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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)**

CASE No:3898/2022

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: YES/NO

SIGNATURE: DIAMOND AJ

DATE: 19/06/2025

In the matter between:

NATIONAL DIRECTOR OF PROSECUTIONS

APPLICANT

and

INAIDA NOEMIA DE ASSUCAO MATE

REPODENT

JUDGMENT

DIAMOND A J:

[1] The Respondent is the registered owner of a farm, Portion 919 Toitskraal Registration Division JS held by Title Deed number T[...] ("the Farm"). As can be determined from the title deed number, the Farm was registered in the name of the Respondent during the year 2020.

[2] During April 2020, Warrant Officer Maleke Phoku ("Phoku") received information from one Petrus Johannes Albert Meintjes. All indications are that Meintjes was at that stage still the registered owner of the Farm, since Phoku established that the farm was held, at that stage, by title deed number T[...]. The information received from Meintjes bars, that there were illegal activities on the Farm.

[3] During the period April to June 2020 and finally on 16 June 2020, Phoku and other members of the South African Police Service conducted an operation on the Farm, and, in the end, discovered, what can only be described as a large factory that was used at that stage to manufacture the illegal drug methamphetamine. These facts are common cause or were or could not be disputed by the Respondent. A several of unknown persons managed to flee from the farm. The South African Police Services did manage to arrest individuals, a certain Ifeani as well as one Aldeo Mathe, which later turned out to be the brother of the Respondent. They were arrested, and at least Mathe was later prosecuted.

[4] The Applicant applied, on 22 April 2022, for a preservation order in terms of the Prevention of Organised Crime Act, 1998 (Act 21 of 1998) ("POCA") of the Farm, as well as a long list of movable assets, which list includes several vehicles. The order was granted. As far as the Farm is concerned, the order refers to the Farm having been held by Deed of Transfer T 3828/2020.

[5] Before this court there is an application for the forfeiture of the preserved assets, in terms of Section 48 of POCA.

[6] Section 48 of POCA reads as follows:

"48. Application for forfeiture order.-(1) If a preservation of property order is in force the National Director may apply to a High Court for an order forfeiting to

the State all or any of the property that is subject to the preservation of property order.

(2) The National Director shall give 14 days notice of an application under subsection (1) to every person who entered an appearance in terms of section 39 (3).

(3) A notice under subsection (2) shall be served in the manner in which a summons whereby civil proceedings in the High Court are commenced, is served.

(4) Any person who entered an appearance in terms of section 39 (3) may appear at the application under subsection (1)-

(a) to oppose the making of the order; or

(b) to apply for an order-

(i) excluding his or her interest in that property from the operation of the order; or

(ii) varying the operation of the order in respect of that property,

and may adduce evidence at the hearing of the application."

[7] Section 50 of POCA reads as follows:

"50. Making of forfeiture order. - (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;

(b) is the proceeds of unlawful activities; or

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

(2) The High Court may, when it makes a forfeiture order or at any time thereafter, make any ancillary orders that it considers appropriate, including orders for and with respect to facilitating the transfer to the State of property forfeited to the State under such an order.

(3) The absence of a person whose interest in property may be affected by a forfeiture order does not prevent the High Court from making the order.

(4) The validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute

such proceedings, in respect of an offence with which the property concerned is in some way associated.

(5) The Registrar of the Court making a forfeiture order must publish a notice thereof in the Gazette as soon as practicable after the order is made.

(6) A forfeiture order shall not take effect-

(a) before the period allowed for an application under section 54 or an appeal under section 55 has expired; or

(b) before such an application or appeal has been disposed of. "

[8] Section 52 of POCA reads:

"52. Exclusion of interests in property. -(1) The High Court may, on application-

(a) under section 48 (3); or

(b) by a person referred to in section 49 (1),

and when it makes a forfeiture order, make an order excluding certain interests in property which is subject to the order, from the operation thereof.

(2) The High Court may make an order under subsection (1), in relation to the forfeiture of the proceeds of unlawful activities, if it finds on a balance of probabilities that the Applicant for the order-

(a) had acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of that interest; and

(b) where the Applicant had acquired the interest concerned after the commencement of this Act, that he or she neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities.

(2A) 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 or property associated with terrorist and related activities; or

(b) where the offence concerned had occurred before the commencement of this Act, the Applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities.

(3) (a) If an Applicant for an order under subsection (1) adduces evidence to show that he or she did not know or did not have reasonable grounds to suspect that the property in which the interest is held, is an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities, the State may submit a return of the service on the Applicant of a notice issued under section 51 (3) in rebuttal of that evidence in respect of the period since the date of such service.

(b) If the State submits a return of the service on the Applicant of a notice issued under section 51 (3) as contemplated in paragraph (a), the Applicant for an order under subsection (1) must, in addition to the facts referred to in subsection (2) (a) and (2) (b) (i), also prove on a balance of probabilities that, since such service, he or she has taken all reasonable steps to prevent the further use of the property concerned as an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities.

