IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, PRETORIA

CASE NUMBER: 50395/2017

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~
(3) REVISED.

20/08/2019 Malindi
DATE SIGNATURE

In the matter between:-

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS Applicant

and

DARREN RODNEY BOBROFF 1st Respondent

RONALD BOBROFF 2nd Respondent

In re:

The credit balances and interest accrued in account 20-23-135877 held at Bank Mizrahi Tefahot, Israel in the name of Darren Bobroff and account 11-130-7592258 held at Bank Discount, Israel in the name of Ronald Bobroff.

IN THE APPLICATION FOR A FORFEITURE ORDER IN TERMS OF SECTION 48 OF THE PREVENTION OF ORGANISED CRIME ACT 121 OF 1998

JUDGMENT

SUMMARY: Application for forfeiture order in terms of the Prevention of Organised Crime Act 121 of 1998 ("POCA"): Whether bank credit balances located in a foreign country fall within the jurisdiction of a South African Court: Held that if such credit balances are proceeds of unlawful activities as defined in POCA South African Courts have jurisdiction.

Whether interest earned from proceeds of unlawful activities falls within the purview of POCA. Held that interest earned from unlawfully earned money is similarly subject to forfeiture. Held further that contraventions of the Income Tax laws in either evading taxation or payment of Value Added Tax ("VAT") fall within POCA and need not to be prosecuted separately in terms of the Income Tax Act if the contraventions flow from the property which is the proceeds of unlawful activities.

MALINDI AJ:

Introduction

[1] This matter concerns an application for civil forfeiture of property to the State in terms of Chapter 6 of The Prevention of Organised Crime Act, 121 of 1998 (POCA), i.e. forfeiture to the State "credit bank balances standing to the credit of the respondents in two bank accounts that the respondents hold in Bank Mizrahi Tefahot (BMT) and Bank Discount (BD) respectively in Israel. The first

respondent's account is the BMT account and the second respondent holds the BD account.

[2] The Applicant, the National Director of Public Prosecutions ("NDPP") or ("the State"), seeks forfeiture of the credit balances and interest accrued in the two accounts.

[3] The application was preceded by a preservation order granted by this Court on 28 July 2017 in terms of section 38 of POCA, which reads as follows:

> *"(1) The National Director may by way of an ex parte application apply to a High Court for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property.*
>
> *(2) The High Court shall make an order referred to in subsection (1) if there are reasonable grounds to believe 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.*
>
> *(3) A High Court making a preservation of property order shall at the same time make an order authorising the seizure of the property concerned by a police official, and any other ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order.*
>
> (4) *Property seized under subsection (3) shall be dealt with in accordance with the directions of the High Court which made the relevant preservation of property order."*

[4] The State contends that the credit balances in the two accounts represent the proceeds of unlawful activities consisting of fraud, theft and offences under the

provisions of the Value Added Tax Act 89 of 1991 ("the VAT Act") and/or offences relating to the avoidance of income tax in terms of the Income Tax Act 58 of 1962 ("the ITA").

Legislative Framework

[5] Applications for forfeiture orders are made in terms of section 48 of POCA, which 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 42(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."

[6] This application is therefore on the back of a preservation of property order that is in force. What constitutes property in this case has therefore been determined in the preservation order as being the credit balances in the relevant accounts. This Court has determined therefore in terms of section 38(2)(b) that there are reasonable grounds to believe that these credit balances are the proceeds of unlawful activities. I mention this at this early stage because later I will deal with the question whether the credit balances which constitute money "*earned*" in South Africa can be pursued in terms of POCA in a foreign jurisdiction. The respondents contend that this court has no jurisdiction over property that is situated in another country.

[7] The respondents entered an appearance giving notice of their intention to oppose the making of a forfeiture order as a whole in terms of section 39 (3) of POCA. They do not seek to exclude any interest in the property concerned from the operation of the preservation order as provided as an alternative.

[8] Subsection (4) of section 48 also provides for a person who entered an appearance in terms of section 39(3) to appear at the application for a forfeiture order to oppose the making of the order or to apply for an order excluding their interest in that property from the operation of the order or varying its operation.

[9] Section 50(1) of POCA reads as follows:

> *"(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) is the proceeds of unlawful activities; or

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

[10] Section 52 reads as follows:

"***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 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 the 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 the 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 the 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."

[11] Any exclusion of interests in property may be ordered only on application by an affected party.

Jurisdiction

[12] The respondents challenge the Court's jurisdiction on the basis that the property that is sought to be forfeited to the State is in Israel. They contend that POCA has no extra territorial application.

[13] The respondents submit that the fact that the preservation order was granted will not establish jurisdiction or render it unimpeachable. The challenge to the Court's jurisdiction was raised in the preservation proceedings as follows:

> "*When filing their affidavit in the preservation proceedings, each expressly recorded that in deposing to the affidavit and in notifying their intention to oppose, the respondents did so "without prejudice to any of [their] rights and more specifically [their] rights to contend that the above Honourable Court has no jurisdiction in regard to the credit amount and which credit amount is in an account in Israel ... and my appearance to defend is not to be construed as a submission by me to the authority of the above Honourable Court.*"

[14] In these proceedings they raise the challenge as follows:

> "9. *Darren and I again reiterate and record that we do not recognize the jurisdiction of the above Honourable Court as regards the credits in the BMT Account and in the BD Account and for the reason that the credits are "situate" in two banks in the City of Tel Aviv and in the State of Israel i.e. which accounts fall outside the jurisdiction of the above Honourable Court.*
>
> 10. *In the event that the above Honourable Court should not uphold the jurisdiction "point", I hereinafter respond to the contents of the Deponent's Founding Affidavit.*"

[15] The Respondents dismiss the State's assertions of jurisdiction as follows:

"*24. The reliance by the applicant upon the respondents' permanent place of residence and the claim that the alleged offences have been committed within the area of jurisdiction of this Court, are misplaced since forfeiture proceedings are proceedings in rem, and are not penal. Neither the personal nor the "offence jurisdiction" of the court is relevant.*

25. The respondents respectfully submit that a court can only exercise preservation and forfeiture jurisdiction over property within the territorial boundaries of the Republic of South Africa and indeed within the area of jurisdiction of the particular Court; and cannot make orders in respect of property outside of the territorial boundaries of South Africa or that Court. Such property is beyond its territorial reach."

[16] The core of the respondent's contention in this regard is that forfeiture proceedings are proceedings *in rem*, that is, proceedings against the actual property not against a person. They submit that the fact that they, in person, still fall within the jurisdiction of this Court does not mean that the property being pursued also falls within the jurisdiction of the Court.

[17] In *Ashley Brooks & Another v National Director of Public Prosecutions*[1] proceedings *in rem* were described as follows:

"*[16] Section 48(1) of POCA provides that if a preservation of property order is in force the NDPP may apply for an order forfeiting to the State the property that is subject to a preservation order. Forfeiture proceedings under POCA are proceedings in rem. It is the property which is proceeded against and by resort to legal fiction, held guilty and condemned as though it were conscious instead of inanimate. The focus is not on the wrongdoer but on the property used to commit an offence, or property which constitutes the proceeds of crime. Forfeiture proceedings are not conviction-based: they may be instituted even when there is no prosecution.*"

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[1] Case No. 855/2016 [2017] ZASCA 42 (30 March 2017)

[18] Mr Subel SC, appearing for the respondents, developed the respondents' argument by referring to section 21 of the Superior Courts Act 10 of 2013 which reads as follows:

> (1) *"A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within its area of jurisdiction and all other matter of which it may according to law take cognizance, and has the power-*
>
> *(a) to hear and determine appeals from all Magistrates' courts within its area of jurisdiction;*
> *(b) to review the proceedings of all such courts;*
> *(c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.*
>
> (2) *A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other Division.*
>
> (3) *Subject to section 28 and the powers granted under section 4 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), if any division may issue an order for attachment of property to confirm jurisdiction."*

[19] He characterised the State's assertion of jurisdiction as being based on the jurisdiction that a South African Court has over persons and causes of action arising within its area of jurisdiction whereas these proceedings involve property that falls outside the jurisdiction of the Court by virtue of it being outside the borders. He referred to The Civil Practice of the High Courts of

South Africa[2] which provides commentary on our courts' jurisdiction over property that may be a subject of attachment. The commentary is to the effect that section 19(1) (c) of the Supreme Court Act[3], the predecessor to the Superior Courts Act, was inserted into the Supreme Courts Act in 1998 to address a limitation "*that a court had no jurisdiction to order the attachment of property that was not within its area of jurisdiction even though the property was within the Republic*". The effect of the insertion of the section was to give jurisdiction to attach property that is within the Republic even where the property need not be within the jurisdiction of the court in which the order is claimed, provided that the cause of action arose within its area of jurisdiction.

