaluation of the evidence

[15] The applicant contends that the purported Resolution 'entitling' Dalvi to the two immovable properties, 3[...] M[...] and [...] C[...]s Street, was not properly passed since the parties constituting the Board were not present, nor

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[1] *National Director of Public Prosecutions v Kajane* (3229/2024) [2025] ZAFSHC 373 (23 November 2025) para 10.

[2] *National Director of Public Prosecutions v Moyane* [2022] ZASCA 79 para 29.

[3] *National Director of Public Prosecutions v Ramolahloane* [2025] ZAFSHC 96 para 10.

were they represented at the meeting when the decision was taken. The applicant furthermore contends that the Resolution was signed by Dalvi as Director, who stood to benefit from it and contends that Dalvi failed to provide proof that the Resolution was signed by the Board of the CGM Group.

[16] In support of the above, the applicant procured and attached an affidavit from Adrian declaring that during his tenure as shareholder of the CGM Group, he never authorised the purchase of any of the three immovable properties that forms the basis of the current dispute and neither did the shareholders know of such transactions. Considering the aforesaid, 3[...] M[...] and [...] C[...]s Street, Ladybrand are therefore instrumentalities of offence *and* proceeds of unlawful activities as contemplated in s 50(1) of POCA according to the applicant.

[17] Section 1 of POCA defines proceeds of unlawful activities as 'any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of the Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived'. Property is described as 'money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof'. Unlawful activity means '*any conduct which constitutes a crime, or which contravenes any law*' whether such conduct occurred before or after the commencement of POCA and whether such conduct occurred in the Republic or elsewhere.

[18] It is trite that the unlawful activity need not have been committed by the holder or owner of the property, but it is sufficient for it to have been committed. The guilt or wrongdoing of the owner or possessor is of no relevance to these proceedings as recorded in *National Director of Public Prosecutions and Another v Mohamed NO.*[4] In *National Director of Public Prosecutions and*

[4] *National Director of Public Prosecutions and Another v Mohamed NO and Others* [2002] ZACC 9; 2002 (9) BCLR 970 (CC); 2002 (4) SA 843 (CC); 2002 (2) SACR 196 (CC) para 17.

Another v RO Cook,[5] the court having to determine whether property formed part of proceeds of unlawful activities, held as follows:

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

[19] The term unlawful activities, as envisaged in POCA, does however not refer to any contraventions of the law which do not amount to criminal conduct. In this regard the Supreme Court of Appeal (the SCA) held in *Bobroff and Another v the National Director of Public Prosecutions*[6] (*Bobroff*), as follows:

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

[20] The SCA in *National Director of Public Prosecution v Seevnaranyan*,[7] considered the interpretation given by the court a quo to 'proceeds of unlawful activity'. Griesel J in the court a quo held that a restrictive interpretation must be given to 'proceeds of unlawful activity'. The SCA stated that:

'For this approach he relied on the Act's short title ('prevention of organised crime'), and noted that its long title suggested that it was intended to "combat organised crime, money laundering and criminal gang activities". From this and the preamble he concluded that evasion of personal income tax by a single individual could not be considered 'organised crime' and that "the Act was never intended to be applied in situations such as the present'. For these and other reasons he applied a restrictive approach.[8]

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[5] *National Director of Public Prosecutions and Another v RO Cook* [2004] ZASCA 36; 2004 (2) SACR 208 (SCA) para 72 (*Cook*).

[6] *Bobroff and Another v the National Director of Public Prosecutions* [2021] ZASCA 56; [2021] 3 All SA 1 (SCA); 2021 (2) SACR 53 (SCA) para 17 (*Bobroff*).

[7] *National Director of Public Prosecutions v RO Cook Properties (Pty) Ltd; National Director of Public Prosecutions v 37 Gillespie Street Durban (Pty) Ltd and Another; National Director of Public Prosecutions v Seevnarayan* [2004] ZASCA 38; [2004] 2 All SA 491 (SCA); 2004 (8) BCLR 844 (SCA); 2004 (2) SACR 208 SCA (*Seevnarayan*).

[8] Ibid para 64.