(4) A High Court making an order for the exclusion of an interest in property under subsection (1) may, in the interest of the administration of justice or in the public interest, make that order upon the conditions that the Court deems appropriate including a condition requiring the person who applied for the exclusion to take all reasonable steps, within a period that the Court may determine, to prevent the future use of the property as an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities. "

[9] The case before me entails an application of Sections 48, 50 and 52 of POCA, the case that falls in its entirety under Chapter 6 of POCA. Initially, the Applicant obtained a forfeiture order by default, which was later rescinded, and both parties were given the opportunity to supplement their papers, and it is this supplemented case and opposition that is currently before this court. I do not elaborate on the sequence of events leading to the rescission of the initial judgement since nothing of substance turns on that.

[10] It is appropriate to take a moment at this point to consider the nature of the proceedings at this stage.

[11] Binns-Ward J, in NDPP v Van der Merwe & another¹ (*van der Merwe*) considered the nature as well as the procedural and evidential implications of the three sections, and what follows is a summary of the judgement contained in paragraphs [7] - [19].

[12] What is important, for the purposes of this judgement, is what is stated in *van der Merwe* as follows:

- Section 37 of POCA states that Chapter 6 proceedings shall be adjudicated as civil proceedings and not criminal proceedings. That means that parties need to discharge their respective onuses, on a balance of probabilities.
- A court which is seized with the question as to whether to grant a forfeiture order in terms of Chapter 6 of POCA, must be astute in keeping the following in mind: the process of adjudicating whether a forfeiture order should be granted consists of two consequential, discrete steps.
- With the first step, the court considers the requirements set out by section 50 of POCA. This means that if the requirements of section 50 are met, then the court "shall" make the forfeiture order. The requirements are

¹[2011] JOL 26963 (WCC).

that the particular assets are "an instrumentality" of an offence, or are the proceeds of unlawful activities, or are associated with terrorist or related activities. This duty of the court to make an order is tempered in an important way, which I will refer later in this judgement.

- If a forfeiture order is warranted, then the second discrete step comes into consideration. This step comes into operation if a person who has an interest in the property opposes the making of the order or applies for an order excluding the interest in property from the operation of the forfeiture order, or varying its operation.

- Such an exclusion can be made if the court finds on a balance of probabilities, in instances where the court must consider a forfeiture of the proceeds of unlawful activities, that the Applicant *"...had acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of that interest"* and *"where the Applicant had acquired the interest concerned after the commencement of this Act, that he or she neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities."*

- In instances where the court is to consider an instrumentality of an offence forfeiture, then the court can exclude assets from a forfeiture order if the Applicant succeeds to establish on a balance of probabilities that it acquired the property legally and that the Applicant neither knew nor had reasonable grounds to suspect this that the property is an instrumentality of an offence or where the offence concerned had occurred before the commencement of POCA, the Applicant has since the commencement of this act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence.

[13] A further factor comes into play when considering the first step, and that is the question whether a forfeiture order could, in principle be made. As part as the first step, the court is obliged to employ a proportionality enquiry, that is to consider whether the granting of the order will be a proportional measure to achieve the

legislation's ends.² This proportionality test is necessary to ensure that the application of the forfeiture stipulation will be compliant with the dictates of section 25 of the Constitution.

[14] What should be kept in mind, is that when it comes to the proportionality test, the innocence or guilt or culpability of the Respondent plays no role in the consideration of proportionality. When it comes to the proportionality test, the question is whether the effect of the forfeiture of the Respondent, irrespective of the latter's blameworthiness or innocence, might show that the civil forfeiture order in the circumstances to be a disproportional measure to achieve the legislation's ends.

[15] What is further important, is that as far as step one of the enquiries concerned, the state bears the onus to adduce evidence showing that the forfeiture order should be made. As far as step two of the enquiries concerned, the person applying for the exclusion of the property from the exclusion order, bears the onus, to show on a balance of probability, that the exclusion should be made.

[16] I will now turn to the facts of the case before me.

[17] The first step therefore is to consider whether a forfeiture order is warranted given the requirements of Section 50 of POCA, while applying the proportionality test.

[18] Section 50 of POCA stipulates that the court shall (obviously tempered by the proportionality test) make a forfeiture order in any one of three instances, viz, where the property was an instrumentality of an offence referred to in schedule 1, or where the property is the proceeds of unlawful activities or, the property is associated with terrorist and related activities.

[19] There can, in my view, not be any doubt that the immovable property as well as the immovable properties which are the subject matter of this application, are instrumentalities of an offence referred to in Schedule 1 of POCA. Item 22 of schedule 1 of POCA refers explicitly to any offence referred to in section 13 of the

² Par 13, *van der Merwe*.

Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992). Section 13 of Act 140 of 1992 stipulates that any transgression of section 3, 4 and of Act 140 of 1992, shall constitute offences.

[20] Methamphetamine is listed, in Schedule II, Part III of Act 140 of 1992 as an undesirable dependence-producing substance and this schedule stipulates that any dealing in or possession of such a substance is prohibited by sections 4 and 5 of Act 140 of 1992, and transgressions of section 4 and 5 are declared to be offences in section 13.

[21] In my view therefore, there can be no doubt that the assets, that is the movable assets as well as the immovable property, were instrumentalities of an offence as is contemplated in section 50 of POCA. I say this for the following reasons:

- The the South African Police Services caught individuals red handed while manufacturing a prohibited substance.
- The area on which substances were found from which the prohibited substance would be manufactured comprised 22 stretched army tents and 37kg of methamphetamine with a street value of R 7 521 000-00, was found inside the tent, together with a variety of other substances and equipment.
- There were no other activities, such as farming activities of some nature, on the farm and the farm itself is relatively small comprising only 65 hectares.
- There were no activities on the farm that could explain the presence of the large number of vehicles and equipment on the farm. The only reasonable inference is that the equipment had to be used in relation to at least the manufacturing and transport of the banned substances.

[22] What remains to be considered as part of the first stage of enquiry, is whether forfeiture order would be proportional to the purpose of POCA. In the judgement of

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 Seevnarayan³ in paragraph 18, the court gives a non-existent list of the objectives of the Applicant states it to be as follows:

" (a) removing incentives for crime; (b) deterring persons from using or allowing their property to be used in crime, (c) eliminating or incapacitating some of the means by which crime may be committed ("neutralising"...property that has been used and may again be used in crime); and ... (d) advancing the ends of justice by depriving those involved in crime of the property concerned."

[23] *Van der Merwe* states further⁴ that property only incidentally connected with the commission of the offence shall thus not be subject to forfeiture in terms of section 50 of POCA.

[24] Central to the explanations which the Respondent placed before the court in support of the application for the exclusion of some of the assets (amongst others the immovable property) from the forfeiture order, on the following:

- The Respondent alleges that she is a businesswoman with interest in several businesses. What is important is that these allegations are made in a bald way, and she does not, as is required by Rule 6, place any evidence before the court to substantiate allegations.
- She explains that she bought the farm with the purpose of developing a pig farm to supply pork to a retail outlet in Gauteng. Important, once again, in my view, is that there is no milligram of evidence, that the Respondent even engaged in credible planning to develop the farm as a pig farm, or proceeded in any way with the implementation of the pig farm project. The explanation is nothing but a very short and bald explanation and it falls way short of an

³ [2004] 2 All SA 491(SCA).

⁴ Paragraph 6.

explanation that would be forthcoming from a seasoned businessperson which she portrays herself to be.

- The Respondent explains that she bought the property by financing it from the proceeds of her businesses, on the one hand, and on the other hand by procuring a loan from family members in Mozambique. Once again, the Respondent fails to attach any supporting evidence, not even the slightest proof, to support these allegations. She bought the property cash. What one would have expected was some evidence such as bank statements indicating the extent of cash flows that the alleged businesses generate, or bookkeeping even some attempt at a basic system that would substantiate allegations. There is absolutely nothing, apart from the bald explanations.

[25] I am unable to find that this small farm and the moveable properties were used or ever credibly intended to be used for a purpose other than the manufacturing of substances prohibited by Act 140 of 1992. The drug manufacturing activities of the farm were large and extensive, and in no way incidental to either the activities on the farm or any possible intended activities in the future. In my view therefore, it will not be disproportional in any way to grant a forfeiture order with regard to the immovable property as well as the movable properties which are currently subject to the preservation order.

[26] Having arrived at the above conclusion, the second stage of the enquiry arises. The Respondent applies that both the farm and the vehicles seized should be excluded from the forfeiture order.

[27] Since it has been found above that the assets seized were instrumentalities of an offence, the Respondent has the onus to prove on a balance of probabilities that she acquired the interest in the properties legally, and further that she neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence.

[28] It is therefore clear that, at this stage of the enquiry, the Respondent has two hurdles to cross, the first being that the interest concerned was acquired legally and

that she neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence.

[29] If either one of these requirements set by section 52 of POCA, is not met, then the application of the Respondent, to exclude the farm and the immovable properties from the forfeiture order, must fail.

[30] The Respondent pins the activities of the farm on a certain Mr Smith, with whom she alleged she entered into an agreement of lease of a portion of the farm, and she attached the first two pages of copy of a document purporting to be a rental agreement, to her section 35(3) affidavit. Two initials appear at the bottom of each page, there is however no final execution paragraph on the document nor full signatures. In terms of this document, the lessee, Mr Smith rented the entire farm for a period of six months from the Respondent, for an amount of R 22 000-00 per month.

