



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not reportable

Case No: 474/2021

In the matter between:

**THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**

APPELLANT

and

TIMOTHY FRANS MOYANE

RESPONDENT

Neutral Citation: *The National Director of Public Prosecutions v Moyane*
(474/2021) [2022] ZASCA 79 (31 May 2022)

Coram: ZONDI, GORVEN and HUGHES JJA and MATOJANE
and SMITH AJJA

Heard: 5 May 2022

Delivered: 31 May 2022

Summary: Asset forfeiture – Prevention of Organised Crime Act 121 of 1998 – whether the vehicle was the proceeds of unlawful activities – substantial amount of money paid directly to the dealership for the purchase price emanated from third parties and was not accounted for – Procedure – full court treatment of evidence flawed – no real, genuine or bona fide dispute of fact arose on papers.

ORDER

On appeal from: The Gauteng Division of the High Court, Pretoria (Louw J, Jordaan AJ concurring, Fischer J dissenting) sitting as a Full Court:

- 1 The appeal succeeds with costs.
- 2 The order of the full court of the Gauteng Division of the High Court, Pretoria, is set aside and is replaced with the following:

‘1 An order is granted in terms of the provisions of s 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 the preservation of property order granted by this Court under the above case number 51250/2011 on 9 September 2011 namely a 2010 Volkswagen 364 Scirocco motor vehicle with registration number FGC 937 MP;

2 The property shall vest in the State upon granting of the order;

3 The appointment of a *curator bonis* is dispensed with;

4 A duly authorised employee of the Asset Forfeiture Unit is authorised to:

4.1 Assume control of the property and take it into his/her custody;

4.2 Pay the proceeds of the property, once realized, into the Criminal Asset Recovery Account established under s 63 of the POCA, number 80303056, held at the South African Reserve Bank, Vermeulen Street, Pretoria.

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

6 The costs of the application are awarded to the applicant.’

JUDGMENT

Zondi JA (Gorven and Hughes JJA and Matojane and Smith AJJA concurring):

[1] This appeal, with special leave of this Court, concerns the question of whether a Volkswagen 364 Scirocco motor vehicle with registration number FGC 937 MP (the vehicle) represents 'the proceeds of unlawful activities' and/or is 'an instrumentality of an offence' within the meaning of the Prevention of Organised Crime Act 121 of 1998 (the Act), and so liable to forfeiture under s 50(1)(a) of the Act. The vehicle is registered in the name of one Albert Mathews Sithole (Sithole), who was the second respondent in the court of first instance. Although Sithole had filed a notice to oppose the forfeiture application, he did not file an answering affidavit setting out the basis of his opposition.

[2] The appellant, the National Director of Public Prosecutions (NDPP), applied for and was granted a preservation order in terms of s 38 of the Act in respect of the vehicle by the Gauteng Division of the High Court, Pretoria (the high court), on September 2011 on the basis that the vehicle is an instrumentality of an offence and/or the proceeds of unlawful activities. In subsequent forfeiture proceedings in terms of s 48(1) of the Act, the high court (per Mavundla J sitting as court of first instance) found, amongst other things, that the vehicle was an instrumentality of unlawful activity and ordered its forfeiture to the state. The learned judge granted the respondent, Mr Timothy Frans Moyane (Moyane), leave to appeal to the full court. On appeal, the full court, of the same Division, in a majority judgment (per Louw J and Jordaan J concurring), upheld the appeal, set aside the order of the court of first instance and replaced it with an order dismissing the application with costs. Fisher J dissented and, in a minority judgment, held that she would have dismissed the appeal with costs. Aggrieved by the order of the full court, the NDPP sought and obtained special leave of appeal from this Court.

[3] It was accepted by the parties in the appeal before the full court that the NDPP's case based on the allegation that the vehicle was an instrumentality of an offence was not sustained by the evidence on which the NDPP relied. Therefore, the matter was adjudicated on the basis of whether the NDPP had established that the vehicle is the proceeds of unlawful activities, namely money laundering. I agree that was the correct approach, and I will approach the issues in this appeal on the same basis.

[4] The appeal turns on whether the evidence adduced by the NDPP in support of its case, established that the concerned vehicle represents the proceeds of unlawful activities. This is so because, in terms of s 50 of the Act,¹ as interpreted by this Court in *National Director of Public Prosecutions v Parker*, the onus is on the NDPP to prove on a balance of probabilities that it is entitled to a forfeiture order.²

[5] Section 1 of the Act defines 'proceeds of unlawful activities' as 'any property or any services, 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.'

¹ Section 50 of the Act provides 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.

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

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

(4) The validity of an order under subsection (1) is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.

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

(6) A forfeiture order shall not take effect—

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

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

² *National Director of Public Prosecutions v Parker* [2006] 1 All SA 317 (SCA) para 18.

[6] This Court, in *National Director of Public Prosecutions v RO Cook Properties (Pty) Ltd*, held that the definition requires that the property in respect of which a forfeiture order is sought must have been ‘derived, received or retained’ ‘in connection with or as a result of’ unlawful activities.³ The proceeds must in some way be the consequences of unlawful activity.