[21] The SCA did not agree with this construction by the court a quo, holding that it radically truncates the scope of the Act. The SCA said further that '[i]t leaves out portions of the long title, as well as the ninth paragraph of the preamble. These show that the stature is designed to reach far beyond "organised crime, money laundering and criminal gang activities". The Act clearly applies to cases of individual wrong-doing'.[9]

[22] It has become well established in our law that a criminal prosecution and conviction are not a requirement or condition precedent for the granting of a forfeiture order. In this regard the SCA held in *Prophet v National Director of Public Prosecution*[10] that:

'a prosecution, followed by a conviction and sentence is no bar to the invocation of Chapter 6 [therefore]… a criminal conviction is not a condition precedent to forfeiture in terms of our Act'. On appeal, the Constitutional Court confirmed this position.[11]

[23] To determine whether the two properties are proceeds of unlawful activities the Resolution dated 20 October 2017 needs closer scrutiny. It appears *ex facia* the Resolution that the attendees at the 'Meeting held by the management of the CGM Group (CGM Industrial and Presitex Entreprises)' were: Mr M Dalvi (Group Managing Director); Mrs Sharmala Roya (Group Admin Manager / Company Secretary); Mr Jatesh John Babu (Group Head of Production); Mr Asitha Medawewa (Group Sales Manager); and Mr Jemsheed Marikkar (Group Merchandising Manager).

[24] It was specifically noted at the meeting, as it appears in the minutes, that the LRA had issued a demand of M481,666,050.96 against the CGM Group and instituted criminal and civil proceedings against the company directors. Roya therefore requested the opinion of the other attendees at the meeting for a special bonus to be awarded to Dalvi as CEO, in view of his contribution in handling all the relevant tax issues in respect of the criminal proceedings instituted against him and Adrian. The minutes disclose that at

[9] Ibid para 65.
[10] *Prophet v National Director of Public Prosecution* [2005] 94; 2005 (2) SACR 670 (SCA) paras 32 and 43.
[11] *Prophet v National Director of Public Prosecutions* [2006] ZACC 17; 2007 (2) BCLR 140 (CC); 2006 (2) SACR 525; 2007 (6) SA 169 (CC) paras 42 and 23.

such time Adrian was holding 1 share in the CGM Group (CGM and Presitex) and went back to China in the year 2011, and because of the criminal and civil cases, he did not return to Lesotho. Adrian subsequently resigned as Director of the CGM Group on 3 August 2015.

[25] The minutes of the meeting continues to state that the criminal case against Dalvi was withdrawn on 28 August 2015. Dalvi single-handedly took on his head all the criminal charges in his capacity as Group Chief Executive Officer and had to go through a lot of mental torture. Based on the above and the view that Dalvi as the Group CEO / Managing Director had to face the entire responsibility on his own (including: criminal charges and civil charges; the fact that no shareholder was presented in the country; and Dalvi resolving the LRA tax disputes and reviving the CGM Group), it was consequently decided to honor him with a special bonus of 2% of M481 666 050,66 (tax liability), which amounted to M9 633 321,02. As stated above and evident from the Resolution, the signatories thereof were Dalvi, Roya, Jatesh John Babu, Asitha Medawewa, and Jemsheed Marikkar in their capacities as mentioned above.

[26] Section 65 of the Companies Act 18 of 2011 (the Lesotho Companies Act) states:

'(1) A director of a company, who has an interest in a transaction or proposed transaction with the company, shall immediately, after becoming aware of it, cause the nature and full extent of his or her interest to be entered in the register of directors and if the company has more than one director, disclose it to the board.

(2) If a director fails to comply with subsection (1), the director –

(a) Commits an offence and on conviction shall be liable to a fine of M50,000 and imprisonment to a term of 10 years of both; and

(b) Shall reimburse the company for any loss suffered by the company through the transaction with the other company.'

[27] In addition to the above, s 66 of the Lesotho Companies Act in relevant parts states:

'(1) Subject to subsection (2), a director or executive officer of a company has an "interest" in a transaction to which the company is a party if the director –

(a) is a party to, or will or may derive a material financial benefit from the transaction;

(b) has a material financial interest in another party to the transaction;

(c) is an officer, auditor or trustee of another party to, or person who will or may derive a material financial benefit from the transaction, not being a party or person that is-

(i) the holding company of which the company is a subsidiary;

(ii) a wholly owned subsidiary of the company; or

(iii) a related company;

(d) is a close relative of another party or person who will or may derive a material benefit from the transaction;

(e) is otherwise directly or indirectly materially interested in the transaction.'

