

SOUTH AFRICA / JUDGMENT

Moyane v National Director of Public Prosecutions (A108/19) [2020] ZAGPPHC 626 (20 October 2020)

[2020] ZAGPPHC 626

COURT

North Gauteng High Court, Pretoria

BEFORE

Louw, Jordaan AJ, Fisher J

CASE / FILE NUMBER

A108/19

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF THE REPUBLIC OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

[1]

REPORTABLE: YES / NO

[2]

OF INTEREST TO OTHER
JUDGES:YES / NO
[3]
REVISED
CASE
NO: A108/19
In

the matter between:

MOYANE,
TIMOTHY
Appellant
and
THE
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
Respondent

JUDGMENT

LOUW, J (JORDAAN A J CONCURRING)

[1] This is an appeal against a forfeiture order granted by Mavundla J on 18 July 2017 in terms of s 50 of the Prevention of Organised Crime Act 121 of 1998 (POCA) in respect of a Volkswagen Scirocco motor vehicle pursuant to an application brought by the respondent (the NDPP) against the appellant in terms of s 48(1) of POCA.

[2] In terms of s 50 (1) of POCA, the High Court shall, subject to s 52 , make an order applied for under s 48(1) if the court finds on a balance of probability that the property concerned is an instrumentality of an offence referred to in Schedule I of the Act,

or is the proceeds of unlawful activities. Mavundla J found that the NDPP had “mustered sufficient” to warrant having the vehicle declared forfeit to the State “as being an instrumentality of unlawful activity or derived from unlawful activity or money laundering”.

[3] Section 48(1) of POCA requires that a preservation order in terms of s 38 be in force when application is made for a forfeiture order. The NDDP had, prior to the bringing of the forfeiture application, obtained a preservation order in respect of the vehicle from a judge in chambers. In that application, it relied on the facts set out in an affidavit by Sgt. P. S. M. Ngwenyama who was stationed at the Organised Crime Unit of the South African Police Services in Nelspruit (now Mbombela). In the forfeiture application, the NDDP relied on the same affidavit by Sgt. Ngwenyama and did not present any additional evidence.

[4] The evidence of Sgt. Ngwenyama can be summarised as follows:

- During 2010, the appellant’s name was, on numerous occasions, mentioned to the SAPS by police informers as being involved in illegal gold smelting, illegal gold trading, dealing in precious stones such as diamonds and illegal drug activities.

- During November 2010, he noticed on the e-Natis system that the Scirocco vehicle was previously registered on the appellant’s name but that it had been transferred to one Albert Sithole within three months after it had been registered in the appellant’s name. This seemed suspicious to him and he decided to investigate.

- The e-Natis system reflected that the vehicle initially belonged to Palm Motors, the Volkswagen dealership in White River. Warrant Officer Smit, who was a member of the investigating team, obtained an affidavit from Ms. Brinkman, the sales manager of Palm Motors, in which she said the following:

- o During August 2009, the appellant, who had previously bought a vehicle from her, arrived at Palm Motors, accompanied by an unknown man who was interested in buying a Scirocco vehicle. She gave the appellant a quotation and the unknown man indicated that he would pay the purchase price in cash.

- o On 22 September 2009, an amount of R20 000.00 was paid into the bank account of Palm Motors. The amount was a holding deposit to secure the purchase of the vehicle.
- o When the vehicle became available, she telephoned the unknown man on the number he previously provided. An unknown lady answered the phone and told her that the unknown man had been shot dead and that she should contact Charmaine or the appellant regarding the vehicle.
- o Ms. Brinkman was acquainted with Charmaine as she had accompanied the appellant on most of his visits to the dealership and knew that Charmaine was the appellant's girlfriend. She phoned Charmaine, who told her that the appellant would continue with the deal as a tribute to the deceased.
- o A few days later, the appellant and Charmaine showed up at the dealership. Charmaine did most of the talking. Ms. Brinkman got the impression that Charmaine acted as the appellant's spokesperson as the appellant was not fluent in English.
- o The purchase price was finalised at R538 320.00. Charmaine indicated that the full purchase price would be paid into the bank account of the dealership.
- o The following payments were made into the ABSA bank account of Palm Motors:
 - § On 1 February 2010, an amount of R100 000.00 was electronically transferred into the account.
 - § On 2 February 2010, a further R60 000.00 was electronically paid into the account.
 - § On 19 March 2010, two deposits, one of R150 000.00 and one of R94 000.00, were made into the account.
 - § On 20 March 2010, an amount of R35 000.00 was deposited into the account.
 - § On 23 March 2010, an amount of R9 400.00 was deposited into the account.
 - § On the same day, a personal cheque of the appellant in the amount of R70 000.00 was provided to Palm Motors as the final payment for the vehicle.
- o The appellant and Charmaine wanted the vehicle to be registered in another person's name. Palm Motors could not comply with the request as company policy required the vehicle to be registered in the name of the person who completed the offer to purchase.
- o The vehicle was personally delivered to the appellant and Charmaine. The date of delivery is unknown, but according to e-Natis, it was registered in the appellant's name on 17 March 2010.
- Sgt. Ngwenyama analysed the deposit slips that are attached to Ms. Brinkman's affidavit and noted the following:
 - o Annexure 1 refers to a payment of R20 000.00 made on 22 September 2009. The deposit slip was completed by a bank official. He subpoenaed the ABSA account to obtain more information on the depositor of the amount but had not received the information from the bank.