[20] The law in this regard is summarised in the Law of South Africa[4] which reads as follows:

> "35 ***Property claims*** *A court's jurisdiction in respect of claims relating to property is largely determined by the doctrine of effectiveness.*
>
> *Immovable property a claim for transfer of immovable property (whether the claim is a real action or a personal action) a High court has:*
>
> *(a) no jurisdiction in respect of property situated outside the borders of the Republic, even if the defendant is an incola of that court;*
>
> *(b) jurisdiction in respect of property situated within the borders of the Republic irrespective of whether the defendant is an incola of that court;*
>
> *(c) jurisdiction in respect of property situated within its area provided the defendant is an incola of the Republic.*

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[2] Herbstein & Van Winsen: The Practice of the High Courts of South Africa, Vol 1 (Cilliers *et al* (Editors) (5th Ed) Juta 2009 at 112

[3] Act 59 of 1959

[4] WA Joubert: The Law of South Africa, Vol 4 (3rd Ed, Replacement Volume 2017) (JA Faris (Ed), LexisNexis (Durban) at par 35

Movables far as movables are concerned the same principles apply, mutatis mutandis.

Incorporeal movables, such as contractual rights, are deemed to be located at the place of domicile or residence of the debtor. In the case of a share it is the registered office of the company concerned. It follows from this that the attachment of an incorporeal right to found or confirm jurisdiction can only take place where the right is situated, that is, where the debtor resides and not where the object of the right may be from time to time.

Intellectual property rights These rights are territorial and the rules applicable to immovables apply."

[21] This exposition of the law is confined to what South African law deals with regarding jurisdiction of the various divisions of the High Court. In respect of this case the respondents would argue that because the money in the accounts held in Israel is outside South African courts' jurisdiction, even though the respondents still consider themselves as citizens of the Republic and as resident within the court's jurisdiction, the court cannot order the forfeiture of the credit balances in the accounts because the court has "*no jurisdiction in respect of the property situated outside the borders of the Republic, even if the defendant is an incola of that court*".

[22] What must not be lost sight of is that there are many instances where domestic courts have been given legislative powers to adjudicate special crimes and civil proceedings under international law. The question is therefore whether there is any empowering legislation that gives jurisdiction in respect of proceedings against property that is beyond our borders in terms of POCA.

[23] Mr Subel referred me to case law authority on the subject of jurisdiction, notably *Ewin McDonald v M&M Products Company & Others*[5], *Metlika Trading Limited & Others v The Commissioner for the South African Revenue Service*[6], and *Tedecom Electrical Engineering Services (Pty) Ltd v Berman.*[7]

[24] In *Ewin McDonald* the appellant company was an *incola* of the Witwatersrand Local Division and had pursued a claim as a cessionary of a claim against the respondent corporation, which is registered in the United States of America, with its principal place of business in Atlanta, Georgia.

[25] The appellant successfully sought an order authorising the attachment *ad fundandam*, alternatively, as *confirmandum jurisdictionem* of the respondent's right, title and interest in and to certain trade marks held by the respondent and registered in South Africa in an *ex parte* application. In turn, the respondent launched an application in the Witwatersrand Local Division seeking the reversal of the order authorising the attachment that the second respondent had executed. The respondent contended that since the trade marks were all registered in Pretoria, they fell outside the jurisdiction of the Witwatersrand Local Division. The application succeeded.

[26] On appeal it was stated[8] that:

> "*The central issue, which is a controversial one, is thus whether one division of the Supreme Court of South Africa has jurisdiction to order the attachment* ***ad fundandam*** *or* ***ad confirmandam jurisdictionem*** *of property which is situated outside its area of jurisdiction but within that of another division.*

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[5] Case No. 199/89 (28 September 1990) (AD)
[6] Case No. 427/03 and 438/03 (1 October 2004)
[7] 1982 (1) SA 520 (W)
[8] at 4 - 7

Jurisdiction in the present context means the power vested in a court by law to adjudicate upon, determine and dispose of a matter (cf GRAAF-REINET MUNICIPALITY v VAN RYNEVELD'S PASS IRRIGATION BOARD 1950 (2) SA 420 (A) at 424; VENETA MINERARIA SPA v CAROLINA COLLIERS (PTY) LTD (IN LIQUIDATION) 1987 (4) SA 883 (A) at 886 D). Such power is purely territorial; it does not extend beyond the boundaries of, or over subjects or subject-matter not associated with, the court's ordained territory. In the most recent pronouncement on the topic of jurisdiction by this court, BISONBOARD LIMITED v K BRAUN WOODWORKING MACHINERY (PROPRIETARY) LIMITED, case no 384/88, in a judgment delivered on the day the present matter was argued in this court, Hoexter JA, at page 6 of the typescript copy of the judgment, quoted, with approval, the following remarks of Bristowe J in SCHLIMMER v EXECUTRIX IN ESTATE OF RISING 1904 TH 108 at 111:

> *"Now the jurisdiction of the courts of every country is territorial in its extent and character, for it is derived from the sovereign power, which is necessarily limited by the boundaries of the Sate over which it holds sway. Within those boundaries, the sovereign power is supreme, and all persons, whether citizens, inhabitants, or casual visitors, who are personally present within those boundaries ad so long as they are so present, and all property (whether movables or immovable) for the time being within those boundaries, are subject to it and to the laws which it has enacted or recognized."*
>
> *Hoexter JA then went onto say (at page 6):*
>
> *"Although the same common law applies throughout South Africa, it is trite that upon the establishment of the Union of South Africa the separate judicial systems of the four colonies were largely preserved despite their formal unification in the Supreme Court of South Africa. In terms of sec 19 of the Supreme Court Act the original jurisdiction enjoyed by the provincial and local divisions is limited to the extent of their respective territorial areas. Such territorial jurisdiction is confirmed by sec 68 (2) of the Republic of South Africa Constitution Act, No. 110 of 1983."*

Being territorial, the original jurisdiction of each division is nowadays to be exercised within the articular geographical areas specified in the First Schedule to the Supreme Court Act, 59 of 1959 (cf ESTATE AGENTS BOARD v LEK 1979 (3) SA 1048 (A) at

1059D; VENETA MINERARIA SPA v CAROLINA COLLIERIES (PTY) LTD (IN LIQUIDATION), supra, at 886G). The territoriality of each division is epitomized in sec 19 (1) of the Supreme Court Act, 59 of 1959 ("the SC Act") which, in so far as it is relevant for present purposes, reads:

> *"19(1)(a) A provincial or local division shall have jurisdiction over all persons residing or being in and in relation to all causes arising ... within its area of jurisdiction and all other matters of which it may according to law take cognizance ..."*

[27] The Court rejected the appellant's argument that section 26(1) of the Supreme Court Act had the effect of expanding the courts' jurisdiction beyond the jurisdictional powers given to each division under Schedule 1 to the Act. The appellant's argument had been summarised by the Court[9] as follows:

"*This appellant's main submission may be paraphrased as follows:*

The doctrine of effectiveness lies at the root of jurisdiction. A judgment would not be effective if it should yield an empty result. The result would be empty if judgment is obtained against a foreign peregrinus who is absent from the jurisdiction and who owns no assets in it. But the attachment of an asset of his within the jurisdiction would render the judgment effective since the attachment would produce as asset on which execution could eventually be levied. The attachment would therefore make the peregrinus amenable to the court's jurisdiction. At common law and before Union the property as a matter of practical necessity, had to be within the boundaries of the court since the authority of the court did not extend to property outside its borders. After Union, the situation, according to counsel, changed. Legislation intervened. Section 26(1) of the SC Act, following on similar enactments in the past, now provides:

> *The civil process of a provincial or local division shall run throughout the Republic and may be served or executed within the jurisdiction of any division.*

A court can now make an order which can be executed on assets found outside the boundaries of its jurisdiction, thereby rendering its judgment fully effective. Because

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[9] at 14 - 16

effectiveness is the basis of a court's jurisdiction and because an attachment, after judgment, would render its judgment effective, an attachment before judgment (so it was contended) would equip the court with the required jurisdiction to try the matter."

[28] The Court, in rejecting the argument, said

"*Counsel's argument runs counter to the common law and offends against the primary principle of the territoriality of the court's jurisdiction... It means that a court would presume to exercise jurisdiction even if there were no connection between the defendant and its area of jurisdiction, neither as to his person or his property, nor as to the cause of action.*"

[29] The ***Tedecom*** case supra was referred to.

