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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: A2022/021718

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES

1 September 2026

DATE

SIGNATURE

In the matter between:

ABDIWAHID TIFOW OMAR

Appellant

and

NATIONAL DIRECTOR OF PUBLIC PROSECUTION

Respondent

This Judgment is handed down electronically by email to the Applicant's Legal Representatives and the Respondent, and by publication on CaseLines and Saflii. The date for the handing down is deemed to be 01 September 2026.

JUDGMENT

MUDAU, J: (MALINDI J AND SUBEL AJ CONCURRING)

Introduction

- [1] This is an appeal against the forfeiture order granted by this Court on 6 March 2025 in terms of the Prevention of Organised Crime Act 121 of 1998 (“POCA”). The National Director of Public Prosecutions (NDPP) alleged in this case that the property should be forfeited, and applied *ex parte* for, and obtained, an interim preservation order in respect of it as a prelude to forfeiture proceedings.
- [2] In the forfeiture proceedings, the order obtained declared the appellant’s truck and trailer instrumentalities of the offence of robbery. It forfeited them to the State in terms of section 50 (1) (a) of POCA. The property in question is a 2014 white Freightliner Argosy truck with registration number J[...], vehicle identification number 1[...], and engine number 7[...], and a trailer with registration number D[...] (the truck and trailer), all of which belong to the appellant. The appellant seeks to overturn that order, contending that he is an innocent owner and that the truck and trailer were not used in the commission of any Schedule 1 offence.
- [2] The central question is whether the truck and trailer were used as instrumentalities in the commission of an offence referred to in Schedule 1 to POCA. The respondent pleaded robbery as the relevant offence. Taken cumulatively, the facts support a finding that the vehicles were instrumentalities of robbery, which is listed in Schedule 1. The use of the truck and trailer was not an afterthought or independent of the (undisputed) robbery; they were integral to the original, pre-planned execution of the robbery.

- [3] The Preamble to POCA provides the legislative context and purpose. It records, *inter alia*, that:

“WHEREAS there is a rapid growth of organised crime, money laundering and criminal gang activities nationally and internationally and since organised crime has internationally been identified as an international security threat;

AND WHEREAS organised crime, money laundering and criminal gang activities infringe on the rights of the people as enshrined in the Bill of Rights;

AND WHEREAS it is the right of every person to be protected from fear, intimidation and physical harm caused by the criminal activities of violent gangs and individuals;

AND WHEREAS organised crime, money laundering and criminal gang activities, both individually and collectively, present a danger to public order and safety and economic stability, and have the potential to inflict social damage;

AND WHEREAS the South African common law and statutory law fail to deal effectively with organised crime, money laundering and criminal gang activities, and also fail to keep pace with international measures aimed at dealing effectively with organised crime, money laundering and criminal gang activities;

AND BEARING IN MIND that it is usually very difficult to prove the direct involvement of organised crime leaders in particular cases, because they do not perform the actual criminal activities themselves, it is necessary to criminalise the management of, and related conduct in connection with enterprises which are involved in a pattern of racketeering activity;

AND WHEREAS no person convicted of an offence should benefit from the fruits of that or any related offence, whether such offence took place before or after the commencement of this Act, legislation is necessary to provide for a civil remedy for the restraint and seizure, and confiscation of property which forms the benefits derived from such offence;

AND WHEREAS no person should benefit from the fruits of unlawful activities, nor is any person entitled to use property for the commission of an offence, whether such activities or offence took place before or after the commencement of this Act, legislation is necessary to provide for a civil remedy for the preservation and seizure, and forfeiture of property which is derived from unlawful activities or is concerned in the commission or suspected commission of an offence.”

- [4] The Preamble underscores the constitutional imperative to combat organised crime and to ensure that no person benefits from the fruits of unlawful activities or uses property for the commission of an offence. Forfeiture under POCA is a civil remedy designed to achieve these objectives. The Act must be interpreted and applied in a manner that gives effect to its purpose, while

respecting the rights of property owners as envisaged in accordance with section 25 (1) of the Constitution. The focus is on the property itself and its role in the offence, not merely the moral culpability of its owner.

Condonation

- [5] The appellant seeks condonation for a 3-day delay in filing the appeal record. The delay is minimal, the explanation is reasonable, and the respondent does not oppose. The issues raised are important, and no prejudice against the other party has been shown. Condonation is granted.