- o Annexures 2 and 3 are electronic payments of R100 000.00 and R60 000.00 respectively, received on 1 and 2 February 2010. The subpoena issued to the bank included a request for further information but further information had not yet been received from the bank.
- o Annexure 4 is a payment of R150 000.00 made on 19 March 2010 by one E N Ngwenya at the Johannesburg branch of ABSA. No further information as to Ngwenya's identity was available to the bank.
- o Annexure 5 is a payment of R94 000.00 also made on 19 March 2010, this time at the Witbank branch of ABSA by one John Tembe. No further information on his identity was available.
- o Annexure 6 is a payment of R35 000.00 made on 20 March 2010 at the Witbank branch of ABSA, again by Tembe.
- o Annexure 7 is a cheque payment of R70 000.00 made on 23 March 2010 from the appellant's personal account.
- o Annexure 8 is a payment of R9 400.00 made on 23 March at the Witbank branch of ABSA. The deposit slip was signed by a person referred to as John, but no further information about him is known to the bank. Sgt. Ngwenyama submits that, as Tembe's name is John and Tembe made two previous deposits at the bank, this deposit was made by Tembe.
- Sgt. Ngwenyame submits that the six cash deposits made during the period 1 February 2010 to 23 March 2010 were made by different people at different locations to disguise the true origin of the funds.
- He states that, according to e-Natis, the Scirocco vehicle was transferred to A Sithole on 2 June 2010. Ms Brinkman referred W/O Smit to Sifiso Zulu, a sales executive who had assisted the appellant in transferring the vehicle to Sithole. Smit obtained an affidavit from Zulu in which the following is stated:
 - o He could not recall the exact date, but it was during the Soccer World Cup in June 2010 when three unknown young men showed up at Palm Motors and requested him to register the vehicle into another person's name. The other person was not present and he told them that he was not permitted to do so without that person and the appellant being present.
 - o The appellant, accompanied by a group of young men, arrived at Palm Motors a few days later and requested him to register the vehicle in the name of one of the men in the group which he pointed out to Zulu. This young man had a crippled hand and leg.
 - o The appellant subsequently handed a copy of Sithole's identity document to Zulu. Brinkman did not want Zulu to do the registration, but Zulu assisted them with the completion of the transfer forms. Zulu made a copy of Sithole's identity document and kept it in the transaction file.
- Sgt. Ngwenyama decided to obtain more information about Sithole in order to investigate the transfer of the vehicle into his name. Being aware of Sithole's disability, he decided to make enquiries at the South African Social Security Agency (SASSA). He established that Sithole was

approved to receive a disability grant which was paid to him monthly. From SASSA'S file pertaining to Sithole, he ascertained his residential address and that according to his medical assessment he was declared 70% permanently disabled, needing assistance in self-care and physical activity.

- Sgt. Ngwenyama further obtained an affidavit from one Andrew Strumpher, a Chief Forensic Investigator in the employ of the Special Investigating Unit (SIU) regarding Sithole's driver's licence. Strumpher declared that that he conducted an e-Natis search on Sithole's identity number and established that he was not issued with any driver's licence.

- Sgt. Ngwenyama further made enquiries at the Department of Home Affairs in Nelspruit which keeps a data base of all cross-border movements through border posts. He obtained an affidavit from a Mr. Theunis Jacobus van der Merwe, a Control Immigration Officer in the employ of Home Affairs. Van der Merwe was requested to check the cross-border movements of the Scirocco vehicle and its passengers and the cross-border movements of Sithole in order to establish if he travelled across the border, with whom he travelled and the vehicle used. Mr. Strumpher declared:

- o that between 25 February and 21 June 2011, the appellant drove through the Lebombo and Beit Bridge border posts on 6 occasions, using the Scirocco vehicle.

- o that on 17 March 2011, the appellant was accompanied by Charmaine in the Scirocco when it went through the Beit Bridge border post.

- o that Sithole passed through the Lebombo border post on 6 occasions between 30 April 2010 and 9 July 2011. On each occasion he crossed the border on foot, not as a driver or passenger of a vehicle.

- During June 2011, Sgt. Ngwenyama received information from a source that the appellant was currently dealing in drugs. He proceeded to apply for a search warrant to search the appellant's residence in Matsulu. During the early hours of 1 July 2011, Sgt. Ngwenyama and several members of the SAPS went to the appellant's house. On their arrival, the appellant was not present, but a female person allowed them entrance and introduced herself as the appellant's wife. Her identity document indicated her name as Phumile Pretty Gama.

- They could not find any drugs or illegal substance when they searched the house. They found a 7.65 pistol hidden in a cupboard for which the appellant has been charged for failing to lock the firearm away in a prescribed safe.

- Upon further investigation, they discovered the Scirocco parked in the garage. Ms Gama informed them that it belongs to the appellant. They found the original licensing documentation of the vehicle in the cubby hole. The documents were in Sithole's name. Ms Gama admitted that she knew Sithole and said that he apparently had a share in the vehicle but she did not know the particulars. She further said that the keys of the vehicle were with the appellant.

· When Sgt. Ngwenyama asked Ms Gama what kind of employment the appellant had to enable him to afford the Scirocco, she said that he was unemployed. Sgt. Ngwenyama established from the Department of Labour that the appellant has neither been registered as employed nor has he ever been registered by an employer with the Unemployment Insurance Fund.

· Sgt. Ngwenyama further referred in his affidavit to the fact that the appellant was convicted in the Barberton magistrates' court on 2 June 1998 for illegal possession of gold and was sentenced to a fine of R3000.00 or 10 months imprisonment. He also refers to a previous preservation order which the Asset Forfeiture Unit had obtained against the appellant on 9 February 2010 regarding a cash amount of R120 000.00. The amount was seized on the basis that it represented the proceeds of illicit gold smuggling. When the appellant's home was searched by the SAPS, they found a Volkswagen EOS vehicle which belonged to the appellant and a firearm with rounds of ammunition lying on a bedside table as well as two gold casting pans. The money was found under a mattress. They also found a piece of metal in a cupboard which they suspected to be gold and a plastic bag containing small solid substances. These were sent to the Forensic Science Laboratory of the SAPS. The appellant was arrested on charges of possession of unwrought gold and possession of an unlicensed firearm. The appellant first appeared in court on 19 November 2008 and on 15 January 2009 the court refused a further postponement pending the outcome of the forensic report. The case against him was withdrawn. It was not

re-enrolled because the forensic report indicated that no unwrought precious metals were present in the exhibits. The Eos was later

handed back to him. The R120 000.00 has not been returned as a close corporation, National Panel Beaters CC, opposed the forfeiture

application and contended that the money belonged to it, being the purchase price of a vehicle which the purchaser had given to the appellant's wife so that the appellant could hand the money over to the close corporation. The opposed forfeiture application has not been finalised. All of this evidence has no direct bearing on the present matter, but explains why the SAPS suspected the appellant of being involved in illegal activities and why they were keeping a watch on him.