[31] Despite the indication of the rental agreement that Mr Smith rented the entire farm, the Respondent explains in an affidavit that Mr Smith only rented a small portion of the Homestead camp, and that the Respondent would continue with her operations. What is conspicuous is the explanation that a lessee would be willing to rent "a small portion of the homestead camp", on a very small farm, which, according to the admission of the Respondent has no water, for a substantial rental of R 22 000- 00, and that only for the six-month period. The Respondent did not indicate that she tried to establish why Mr Smith would be willing to rent the small portion of the homestead camp for such a short period of time, for a substantial monthly rental.

[32] The Applicant says that they tried to trace Mr. Smith but was unable to do so. The Respondent replied to this by saying that the Applicant did not do enough to verify the whereabouts of the existence of Mr Smith.

[33] It is also common cause between the parties that the Respondent had a previous conviction, in 2008, for an offence of the possession of and dealing in drugs and further also was arrested for being in possession of 3 kg of drugs, and at the time of the commissioning of the affidavit case was still pending.

[34] I will assume, for purposes of this judgement, but without finding that the Respondent did acquire the farm and the vehicles legally, although I find the explanation by the Respondent as to how she acquired the properties, unconvincing.

[35] In my view, however, the attempt by the Respondent to deny knowledge of the activities on the property and the presence of all the movable assets, on the farm within the context of all the facts, is unconvincing.

[36] What the Respondent had to do was to prove on a balance of probabilities, that she "*neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence*".⁵

[37] In my view the Respondent failed to prove this on a balance of probability.

[38] The allegations which the respondent places before the court consists largely of consternation of bald allegations with out any substantiating evidence. In my view, the explanations given by the Respondent are far-fetched and highly improbable. In fact, on the basis of all the evidence set out above I am of the view that the contrary can be inferred and that is that the Respondent knew that the properties were used in the instrumentality of an offence.

[39] In my view therefore the application by the Applicant must succeed.

[40] I consequently make the following order:

1. An order is granted in terms of the provisions of section 50 of the Prevention of Organised Crime Act 121 of 1998 (POCA) declaring forfeit to the state the following property:

1.1 Pieon Game Farm, portion 919 JS12 Toitskraal with title deed number T[...] situated at Toitskraal area of Marble Hall, Limpopo Province and other property listed in SCHEDULE "A" seized by

⁵ Section 50(2A)(a).

members of the SAPS in the Marble Hall Policing area on 16 June 2020 and held under case docket Marble Hall CAS 40/06/2020 (the property) which property is presently subject to a preservation of property order granted by this honourable court under the above case number on 22 April 2022.

2. In terms of section 56(2) of the Act, the property shall vest in the State upon granting of this order.

3. Subject to paragraph 4 below, the following shall apply:

3.1 The Registrar of Deeds shall, after the period mentioned in paragraph 4 below has lapsed remove the endorsement on title deed of the immovable property on being requested to do so by the Auctioneer; and

3.2 The movable property shall remain in the custody of the SAPS at the Seshego and Modimolle Police pounds under the control and supervision of Lieutenant Colonel Moshopjadi Patricia Nkuna, the SAPS investigator allocated to this case, until the expiry of this order in terms of section 40 of POCA, or until this matter is otherwise concluded.

4. Upon the expiration of a 45 days period after a notice of this order is published in the Government Gazette, Mr Tirhani Ezekiel Mabunda of Tirhani Auctioneers, or any other duly authorised employee of Tirhani Auctioneers, is authorised to:

4.1 Assume control of the property on behalf of the Applicant, and the movable property must, subject to paragraph 4.2, remain in the custody of the SAPS at the Seshego and Modimolle Police pounds, respectively;

4.2 Sell the immovable and immovable property at best, either by public action or private treaty;

4.3 Sign all documentation necessary to effect the sale, transfer and registration of the property;

4.4 Deposit the proceeds from the sale of the property, less any commission and incidental expenses occasioned by the sale, into the Criminal Asset Recovery Account established under section 63 of POCA, account number 8[...] held at the South African Reserve Bank, Vermeulen Street, Pretoria.

5. Mr Tirhani Ezekiel Mabunda, or any other duly authorised employee of Tirhani Auctioneers shall as soon as possible but not later than a period of 90 days of i this order coming into effect, file a report with the Applicant indicating the manner in which s/he complied with the terms of this Order.

6. Any person whose interest in the property concerned is affected by the forfeiture order, may within 20 days after he/she has acquired knowledge of such order, set the matter down for variation or rescission by the court.

7. Respondent shall pay the costs of this application, and the costs of counsel shall be determined on Scale B, of the relevant prescribed fee rule applicable to the fees of counsel.

DIAMOND AJ