The statutory framework

- [6] Section 50 (1) of POCA provides:

“(1) 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; or

(b) ...”

- [7] Section 52 (2A) sets out the *innocent owner* defence. It reads:

“The High Court may make an order under subsection (1), in relation to the forfeiture of an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities, if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and—

(a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in Schedule 1; ...”

- [8] The onus is on the person claiming an interest to prove these elements on a balance of probabilities. The court must be satisfied that the property was acquired legally, and that the owner neither knew nor had reasonable grounds to suspect that the property would be used as an instrumentality of a Schedule 1 offence.
- [9] Schedule 1 to POCA lists a wide range of offences. Items 6 and 17 respectively refer to offences relating to robbery and theft. More broadly, robbery is a species of theft, aggravated by violence or threats of violence. It is the violent dispossession of another's property with the intention to deprive it permanently. The offence of robbery is therefore squarely within the ambit of Schedule 1.
- [10] The Preamble reinforces the purpose of the forfeiture provisions. It declares that "no person should benefit from the fruits of unlawful activities, nor is any person entitled to use property for the commission of an offence". The forfeiture of property used as an instrumentality of an offence is a direct expression of this principle. The Act is not punitive; it is remedial. Its purpose is to remove the means and fruits of crime, and to deter the use of property in criminal activities.

The factual background

- [11] The factual details are set out in the founding affidavit of Adv Chuma Mtengwane, Deputy Director of Public Prosecutions, deposed to on 6 December 2023 in support of the forfeiture application and the appeal record. The contents of this affidavit are not in serious dispute in this appeal. On 11

March 2022, a white MAN truck with registration number H[...] and pulling two trailers belonging to SF Logistics was hijacked along the R21 near Pomona, Kempton Park, by unknown assailants who were impersonating officers from the Ekurhuleni Metropolitan Police Department. At the time, the SF Logistics truck was transporting a consignment of palletized Aquafresh toothpaste valued at approximately R2,500,000.

[12] The driver, Andile Mzamo, was stopped by individuals dressed in EMPD uniforms and driving a Volkswagen Polo bearing EMPD insignia. They approached him, pretending to verify his driving license and the truck's license disc. He was then accosted at gunpoint and bundled into the backseat of the Polo. He was taken to a house at an unknown location, where he was forced to consume alcohol at gunpoint before being released on the side of the road. This demonstrates the violent and coercive nature of the offence and underscores that the robbery was not a brief or isolated event, but a continuing, calculated operation designed to incapacitate the driver and prevent him from reporting the crime immediately.

[13] On the same day, Mr Suleyman Dickson, a security officer employed at the warehouse complex at 1[...] A[...] Road, later saw the SF Logistics truck enter the premises. Mr Dickson observed the robbed goods being offloaded from the SF Logistics truck and placed next to a unit being leased by Abdulahi Guled Abdi (Guled). After the offloading was completed, the SF Logistics truck left the premises. Crucially, about 10 minutes later, Mr Dickson observed a "black Superlink" truck, whose driver was "a Somalian person [who] said he [was there] to collect his load," arrive on the premises. The robbed goods

were loaded onto it under Guled's supervision, and it thereafter left the premises with the goods. The proximity in time—a mere 10 minutes—strongly suggests pre-arrangement and coordination.

[14] On 12 March 2022, Mr Ziad Limbada, a manager at Drink World Cash and Carry in Crown Mines, Johannesburg, observed “a white Freightliner truck with blue curtains” arrive at the premises with Guled. Guled sold the robbed goods to Mr Limbada for R1,197,262. The purchase price was paid in tranches: R350,000, R300,000, and R245,000 on 12 March 2022; and R252,262 and R50,000 on 14 March 2022. It is common cause that the truck and trailer were later booked into the police pound at Chamdor.

[15] The appellant admits that he used his truck with a driver to collect and deliver the goods. His defence is that he was hired by his friend Hassan, did not know the goods were stolen, and was merely conducting legitimate business. However, the facts show that the appellant's truck and trailer were not accidentally involved; they were essential to executing the robbers' plan. The abandonment of the original hijacked truck confirms that transferring the goods to the appellant's vehicle was the intended method of “safely” removing and disposing of them.