[5] Sections 4, 5 and 6 of POCA provide the following:

4. Money laundering

Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and-

- (a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or
- (b) performs any other act in connection with such property, whether it is performed independently or in concert with any other person,

which has or is likely to have the effect-

- (i) of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or
- (ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere-
- (aa) to avoid prosecution; or
- (bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence,

shall be guilty of an offence.

5. Assisting another to benefit from proceeds of unlawful activities

Any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby-

- (a) the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or
- (b) the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way,

6. Acquisition, possession or use of proceeds of unlawful activities

Any person who-

- (a) acquires;
- (b) uses; or
- (c) has possession of,

property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities of another person, shall be guilty of an offence.

- [6] The respondent's case, as formulated by Sgt. Ngwenyama in paragraph 61 of his affidavit, is that the appellant, Sithole and Charmaine have committed the offences mentioned in ss 4, 5 and 6 of POCA for the following reasons:

"61.1 The modus operandi used by Moyane, Sithole and Charmaine in dealing with the Scirocco, indicates that they acted in concert to conceal the true origin of the money used to purchase the Scirocco.

61.2 The purchase price of the Scirocco was paid by various persons from various locations, i.e. Johannesburg, Witbank and White River. The true origin of these huge amounts of cash is very suspicious. I submit that it was derived from unlawful activities, i.e. gold smuggling, diamond smuggling, drug smuggling committed either by Moyane and/or other unknown persons.

61.3 The records show that Moyane is unemployed. I respectfully submit that it is impossible for an unemployed person to afford the Scirocco, a vehicle with a purchase price of more than half a million Rand.

61.4 The Scirocco was registered in Sithole's name with the exclusive purpose of concealing the true and beneficial ownership of the vehicle. It is submitted that Moyane is the de facto and beneficial owner of the vehicle. Sithole does not even possess a driver's licence to drive the vehicle and he is crippled. The vehicle is kept at Moyane's residence and he is continuously using the vehicle, as indicated by the cross-border movements in paragraph 32 supra. Furthermore, Moyane made substantial payments towards the purchase price of the vehicle.

61.5 The agreement with Zulu to register the vehicle in Sithole's name was clearly made 'to conceal or disguise the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof'."

[7] Sgt. Ngenyama concluded by submitting that the appellant knows that the police are investigating his unlawful activities and that he therefore had to disguise the true ownership of the Scirocco by registering the vehicle in Sithole's name. He therefore

submitted that the Scirocco represents the proceeds of unlawful activities and that it was used as an instrumentality to commit money laundering in contravention of sections 4 to 6 of POCA.

[8] Significantly, the respondent did not provide any evidence that the money which was used to pay the purchase price of the vehicle, was the proceeds of unlawful activities such as gold, diamond and drug smuggling. Sgt. Ngwenyama only went so far as to say that the origin of the cash deposits was very suspicious and to submit that the money was derived from such unlawful activities committed either by the appellant and/or other unknown persons.

[9] The appellant, in his answering affidavit, challenged Sgt. Ngwenyama's contentions. He gave the following explanations of the payments which were made to Palm Motors in his answering affidavit:

- The deposit of R20 000.00 was an amount of income he had been paid in the course of his employment by National Panel Beaters Trading CC, which amount he had withdrawn in cash from his personal bank account at FNB, Nelspruit branch. He held a member's interest in the close corporation at the time.
- The amount of R100 000.00 paid electronically on February 2010 emanated from the account of Richbar CC which belonged to a friend, Aaron Mlambo, who lent him the money.

· The amount of R60 000.00 paid electronically on 2 February 2010 originated from a business associate of the appellant, John Thembe,

who held a tender with Escom through his company Delta Blue Trading for providing certain services. The appellant, in his capacity as a member of Chihudho Trading CC, was subcontracted by Thembe to provide certain transport functions. The amount was payable in terms of the subcontracting agreement and he requested Thembe to pay the money over to Palm Motors.

· The payment of R150 000.00 on 19 March 2010 was made by Edson Ngwenya, as appears from the deposit slip attached to the respondent's

founding papers. His telephone also appears on the deposit slip. The amount was paid for a truck which Ngwenya had rented from the appellant and his brother. Mr. Ngwenya subsequently passed away. The respondent admitted in its replying affidavit that the truck was registered in the appellant's name.

· The payment of R94 000.00 on the same day was made by Thembe in terms of the aforesaid rental agreement. His telephone number also appears on the deposit slip.

· The payment of R35 000.00 on 20 March 2010 was a similar payment by Thembe.

· The last payment of R70 000.00 was paid by a cheque which the appellant had drawn against the account of Chihudho Trading CC which is also held at FNB, Nelspruit.

[10] The court a quo held that, for the appellant and Sithole, who was the second respondent in the forfeiture application, to successfully oppose the grant of a forfeiture order, they attract the onus to show that they were innocent owners, and also the onus to apply for the property to be excluded from the forfeiture order in terms of s 52 of POCA. Section 52(1) provides that the High Court may, on application, 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.

[11] The court in my view erred in finding that there was such an onus on the appellant or Sithole. In *National Director of Public Prosecutions v Van der Merwe*,^[1] the court said the following regarding the incidence of onus, with which I respectfully agree:

"The NDPP is burdened with the onus of proving an entitlement to a forfeiture order pursuant to an application by that functionary in terms of s 48(1) of the Act. As is generally the position in regard to a true onus, the incidence of which is fixed by law, nothing in the character of a particular case can shift that onus to the other party. The ambit of the onus on the NDPP in all forfeiture applications, irrespective of whether or not the respondent claims an exclusionary order in terms of s 52, includes the onus of establishing on a balance of probabilities that the remedy sought is proportionate, in the context of realising the objects of the Act, to the ends sought to be achieved by the grant – and therefore by implication, would not amount to an arbitrary deprivation of property."