[28] Section 67 of the Lesotho Companies Act, also provides that:

'A director of a company who is interested in a transaction entered into or to be entered into by the company, and who has disclosed his or her interest in compliance with section 65, may–

(a) vote on a matter relating to the transaction;

(b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present for the purpose of a quorum;

(c) sign documents relating to the transaction on behalf of the company; and

(d) do any other thing in his or her capacity as a director in relation to the transaction, as if the director was not interested in the transaction:

Provided that –

(i) the board is satisfied, on reasonable grounds, that the company will satisfy the solvency test after the director has done the things in paragraphs (a), (b) and (d);

(ii) the articles of incorporation of the company expressly authorise the director to do the things in paragraphs (a), (b), (c) and (d); or

(iii) the shareholders have authorised him or her to do the things in paragraphs (a), (b), (c) and (d).'

[29] Furthermore, s 61(1) of the Lesotho Companies Act provides that a company shall not enter into a major transaction unless the transaction is approved by special resolution or contingent upon the approval of the shareholders by special resolution. In s 61(3), it provides that a major transaction shall include an action affecting shareholders and shall be approved by special resolution.

[30] Adrian, who was a Shareholder of Presitex and CGM, fled from Lesotho at the end of 2011 and never returned (on the respondents' own version). When the purported Resolution was therefore passed Adrian could not have been present nor have signed the Resolution or approved the award as shareholder. The respondents therefore tacitly acknowledged that the passing of the purported Resolution was in contravention of the law. Adrian's testimony on oath, which stands uncontroverted, is accordingly accepted and favors the granting of the order of forfeiture.

[31] Having regard to the above, I am in agreement with the applicant that the Resolution was not properly passed. Dalvi did in fact stand to benefit from the Resolution and still took part in taking such Resolution and he furthermore signed it. No proof was provided by the respondent that the Resolution was signed (or taken) by a validly constituted Board of the CGM Group. Neither of the other persons present at the purported Board meeting were Shareholders or Directors of the GCM Group. Dalvi was the sole Director of the CGM Group at the time the Resolution was taken, and he had a financial interest in the matter. No declaration of interest was provided by the respondents showing that Dalvi disclosed his interest in the matter. No proof was provided that the shareholders authorised Dalvi to vote on the matter or attend the meeting of directors at which the matter arose, or to sign anything in relation to the transaction. In the premises, the Resolution was thus not lawfully passed by a properly constituted Board of Directors of the CGM Group or its shareholders.

[32] The above actions of Dalvi contravenes, *inter alia*, s 65 read with ss 61, 66 and 67 of the Lesotho Companies Act, which actions constitute an offence in term of s 65(2) of the Act, and on conviction shall be liable to a fine of M50 000 and imprisonment to a term of 10 years or both. Dalvi's actions also violate clause 81.2 of the Memorandum of Incorporation (MOI) of Presitex, which clause expressly states that it is not permissible for a director to preside over an issue that affects him. In the premises, I accordingly find that the 3[...] M[...] and [...] C[...]s Street properties are proceeds of unlawful activities as contemplated in POCA.

[33] This is however not where the buck stops. The applicant furthermore contends that the two properties are likewise instrumentalities of an offence and should also be forfeited to the State on this basis. Notwithstanding the above finding in favor of the applicant, I will also deal with this contention of the applicant for completeness's sake, if my finding above is incorrect.

[34] An instrumentality of an offence as per s 1 of POCA is defined as 'any property which is concerned in the commission or the suspected commission of an offence at any time before the commencement of [such] Act, whether committed within the Republic or elsewhere'. It is trite that the expression 'concerned in' requires that a close link must exist between the property and the crime. The property must in some way facilitate or make possible the commission of the offence. The SCA went further to say that what is meant by this is that the property must play a reasonably direct role in the commissioning of the offence. In a real or substantial sense, the property must facilitate or make possible the commission of the offence.[12]

[35] Property can also be an instrumentality of an offence by being used repeatedly to commit offences. In *National Director of Public Prosecutions v Parker*,[13] Cameron JA held that where evidence of adaptation or storage is lacking, and the police case depends principally on the frequency with which the property serves as a venue for criminal conduct, the correct characterisation of the property as a criminal instrumentality necessarily becomes a question of degree[14]. There the SCA held that the repeated drug sales were not incidental occurrences that happened to take place there but rather represented a pattern of sustained activity that reveals the use to which the premises were put and there instrumental character in the crimes committed there.[15]