[16] Additionally, the appellant was in constant telephonic communication for well over an hour as he, on his version, was attending to the truck's tyre before handing it over to the driver. This prolonged communication at the material time is telling and supports the inference that the appellant was not a passive, uninvolved owner but was actively engaged in the operation's logistics.

[17] The tracking reports for the SF Logistics truck established that its tracking device was disabled or its signal interfered with. However, the tracking device on one of the trailers was active, allowing the movements to be traced to 1[...] A[...] Road. On 16 March 2022, a security guard at the Crown Mines truck depot called him and told him that members of the SAPS were searching for the truck and trailer. He arranged with Hassan to go in his stead. Hassan later called him and advised that he had been arrested in connection with the stock that he had hired the truck and trailer to transport, as it was reportedly stolen.

Admissibility of evidence

[18] Before dealing with the substantive issues, it is necessary to address the appellant's complaints regarding the admissibility of certain evidence.

[19] In respect of Mr Ahmed's statement, the complaint was that it was inadmissible against Mr Omar because of the exclusion under section 34 (3) of the Civil Proceedings Evidence Act 25 of 1965 (CPEA). However, an objective reading of the judgment of the court *a quo* clearly shows that the court did not consider Mr Ahmed's evidence to be material to the decision. The court *a quo* stated in paragraph 58 of its judgment: "Even with the exclusion of Ahmed's evidence..." The appellant's complaint in this regard is therefore without merit.

[20] In respect of the statements of Messrs Dickson, Khan, and Limbada, the complaint was that they were not commissioned, and, as such, they were inadmissible hearsay evidence. However, a cursory reading of the statements establishes that they were given under oath.

- [21] It is trite, as was held in *Schimper and Another v Monastery Diamond Mining Corporation (Pty) Ltd and Another*¹ that conditions for admissibility in terms of section 34 of Act 25 of 1965 are not present if the deponent shows, inter alia, that he had no personal knowledge as required by subsection (1) (a) (i). The logical converse: admissibility is established (the conditions are present) when personal knowledge is proven. The general test for the admissibility of evidence is whether such evidence is relevant and/or material to the determination of the issues in dispute. In turn, section 34 (1) of the CPEA provides that statements are admissible as evidence provided that the deponent has personal knowledge of the contents thereof.
- [22] Messrs Dickson, Khan, and Limbada's statements are based on their personal knowledge of the events they witnessed. They are relevant and material to determining whether the truck and trailer were used to commit the robbery. The complaint that they are inadmissible hearsay evidence is without merit and falls to be rejected.
- [23] The appellant also relies on the alleged dishonesty of Sergeant Matlala. This argument is overstated. The spoliation court's finding concerned a different truck (registration number T[...]) and the inadmissibility of video footage, not a finding of dishonesty. Noko J, in the reconsideration judgment, did not make a finding that Sergeant Matlala was dishonest. At most, Noko J noted that the appellant had raised concerns. The court *a quo* cannot be faulted for not treating Sergeant Matlala's evidence as inherently unreliable.

Ground 1: Involvement of the truck and trailer – the instrumentality enquiry

¹ 1982 (1) SA 612 (O).

[24] Section 1 of POCA defines ‘instrumentality of an offence’ as ‘any property which is concerned in the commission or suspected commission of an offence at any time before or after the commencement of this Act, whether committed within the Republic or elsewhere’. To establish ‘instrumentality’, there must be a scheduled offence. The test for instrumentality is settled. In *National Director of Public Prosecutions v RO Cook Properties (Pty) Ltd*,² the Supreme Court of Appeal held that the property must play a “reasonably direct role” in the commission of the offence and must “facilitate or make possible the commission of the offence”. It must be instrumental in, and not merely incidental to, the offence. The interpretation is independent of the property owner's guilt or innocence.

[25] In *National Director of Public Prosecutions v Kalmar Industries SA (Pty) Ltd*,³ the SCA emphasised that the focus is on the role the property plays in the commission of the crime, not on the wrongdoer. There must be a functional relation between the property and the offence.

[26] In *Prophet v National Director of Public Prosecutions*,⁴ upheld on further appeal to the Constitutional Court in *Prophet v National Director of Public Prosecutions*,⁵ the following factors were found instructive: ‘whether the use was deliberate and planned or merely incidental; whether the property was important to the success of the offence; the duration and extent of the illegal use; whether the use was isolated or repeated; and whether the property was acquired or maintained for the purpose of carrying out the offence.

² [2004] ZASCA 86 at [31].