[12] The court a quo criticised the appellant for failing to attach supporting documentation for the deposit of R20 000.00 which he paid, such as his work relationship with National Panel Beaters Trading CC or a statement of account of the CC or proof of its payment to the appellant; for failing to attach a supporting documentation or a supporting affidavit from Mr. Mlambo in respect of the R100,000.00 which the appellant borrowed from him; for failing to attach a copy of the agreement with Edson Ngwenya for the hiring of a truck for which he paid R150,000.00, or a confirmatory affidavit by the appellant's brother; and for failing to attach the financial

statements of Chihudhu or source documentation to explain the deposits made to Chihudhu's bank account which enabled the

appellant draw the R70,000.00 cheque against the account. From the fact that there were none of these supporting documents, the court then drew the inference that these amounts were either the proceeds of unlawful activity or derived from money laundering. This finding arose from its incorrect finding that there was an onus on the appellant to show that he was an innocent owner and to apply for the vehicle to be excluded from the forfeiture order. What the court was required to do, was to determine, as required by s 50 of POCA, whether the respondent had proved on a balance of probabilities that the vehicle was an instrumentality of an offence referred to in Schedule 1 of POCA or was the proceeds of unlawful activities, e.g. money laundering.

[13] Where there are factual disputes in motion proceedings, the Plascon-Evans rule must be applied by the court. In *National Director of Public Prosecutions v Zuma (Mbeki and another intervening)*,^[2] the Supreme Court of Appeal said the following:

"Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of facts arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, farfetched or so clearly untenable that the court is justified in rejecting them merely on the papers."

[14] It cannot be said that the appellant's version is palpably implausible, farfetched or so clearly untenable that a court would be justified in rejecting it on the papers. The court a quo also did not make such a finding. That being so, and applying the Plascon-Evans rule, the court could not have granted a final order on the respondent's forfeiture application. What the court could have done, was to refer the factual disputes for oral evidence in terms of Rule 6(5)(g) of the Uniform Rules of Court. No such application was made by the NDPP. I have considered whether such an order should be made by this court in place of the order made by the court a quo. In view of the long lapse of time and the fact that the Scirocco vehicle is now ten years old and probably worth much less than the amount for which it was

purchased, I do not think that it is desirable that such an order be made.

[15] It follows that the appeal must succeed. I accordingly make the following order:

- (a) The appeal is upheld with costs.
- (b) The order of the court a quo is set aside and replaced with the following order:

The application is dismissed with costs.

J W LOUW

JUDGE OF THE HIGH COURT

Date of hearing: 5 August 2020

Date of judgment: 14 September 2020

DISSENTING

JUDGMENT

FISHER J:

Introduction

- [1] I have had the benefit of the judgment of my colleague Louw J and particularly his succinct summing up of the relevant facts and issues on which I have relied. I am inclined however to a more favourable view of the case put up by the NDPP. I am also not persuaded that the appellant has done what is required of him in the context of the Prevention of Organised Crime Act (POCA) and generally in relation to opposing the application. I thus differ from the judgment of Louw J.
- [2] To my mind it is important that the respective cases made out in the application be considered with some reference to the purpose of the legislative scheme created by POCA and specifically its forfeiture provisions.
- [3] In this case, although there was a vague attempt by the NDPP to suggest that the vehicle was possibly an instrumentality because of its cross border usage, it seems clear that the real charge against the appellant and his co-respondent, Mr Sithole was that the vehicle was the proceeds of unlawful activities and that it had been acquired by a process of money laundering. I thus turn to deal with the purpose of POCA with specific reference to money laundering.

The legislative purpose of POCA in relation to forfeiture.

- [4] The preamble to POCA[3] starts by lamenting a rapid growth of organised crime, money laundering and criminal gang activities nationally and internationally. It acknowledges that the South African law fails to deal effectively with organised crime, money laundering and criminal gang activities. It acknowledges also that it is 'usually very difficult to prove the

direct involvement of organised crime leaders in particular cases’ and that, because they do not perform the actual criminal activities themselves, ‘it is necessary to criminalise the management of and related conduct in connection with enterprises which are involved in a pattern of racketeering activity[4]’

- [5] Cameron J, in his concurring judgment in *National Director of Public Prosecutions v Elran*[5], said as follows in relation to asset forfeiture legislation:

‘The Prevention of Organised Crime Act (POCA) has been described as draconian. It is necessarily and rightly far-reaching and robust. Two principal reasons have impelled modern democratic states to enact asset forfeiture legislation like POCA. The first is that, given the fantastically rich spoils the international economy offers, the deterrent effects of even long prison sentences fade. Hence the need for civil recovery mechanisms under which the state can seize property obtained through unlawful activities without having to secure a conviction in a criminal court. Crime must be tackled independently of the criminal justice system, and at source – by inhibiting its rewards.’[6]

He continued: ‘Hence, here and elsewhere, the indispensable response has been asset forfeiture legislation. Follow the money.

Seize the profits. Target the spoils of criminality. This is what POCA does’[7].

- [6] The grant of a forfeiture order is civil in nature and is not dependent on there being a prior conviction for a criminal offence. The purposes of section 50 in the context of Chapter 6 of POCA were helpfully explained by the Constitutional Court in *Mohamed*[8] as follows:

‘Chapter 6 provides for forfeiture in circumstances where it is established, on a balance of probabilities, that property has been used to commit an offence, or constitutes the proceeds of unlawful activities, even where no criminal proceedings in respect of the relevant crimes have been instituted. In this respect, Chapter 6 needs to be understood in contradistinction to Chapter 5 [of POCA]. Chapter 6 is therefore focused, not on wrongdoers, but on property that has been used to commit an offence or which constitutes the proceeds of crime. The guilt or wrongdoing of the owners or possessors of property is, therefore, not primarily relevant to the proceedings.’[9]

- [7] Thus notwithstanding that the appellant has sought to place much emphasis on his alleged innocence of the crimes for which he was being investigated, the ability or otherwise of the NDPP to prefer criminal charges is of little relevance to the enquiry.

- [8] Section 50 provides that the Court is obliged to [shall] order forfeiture if it ‘ finds on a balance of probabilities that the property concerned— (a) is an instrumentality of an offence or

- (b) is the proceeds of unlawful activities.’

[9] As I have said, I will approach this matter on the basis that the NDPP had to establish that the vehicle was the proceeds of unlawful activities as, to my mind, the case based on the vehicle being an instrumentality of the offence has not been established by the NDPP.