[30] In ***Metlika*** it had been argued that the aircraft which was in a foreign country was incapable of being returned to South Africa and that the court *a quo* had no jurisdiction to order its return to South Africa because such an order infringed the sovereignty of the foreign country concerned and because the court *a quo* would be unable to give effect to its order.[10]

[31] After receiving local and English law the Court held that because the aircraft is registered in South Africa and the directors of the company were *incola,* the court may assume jurisdiction to grant an interdict (whether mandatory or prohibitory) in *personam* "*no matter if the act in question is to be performed or restrained outside the court's area of jurisdiction*" because the effectiveness of the order will lie in the directors of the South African company being held in contempt of court should they not comply with the order.[11]

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[10] at [35]
[11] at [46] – [51]

[32] Mr Subel pointed out that this case is not on point in regard to the present case in that the cause of action was in *personam* as opposed to be *in rem*. He emphasised that otherwise *Metlika* confirms that proceedings against property have to be pursued in the jurisdiction where it is situated.[12]

[33] The view of the authorities referred to by Mr Subel was helpful in distilling the following points:

1. The different divisions of the Republic have their areas of jurisdiction defined in the Superior Courts Act.

2. An *incola* of a division can bring proceedings in a division where a cause of action arose for the attachment of a defendant's property which is situated in another division.

3. The courts of the Republic are bound by territorial jurisdiction and cannot make orders on matters of property that is situated in foreign territory.

4. The territorial jurisdiction is subject to specific legislative provisions giving our courts jurisdiction extra territorially.

[34] Mr Labuschagne SC, who appeared for the NDPP, submits that the definition of "*instrumentality of an offence*" in POCA affords the South African courts' jurisdiction over property so defined regardless of where the offence was committed or suspected of commission. The definition is:

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[12] at [52]

"*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.*"

[35] Therefore, by parity of reasoning, if property that is an instrumentality of an offence can be pursued elsewhere outside of the republic, there is no reason why property which is "*proceeds of unlawful activities*" should not be pursued elsewhere outside the Republic.

[36] He relies further directly on the definition of "proceeds of unlawful activities" which provides for its forfeiture to the State. The definition reads as follows:

"*means 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 this 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.*"

[37] The introduction of POCA states that the Act is enacted in order to introduce measures "*to provide for the recovery of the proceeds of unlawful activity*" and "*property that is the proceeds of unlawful activity*". The preamble also recognises that:

"*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.*"

[38] Recognised in the introduction of POCA is also the need to amend the International Co-operation in Criminal Matters Act, 75 of 1996 ("ICCMA") in order to attain the objects of POCA. Section 1 of ICCMA was amended by the inclusion in the definition of "*confiscation order*" by adding "*and includes a forfeiture order made under the Prevention of Organised Crime Act, 1998.*"[13]

[39] In turn, the ICCMA provides in its introduction as follows:

"*To facilitate the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between the Republic and foreign States; and to provide for matters connected therewith.*" (Emphasis added)

[40] It is apparent in the definitions of "*Agreement*", "*confiscation order*", "forcing *confiscation order*", "*foreign state*", and "*letter of request*" that forfeiture orders under POCA are capable of execution in or by foreign States that have similarly bound themselves to multilateral conventions to which the Republic is a signatory or to which it has acceded and which has the same effect as an agreement referred to in section 27 of ICCMA.[14]

[41] I agree with Mr Labuschagne that the framework of POCA, read with the framework of ICCMA, especially section 19 thereof, gives our courts jurisdiction over property situated in a foreign State in respect of which a forfeiture to the State order has been made if such property, including money, constitutes the proceeds of unlawful activities.

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[13] Schedule 2 of POCA
[14] See definition of "Agreement"

[42] The respondents' argument on territorial jurisdiction is good only in respect of domestic jurisdictional constraints. Once a court in the Republic has jurisdiction to adjudicate an application for forfeiture because the unlawful activity took place within its area of jurisdiction or the respondent is an *incola* or resides permanently within its jurisdiction, then its order is enforceable or executable in a foreign requested State as envisaged in POCA, read with ICCMA.

Background Facts: Applicant

[43] In order to deal with the merits, I set out the background facts below. The gist of the application is that the respondents overreached their clients beyond the statutorily prescribed contingency fee agreement not exceeding 25% of the monetary award recovered on their behalf in claims for personal injury.

[44] The investigation into the property by Christaan Gouws, Senior Special Investigator employed by the National Prosecuting Authority, forms part of the founding papers in the preservation application. It is incorporated by reference into the forfeiture application. The investigation points to the following:

44.1. In terms of the Contingency Fees Act 66 of 1997 the cap on remuneration would be 25% of the monetary award recovered on behalf of the client, or double the agreed hourly rate, whichever is the lesser. From the *modus operandi* employed by the practice, it is apparent that the percentage would be applied without measuring whether the fees based on an hourly rate (and doubled), represented a higher or lower figure than the contingency percentage.

44.2. In addition, Gouws pointed out the irregularity pertaining to the trust investment account in the name of Zunelle. This was an account in terms of Section 78(2A) of the Attorneys Act 53 of 1979 ("the Attorneys Act"). This Act requires that it pertain to a trust creditor of the firm whose funds were transferred, for purposes of investment, from the firm's trust banking account in terms of Section 78(1) of the Attorneys Act. Zunelle was, however, not a trust creditor of the firm. The transfer from the firm's business banking account to a trust account, is highly suspicious and indicative of unlawful activities. The unlawful activities, it contends, would be to avoid tax, payment of interest to the Attorneys Fidelity Fund and, through the account, to facilitate money laundering.

44.3. As soon as a matter was settled and the RAF pays, the firm failed to raise a fee and to account for VAT and Income Tax.

44.4. In respect of Discovery Health, a 40% contingency was applied to past medical expenses.

44.5. For most of the 300 files pertaining to Discovery members whose past medical expenses were paid for by Discovery, there were no final accounts to the clients on file, despite the files being archived. There was trust money on the files which had not yet been used to settle outstanding creditors and fees had not been debited. However, these funds were withheld from the client.

44.6. An indiscriminate R15 000.00 general fictitious disbursement was debited without raising VAT in respect thereof.

44.7. In respect of 5 files that Mr Van Niekerk, attorney of ENS wished to inspect, the file notes evidencing time spent were fabricated by Darren Bobroff, assisted by Rochelle Steyn.

44.8. Darren Bobroff deposited into his personal bank account cheques that were meant for clients. On his instruction the cheques were not crossed and remained payable to bearer. According to Christie de Beer, Darren Bobroff admitted to her that he forged his brother's signature in depositing a cheque for the client F Pombo into his personal bank account.

44.9. The practice opened a trust ledge suspense account with Number 11521. All fees had to be channeled to that account pertaining to four matters that had been settled a long time before. This was in order to "*balance*" the books.

44.10. Van Wyk was instructed by Ronald Bobroff to manufacture VAT invoices for clients when it became clear that SARS was about to inspect the practice.

44.11. Van Wyk, despite being a bookkeeper, was not permitted to work on the Zunelle trust account. According to her this is an account that was used to launder money.

44.12. An amount of R40 million was transferred from the Zunelle account to the auditor, Andre Van Der Merwe, giving rise to a suspicion amongst staff that Ronal and Darren were getting ready to leave the country and that is why they were moving money.

44.13. There were in fact three Zunelle accounts according to the bookkeeper, Natasha. Two accounts were held at Investec Bank and one at Standard Bank. Ronald Bobroff only deals with one such account at Stanlib.

44.14. De Beer refers to R2.5 million being invested in a Section 78(2A) investment account at Investec Bank. The Bobroffs do not deal with the account at Investec Bank in their answering affidavits.

44.15. The accounts created in Israel created suspicion that triggered a restraint application in Israel based on money laundering.

44.16. Darren Bobroff fled the country on 16 March 2016 and Ronald Bobroff on 19 March 2016.

44.17. Warrants of arrest for fraud were issued against the respondents on 14 March 2016 and they, on the probabilities, got wind of their imminent arrest.

44.18. Ronald Bobroff admits that Darren Bobroff had paid the cheque of the client Pombo into Darren's own account. He describes it as a mistake and blames the bookkeepers.

44.19. Darren Bobroff contends that part of the amounts standing to the credit of his account in Israel emanates from his Australian bond. However, he cannot establish a transfer to Bank Mizrahi Tefahot from Leumi Bank, to which he ostensibly had made the payments in Israel. The respondent has failed to establish that the BMT credit emanates from his Australian bond (NAG in Australia).

The Background Facts: Respondents

[45] The respondents contend that upon admission of the evidence in the SAA (supplementary answering affidavit) the application should be dismissed with costs.

[46] The facts as set out in the SAA, read with the Answering Affidavit are as follows:

46.1. Documents (bank statements) show details of another bank account, Bank Leumi, held in Israel by the first and second respondents.