³ [2017] ZASCA 142; 2017 (2) SACR 593 (SCA) at [22].

⁴ 2006 (1) SA 38 (SCA) at [27].

⁵ [2006] ZACC 17; 2007 (2) BCLR 140 (CC); 2006 (2) SACR 525 (CC).

Importantly, 'a court must be able to conclude, after considering the totality of the circumstances, that the property was a substantial and meaningful instrumentality in the commission of the offence(s)'.

[27] In *National Director of Public Prosecutions v Parker*,⁶ the court held that, when enquiring whether a property is an instrumentality of an offence, the court must consider the whole picture and determine, from the totality of the circumstances of the case, whether the property played a substantial and meaningful role in the commission of the offence.

[28] Applying these principles to the facts, the evidence establishes that:

- a) The truck and trailer arrived at 1[...] A[...] Road within approximately 10 minutes of the hijacked SF Logistics truck leaving. This suggests pre-arrangement and coordination. The use of the truck and trailer was pre-arranged when Hassan spoke to the appellant about needing it to transport the goods. The use was deliberate and planned, not spontaneous or incidental. It was part of the original robbery scheme to switch vehicles.
- b) The SF Logistics truck was abandoned after the robbery. This clearly indicates that the robbers never intended to use that truck for the final transport or disposal of the goods. The appellant's truck was the designated getaway and transport vehicle from the outset. Without the appellant's vehicle, the robbery would have been incomplete, and the goods would have remained vulnerable at 1[...] A[...] Road.

⁶ [2005] ZASCA 124; [2006] 1 All SA 317 (SCA); 2006 (3) SA 198 (SCA); 2006 (1) SACR 284 (SCA) at [18].

- c) The goods were bulky (palletised toothpaste) and required a large transport vehicle. Without the truck and trailer, the perpetrators could not have removed the goods from the storage location or transported them to the buyer. The vehicles were essential to the robbery's success. The theft of the goods via violence would have been substantially less effective, if not impossible, without the use of such a vehicle to complete the transportation (carrying away) and disposal.
- d) The illegal use extended over two days, including an overnight parking at City Deep Truck Depot, with the loot from Drinkwater Cash and Carry being found to have closed on the evening before. The truck was not used only briefly at the scene; it was integral to the entire post-taking phase of the robbery. The overnight storage facilitated the concealment of the goods and reduced the risk of detection, ensuring the success of the criminal enterprise.
- e) The circumstances of this incident—its planning, execution, and duration—justify a finding of instrumentality. The use was not an isolated, incidental act but a central component of the criminal enterprise.

[29] I am satisfied that the truck and trailer were instrumentalities of the offence of robbery, as listed in Schedule 1 to POCA. The functional relation between the vehicles and the robbery is clear. The vehicles made the robbery more effective and profitable by enabling the perpetrators to take physical control,

remove, conceal, and sell the stolen goods. The connection between the property and the offence is reasonably direct, and the vehicles were instrumental in committing the robbery. The property owner's guilt or innocence is irrelevant to this inquiry; the focus is on the property's role.

Ground 2: Whether the robbery was continuing or a continuous transaction

[30] The appellant relies on *Olivier and Another v S (Appeal)*⁷ for the proposition that robbery is not a continuing offence. In *Olivier*, the Northern Cape Full Bench stated: “Robbery, unlike theft, is not a continuing crime. It is complete once a *contrectatio* is effected.” The appellant contends that because the violence occurred on the R21, the robbery was complete at 1[...] A[...] when the robbers left the scene at that, and the later use of the truck cannot be part of the robbery.

[31] I have considered *Olivier* carefully. That case concerned the alleged duplication of convictions for counts of robbery and kidnapping arising from an incident where several violent acts occurred. The court concluded that:

“The robbery was therefore no longer in progress when the appellants, together with the complainant and one Lerato, drove to a different spot in the veld where the victims and two of the robbers (including the second appellant) were left. That at the said scene one of the robbers still had the firearm and the complainant’s hands and feet were fastened to make sure he was unable to get away.”⁸

[32] There, the court held that the robbery was complete once the *contrectatio* was effected; however, the fact that the complainant was deprived of his freedom

⁷ [2024] ZANCHC 60 at [24].