[10] The South African economy has been ravaged by widespread organised crime and corruption and, hand in hand with this, goes money laundering. Central to the laundering of money is the concealment of the origins of illegally obtained cash. This is typically achieved by means of transfers of cash involving multiple

bank accounts so as to render the cash untraceable or by using businesses which operate to create the façade of legitimacy

but which serve, in addition to their other, perhaps legitimate trading functions, the funnelling of money so as to disguise its

origins. Thus 'dirty' money is given the appearance of being 'clean'. Considerable time and effort is put into strategies that enable the use of the proceeds of crime – because, if this is not effectively achieved, the money is of limited worth to those who have been involved in generating it in that it cannot be spent without the dangers of detection and forfeiture being ever present.

[11] It is helpful to start by considering what money laundering generally entails and how this shapes the transactions which are entered into to achieve it.

What is money laundering?

[12] The offence of money laundering is described in s 4 of POCA[10] and, in essence, is the concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime.

Hallmarks of money laundering

[13] Given its express purpose and nature, money laundering has certain hallmarks which include the following.

- a. Expensive items (such as vehicles and immovable properties) which are usually acquired by the general populace using credit facilities are paid for in a lumpsum.
- b. Cash is funnelled through multiple bank accounts in amounts which are not so large as to raise suspicion.
- c. Transfers of money into these accounts are made by cash deposit rather than the normal electronic transfer.
- d. Large amounts of cash are to be found in the possession of persons involved.
- e. Persons attempt to explain their lavish spending by claiming that they derive large amounts of money from lucrative legitimate enterprises, when this, in fact, bears no scrutiny with reference to the enterprises in question.

- f. The crimes which are investigated are of a nature that generate large amounts of cash for the perpetrators.
 - g. The beneficial owner of property procured with the proceeds of unlawful activities is often not the person in whose name the property is officially registered in that fronts are used to avoid asset detection by the authorities.
- [14] As I have said with reference to the preamble to POCA, a premise of the legislative scheme is that it is very difficult to prove the direct involvement of people organized crime rings and that it is necessary to focus on and criminalise the management of the proceeds.
- [15] I now turn to an analysis of the facts of this matter with reference to these principles. As I have said, the facts are set out in the first judgment of Louw J and they are gratefully relied on by me here.

The application of the law to the facts of this case

- [16] The appellant was under investigation for illegal trade in gold, diamond and drugs. In conducting an asset search in the course of the investigation Sergeant Penuel Ngwenyarna of the Organised Crime Unit (OCU) in Nelspruit noted that vehicle had been acquired by the appellant and, within three months, transferred by the appellant to Mr Sithole, who became the appellant's co-respondent in the application. This caused Sgt Ngwenyarna to investigate the transfers leading to the acquisition of the vehicle by the appellant and the subsequent registration of the vehicle in the name of Mr Sithole.
- [17] The salespersons who were involved in the initial sale and subsequent transfer to Mr Sithole, when interviewed by members of the OCU confirmed that it was initially sought that the vehicle which was ordered be registered in the name of another person, Mr Mr Mchirawondu but that this was ultimately not possible, as this person had been shot dead by the time that the vehicle became available to the dealership from the supplier. The vehicle was thus registered in the name of the appellant. The appellant says that this was always his intention and that it was a misunderstanding that led the employees of the seller independently to think that Mr Mchirawondu was the intended purchaser. However, less than three months later the vehicle was registered in the name of Mr Sithole, who could neither drive the vehicle nor afford to pay for it as he was disabled and unemployed. The NDPP says that these circumstances suggest that Mr Sithole was used as front to disguise the appellants ownership of the vehicle.
- [18] As I have said, the appellant contends that he was an innocent purchaser of the vehicle and that the investigations into his ownership of the vehicle and the payments made in relation thereto constitute harassment. He claims that he earns his income from legitimate business interests. He promises in his affidavit that he will provide full details of this legitimate income and that he will explain that the payments made for the vehicle were made with legitimately earned funds. He claims that the registration of the vehicle into the name of Mr Sithole is neither sinister nor suggestive of an attempt to disguise the ownership of the

vehicle.

- [19] I will now turn to an analysis of the version of the appellant with reference to the objective facts relating to the investigations of the OCU, the explanations provided by the appellant as to the payments made, and the evidence provided as to the sources of the appellants income.

Investigations of the Organised Crime Unit into the appellant's activities.

- [20] That the appellant was under investigation during the period in question, being 2008 to 2011, for unlawful trading in unwrought gold is not in dispute. He is also suspected of illegal trade in precious gems such as diamonds and in offences relating to drugs.
- [21] It is common cause that in 2008, whilst the appellant was being investigated for his involvement in the illegal gold trade in Barberton, his house was searched and that R120 000 in cash was found hidden under his mattress. This cash is the subject of a separate forfeiture application. In addition, the search yielded a scale of the type used to weigh gold and casting pans for gold. Hidden with the cash under the mattress was a manuscript document which the NDPP allege is a record relating to the trade in gold. The appellant claims that the cash was the proceeds of a sale of a vehicle and that the casting pans were used for 'making bricks'. He does not explain the scale and he denies any knowledge of the document.
- [22] The appellant admits, as he must because it is a matter of record, that he has a previous conviction in the Barberton Magistrates Court for illegal possession of gold for which he was sentenced to a fine of R 3 000 or 10 month's imprisonment. He explains that he was 'in the wrong place at the wrong time' and pleaded guilty when he was not in fact guilty to avoid a protracted criminal process.
- [23] Thus it is clear that there can be no dispute that the appellant was, justifiably, a person of interest to the police. On the objective facts the protestations of gratuitous and arbitrary harassment by the OCU, the Asset Forfeiture Unit (AFU) and the NDPP bear no scrutiny.
- [24] The NDPP has, through the investigations of the OCU, the AFU, and SARS been meticulous in providing details as to each of the payments made for the vehicle as well as in relation to the veracity of the versions of the appellant as to each of the payments. I proceed now to examine each payment with reference to these explanations given by the appellant and the evidence put forward by the NDPP.

The payments and the appellant's explanations therefor.