[36] The repeated use of the properties becomes a relevant factor when

[12] *Cook* and *Seevnarayan* para 31.
[13] *National Director of Public Prosecutions v Parker* [2005] ZASCA 124; [2006] 1 All SA 317 (SCA); 2006 (3) SA 198 (SCA); 2006 (1) SACR 284 (SCA) para 38.
[14] Ibid para 43.
[15] Ibid para 42.

dealing with the two lease agreements entered into in respect of the properties situated at 3[...] M[...] and [...] C[...]s Street. The two properties belonging to Dalvi and Sushama were rented out to Alchemy and Presitex through a Real Estate Agency and the rental was paid into the personal bank accounts of Dalvi and Sushama, respectively.

[37] Insofar as 3[...] M[...] Street is concerned it is averred that Alchemy did not render any services from the said leased premises, nor is there evidence of its employees occupying the leased premises. Dalvi received an amount of M1,531,935.00 as rental from Alchemy in terms of the said lease over a period of 2 years.

[38] Regarding [...] C[...]s Street, it is contended by the applicant that Presitex is based in Lesotho and does not conduct business in South Africa and was there no need to lease a premises in South Africa. No resolution was provided which was passed by Presitex to enter into the lease agreement with Dalvi and Sushama, yet Presitex paid an amount of M726,000.00 as rent into Sushama's bank account. According to the applicant this lease is a sophisticated form of theft, whereby Presitex paid for a service it did not require nor receive.

[39] Dalvi facilitated the lease agreements as director of the CGM Group and held personal interests in both leases. He did not enter such in the register of directors, nor did he disclose it to the Board. The applicant therefore contends that Dalvi acted in contravention of s 65 of the Lesotho Companies Act in this regard as well and submits that such conduct falls squarely within the ambit of the definition of unlawful activity in that the properties were used as instrumentalities of an offence to defraud Presitex and Alchemy. The above submissions apply equally to Sushama as director of Alchemy and the other lease agreement entered into with Presitex.

[40] There is therefore merit in the submission of the applicant that the lease agreements facilitated in providing 'clean income' from illegality obtained properties while disguising the disposition and movement of said income. I therefore find that the two properties were also used as instrumentalities of an

offence as contemplated in POCA insofar as the purported lease agreements are concerned and should therefore be forfeited to the state.

[41] In conclusion on the topic of the 3[...] M[...] and [...] C[...] Street properties, the evidence furthermore shows that the two properties owned by Dalvi and Sushama were renovated with funds of CGM and Presitex after registration. An amount of R1 000 000,00 of Presitex's funds were used for renovations to [...] C[...]s Street and R500 000,00 of CGM funds were used to renovate the 3[...] M[...] Street property. The applicant accordingly contends that the amounts used to renovate the two properties are proceeds of unlawful activities.

[42] There was no resolution or other evidence attached to the court papers to justify the renovations paid for by the CGM Group to properties belonging to Dalvi and Sushama in their personal capacities, and if it was done in terms of the Resolution that forms the cornerstone of the first and second respondents' opposition to the forfeiture application, it is equally unlawful and constitutes proceeds of unlawful activities. This issue of the renovations was not dealt with by the respondents.

[43] In the *Bobroff* matter, the court considered the issue of renovations and the source thereof (amongst others), and made the following statement:[16]

'Where proceeds of crime have been laundered with the very purpose of disguising the origin and identity thereof, they may be mixed with other assets which may not be the proceeds of crime, and they may be converted into other forms of assets which technically are not direct proceeds of crime. In the case of money, this would typically be the case. The definition of the concept in s 1 of POCA therefore includes 'any property representing property so derived'. In *Botha*, a corrupt relationship existed between Ms Botha, at the time the head of the Northern Cape Department of Social Services and Population Development, and Trifecta Investment Holdings (Pty) Ltd (Trifecta). Trifecta executed and paid for renovations to Ms Botha's family home. The renovations cost R1 169 680,49. After Ms Botha had died, the NDPP sought to recover the value of the benefit as proceeds of crime from her estate, in terms of s 48(1) and s

[16] *Bobroff* para 40.