46.2. The respondents understand the allegations against them as:

"that Darren and I, (in our capacities as directors and shareholders of the Practice), defrauded and/or perpetrated thefts on/from personal injury claimants ("PI Claimants") of the Practice i.e. by "over reaching" them as a consequence of the Practice having entered into CLCF Agreements in contravention of the provisions of the CONFEES Act, i.e. The Practice thereby deducting monetary amounts in the nature of fees from ("the Awards") payable to PI Claimants of the Practice (arising from payments effected to the Practice, on behalf of PI Claimants, by the Road Accident Fund ("the RAF") and other entities and/or persons such as hospitals and/or medical practitioners – in the

main, these entities were represented by insurance companies ("the PI Defendants"); and

Darren and I caused the Practice to raise, and thereafter retain fee amounts which exceeded the "ceiling" percentage as prescribed in the CONFEES Act i.e. by 10% (which Darren and I specifically dispute and deny), the Practice ***never*** *having entered into CLCF Agreements which provided that the fee percentage amount of the Award was more than 30% plus VAT."*

46.3. It is alleged that the respondents deducted fee amounts from the unidentified Award and from unidentified ex-PI Claimants of the Practice and which fee deduction amounts exceeded either the percentage fee amount (either in terms of the CONFEES Act or any one of two or three agreements) alternatively that the deducted fee percentage amount bore no resemblance to the actual number of hours rendered by the Practice (in the nature of legal services) relative to each of the matters that the Practice.

46.4. The Practice, never intentionally and/or fraudulently overreached any of their ex-PI Claimants as a consequence of concluding CLCF agreements with certain of their PI Claimants.

46.5. Subsequent to the Constitutional Court judgment in *De La Guerre*[15] which was handed down on 20 February 2014 the Practice did not enter into any CLCF agreements with ex-PI Claimants.

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[15] Ronald Bobroff & Partners Inc v De La Guerre; South African Association of Personal Injury Lawyers v Minister of Justice and Constitutional Development (CCT 122/13, CCT 123/13) [2014] ZACC 2; 2014 (3) SA 134 (CC); 2014 (4) BCLR 430 (CC) (20 February 2014)

46.6. Subsequent to the *De La Guerre* judgment the Practice did not rely upon any CLCF agreements that had been concluded prior to the De La Guerre judgment.

[47] The State alleges that the overreaching of claimants took place from 2007. In response thereto the respondents contend that:

47.1. Prior to 2007 the PI attorneys fashioned their CLCF agreements in line with an opinion obtained on 30 May 2002 and as resolved by the Law Society of the Northern Provinces (LSNP) on 21 June 2002 and further mindful of the 25% cap referred to in the Contingency Fees Act of 1969 (but which came into effect only in 1997).

47.2. The LSNP, in May 2008, conducted a survey regarding the utilisation of CLCF agreements since it permitted the use of common law percentage contingency fee agreements to which the indication was that 94.94% of attorneys and claimants embraced the CLCF agreements.

47.3. In 2010, Judge Malcolm Wallis wrote a paper on legal costs in which he embraced the Contingency fee agreements where attorneys will tax a fair proportion of their disbursements and charge over and above that a proportion of 25% of the damages recovered.

47.4. In 2011 the President of the LSNP pledged support for the contingency fee during the LSNP's Annual General Meeting (AGM).

47.5. In October 2011 the LSNP addressed a communication to the Deputy Judge President (DJP), WJ van der Merwe indicating the LSNP's guideline to attorneys that the 25% cap referred to in the CF Act could be exceeded where it can be justified. The DJP had issued a practice directive that CLCF agreements have to be compliant with the CF Act cap of 25%.

47.6. In the De La Guerre application the LSNP's President, Mr Johannes Cornelius Janse van Rensburg, submitted an affidavit in which the LSNP records "its unwavering support relative to CLCF agreements. The essence of the support of CLCF agreements being that the CF Act was unworkable. The basic submission being:

"*that the same need expressed by the public and members of the Law Society and which gave rise to the enactment of the Contingency Fees Act continued to be expressed with increasing urgency with regard to the introduction of a simple, easily understood and equitable contingency fee agreement, given the perceived unpopularity and impracticality of the agreement provided for in terms of the Contingency Fees Act.*"

47.7. The CC judgment in *De La Guerre* drew attention to the following undisputed facts:

"*that the Practice concluded CLCF Agreements and raised fee percentage amounts as a consequence of the LSNP permitting and sanctioning same; and uncertainty reigned in the attorneys' profession about the correct legal position in relation to contingency fees; and*

could these fees be charged only under the Act, or also outside its provisions?; and

the Practice was one of the firms (my emphasis) which charged more than allowed for in the Act, as the rules of its professional association allowed."

47.8. The Practice never concluded CLCF Agreement with PI Claimants which exceeded a fixed fee amount higher than 30% plus VAT of the Award/s and that in fact and in most instances, the percentage fee amount was equal to 25% plus VAT of the Award.

47.9. There were instances where a 30% plus VAT fee amount of the Award was agreed upon between certain ex- PI Claimants of the Practice where the issues were determined to be extremely complex, would be time consuming, the prospects of success were problematical, lengthy in nature and involving the contracting of various professionals (such as experts in various medical fields and financial fields an accident reconstruction specialists).

47.10. In or about 2006, the Practice took the decision to conclude "fall back" agreements with its clients in view of the advisory notice of the LSNP to its members recommending that in view of the Judgment of the SCA in the Pricewaterhouse[16] that members should be encouraged to enter into fall back agreements.

47.11. The Practice proceeded as follows in regard to CLCF

"I furthermore draw attention to the fact that since the use by the Practice of CLCF Agreements, the Practice was concerned that (notwithstanding the opinion of Labuschagne and the consent of the LSNP) CLCF Agreements

[16] (2004) (3) ALL SA 20 (SCA)

could be declared invalid (given the fact that this practice was "new territory" in the South African area of Law) (which would create financial turmoil for the Practice and could also result in the Practice having been compelled to demand immediate payment of legal costs and disbursements rom PI Claimants that it represented) and paragraph 4.2 of the Practice's CLCF Agreement specifically stated – "(In the event of) Any Court or professional body, or any other authorised person or body not recognising this contingency percentage agreement ... then and in that event, we shall have the option of electing to have our fees calculated in accordance with our fee mandate(s) signed by you, in terms of which our fees are based on which our fees are based on a rate per hour on time spent". Accordingly, the Practice put into effect a "Fall back" position which involved PI Claimants signing 2 other agreements and more particularly:-

- *in the first instance, a written contingency fee agreement in terms of the CONFEES Act (notwithstanding the badly worded and crafted CONFEES Act) an example whereof I will cause to annex hereto as* ***Annexure AF 18****; and*

- *in the second instance, a written rate per hour fee agreement between the Practice and the PI Claimant which detailed the hourly rate applicable and the extent thereof (and disbursements) would be recoverable in full from the PI Claimants regardless as to whether the claim was successful and regardless as to whether the extent thereof exceeded the Award (that was eventually recovered by agreement or by way of a court judgment after a trial hearing) – I will cause to annex hereto as* ***Annexure AF 19****, an example of one such agreement, and which was given effect to by the taxing master in the De La Guerre matter, after the Court held that the Practice's CLCF agreement was invalid.*

In an attempt to illustrate the standard procedures adopted by the Practice with regards to fee agreements that it concluded with PI Claimants, the practise of the Practice was as follows:

- *prior to 2005 the routine practice (pertaining to PI Claimant clients of the Practice who could not afford to pay legal fees and/or disbursements), was such that the Practice would conclude a CLCF Agreement and a Rate per hour fee agreement (as referred to in paragraph 19.10.2 hereinabove); and*

- *in 2005, and thereafter the routine custom of the Practice was to conclude 3 agreements with its ex- PI Claimants client of the Practice who could not afford to pay legal fees and/or disbursements), i.e. a CLCF Agreement and the agreement referred to in paragraph 19.10.1 and the agreement referred to in 19.10.2 hereinabove; and*

- *at the first consultation (when a new ex- PI Claimant of the Practice was interviewed), the PI Claimant would be made aware of the necessity for the Practice to conclude 2 agreements with him/her (prior to 2005) and 3 agreements with him/her (in 2005 onwards and until the 19th February 2014); and*

- *in every instance, to the best of my knowledge, (I contend for this for the reason that all professional employees of the Practice were directed in no uncertain terms to comply therewith) the attorneys and/or the professionals of the Practice carefully explained to the ex- PI Claimants of the Practice the contents of the documents and whereafter these were then signed by PI Claimants of the Practice (in most instances, at the same time and during the course of certain legal proceedings, I became aware that this was not always the case and due to apparent oversights on the part of the attorneys/legal personnel involved).*

[48] In other words they deny "*intentionally and/or fraudulently*" overreaching their clients through the CLCF and aver that after the *De La Guerre* judgment and all other circumstances set out above regarding, *inter alia*, opinions obtained by the LSNP, conference papers on contingency fee agreements and support thereof by the LSNP, they ceased entering into any CLCF agreements and furthermore that the Practice complied with the De La Guerre judgment even in

instances where CLCF agreements had been entered into before the judgment.

Respondents' Supplementary Affidavit

[49] On 29 April 2019 I granted an order to admit the respondents' supplementary answering affidavit and condoning the late addition of the documents appearing at pages 908 -1235 of Vol 10 of the record. The purpose of the supplementary affidavit is to give the facts and events giving rise to the credit amounts which reflect in the BMT and BD accounts as at February and March 2017 when the Israeli Police obtained court orders freezing the two accounts, and other accounts conducted by them at Bank Leumi.