First payment -The cash deposit of R20 000 on 22 September 2009

- [25] The applicant claims that this is income from his employment by National Panel Beaters cc which was paid from his personal bank account held at First National Bank at the Nelspruit under account 62107602006. The money was withdrawn and the deposit made to the account of Palm Motors in cash. It is not explained by the appellant why the payment was not simply transferred electronically. In reply the NDPP put up a bank statement for the period from 01

September 2009 to 01 December 2009 for the account in question. From this statement it is evident that no cash withdrawal of R20 000 was made from the account on 22 September 2009 or at any other time in September 2009. More specifically the statement reveals that the account is used for personal

expenditure such as payments for DSTV, food, clothing and other personal expenses. When the balance of the account reduces below R 1000, there is a payment of R 70 000 into the account. Importantly this is recorded on the account as having been a cash

deposit. Again, why the income derived from a legitimate business would be paid from that business to a member or employee in cash is not explained. Thus the NDPP has established that this cash payment is unaccounted for and indeed dubious as to its legitimacy.

[26] National Panel Beaters has made an appearance as a protagonist in the other asset forfeiture matter in respect of the R 120 000 cash found under the mattress of the appellant during the search of his house by the OCU. As I have said, it was contended in this other application that the monies belonged to National Panel Beaters and were paid in cash to the appellant qua member by a purchaser of a vehicle from National Panel Beaters. The appellant explains that the cash was intercepted before it could be paid into the bank account. The appellant would have this Court discount this case as being irrelevant to these proceedings. However clearly there is relevance here. The NDPP explains that although National Panel Beaters opposed the application, its attorneys have now withdrawn.

Second payment – electronic payment from Richbar Metals CC of R 100 000 on 1 February 2010

[27] This payment was electronically transferred into the account of Palm Motors. This money emanates from the account of a close corporation called Richbar Metals cc. The appellant failed state the full name of the close corporation, merely calling it Richbar. The ‘Metals’ part of the name which was brought to the attention of the Court by the NDPP in reply is obviously relevant and so is the fact that it was omitted by the appellant when explaining this payment. The explanation is that the money was a loan paid from the account of Richbar Metals, the member of which, Mr Aaron Mlambo is a friend of the appellant. Why this loan was needed for the purchase of the vehicle was not explained. Neither is it explained why the loan was advanced to Palm Motors on behalf of the appellant rather than to the appellant

directly. Thus an entity which seems eponymously to be involved in some way with the trade of metals makes a direct payment to Palm Motors for the vehicle. This is an unconventional way for a loan to be transacted and advanced. Furthermore, Richbar Metals is reflected in the CIPC search conducted by the NDPP as being deregistered for lack of compliance with formalities.

Third Payment- electronic payment of R 60 000 made on 02 February 2010 by Mr Thembe

[28] The day after the electronic transfer from Richbar Metals, a further electronic transfer in the amount of R60 000 was made by ‘a business associate’ of the appellant, Mr John Thembe. The appellant explains that Mr Thembe holds a tender with Escom, through an entity called

Delta Blue Trading and that, in terms of the tender, he provides Escom with 'certain services'. The appellant says he is subcontracted by Thembe, in his capacity as a member of Chihudho Trading cc, to provide 'certain transport functions' to him. The R 60 000 was, he says, paid by Mr Thembe as fees payable under this subcontracting agreement. Why this was not paid to Chihudho Trading for work done but rather for the appellants personal debt to a vehicle dealership is not explained. Delta Blue Trading is reflected

in CIPC records as being in deregistration as at October 2010 and as finally deregistered as at 24 February 2011.

[29] The NDPP's further investigations of the bank account of Chihudho Trading for the period 30 November 2009 to 19 March 2010 reveal that no transactional activity took place until 19 March 2010 when two cash deposits in the amount of R 11 200.00 and R 60 000.00, respectively, were made into the account. The entity is confirmed by SARS to have paid no income tax or VAT. The activity on the account is atypical of a business account. This is also relevant to the eighth payment which I deal with below.

Fourth Payment - cash deposit of R 150 000.00 made on 19 March 2010 by Mr Ngwenya

[30] The appellant explains that this cash deposit was made by Mr Edson Ngwenya. His telephone number is said to appear on the deposit slip although it is hardly legible. This large cash amount, the appellant says, was paid by Mr Ngwenya for a truck he had rented from the appellant and his (the appellant's) brother. Again, the payment is not paid to the appellant by Mr Ngwenya but is paid indirectly on behalf of the appellant to Palm Motors. Mr Ngwenya is deceased and thus cannot confirm this payment.

Fifth payment - R 94, 000.00 cash deposit made on 19 March 2010 by Mr Thembe

[31] Recall that the appellant says that Mr Thembe holds a tender with Escom, through his entity called Delta Blue Trading in terms of which he renders 'certain services' to Escom. As I have said, the nature of these services is not disclosed. The appellant alleges that this payment was also in terms of the sub-contracting agreement entered into through Chihudho Trading for work done. Why Mr Thembe should make one payment electronically (ie the third payment of R 60 000) and payment of this R 94 000 by way of cash deposit is not explained. Again it must be recalled that Chihudho Trading paid no income tax and was not VAT registered.

Sixth payment – cash deposit of R 35, 000.00 made on 20 March 2010

[32] The appellant's version is that this was another cash payment by Mr Thembe for the sub-contract for the transport functions for the alleged Escom contract. The same questions are raised.

Seventh payment - cash deposit of R 9 400 made on 23 March 2010

[33] This is allegedly yet another cash payment from Mr Thembe for the same Escom contract.

Eighth payment – cheque for R 70 000 drawn against Chihudho Trading bank account on 23 March 2010

[34] The appellant refers to this as his business account but, as I have said, it does not appear to be conducted as a normal business account. Recall that there is no activity on the bank account from 30 November 2009 to 19 March 2010, on which date two cash payments totalling R71 200 are paid into the account. A cheque is then drawn against these cash payments four days later by the appellant.

The respective cases made out and the weighing of the balance of probabilities.