50 of POCA. The Constitutional Court held that the amount paid by Trifecta in respect of the renovations represented the proceeds of crime, in the hands of Ms Botha, and ordered, in terms of s 50(1)*(b)*, that an amount equivalent to the benefit received be paid from Ms Botha's estate to the State.'

[44] Premised on the above, I find that the amounts used for the renovations are proceeds of unlawful activities and that the properties were also used as instrumentalities of an offence as contemplated in POCA insofar as the renovations are concerned and should be forfeited to the State.

1[...] P[...] Street, Ladybrand

[45] It is the applicant's main contention that Alchemy concluded an unlawful SAA with Presitex which enabled it to purchase the 1[...] P[...] Street property. The terms of the SAA entailed rendering the following services on behalf of Presitex: locating suitable customers and retailers and introducing them to Presitex; gathering and arranging the delivery of pre-production samples of goods from Presitex to retailers for consideration and liaising with retailers on any changes including obtaining fabric and trim approvals and the entire sample approval process; compiling market information relevant to goods; communicating with the customers / retailers on behalf of Presitex and following up to get the order discussion record (ODR); placing confirmed orders for the goods with Presitex accordance with the customers / retailer written instructions; negotiating with customers on behalf of Presitex; concluding contracts for the purchase and supply of goods with the relevant customers on behalf of Presitex; arranging for the inspection and / or packaging of goods; arranging the shipment and delivery of goods; assisting Presitex in and enforcing the terms of the purchase contract against customers, retail for no additional charge; assisting to consolidate order from customers/ retailers for Presitex; and arranging for customers / retailers to visit the Presitex factory.

[46] The applicant avers that the Alchemy did not render any of the above services nor was there a valid resolution to have concluded the SAA with the Presitex and / or the CGM Group. The SAA was therefore unlawful and it too was created by Dalvi and Sushama to further defraud Presitex and CGM and

thereby syphon funds into Alchemy in South Africa. According to the applicant Alchemy invoiced and received M60,179,391,00 as a result of the alleged unlawful SAA despite not having rendered any services, of which R1 193 963.23 and R221 592,91 from Presitex, and a further R 399 486,24 from CGM was used to facilitate the purchase of the property,1[...] P[...] Street, Ladybrand.

[47] As alluded to above, Adrian, one of the shareholders of the CGM Group stated under oath that he was not aware, neither did he authorise the purchasing of the properties (including 1[...] P[...] Street) *or the concluding of the SAA*. There is no evidence furnished by the respondents to the contrary illustrating that the shareholders were aware of the transactions, and moreover the conclusion of the SAA. What is also striking is that no proof was provided that any of the services agreed upon in the SAA was indeed delivered. It also needs mentioning and reiteration that the SAA was concluded between Presitex and Alchemy and CGM was not a party thereto. Notwithstanding the aforesaid, the respondents admitted that R 399 486.24 of CGM funds paid in terms of the SAA contributed to the purchase of the 1[...] P[...] Street property.

[48] It was averred by the applicant that all business activities of Presitex have always been done in Lesotho by its employees, who are also based in Lesotho and that Presitex clients were not aware that Alchemy was an agent. Despite the aforesaid, Dalvi fraudulently invoiced for these services as though these services were rendered by Alchemy according to the applicant. The applicant asserted that Dalvi used Alchemy as a conduit to channel funds from the CGM Group to the value of M60 179 391.00, with only the purchase of the property under discussion being traceable. This was a sophisticated form of money laundering that obfuscated the destination of the funds and has gone undetected in the applicant’s view.

[49] Rodney Esther (Esther), Financial Manager of the CGM Group, was responsible for creating receipts and processing payments pertaining to the fictitious invoices issued by Alchemy to the CGM Group and he would prepare the invoices monthly in line with the sales report of CGM and Presitex (CGM Group) for sales that occurred in Lesotho. The invoices were for ‘commission

and consultancy charges'. It is because of his role within the CGM Group, that Esther attested on oath to the illegality of the SAA as well as payments emanating from it. In my view, the respondents did not provide anything tangible to gainsay the above, save for attempting to discredit Esther. The latter did not assist the respondents at all insofar as the forfeiture application is concerned. The respondents also did not deny that a portion of the funds that was used to purchase 1[...] P[...] Street was from CGM, despite said company not being a party to the SAA. The aforesaid alone constitutes an unlawful activity. As alluded to above, the respondents did not provide any evidence as proof that they provided any of the services stipulated in the SAA.