[50] It is alleged that funds deposited into the BMT account originated from Leumi Bank. The 2nd respondent conducted a bank account at Leumi Bank in his name and both respondents conducted another account in their joint names.

[51] The respondents then contend that the supplementary affidavit and its relevant annexures will demonstrate that in truth and in fact they have not exported or transferred out of South Africa R96.9m, but rather an amount between R15m and R20m over a period of 30 years.

[52] It is further contended that the amount of between R15m and R20m was lawfully acquired by the respondents and constitutes after tax earnings from the Practice. They contend that:

"[44] By virtue of the aforegoing Darren and I contend that:-

44.1 there is no "nexus" between the foreign currency amounts reflected in our BD Account and BMT account with the so-called overreach percentage amount (10%) as contended for by the NDPP; and

44.2 the foreign currency amount credits in the BD Account and the BMT Account (converted by the Israeli Police into US$) cannot be converted into Rands in order that this conversion can "fit" the case of the NDPP – in fact as I have indicated above, the conversion of the US$ amount of US$ 6.83 m as at March 2017 in fact converts into Rands in excess of R100m; and

44.3 the true value of the amounts transferred / exported by Darren and me from South Africa and into various overseas bank accounts is between R15m and R20 (it is only as a consequence of the depreciation of the Rand against US$, that the Rand amount after having being converted into Dollars then translates into a far larger figure (in Rands) i.e. ±R96m on the NDPP's version and over R100m on Darren' and my version."

[53] I was urged to accept the assertions in the supplementary affidavit as a complete answer to the State's allegations because the State chose not to file any answer thereto. It is contended further that:

"[52] In 2015 the South African Reserve Bank ("the SARB") gave notice of an "Exchange Control Special Voluntary Disclosure Programme" ("EC-SVDP") which served as an opportunity to South African citizens to declare foreign assets held/owned by them as at the 28th February 2016, and in order to permit such persons to regularize and more particularly to declare the extent of such foreign assets and thereby to avoid the criminal and civil consequences envisaged in the SARB Act, read with its regulations.

"[53] Arising from that event indicated in paragraph 2 above, Darren and I made application to the SARB (in common with over 18 000 other applicants who it was reported had also participated in the EC - SVDP) in which we disclosed the credit amounts in our overseas bank accounts in Israel and arising therefrom:-

53.1 on the 18th December 2018, the SARB accepted my application, in writing, and imposed a penalty of the sum US$277 131.28, in confirmation whereof I will cause to annex hereto as ***Annexure SA23*** *a redacted version of the letter addressed by SARB to me; and*

53.2 on the 18th December 2018, the SARB accepted Darren's application, in writing, and imposed a penalty of the sum US$357 786.72, in confirmation whereof I will cause to annex hereto as ***Annexure SA24*** *a redacted version of the letter addressed by SARB to Darren.*

[54] Arising from the aforegoing and again for the sake of completeness, Darren and I record that none of the credit mounts in the accounts conducted by us at Bank Mizrahi and Bank Discount, are the proceeds of crimes and/or unlawful activities and accordingly did not constitute property that is capable of being forfeited to the NDPP in terms of the POCA."

[54] The point that the respondents miss is that the Exchange Control Special Voluntary Disclosure Programme and Notice of approval under Regulation 24 of the Exchange Control Regulations applies to lawfully earned monies but which were expatriated unlawfully. In my view the credit balances in the affected bank accounts in Israel are unaffected by these approvals.

[55] The background facts set out in the answering and supplementary answering affidavits, together with the respondents' contentions do not provide an answer to the gravamen of the accusations against them or their Practice. The supplementary affidavit on its own version discloses a pattern of expropriation of funds that Ranchod J found to be proceeds of unlawful activities.

Analysis

[56] It is trite that the onus is on the State to prove its case on a balance of probabilities.[17] Section 37(2) of POCA is explicit in this regard and states, in reference to Chapter 5:

"*The rules of evidence applicable in civil proceedings shall apply to proceedings under this Chapter.*"

[57] Much reliance was placed on the case of *National Director of Public Prosecutions v Seevnarayan*[18] for the proposition that the respondents' case stands almost on all fours with that one. If it does then the respondents' lawfully earned credit balances in the Israeli accounts cannot be described as the proceeds of unlawful activities and the interest earned therefrom similarly escapes the definition. It was also argued that any income tax evasion should be punished through the applicable tax laws not through POCA. In any event, it was argued, the revenue authority has granted the respondents indemnity in terms of Regulation 24 of the Exchange Control Regulations for their tax law contraventions, accompanied by appropriate penalties.

[58] Reliance on the *Seevnarayan* case is misplaced for the reasons that in *Seevnarayan:*

58.1. it was held that the Act applies to cases of individual wrong-doing, and therefore that it is designated to reach far beyond "*organised crime, money laundering and criminal gang activities.*"

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[17] National Credit Regulator v Opperman and Others 2013 (2) SA 1 (CC) at [67]
[18] (111/03) [2004] ZASCA 38; [2004] 2 All SA 491 (SCA)

58.2. forfeiture of benefits derived, received or retained "*in connection with or as a result of any unlawful activity*" should be given its full amplitude. The definitions of "*proceeds of unlawful activities*" and "*in connection with*" should be given their full ambit. The Court stated its distinction between property which is an "*instrumentality of an offence*" and property which constitutes "*proceeds of unlawful activities*" as follows:

> *"[66] It is evident that the definition of 'proceeds of unlawful activities' is cast extremely wide, and the interpretative caution Miller JA expressed regarding 'in connection with' in Lipschitz NO v UDC Bank Ltd (para 13 above) applies. But with that adjustment made, we consider that the amplitude of the definition should be approached somewhat differently from that in the case of 'instrumentality of an offence'. This is because the risk of unconstitutional application is smaller.*
>
> *[67] As we showed earlier, the forfeiture of a good deal of property that could literally be said to be 'concerned in' an offence would run unconstitutionally counter to the Act's objectives of removing incentives, deterring the use of property in crime, eliminating or incapacitating the means by which crime may be committed and at the same time advancing the ends of justice. In our view it is less likely that forfeiture of benefits derived, received or retained 'in connection with or as a result of any unlawful activity' would fail rationally to advance those objectives. We therefore approach the definition on the basis that, subject to necessary attenuation of the linguistic scope of 'in connection with', it should be given its full ambit."*

58.3. In *Seevnarayan* the property (money involved in the investment) was lawfully earned[19] and the proceeds thereby were a fraud committed

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[19] at [60] and [68]

against the revenue services by proffering false income tax returns.[20] That is why the evasion of income tax offences had to be prosecuted separately.

58.4. In this case I have found that the credit balances in the Israeli accounts were proceeds of unlawful activities, both in the respects of the capital amounts earned in South Africa and the interest earned in the Israeli bank accounts (or even in South Africa before the capital amounts were repatriated).

58.5. The interest earned in *Seevnarayan* was not as a result of unlawful conduct. It was as a direct result of his lawfully earned investment, but which he had failed to declare to SARS.[21]

58.6. In this case the interest earned in Israeli accounts is as a direct result of an unlawfully earned amounts. It flows directly from proceeds of unlawful activity.[22] It would be illogical to separate the interest which is an accrual of property which itself is proceeds of unlawful activities and cleanse it from the reach and application of POCA and seek that SARS conduct separate proceedings in respect thereof.

[59] In the circumstances, it is found that where the court finds on a balance of probabilities that the property concerned is the proceeds of unlawful activities, the interest earned, and benefit (such as evasion of tax) which was "derived,

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[20] at [55] – [59]
[21] at [70] – [71]
[22] at [71] - [72]

received or retained, directly or indirectly" in connection with or as a result of any unlawful activity as defined, fall to be forfeited to the State in terms of section 48(1) of the Act, and should not be prosecuted separately. This finding applies to the present case.

Previous Judgment and established Facts

[60] In *Law Society of the Northern Provinces and Ronald Bobroff & Others*[23] various forms of misconduct by the Practice as alleged also in these proceedings as established. It found that the Vivian, De La Guerre and Motara cases were examples of overreaching. It found misconduct also in other matters – being the De Pontes, Graham and Alves matters.

[61] The judgment further dealt with misappropriation of trust funds in the Pombo matter, *De La Guerre* and fictitious disbursements in matters set out in par 87 of the judgment.

[62] It is not within my power to disagree with Ranchod J's judgment. The respondents have not sought to appeal the judgment and its orders. Accordingly, I must accept that the Bobroffs engaged in various forms of misconduct in their Practice which warranted their being struck off the roll of legal practitioners as attorneys.