Case of the NDPP

[35] In sum, the NDPP has established objectively that the appellant was a person being investigated for dealing in unwrought gold, diamonds,

and drugs and that he had a previous conviction for dealing in unwrought gold. The appellant was previously found with a large

amount of cash hidden under his mattress. Eight payments were made for the vehicle of which only two were by way of electronic

transfer. The cheque paid in to the account of Palm Motors by the appellant was itself drawn from cash deposits into the account of Chihudho Trading. Thus the bulk of the purchase price was paid by means of cash deposit. The two electronic transfers are anomalous in that they did not come from the appellant directly but were made on his behalf by a person whom, he alleges, is a 'business associate'. In addition there is independent evidence under oath from two witnesses that the appellant wanted to have the vehicle registered in the name of another person despite his payment of the deposit and that after that person was shot dead the vehicle was registered in the name of the appellant who then registered it the name of Mr Sithole for no consideration and on the basis that Mr Sithole had no beneficial ownership of it.

[36] It would, in my view, be difficult to establish a more compelling prima facie case than this.

The Case of the Appellant.

[37] There is no doubt that it was necessary for this case to be astutely answered with due reference to explaining the unusual features which undoubtedly point, in the absence of a clear and honest explanation, to money laundering. This should, as a matter of some priority in the appellant's case, have involved that the following questions be tackled head on in a cogent and credible manner: First, Why were large payments deposited in cash on separate occasions? Second, why were payments made by third parties on behalf of the appellant? Third, how was the cash generated? Fourth, why was the vehicle registered in the name of a third party?

[38] These questions are salient and without them having been answered in a satisfactory manner, the appellant must, in my view, fail on a weighing up of the probabilities. I will move to examining the manner in which these questions were dealt with by the appellant. As I have said the Court must order forfeiture if it finds on a balance of probabilities that the property in issue is the 'proceeds of unlawful activities.[11]'

Why were payments made in cash?

[39] In the last twenty years, developments in electronic payment systems the world over have rendered the use of cash, other than for smaller and incidental purchases, almost obsolete. Even the traditionally unbanked members of society, such as the recipients of social grants, are now paid electronically within the South African National Payment System. It must be regarded as exceptional for payments in excess of R10 000 to be made in cash. If this occurs, even once, in a context like the one under consideration, serious questions as to the legitimacy of such payments arise. It thus requires rational explanation as to why the cash payment occurred.

[40] In this case, cash payments totalling R 378 400 were made for the purchase of the vehicle. Some aspects of the appellants version require special mention. The first is the payment of R 20 000 as a deposit for the purchase of the vehicle. The appellant alleges that he drew the cash from his personal bank account. The purpose of withdrawing this cash was, says the appellant, the payment of the deposit on the vehicle. This would seem outlandish in the absence of an explanation as to why these lengths were necessary. None is forthcoming. In fact reference to the bank statement from which the cash is alleged to have been drawn shows that no withdrawal as alleged was made. Thus the NDPP's contention that the cash did not emanate from the

appellant's bank account as claimed must be accepted. Thus where did this cash come from? This remains unexplained.

Why was it necessary for the payments to be made indirectly by third parties?

[41] In the normal course of the payment of debt the focus of such payment obligation is on the person who owes the debt. Why does the appellant not make direct payments from his own bank account and receive monies owed or loaned to him into his own bank account? This anomaly is not explained as it should be if the appellant is to succeed. The repeated indirect payments suggest an attempt to disguise the source of the funds.

How was the cash generated?

[42] The attempts by the appellant to suggest that he earns an honest living are without any detail or corroboration. His vague reference to his witnesses (including his co- respondent) being on holiday are not satisfactory explanations for the paucity of any corroboration for his version.

[43] Reference to the bank accounts of Chihudho Trading, which he claims is a business which generates an income for him, shows only lumpsum cash payments of monies into the account which are almost immediately withdrawn. The company pays no income tax and no VAT. It has been deregistered for non-compliance with the formalities of staying in business. It clearly has no presence in the market, as one would have expected evidence of a thriving enterprise to have been put up. This would surely include evidence of an internet presence, a place of business, and employees and customers. One would expect at very least a rudimentary keeping of books of account. Instead there is no real indication given as to what this entity does.

[44] Another source of income is said to be the appellant's directorship in a private company called Advisor Progressive College. The appellant does not say what the nature of this business is. If it is a college as the name suggests, it should have students and a curriculum which would be a simple matter to establish. If it is not a college, one would expect to be provided with information as to what it did and why it was called a college. This company is registered for Income tax but not for VAT. The tax returns suggest no income of any substance – ie a nil return for 2006, a negative income of minus R33 000

for 2007 and for 2008 an income of R16 000. The Income tax return was outstanding for 2009. Thus this directorship is decidedly not a generator of a large income. And then there is National Panel Beaters which as I have said is involved in the other forfeiture application and which does not bear scrutiny either in respect of this application or the other which is pending.

[45] Thus the appellant puts up no evidence as to a legitimate income source despite promising in his answering affidavit that he will do so.

Why was the vehicle registered in the name of Mr Sithole?

[46] Although the appellant puts the evidence of Mr Brinkman and Mr Zulu in relation to the fact that he wanted the vehicle to be registered in the name of Mr Mchirawonde down to a misunderstanding on their part, it appears clear that there was indeed an intention to have the vehicle registered in the name of a person who was not its beneficial owner and who would have no control over it. Mr Sithole never joined the fray because the appellant said he was in Mozambique on holiday when the time came to engage with the matter. He has never made any attempt to suggest that he has an interest in the vehicle.

[47] The explanation of the appellant as to the registration of the vehicle into the name of Mr Sithole is this was a subterfuge to keep it out of his estate on divorce but, at the same time, he suggests that the vehicle is available to Mr Sithole so that he can sell it and live off the proceeds.

The judgment of the Court a quo

- [48] Clearly, the characterisation of the court a quo of the respondent as having an 'onus' was incorrect. This may have been an infelicitous reference to what is termed in Afrikaans – a weerlegingslas – which, translated, is the burden of rebuttal. Be that as it may and whatever the approach of the court a quo as to the burden of proof, this Court is in as good a position to evaluate the evidence.
- [49] As I have said, the police are shown in this case to have been thorough in their investigations. Against this, the appellant's accusations that those involved in the investigation and the bringing of the case to court have acted in bad faith are regrettable. I have no reason not to accept the inherent credibility of the witnesses for the NDPP. On the contrary, it appears to me that the investigation has been impeccable.