⁸ *Id* at [21].

of movement after the robbery is a clear indication that a new intent was formed to continue with the kidnapping and therefore the appellant was properly convicted of counts of robbery and kidnapping. The judgment did not deal with the question of whether a vehicle used *during the transportation phase* of the robbery is an instrumentality of that robbery. That case is distinguishable on its own peculiar facts.

[33] The *contrectatio* in theft or robbery does not merely mean the initial grabbing of the property. As our courts have long recognised, the *contrectatio* includes the act of transportation—the carrying away of the property. The carrying away is an integral part of the taking. In this case, the taking was not complete when the SF Logistics truck was hijacked on the R21. The hijackers merely obtained *de facto* control there. Full exercise of control, and the successful completion of the robbery, required transferring the goods to the robbers' designated mode of transport and moving them to a place of safety and disposal (Drinkwater Cash and Carry).

[34] The evidence shows that the truck switch was pre-planned. The appellant's truck arrived within 10 minutes of the departure of the hijacked SF truck. The original SF truck was abandoned. This demonstrates that the robbers' plan was not merely to take the truck, but rather to seize the specific cargo and transport it away using a different vehicle. The violence used on the R21 was the means to seize the property. The subsequent loading onto the appellant's truck and the transport to the buyer was the consummation of the robbery. The violence and the theft were part of a continuous, unbroken transaction.

The theft could only be achieved by the initial use of violence during the transit.

[35] In *S v Yolelo*,⁹ the court held that robbery requires a close link between the theft and the violence, so they can be regarded as connected components of one action. If the violence and the taking are closely connected in time and place, the offence is robbery. Here, the violence (hijacking at R21), the kidnapping of the driver and forcing him to drink liquor, the transport to A[...] Road, the immediate loading onto the appellant's truck, and the transport to the buyer are so closely connected in time and as part of the same plan that they constitute one continuous action. The violence set the entire chain of events in motion. The robbery was not complete until the goods were safely in the buyer's hands and the proceeds were realised.

[36] In *Madlala v S*,¹⁰ the court held that robbery continues if the perpetrators remain in possession of the stolen property. The Constitutional Court in *Prophet* also emphasised that a court must consider the "totality of the circumstances". Considering the totality here—the pre-planning, the 10-minute interval, the abandonment of the original truck, the overnight storage, the kidnapping and incapacitation of the driver, and the final sale—the robbery was a continuing, uninterrupted transaction. The truck and trailer were integral to that transaction from its inception.

[37] I therefore find that the truck and trailer were used as a part of the process to commit and perpetuate the robbery. They were not used after the robbery was

⁹ 1981 (1) SA 1002 (A).

¹⁰ 2015 (2) SACR 247 GJ at [29].

complete; they were used to execute the very plan of the robbery—to violently seize property and transport it to a destination where it could be converted to cash. The fact that the robbery was meticulously planned and executed in stages does not sever the link between the violence and the taking; it confirms the premeditated nature of the crime.

Ground 3: The innocent owner defence under section 52 (2A)

[38] The appellant bears the onus of proving, on a balance of probabilities, that he acquired the truck and trailer legally, and that he neither knew nor had reasonable grounds to suspect that they would be used as instrumentalities of a Schedule 1 offence. Section 52 (2A) sets out the elements of the defence clearly: the applicant must prove both legal acquisition and the absence of knowledge or reasonable grounds to suspect. This was not seriously dealt with in argument, but in the heads of argument.

[39] The appellant's version is that Hassan, a friend, contacted him and wanted to hire the truck for R10,000. He sent his driver to collect goods from Hassan and to deliver them at a particular destination. The driver found the premises closed and parked the truck overnight at a different location, City Deep. Delivery was completed the following day. The appellant denies any knowledge that the hire of his truck was for purposes of transporting the stolen goods.

[40] The test under section 52 (2A) is objective. In terms of section 1 (3) of POCA, a person "ought to have known" if the existence of the relevant fact could

easily be ascertained by a reasonably diligent person regarding an offence referred to in Schedule 1.

[41] Several factors, considered cumulatively, lead to the inference that the appellant knew or ought reasonably to have known of the purpose for which the truck and trailer were to be used. First, the appellant is a businessman in the logistics industry. It is standard practice to know what goods are being transported, for insurance and liability purposes. He did not enquire about the nature, quantity, or source of the goods. That is not the conduct of a reasonably diligent businessman in the ordinary course. A responsible owner of a commercial vehicle would ordinarily insist on documentation, particularly for a hire arrangement.