[63] In respect of Account 11521 it was found that it had an opening credit balance of R28 324 976.02 on 6 June 2011. The credit balance was made up by

[23] Case No. 20066/2016 (20/07/2017)

transfers from various trust creditors by means of journal entries and later debited against the suspense account. The balance was reduced to nil from 10 June 2011 to 11 December 2012 by effecting trust transfers from the suspense account. The retention of fees in the trust account was found to be a contravention of Rule 68.6.1 of the Law Society and that the suspense account was created to avoid or unlawfully reduce income tax and VAT liabilities.

[64] In respect of the Zunelle Account it was found that the investment of the Practice's funds in a section 78(2A) trust account was a contravention of Rule 68.6.1 of the Law Society and that this was done in order to avoid being taxed on interest earned on the moneys invested as such.

[65] The respondents argue that if it is found in these proceedings that the Practice is guilty of violating income tax and VAT laws, and engaged in a scheme to avoid being taxed on interest earned as a result, separate proceedings should be instituted for such violations. Mr Subel referred to the cases of *National Director of Public Prosecutions v R O Properties (Pty) Ltd; National Director of Public Prosecutions v 37 Gillespie Street, Durban (Pty) Ltd; and National Director of Public Prosecutions and Mothiellall Seevnarayan [2004] 2 All SA 491* in which it was held that such violations do not fall within the purview of POCA.

[66] This submission would be correct if such violations were in respect of ordinarily earned moneys upon which tax and VAT liabilities were evaded and payments of tax on interest earned was evaded. However, if these violations of the income tax and VAT laws was in respect of moneys earned unlawfully the

violations must be dealt with together with the provisions of section 50(1) of POCA. The benefits derived from such violations of the law are themselves proceeds of unlawful activities.

[67] The property which is proceeded against is the sums of money that the respondents acquired by unlawful activities referred to, *inter alia*, in the Ranchod J judgment. The property in turn has given rise to proceeds benefitting the respondents. The proceeds are the income tax and VAT that were not paid over to the tax authorities and the tax on the interest earned since the property was acquired which was also not paid to the tax authorities. For example,

(1) the credit balance in Account 11521 constituted proceeds of crime. By placing these proceeds in the suspense account the respondents were able to avoid payment of full income tax and VAT liabilities by the Practice. This was one transactional act or the acts were sufficiently close to constitute one object by the respondents.

(2) The investment of the Practice's funds in a section 78(2A) trust account, a provision meant solely for investment of a client's funds so that the interest earned is not taxed by the state but accrues to the Attorneys Fidelity Fund, was used as an unlawful activity with the object of ensuring that the Practice is not taxed on any interest that its invested funds would have earned were they invested in the ordinary way. This too constitute one transactional act for an unlawful purpose. Had the respondents invested the funds ordinarily and avoided the payment of

tax on the interest this would have been a matter for the tax authorities. However, since this avoidance is directly linked or sufficiently linked to the unlawful activity conceived by the respondents the evasion of tax liability on the interest is a matter to be adjudicated together with the original act.

[68] My view in this regard coincides with the definition of "*proceeds of unlawful activities*" because the avoidance of the liabilities referred to above constitute an "*advantage, benefit or reward which was derived, received or retained, directly or indirectly, ... in connection with or as a result of any unlawful activity ...*"

[69] Ranchod J described the misconduct on the part of the Bobroffs as extensive and serious.[24] The conduct was of "*serious charges of a practice–wide conduct of overreaching clients, contravening the Contingency Fees Act by relying on unlawful common law contingency fee agreements making clients sign several different fee agreements with a view to using the one that was later the most advantageous to the firm, and other unprofessional, dishonourable and even fraudulent conduct.*"[25]

[70] The misconduct referred to above was not a mere failure to adhere to the Rules of the Law Society. It was conduct prohibited by POCA.

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[24] Judgment: Vol 9, p.897 at [117]
[25] Ibid at [135]

Prescription

[71] The respondents have also raised the defence of prescription. It is contended by them that the Prescription Act, No. 68 of 1969, read with section 11(d) of the Contingency Fees Act, No. 66 of 1977 render individual claims by the Practice clients or by allegations related to such misconduct as having prescribed since they took place more than 3 years before proceedings were launched against them.

[72] This defence does not avail the respondents because POCA proceedings are not claims for a debt but, in this instance, are specifically prescribed to recover proceeds of unlawful activities whenever they may have taken place.

Intention to Commit a Crime

[73] The respondents contend that there is no evidence of VAT or tax evasion nor of money laundering. Especially the intention to commit any of these crimes has not be demonstrated. This is so because the respondents believed that the CLCF agreements were permitted and lawful.

[74] The above contention is without merit. I am satisfied that the schematic way in which the clients of the Practice were overreached and the manner of concealing the origins of the funds (by effecting inter-account transfers which disguised the Practice funds as section 78(2A) investments) reveals the respondents' intention. The respondents had the necessary intention to overreach and to conceal or evade paying tax on any portions of the proceeds of their unlawful activities.

Proportionality

[75] The respondents have referred to the cases of ***Prophet v National Director of Public Prosecutions***[26]; ***Mohunram and Another v National Director of Public Prosecutions and Another (Law Review Project as Amicus Curiae)*** [27] ; ***National Director of Public Prosecutions v Gerber and Another***[28] to argue that the application should fail on the basis that the State has failed to discharge an onus of demonstrating that the forfeiture that it seeks passes a proportionality test having regard to the fact that the forfeiture constitutes a deprivation of property.

[76] The process of determining disproportionality in forfeiture cases is set out in ***Ashley Brooks & another v National Director of Public Prosecutions***.[29] Essentially, if forfeiture is considered, it should first proximate the punishment that would have been imposed under criminal proceedings.[30] Secondly, the order must not impact adversely other parties connected with the property to be forfeited if the property is an instrumentality of a crime, especially if it will result in a deprivation against innocent parties.

[77] The proportionality rule is stated succinctly in paragraph [39] in Brooks as follows:

> *"[39] Once it established that the property was an instrumentality of an offence, a court is obliged to embark on a proportionality enquiry. This enquiry is aimed at*

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[26] 2007 (6) SA 169 (CC)
[27] 2007 (4) SA 222 (CC) at 246B – 252C
[28] 2007 (1) SA 512 (W)
[29] (855/2016) [2017] ZASCA 42 (30/3/2017) at [65] – [81]
[30] Brooks at [40]

balancing the constitutional imperative of law enforcement and combating crime and the seriousness of the offence, against the right not to be arbitrarily deprived of property."

[78] In this case the wrong-doing, being an accrual of proceeds of unlawful activities in the form of money cannot be said that the forfeiture comes close to forfeiture of physical property that is used jointly by various parties against whom the deprivation would be disproportionate or unfair. The spouses, children or associates of the respondents cannot be heard to be protesting that the unlawfully earned money and its accruals must be saved from forfeiture for their innocent benefit. This is a case of full forfeiture unless an application for exclusion under section 48(4)(b) is considered.

Judgment on costs in the Exclusion of Interest Application

[79] At the beginning of the first day of hearing this matter I heard argument regarding a costs order sought by the respondents against Stephen Derek Bezuidenhout. This arose out of Bezuidenhout's filing of an affidavit on behalf of Ronald Bobroff & Partners Inc. ("the Practice") seeking that certain monies be excluded from forfeiture in terms of section 49. The affidavit was filed on 22 June 2018, the application of the NDPP having been made in January 2018.

[80] Bezuidenhout is the surviving director of the Practice who was not struck off the roll of legal practitioners when the respondents were. He sought an order

excluding R50 990 427.30 (fifty million nine hundred and ninety thousand four hundred and twenty seven rand thirty cents).[31]

[81] The respondents filed answering affidavits. Bezuidenhout later withdrew the application or abandoned it. The respondents now seek costs against him or the Practice on the scale as between attorney and client.

[82] Bezuidenhout contends that the filing of the application is an issue between the NDPP and the Practice which has nothing to do with the respondents in their personal capacities. As a result, it was unnecessary for the respondents to file answering affidavits. On the face of it this seems to be the point as an application to exclude an interest in the property which is a subject of a forfeiture application is between the State and the person seeking the exclusion. However, the amounts sought to be excluded related to various matters that Ranchod J found the respondents to have misconducted themselves in respect of. Since the respondents continue to challenge the findings in respect thereof it was to be expected that they would not like to be seen to be conceding the issue to the NDPP. Their filing answering papers has to be seen in that context.

[83] Bezuidenhout points to the fact that correspondence to the effect that the Practice does not intend entering the litigation fray as a party to the proceedings was sent to both the NDPP and the respondents. Despite this awareness the respondents seek an order that Bezuidenhout pays their wasted costs personally or by the Practice.

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[31] Vol 9, p.843-846

[84] On 28 March 2019 the respondents filed an application for leave to respond to the application by the Practice to exclude from the forfeiture application by the NDPP of certain amounts. They correctly protest that the amount claimed to be excluded is described as damages suffered by the Practice and can therefore not be recoverable from the affected credit balances in the two bank accounts in Israel that are a subject of forfeiture proceedings. Nevertheless, the respondents proceeded to file the whole of Vol 4 in answer to Bezuidenhout. The response contains in the majority the defence that the respondents have already proffered in the main answering affidavit.