Conclusion

- [50] To my mind the appellant's attempts at contending for any semblance of legitimacy as to the transactions are clearly untenable and I reject them as being dishonest. I find that the NDPP has established on a balance of probabilities that the vehicle is the proceeds of unlawful activities and that the order of the Court a quo that it be forfeited is correct.
- [51] A thriving business which generates a comfortable living and which allows for purchases which do not generate debt is easily proved. In contrast, the need for a cash based payment system which flows indirectly from a number of sources needs explanation in the context of POCA and generally. This has not been forthcoming in this matter. The Court a quo's analysis of the facts shows that there was a proper rejection of the version of the appellant in relation to his business dealings and specifically the transaction relating to the vehicle.

Order

- [52] In all the circumstances, I would dismiss the appeal with costs.

FISHER J

HIGH COURT JUDGE

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of Hearing: 05 August 2020.

Judgment

Delivered: 20 October 2020.

APPEARANCES:

Counsel for appellant: Adv. S. de Villiers

Instructed by: The State Attorney

Attorney for respondent: Mr. R. C. Krause

Instructed by: BDK Attorneys, Johannesburg

[1] 2011

(2) SACR 188 (WCC) par. 15

[2] [2009] 2 All SA 243 (SCA) par. 26

[3] The full preamble to POCA reads as follows: ‘WHEREAS the Bill of Rights in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996). enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom: AND WHEREAS the Constitution places a duty on the State to respect, protect, promote and fulfil the rights in the Bill of Rights: AND WHEREAS there is a rapid growth of organised crime, money laundering and criminal gang activities nationally and internationally and since organised crime has internationally been identified as an international security threat: AND WHEREAS organised crime, money laundering and criminal gang activities infringe on the rights of the people as enshrined in the Bill of Rights; AND WHEREAS it is the right of every person to be protected from fear, intimidation and physical harm caused by the criminal activities of violent gangs and individuals; AND WHEREAS organised crime, money laundering and criminal gang activities, both individually and collectively, present a danger to public order and safety and economic stability, and have the potential to inflict social damage; AND WHEREAS the South African common law and statutory law fail to deal effectively with organised crime, money laundering and criminal gang activities, and also fail to keep pace with international measures aimed at dealing effectively with organised crime, money laundering and criminal gang activities; AND BEARING IN MIND that it is usually very difficult to prove the direct involvement of organised crime leaders in particular cases, because they do not perform the actual criminal activities themselves, it is necessary to criminalise the management of and related conduct in connection with enterprises which are involved in a pattern of racketeering activity: AND WHEREAS persons should not benefit from the fruits of organised crime and money laundering, legislation is necessary for the preservation and forfeiture of property which is concerned in the commission or suspected commission of an offence: AND WHEREAS there is a need to devote such forfeited assets and proceeds to the combatting of organised crime and money laundering; AND WHEREAS the pervasive presence of criminal gangs in many communities is harmful to the well being of those communities, it is necessary to criminalise participation in or promotion of criminal gang activities.’

[3] The full preamble to POCA reads as follows:

‘WHEREAS the Bill of Rights in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996). enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom: AND WHEREAS the Constitution places a duty on the State to respect, protect, promote and fulfil the rights in the Bill of Rights: AND WHEREAS there is a rapid growth of organised crime, money laundering and criminal gang activities nationally and internationally and since organised crime has internationally been identified as an international

security threat: AND WHEREAS organised crime, money laundering and criminal gang activities infringe on the rights of the people as enshrined in the Bill of Rights; AND WHEREAS it is the right of every person to be protected from fear, intimidation and physical harm caused by the criminal activities of violent gangs and individuals; AND WHEREAS organised crime, money laundering and criminal gang activities, both individually and collectively, present a danger to public order and safety and economic stability, and have the potential to inflict social damage; AND WHEREAS the South African common law and statutory law fail to deal effectively with organised crime, money laundering and criminal gang activities, and also fail to keep pace with international measures aimed at dealing effectively with organised crime, money laundering and criminal gang activities; AND BEARING IN MIND that it is usually very difficult to prove the direct involvement of organised crime leaders in particular cases, because they do not perform the actual criminal activities themselves, it is necessary to criminalise the management of and related conduct in connection with enterprises which are involved in a pattern of racketeering activity: AND WHEREAS persons should not benefit from the fruits of organised crime and money laundering, legislation is necessary for the preservation and forfeiture of property which is concerned in the commission or suspected commission of an offence: AND WHEREAS there is a need to devote such forfeited assets and proceeds to the combatting of organised crime and money laundering; AND WHEREAS the pervasive presence of criminal gangs in many communities is harmful to the well being of those communities, it is necessary to criminalise participation in or promotion of criminal gang activities.'

- [4] 'racketeering activity' is defined as 'the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule I' which includes any offence referred to in section 13 of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992); any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones.
- [5] National Director of Public Prosecutions v Elran (CCT 56/12) [2013] ZACC 2; 2013 (1) SACR 429 (CC); 2013 (4) BCLR 379 (CC) (19 February 2013).
- [6] Ibid para 66.
- [7] Ibid para 68.
- [8] National Director of Public Prosecutions v Mohamed N.O. [2002] ZACC 9; 2002 (4) SA 843 (CC)[2002] ZACC 9; ; 2002 (9) BCLR 970 (CC) (Mohamed).
- [9] Ibid at para 17.
- [10] Section 4 reads as follows: 'Money laundering.—Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and— (a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether

such agreement, arrangement or transaction is legally enforceable or not; or (b) performs any other act in connection with such property, whether it is performed independently or in concert with any other person, which has or is likely to have the effect— (i) of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership

thereof or any interest which anyone may have in respect thereof; (ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere— (aa) to avoid prosecution; or (bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, shall be guilty of an offence.’

[10] Section 4 reads as follows:

‘Money laundering.—Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and—

(a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether

such agreement, arrangement or transaction is legally enforceable or not; or

(b) performs any other act in connection with such property, whether it is performed independently or in concert with any other person, which has or is likely to have the effect—

(i) of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership

thereof or any interest which anyone may have in respect thereof;

(ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere—

(aa) to avoid prosecution; or

(bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, shall be guilty of an offence.’

[11] Section 50 of POCA.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2020/626.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/moyane-v-national-unknown-topic-agpphc-2020>

Prepared on 13 October 2026 · Esheria