[42] Second, the timing was suspicious. The goods were collected late in the day, and the driver found the intended destination premises closed. The truck was parked elsewhere overnight with the goods on board. This is not the normal course of business for a legitimate logistics operation. A legitimate client would typically arrange for delivery during business hours and would not leave goods unattended overnight.

[43] Third, the appellant was in constant telephonic communication for well over an hour as he, on his version, was attending to the truck's tyre before handing it over to the driver. This prolonged communication at the material time is telling and supports the inference that the appellant was not a passive, uninvolved and ignorant owner but was actively engaged in the operation's logistics.

[44] Fourth, no records were kept of the supposed hire transaction. No invoice, delivery note, or written contract existed. This is inconsistent with the conduct of a reasonably diligent businessman. In the logistics industry, documentation is essential. The absence of any paperwork strongly indicates that the transaction was (to the appellant's knowledge) not legitimate.

[45] Fifth, the appellant knew Ahmed, who was directly involved in the robbery. Ahmed admitted that on 11 March 2022 he was called by the appellant to bring a mechanic and a tyre to 1[...] A[...] Road. The appellant cannot credibly claim total ignorance of the criminal network. If Ahmed had falsely implicated Mr Omar, he had every opportunity to claim his innocence by approaching the SAPS immediately and at Chamdor, as the court *a quo* correctly found.

[46] Sixth, the appellant's conduct in avoiding consultation with the police, when requested, is telling. He only came forward after a warrant was issued, months later. This suggests consciousness of guilt. An innocent person would typically cooperate with the authorities to clear his/her name.

[47] The court *a quo* found that the appellant's version was "highly improbable". I agree. The appellant's bare denial is insufficient to discharge the onus. In *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another*,¹¹ the court held that a party who raises a dispute of fact must do so seriously and

¹¹ [2008] ZASCA 6; 2008 (3) SA 371 (SCA) at [13].

unambiguously. The appellant's denials are not sufficient to raise a genuine dispute.

[48] The appellant also relies on the alleged dishonesty of Sergeant Matlala and Mr Abdul's statement. This argument is overstated. The spoliation court's finding concerned a different truck previously owned by the appellant and the inadmissibility of video footage, not dishonesty. Noko J, in the reconsideration judgment, did not make a finding that Sergeant Matlala was dishonest. At most, Noko J noted that the appellant had raised concerns. The court *a quo* cannot be faulted for not treating Sergeant Matlala's evidence as inherently unreliable.

[49] I am satisfied that the appellant has failed to establish the innocent owner defence under section 52 (2A). At best, he ought reasonably to have known that the truck was being used for criminal purposes. At worst, he knew and turned a blind eye. In either case, the defence fails.

Proportionality

[50] The appellant argues that forfeiture would be arbitrary and disproportionate, as the truck is his only means of earning a living. Section 25 of the Constitution protects against arbitrary deprivation of property.

[51] The proportionality inquiry requires a balancing of the public interest in forfeiture against the owner's right not to be arbitrarily deprived of property. In *Van der Burg and Another v National Director of Public Prosecutions and*

Another,¹² the court held that forfeiture must not be arbitrary or unjust. There must be a rational connection between the ends sought and the means used.

[52] The Preamble to POCA emphasises the public interest in combating organised crime and ensuring that no person benefits from the fruits of unlawful activities or uses property to commit an offence. The Act's purpose is primarily deterrent. It seeks to prevent people from using their property to commit offences.

[53] In *Mohunran and Another v National Director of Public Prosecutions and Another*,¹³ the Constitutional Court held that the closer the criminal activities are to the primary objectives of POCA, the more readily should a court grant a forfeiture order.

[54] In this case, the truck was used deliberately and in a planned manner to transport stolen goods. The truck was essential to the robbery's success. Without it, the perpetrators could not have executed their plan to remove the goods from the storage location or transport them to the buyer. The public interest in forfeiture is substantial: it deters owners from allowing their property to be used for criminal purposes and ensures that crime does not pay.

[55] The *Prophet* factors weigh in favour of forfeiture. The use was deliberate and planned, the truck was important to the success of the offense, the use extended over two days, and the truck was used to carry out the offense.

¹² 2012 (2) SACR 331 (CC) at [58].