[50] The respondents only provided an email that illustrates that Alchemy was registered as a vendor of the TFG Group but that does not advance the respondents' case in my view. The reference to Edcon also does not assist the respondents as a Service Level Agreement was entered into between Edcon and CGM, incorporating Presitex in 2013, before the advent of the SAA. Neither the TFG nor Edcon partnerships were facilitated by Alchemy. At least nothing to that end was established on the papers. As alluded to above, Adrian in any case stated on oath that the SAA was not authorised and/or approved by the shareholders of the CGM group. The SAA constitutes an action or major transaction that affected the shareholders and required their approval by special resolution as contemplated in s 61(3) of the Lesotho Companies Act.

[51] Dalvi in concluding the SAA between Alchemy and Presitex did not disclose that he has a financial interest in Alchemy, in that his wife is a director and shareholder of Alchemy. A declaration of interest was not furnished nor valid resolution of the Board. This is once again in contravention of the Lesotho Companies Act and constitutes an offence punishable by a fine or imprisonment. I therefore find that the property situated at 1[...] P[...] Street, Ladybrand was bought with, and is, the proceeds of unlawful activities.

Conclusion

[52] All the above actions, i e the purchase of the three properties, and the conclusion of the SAA transpired after Dalvi became the sole director of the

CGM Group in 2015. Sushama and Roya played a pivotal role in assisting Dalvi to defraud the CGM Group. Roya as Group Admin Manager / Company Secretary of the CGM Group and director and shareholder of Alchemy, facilitated the special bonus that was 'awarded' to Dalvi. Roya, Sushama and Dalvi was instrumental in the SAA being entered into between Presitex and Alchemy. Sushama also became the co-owner of the M[...] and C[...] Street properties and later landlord (together with Dalvi) of Alchemy and Presitex. It was carefully orchestrated that Sushama conveniently received the rental from Presitex (Dalvi being a director of this company) and Dalvi received the rental from Alchemy (Sushama being a director and shareholder of this company) to conceal the true nature of the transactions and the origin of the funds.

[53] Taking the above into account, I cannot fault the applicant's submission that it was only after the resignation of the other directors, Dalvi as sole director started to misappropriate and siphon funds from the CGM Group for his personal gain and for the benefit of family and acquaintances.

[54] Dalvi is not a shareholder of the CGM Group and entered into large transactions without special resolutions of the shareholders and/or their approval. He, as sole director of the CGM Group, understated the financial statements of the CGM Group in contravention of the Lesotho company laws for him to acquire the company at a lower value. Lethuka Sephalane (Sephalane), a Chartered Accountant at LETACC Firm of Chartered Accountants, who was appointed by Adrian to audit the books of the CGM Group stated on oath that she enquired on numerous occasions about the absence of the shareholder(s) in the companies and their dealings.

[55] According to Sephalane, Dalvi informed her that Adrian 'is positive towards selling him some of his shares'. Subsequent to the aforesaid disclosure the business was revalued and a revaluation report provided to Sephalane to audit. Sephalane, however, found that the financial statements reflected a lower figure than that in the valuation report. Sephalane thought that it was an error but according to her Dalvi informed her that he still has the intention to buy the company and does not want to include the correct amount as the business

would have a higher valuation.[17] An analysis of the Annual Financial Statements of the CGM Group also revealed that the property purchases (3[...] M[...] and [...] C[...] Street) have been recorded as costs of sales, which is clearly false and could only been intended to deceive as well as conceal the true nature of the expenses and/or the source of the funds.

[56] On a balance of conspectus of all the facts and evidence, I cannot but agree with the applicant that all of the above was orchestrated by Dalvi to benefit him and those close to him.

[57] The respondents did not support their allegations with proof for the veracity thereof to be accepted as tenable. Consequently, the respondents failed to discharge their evidentiary burden to show that the proceeds used to purchase these properties emanated from a legitime source or have been legitimately acquired as contemplated in POCA. I therefore find on a balance of probabilities that all three properties that forms the subject matter of this application are the proceeds of unlawful activities and were used as instrumentalities of an offence(s), hence the application for forfeiture succeeds. There is no compelling reason why costs should not follow the event.