[85] In the exercise of my discretion in the issue of costs I have taken into account factors such as that:

85.1. The Practice had not followed the provisions of section 49 when Bezuidenhout filed his affidavit. The prospects that leave would have been granted had the Practice sought leave are less than reasonable.

85.2. The Practice had notified both the NDPP and the respondents of its intention merely to register the Practice's interest in the claimed R50 million damages. The respondents received seemingly good legal advice that this claim is not a recognised cause of action under POCA;

85.3. The majority of the answering affidavit contains matter that the respondents have traversed in the answering affidavit; and

[86] In the circumstance I make an order that the Practice (Ronald Bobroff & Partners Inc) pay 50% of the respondents' costs, including the costs of counsel, on a party and party scale in this application.

[87] In the circumstances I 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 ("the POCA") declaring forfeit to the state certain property ("the property"), which is presently subject to a preservation of property order granted by this honourable court under the above case number on 28 July 2017, namely the credit balances and interest accrued in:

    1.1. account 20-23-135877 held at Bank Mizrahi Tefahot, Israel in the name of Darren Bobroff; and

    1.2. account 11-130-7592258 held at Bank Discount, Israel in the name of Ronald Bobroff.

2. The appointment of a *curator bonis* is hereby dispensed with.

3. Authorised persons of Bank Mizrahi Tefahot, Israel and Bank Discount, Israel are directed to deposit the balance of the proceeds in the aforementioned accounts into the Criminal Assets Recovery Account established under section 63 of the POCA, number 80303056 held at the South African Reserve Bank, Vermeulen Street, Pretoria.

4. The Registrar of this honourable court must publish a notice of this order in the Government Gazette as soon as practical after the order is made.

5. Any person affected by the forfeiture order, and who was entitled to receive notice of the application under section 48(2) but who did not receive such notice, may within 45 days after the publication of the notice of the forfeiture order in the Gazette, apply for an order under section 54 of the POCA, excluding his or her interest in the property, or varying the operation of the order in respect of the property.

6. All the paragraphs of the order operate with immediate effect, except paragraph 2 which will only take effect on the day that a possible appeal is disposed of in terms of section 55, or on the day that an application for the exclusion of interests in forfeited property in terms of section 54 of the POCA is disposed of, or after expiry of the period in which an appeal may be lodged or application be made in terms of section 54 of the POCA.

7. The Letter of Request annexed hereto, marked "X" is authorised.

8. The respondents are to pay the costs of the application jointly and severally, one paying and the other to be absolved.

Malindi, AJ

Acting Judge of the High Court of South Africa

Appearances:

For Plaintiffs:	Adv E C Labuschagne SC and Adv S de Villiers
Instructed by:	Office of the State Attorney, Pretoria Ref: Mr Mathanga /Z56/2017 E-mail: RMathaga@justice.gov.za / TManyako@npa.gov.za
For Defendants:	Adv A Subel SC and Adv D Vetten
Instructed by:	John Joseph Finlay Cameron c/o Friedland Hart Solomon Nicolson Ref: Trudie van Straaten e-mail: johncam@mweb.co.za
Date of hearing:	29 and 30 April 2019
Date of judgment:	21 August 2019

"X"

Mahodi
20/08/2019

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA

CASE NUMBER: 50395/2017

In the matter between:-

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS Applicant

and

DARREN RODNEY BOBROFF 1st Respondent

RONALD BOBROFF 2nd Respondent

In re:

The credit balances and interest accrued in account 20-23-135877 held at Bank Mizrahi Tefahot, Israel in the name of Darren Bobroff and account 11-130-7592258 held at Bank Discount, Israel in the name of Ronald Bobroff.

IN THE APPLICATION FOR A FORFEITURE ORDER IN TERMS OF SECTION 48 OF THE PREVENTION OF ORGANISED CRIME ACT 121 OF 1998

LETTER OF REQUEST

TO: LEGAL ASSISTANCE TO FOREIGN COUNTRIES
22 KANFEI NESHARIMS TREET
JERUSALEM 95464
ISRAEL

TEL: (9722) 655 6919

FAX: (9722) 655 6887

ATTENTION: THE LEGAL ADVISOR FOR THE ADMINISTRATION OF COURTS

INTRODUCTION

1. The Gauteng Division of the High Court of South Africa requests the assistance of the competent authority in Israel to enforce a forfeiture order made by the Court, a copy of which is attached hereto marked "A" pertaining to the credit balances and interest in two bank accounts in Israel, details of which are set out in the Court order.

2. A previous letter of request was issued at the time of ordering the preservation of such funds pending the forfeiture proceedings. A copy is annexed marked "B". The particulars contained therein are repeated herein by incorporation.

3. The funds have been frozen in the bank accounts and are still frozen.

4. This is a request to give effect to the order being an order in terms of Section 19 of the International Cooperation for Criminal matters, Act 75 of 1996.

DATED at PRETORIA ON THIS THE DAY OF AUGUST 2019

Malindi

G Malindi
Acting Judge of the High Court of South Africa

"A"

Malindi 20/08/2019

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA

CASE NUMBER: 50395/2017

In the matter between:-

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS Applicant

and

DARREN RODNEY BOBROFF 1st Respondent

RONALD BOBROFF 2nd Respondent

In re:

The credit balances and interest accrued in account 20-23-135877 held at Bank Mizrahi Tefahot, Israel in the name of Darren Bobroff and account 11-130-7592258 held at Bank Discount, Israel in the name of Ronald Bobroff.

IN THE APPLICATION FOR A FORFEITURE ORDER IN TERMS OF SECTION 48 OF THE PREVENTION OF ORGANISED CRIME ACT 121 OF 1998

ORDER

Before the Honourable Justice G. Malindi on 29 and 30 April 2019.

Having read the documents filed of record and having considered the matter, it is hereby ordered.

1. An order is granted in terms of the provisions of section 50 of the Prevention of Organised Crime Act 121 of 1998 ("the POCA") declaring forfeit to the state certain property ("the property"), which is presently subject to a preservation of property order granted by this honourable court under the above case number on 28 July 2017, namely the credit balances and interest accrued in:

   1.1. account 20-23-135877 held at Bank Mizrahi Tefahot, Israel in the name of Darren Bobroff; and

   1.2. account 11-130-7592258 held at Bank Discount, Israel in the name of Ronald Bobroff.

2. The appointment of a *curator bonis* is hereby dispensed with.

3. Authorised persons of Bank Mizrahi Tefahot, Israel and Bank Discount, Israel are directed to deposit the balance of the proceeds in the aforementioned accounts into the Criminal Assets Recovery Account established under section 63 of the POCA, number 80303056 held at the South African Reserve Bank, Vermeulen Street, Pretoria.

4. The Registrar of this honourable court must publish a notice of this order in the Government Gazette as soon as practical after the order is made.

5. Any person affected by the forfeiture order, and who was entitled to receive notice of the application under section 48(2) but who did not receive such notice, may within 45 days after the publication of the notice of the forfeiture order in the Gazette, apply for an order under section 54 of the POCA, excluding his or her interest in the property, or varying the operation of the order in respect of the property.

6. All the paragraphs of the order operate with immediate effect, except paragraph 2 which will only take effect on the day that a possible appeal is disposed of in terms of section 55, or on the day that an application for the exclusion of interests in forfeited property in

terms of section 54 of the POCA is disposed of, or after expiry of the period in which an appeal may be lodged or application be made in terms of section 54 of the POCA.

7. The respondents are to pay the costs of the application jointly and severally, one paying and the other to be absolved.

BY ORDER OF THE COURT

REGISTRAR OF THE ABOVE HIGH COURT

DATE

"B"
000404 Malidi
20/08/2019

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 50395/2017

In the *ex parte* application of:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS — **APPLICANT**

and

RONALD BOBROFF — **1ST RESPONDENT**

DARREN RODNEY BOBROFF — **2nd RESPONDENT**

LETTER OF REQUEST

TO: LEGAL ASSISTANCE TO FOREIGN COUNTRIES

22 KANFEI NESHARIM STREET

JERUSALEM 95464

ISRAEL

TEL: (9722) 655 6919

FAX: (9722) 655 6887

ATTENTION: THE LEGAL ADVISOR FOR THE ADMINISTRATOR OF COURTS

A. INTRODUCTION

1. The Gauteng Division of the High Court of South Africa requests the assistance of the competent authority in Israel to enforce an order made by the said Court on 28 July 2017;

B. PARTICULARS OF THE REQUESTING COURT

2. In terms of the Constitution of the Republic of South Africa, Act 108 of 1996 (hereinafter *"the Constitution"*) the judicial authority of the Republic of South Africa vests in the Courts.

3. The judicial system consists *inter alia* of High Courts (for different areas of jurisdiction) established under Section 166(c) of the Constitution read with Section 2 and the First Schedule to the Supreme Court Act, No 59 of 1959.