¹³ CCT 19/06 4 [2007] ZACC 4; 2007 (4) SA 222 (CC); 2007 (6) BCLR 575 (CC) at [146].

While there is no evidence of prior use, the circumstances of this case justify forfeiture.

[56] The fact that the truck is the appellant's means of earning a living is relevant. However, it is not determinative. The appellant's failure to exercise reasonable diligence in stewarding his property weighs heavily against him. Owners have a duty to exercise responsible stewardship and to prevent their property from being used for criminal purposes. This duty is implicit in the Preamble, which declares that no person is entitled to use property for the commission of an offence.

[57] As the SCA pointed out in *RO Cook Properties*,¹⁴ 'a criminal conviction is not a condition precedent to forfeiture, and property may be forfeited even where no charge is pending... the guilt or wrongdoing of owners or possessors of property is not primarily relevant to the proceedings.

[58] I am satisfied that the forfeiture order is proportionate and does not constitute an arbitrary deprivation of property. The balance between the public interest and the appellant's rights tips in favour of forfeiture. The vehicles were instrumental in a serious, pre-planned robbery, and their forfeiture serves a legitimate purpose under POCA.

[59] As the Constitutional Court stated in *National Director of Public Prosecutions and Another v Mohamed NO and Others*:¹⁵

¹⁴ See n2 at [20].

¹⁵ [2002] ZACC 9; 2002 (9) BCLR 970 (CC); 2002 (2) SACR 196 (CC) at [17].

“... forfeiture in circumstances where it is established, on a balance of probabilities, that property has been used to commit an offence, or constitutes the proceeds of unlawful activities, even where no criminal proceedings in respect of the relevant crimes have been instituted.”

Costs

[60] Costs are within the court's discretion. The general principle is that costs follow the result. The successful party is ordinarily entitled to costs. The appellant relies on the *Biowatch* principle, which provides that persons should not be deterred from enforcing their rights because they fear that they will have to pay costs if unsuccessful. In *Biowatch Trust v Registrar, Genetic and Others*,¹⁶ the court held that costs should not ordinarily be awarded against an unsuccessful litigant in constitutional litigation.

[61] However, the *Biowatch* principle is not absolute. In *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others*,¹⁷ the court held that costs may be awarded against the NDPP where it acted vexatiously or unreasonably. Similarly, costs may be awarded against a private litigant where the proceedings are not genuinely constitutional or where the litigant has acted unreasonably.

[62] In this matter, the appellant has not established that the respondent acted vexatiously or unreasonably. The respondent's decision to pursue forfeiture was justified on objective facts. The evidence, considered cumulatively,

¹⁶ [2009] ZACC 14; 2009 (6) SA 232 (CC); 2009 (10) BCLR 1014 (CC) at para 24.

¹⁷ [1995] ZACC 13; 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 a [64].

supported the conclusion that the truck and trailer were instrumentalities of the robbery. The appellant had a full opportunity to present his case, and his defence failed.

[63] The appellant is a private litigant. The respondent is a public functionary executing a constitutional obligation. However, the appellant's defence was not primarily a constitutional challenge; it was a factual defence based on his alleged lack of knowledge. The *Biowatch* principle is less compelling in such circumstances.

[64] In the exercise of my discretion, I consider it appropriate that the appellant pay the costs of the appeal. The respondent has been successful, and there is no reason to depart from the general principle that costs should follow the result. The appellant's failure to establish the innocent owner defence and his reliance on an untenable version of events justify a costs order against him.

Conclusion

[65] The appeal is meritless. The forfeiture order is confirmed, on the basis that the truck and trailer are instrumentalities of the offence of robbery (a Schedule 1 offence). The innocent owner defence under section 52 (2A) has not been established. The forfeiture is proportionate. The appellant is liable for the respondent's costs.

Order

[66] In the result, the following order is made:

1. Condonation for the late filing of the appeal record is granted.
2. The appeal is dismissed with costs.

I agree

TP MUDAU
JUDGE OF THE HIGH COURT
JOHANNESBURG

I agree

PG MALINDI
JUDGE OF THE HIGH COURT
JOHANNESBURG

A SUBEL
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances:

For the Appellant:

Mr M Sithole

Instructed by:

Lesika Molefi Attorneys

For the Respondent:

Mr A Dabula

Instructed by:

State Attorneys, Johannesburg

Date of Hearing:

12 August 2026

Date of Judgment:

01 September 2026