[58] I therefore, make the following order:

6 An order is granted in terms of the provisions of s 50 of the Prevention of Organised Crime Act 121 of 1998 (POCA), declaring forfeited to the state the properties listed below which are presently subject to a preservation of property order granted by this Honourable Court, under the above case number on 12 September 2024, namely:

1.4 Erf 9[…], situated at 3[…] M[…] in Ladybrand, with Title Deed number: T16[…], registered at Bloemfontein Deeds Office in the names of Sushama Madhav Dalvi with identity number: 5[…] and Madhav Vasant Dalvi with identity number: 5[…].

1.5 Erf […], Portion 2 situated at […] C[…] S[…] in Ladybrand, with Title Deed number: T97[…], registered at Bloemfontein Deeds Office in the

[17] See: p 214, Annexure NM10, Preservation Application.

names of Sushama Madhav Dalvi with identity number: 5[…] and Madhav Vasant Dalvi with identity number: 5[…].

1.6 Erf 4[…], Portion 3 situated at 1[…] P[…] Street in Ladybrand, with Title Deed number: T21[…], registered at Bloemfontein Deeds Office in the name of Alchemy Textile (Pty) Ltd with registration number: 2013/192279/07.

7 Costs of the Office of the State Attorney, which includes costs of Counsel on scale C.

8 This order will be executed under the supervision of and control of the curator *bonis*. Representatives of the applicant may accompany the curator *bonis* in order to represent the applicant's interest in the execution of this order. The state may deal with the property as set hereunder.

9 In terms of s 42(1)*(a)* of POCA, **Johan Francois Engelbrecht (Engelbrecht) of Icon Insolvency Practitioners (Pty) Ltd (Icon)** an insolvency company, is hereby appointed as curator *bonis* subject to the applicable provisions of POCA and, save where otherwise provided in POCA, the provisions of the Administration of Estates Act 66 of 1965 (as amended), as well as supervision of the Master of the High Court.

10 After obtaining letters of curatorship the curator *bonis* shall:

12.1 assume control over the properties.

12.2 take care of the said properties.

12.3 administer the said properties and do any act necessary for that purpose.

12.4 order any person holding the properties subject to the preservation of property order, to surrender forthwith such properties into the custody of the curator *bonis*.

13 The objectives of POCA will be properly met if Engelbrecht takes control of the properties listed in paragraph 1 above, and for the said Engelbrecht or a person authorised by him in writing, to sell the properties and make the following payments:

13.1 Pay 10% of the proceeds of the sale into the Criminal Asset Recovery Account (**CARA**) number: **80303056** established under s 63 of POCA, held by the South African Reserve Bank.

13.2 Pay 10% of the proceeds of the sale into the FNB Lesotho account in the name of the Directorate on Corruption and Economic Offences with account number: 6[…].

13.3 Pay the balance to CGM Industrial (Pty) Ltd held with Standard Lesotho Bank under account number: 9[…].

14 Payment to the victims shall be deemed to be payment to the State in terms of POCA.

15 Any person whose interest in the properties concerned is affected by the forfeiture order, may within 45 days after he or she has acquired knowledge of such order, set the matter down for variation or rescission by the Court.

16 The said Engelbrecht, or the person authorised by him, shall as soon as possible, but not later than a period of 90 days of this order coming into effect, file a report with the applicant on the manner in which he:

16.1 completed the administration of the property mentioned above, and

16.2 complied with the terms of the order.

17 The Registrar of the above Honourable Court is hereby directed to publish as soon as is practicable a notice of this order in the Government Gazette.

18 The respondents' application for the exclusion of their interest in the properties is dismissed with costs.

19 In terms of s 42(2) of POCA, it is ordered that the fees of the curator *bonis* and all disbursements be paid from the forfeited property.

20 In terms of s 75(2) and 75(3), read with s 75(4) of the POCA, any person who intentionally refuses or fails to comply with this order shall be guilty of an offence and shall be liable on conviction to a fine or to a period of imprisonment of up to 15 years.

D R THOMPSON

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the applicant:	SS Jonase
Instructed by:	State Attorney, Bloemfontein

For the Respondent:	WJ Edeling SC
Instructed by:	Barnard & Venter Inc. c/o Lovius Block Attorneys, Bloemfontein.