4. The Gauteng Division of the High Court (hereinafter referred to as *"the Court"*) is a properly constituted division of the High Court of South Africa in terms of the above provisions.

5. The Court has the authority to issue Letters of Request to foreign countries by virtue of Section 23 of the International Co-Operation in Criminal Matters Act, No 75 of 1996. A copy of Section 23 of the said Act is attached hereto marked **Annexure 1**.

6. In terms of Section 19(3) of the International Co-Operation in Criminal Matters Act, the Court shall send the Letter of Request to the Director-General of the Department of Justice for onward transmission to the appropriate Government Body in the requested state, *in casu*, Israel.

THE ORDER OF COURT:

7. On 28 July 2017 the Court, on application made by the National Director of Public Prosecutions of South Africa (the Applicant) granted a preservation order in the terms set

out in **Annexure 2** hereto (hereinafter referred to as *"the Order"*) ordering the preservation of monies held by Ronald Bobroff (the 1st Respondent) and Darren Rodney Bobroff (the 2nd Respondent) in the Israeli bank accounts mentioned in paragraph 7 *infra*. The Court ordered that the monies contained in the said accounts be retained under the control of Bank Mizrahi Tefahot and Bank Discount pursuant to the granting of a forfeiture order

D. ASSISTANCE REQUIRED

7. The appropriate authority in Israel is hereby requested to assist the Court in giving effect to the order insofar as it applies to the property, referred to in the Order, which is situated in Israel. In particular, the appropriate Israeli authority is required to assist in safeguarding the funds held in Account 20-23-135877 held at Bank Mizrahi Tefahot, Israel and Account 11-130-7592258 held at Bank Discount, Israel.

8. The appropriate authority in Israel is requested to provide such assistance as requested above for as long as the above Order of the Court remains in force.

9. The Registrar of the Court has been instructed to inform you should any changes be made to the Order of the Court.

Dated at Pretoria on 28 July 2017

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG, PRIVAATSAK X67
PRETORIA 0001
2017 -07- 28
JUDGE'S SECRETARY
REGTERS KLERK
GRIFFIER VAN DIE HOË HOF VAN
SUID AFRIKA GAUTENG AFDELING, PRETORIA

POTTERILL

POTTERILL J
JUDGE OF THE GAUTENG DIVISION, PRETORIA
HIGH COURT OF SOUTH AFRICA

Classified

Contact: Sunita Tel: 011 280 3147
E-mail: sunitap@timesmedia.co.za

Norman Canale, left, with Sunday Times colleag
fourth estate. Picture: Sydney Seshibedi

Norman Cana sharp pen an

Beaten up, banned and threatened – but he stuck to the story

Former Sunday Times sportswriter Norman Canale, who died this week a month short of his 95th birthday, was larger than life with a flamboyant style that matched his courage for writing the hard-hitting truth.

As a result he was threatened, beaten up and banned from rugby stadiums and boxing tournaments along the way.

Canale matriculated at Muir College in Uitenhage, studied at Rhodes and Stellenbosch universities, did a stint in the army during World War 2 and tried his hand as a farm worker, a lifesaver and selling insurance (he never sold a policy).

His first newspaper job was at the Eastern Province Herald in Port Elizabeth. He earned the ire of his editor when, sent to cover club rugby, he played rather than reported.

Canale went on to become a stand-out among a generation of gifted writers who included Ray Williams, Barry Glasspool, Chris Greyvenstein and Paul Irwin, whose Fleet Street approach was a contrast to the often "ungrammatical purity" of American Damon Runyon preferred by Canale.

Carousing with tennis stars

He womanised and drank with the best of them and was banned a few times from the Federal Hotel, the favourite watering hole for newspapermen, radio personalities and

LEGALS

IN THE HIGH COURT OF SOUTH AFRICA THE WESTERN CAPE DIVISION, CAPE TOWN

Cape Town:
Thursday 10 May 2018
Before the Honourable
Mr Justice Samela
Case No: 7111/2018

In the Ex parte application of:
TALAZA MIRRIAM DESEU
(Did 521113 0654 088)
Applicant

In Re: Presumption of Death

ORDER

Having read the papers of record and having heard the legal representative for the Applicant an order in the following terms is made:
1.That a rule nisi do issue calling upon all the interested parties to appear in the above Honourable Court on 29 June 2018 and show cause why the Court should not make an order:-
a) Presuming the death of Victor Bututu Sizani;
2. Applicant is ordered and directed to serve copies of this order by publication of one copy in English in the Sunday Times newspaper and one copy in English in the Vukani Newspaper no later than ten (10) days before the return date.

BY ORDER OF THE COURT

Legal Aid South Africa
Cape Town Office
021 426 4126

IN THE HIGH COURT OF ZIMBABWE HELD AT HARARE
Case No. HC 2169/16

In the matter between:
FAITH CHINOMONA
(Nee MUCHAGONA)
Plaintiff
And
MARTIN CHINOMONA
Defendant

NOTICE TO PLEAD AND INTENTION TO BAR

TO: Martin Chinomona whose whereabouts are currently unknown.

TAKE NOTICE THAT the Defendant is hereby required to file his plea to the Plaintiff's claim within twelve (12) days from the date of this publication failure of which this matter will be set down for hearing on the unopposed roll before this Honourable Court.

Dated at Harare on this 29th day of May 2018.

MUGIYA & MACHARAGA
LAW CHAMBERS
Plaintiff's Legal Practitioners
No. 11 Belvedere Road, Kopje
HARARE (NYM/lk/H2337

TO: THE REGISTRAR
High Court of Zimbabwe
HARARE

ANNEXURE A

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 50395/2017

In the ex parte application of:
THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS **APPLICANT**
In re:
The credit balances and interest accrued in account 20-23-135877 held at Bank Mizrahi Tefahot, Israel in the name of Darren Bobroff and account 11-130-7592258 held at Bank Discount, Israel in the name of Ronald Bobroff

IN THE APPLICATION FOR A PRESERVATION ORDER IN TERMS OF SECTION 38 OF THE PREVENTION OF ORGANISED CRIME ACT 121 OF 1998

Notice in terms of section 39 of the Prevention of Organised Crime Act 121 of 1998 (POCA)

This notice is addressed to **Ronald Bobroff and Darren Bobroff** and all other persons who have an interest in the credit balances and interest accrued in account 20-23-135877 held at Bank Mizrahi Tefahot, Israel and account 11-130-7592258 held at Bank Discount, Israel **(the property)**:

Take notice that:

1 The National Director of Public Prosecutions **(National Director)** has obtained a preservation of property order **(the order)**, a copy of which is attached to this notice, in terms of section 38(2) of the POCA in respect of the property;
2 If you have an interest in the property, you should understand that it is now at risk. You are advised to obtain legal advice on whether your interest can be protected and, if so, on how to protect it;
3 You are notified that the National Director will, within 90 days of publication of this notice, apply to the High Court under section 48 of the POCA for an order declaring the property forfeit to the state. The order will remain in force until the application for a forfeiture order is finalised, and until any forfeiture order that is made is satisfied;
4 If you intend to oppose the application for a forfeiture order, or you intend to apply for an order excluding your interest from a forfeiture order in respect of the property, you must enter an appearance in terms of the order. The requirements for such an appearance are set out in the order and are also dealt with in sections 39(3), (4) and (5) of the POCA. An appearance must comply with these requirements;
5 Your attention is specifically drawn to the 14-day time limit prescribed in section 39(4) for the entry of an appearance referred to in paragraph 4 above;
6 If you enter an appearance in terms of the order you will be entitled to be given 14 days notice of the application by the applicant for a forfeiture order in respect of the property;
7 If you fail to enter an appearance in terms of the order or to comply with the above requirements, you will not be given notice of the application for a forfeiture order and you will not be entitled to appear at the hearing of the application. In such a case, the court may grant a default order forfeiting the property to the state under section 53 of the POCA;
8 You may, on good cause shown (including the non-availability of any other suitable remedy to protect your legitimate rights or interests), on 3 days notice in urgent instances and at least 7 days notice in other instances to the applicant, and within 8 days of becoming aware of the order, apply for reconsideration of the order;
9 You are specifically advised that even if you intend to apply for reconsideration of the preservation order in this case, you must, in addition, comply with paragraphs 4 and 5 above if you intend to oppose the forfeiture application at a later date. Failure to do so can result in a forfeiture order being granted against the property by default and without further notice to you.
10 Whenever this order states that you must deliver or serve any notice, affidavit or other process document on the applicant, you must deliver or serve them on the applicant at the following address:

STATE ATTORNEY, SALU Building, Ground Floor, Cnr Andries and Schoeman Streets, Pretoria
Tel: 012 309 1677 **Cell:** 082 650 5560
Email: RMathaga@justice.gov.za

Reference number: 5461/17/Z56

Any correspondence or other enquiries must also be directed to this address or contact number.