

28 August 2020

The National Director of Public Prosecutions
National Prosecuting Authority
VGM Building
Hartley Street
Weavind Park
0002

Per E-mail: SBatohi@npa.gov.za
mmutshivhana@npa.gov.za

Dear Adv. Batohi,

REPRESENTATIONS: SHAREMAX – BROOKLYN CAS 697/10/2010

**OUR LETTER DATED 22 JUNE 2020 AND ATTACHED UNNUMBERED LETTER
FROM ADVOCATE R DE KOCK DATED 29/07/2020 REFER:**

1. The purpose of this letter is to direct representation to your office regarding the above-mentioned matter.
2. Advocate De Kock's letter dated 29 July 2020, under the heading CURRENT POSITION OF THE NPA states that

“As a result of this there appears to be no “illegality” as the companies and their underlying assets taken over by Nova complied with the Bank's Act and can therefore not be regarded as assets acquired from the proceeds of crime.”



3. We infer from the abovementioned that a decision was taken not to proceed with an asset forfeiture application.
4. We are calling for Advocate de Kock's decision regarding an asset forfeiture application to be reviewed. Moreover, this also serves as notice that based on our understanding of the facts and the law we view the decision as irrational and incongruous with the facts and/or the law.
5. We accept that you share our commitment to ensure that justice is done and that the principle of equality before the law is upheld. Having a reasonable understanding of the functioning of the NPA we hope that those who briefed Adv de Kock merely exhibit a lack of understanding of the law, the facts or the practical implementation thereof in the interest of the victims of crime.
6. Having been exposed to the horrific stories of those who have lost their life savings we feel obliged to enlighten you with our view. This we do with the stated caveat that we have not had access to the police case docket and have only utilised publicly available information. We infer that Adv de Kock was provided with representations by Nova and/or individuals that may be benefitting under the NOVA scheme and neither have we been privy to these arguments.
7. Kindly forgive us for stating the obvious and for repeating our earlier arguments. This we, however, do in an endeavour to ensure that our argument is understood

8. The entire Sharemax investment scheme was declared illegal following proven transgressions of the Banks Act. In terms of this Act, no person may conduct the business of a bank unless such a person is a public company and registered as a bank which Sharemax was not.
9. During 2012 all the property-owning companies promoted by Sharemax were transferred to and became part of Nova Properties. The Nova scheme cannot absolve the contravention of the Banks Act by Sharemax. The Nova scheme has no bearing on the initial criminal conduct of Sharemax. The mentioned withdrawal, by the Reserve Bank, of the directive to repay the investors can also not absolve the contraventions of the Banks Act. Whatever administrative directives the Reserve Bank may have withdrawn is a nullity if crimes were committed. We feel strongly and consider this an aspect that perhaps did not get the attention it deserves and we, therefore, reiterate that if the original funds were procured through criminal conduct it remains proceeds until restitution is made to the victims.
10. The fact that the inspectors reported the contraventions of the Banks Act to the Serious Economic Offences Unit of the South African Police Service on 09 March 2012, indicates that they shared the same view. This was done after the establishment of Nova.
11. Advocate de Kock's assumption that the Reserve Bank "appears to have supported" the Nova rescue vehicle is correct but the fact remains that it has no bearing on the initial criminal conduct by Sharemax. Our argument may seem

crude but the principle is stark that the Reserve Bank cannot condone criminal conduct or affect the reality that assets were procured with the proceeds of crime.

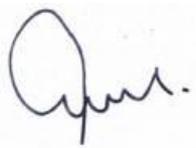
12. The logic of Advocate de Kock's argument that the NPA/AFU will "be assuming the functions of Nova" if it should proceed with an asset forfeiture escapes us. The NPA should not be seen to be transferring their obligation to deal with proceeds of crime in terms of POCA to Nova. The NPA is obliged and equipped through the Asset Forfeiture Unit (AFU) to take action concerning the proceeds of crime. We argue that a Chapter 6 Asset forfeiture intervention is required in the interests of justice and protecting the rights of the investors since the other safeguards have failed them dismally to this point.
13. Illegally obtained property which is "proceeds of crime" cannot be manipulated utilizing a compromise to change its nature. It remains "proceeds of crime" as defined in POCA.
14. The failure to proceed with an asset forfeiture application, based on the reasons provided by Advocate De Kock, may be viewed as irrational. The NPA has positioned itself as an organisation that is victim orientated in its application of the law. We are convinced that an asset forfeiture application brought by the NPA will go a long way in restoring the trust of society in the NPA's commitment to deal with commercial crime.
15. Likewise, an inference is possible that the delay to prosecute the directors of Sharemax is not only inexplicable but may contribute to the dissemination of assets by the board members of Nova which may, in turn, deprive the investors of their

investment funds for an extended time. Kindly also consider the undue delay and seeming disinterest by the prosecution team dealing with this matter to ensure a prosecution.

16. The mere fact that Nova may be a compromise “to protect the interest of investors” cannot and should not excuse Sharemax and the directors for the illegal contravention of the Banks Act.

17. We kindly request a re-evaluation of the decision not to proceed with an application in terms of Chapter 6 of POCA.

Yours sincerely,



GERRIE NEL

PRIVATE PROSECUTOR

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