[7] Section 52, to which reference is made in s 50, permits a court to exclude from the operation of a forfeiture order certain interests in the property concerned if it is shown by the applicant for such exclusion that the interest was legally acquired and that the applicant ‘neither knew nor had had reasonable grounds to suspect’ that the property in which the interest is held, is the proceeds of unlawful activities.⁴

³ *National Director of Public Prosecutions v R O Cook Properties (Pty) Ltd* [2004] ZASCA 36 2004(2) SACR 208 (SCA) para 64.

⁴ See specifically s 52(2)(b)(ii). Section 52 of the Act provides that:

‘(1) The High Court may, on application—

(a) under section 48(3); or

(b) by a person referred to in section 49(4), 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) if it finds on a balance of probabilities that the applicant for such an order—

(a) had acquired the interest concerned legally; and

(b) neither knew nor had reasonable grounds to suspect that the property in which the interest is held—

(i) is an instrumentality of an offence referred to in Schedule 1: or

(ii) is the proceeds of unlawful 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, 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.

(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.’

[8] As the NDPP is seeking final relief in the forfeiture proceedings, any factual dispute arising on the papers should be resolved in terms of the *Plascon-Evans* rule⁵ as clarified by this Court in *National Director of Public Prosecutions v Zuma*.⁶ In this case, this Court clarified the *Plascon-Evans* principle as follows:⁷

‘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 fact 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, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers. The court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP's version.’

[9] As regards the meaning of a denial by the respondent of a fact alleged by the applicant, which may be sufficient to raise a real, genuine or bona fide dispute of facts, this Court in *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* held:⁸

‘A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily

⁵ *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd.* [1984] 2 All SA 366 (A); 1984 (3) SA 623 at 634E -635C.

⁶ *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA); 2009 (1) SACR 361 (SCA); 2009 (4) BCLR 393 (SCA); [2009] 2 All SA 243 (SCA).

⁷ *Ibid* para 26. (Footnotes Omitted.)

⁸ *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6; [2008] 2 All SA 512 (SCA); 2008 (3) SA 371 (SCA) para 13.

possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.'

[10] This is the background against which I seek to determine the issue identified in para 1 of the judgment, namely whether the vehicle is the proceeds of unlawful activities and if it is, whether it is liable to forfeiture. Reverting to the facts of this case, the evidence relied upon by the NDPP is set out in affidavits by Advocate Priyadarshnee Biseswar, the Deputy Director of Public Prosecutions and of Sergeant Penuel Sithembiso Mathanda Ngwenyama (Sgt Ngwenyama) of the Organised Crime Unit, Nelspruit.

[11] It appears from the evidence of Sgt Ngwenyama that Moyane had been under police investigation for the crimes of gold and diamond smuggling, drug dealing and money laundering since 2008. During the search and seizure operation conducted by the police at Moyane's house, several items were seized, including a cash amount of R120 000 found hidden under his mattress. It is common cause that the forfeiture proceedings relating to this amount are still pending.

[12] In November 2010, Sgt Ngwenyama conducted an asset search in the course of the investigation of Moyane. The search revealed that in March 2010, Moyane acquired this vehicle, for which he paid an amount of R538 320. The acquisition was not subject to a credit agreement. A substantial amount of the

purchase price was paid by various third parties who Moyane claimed were his business associates and/or friends. Three months later, after acquiring the vehicle, Moyane caused its ownership to be transferred to Sithole.

[13] Sgt Ngwenyama investigated how the vehicle was acquired, first by Moyane and later by Sithole. His investigation revealed the following: The vehicle initially belonged to Palm Motors, a Volkswagen dealership in White River. According to Ms Juanita Anne Brinkman (Brinkman), a salesperson of Palm Motors, who was involved in the sale of the vehicle to Moyane, the latter had initially wanted to have the vehicle registered in Mr Gideon Casey Mchirawonde's name (Mchirawonde). Mchirawonde was with Moyane when the terms of sale of the vehicle were discussed. But that became impossible as Mchirawonde died before Palm Motors could source the vehicle. It was thus registered in Moyane's name. Moyane denied that he had told Brinkman that the vehicle, once sourced, was to be registered in Mchirawonde's name. He contended that Brinkman must have misunderstood him because right from the beginning, he told her that he was the purchaser of the vehicle and that it was to be registered in his name.

[14] On 22 September 2009, Moyane deposited an amount of R20 000 in cash into the bank account of Palm Motors. Moyane claimed that he withdrew this amount from his bank account held at First National Bank (FNB). This cannot be true because the bank statement for this account for the period of 1 September 2009 to 1 December 2009 indicates that no cash withdrawal of R20 000 was made from it on 22 September 2009 or shortly thereafter. This amount of R20 000, therefore, remains unaccounted for. It appears to me that Moyane's evidence regarding the source of this amount, which is quite substantial, was untruthful and is a fact which tends to strengthen the NDPP's case against Moyane.⁹

[15] On 1 February 2010, an amount of R100 000 was electronically transferred into the bank account of Palm Motors. This payment, Moyane

⁹ *Smit v Arthur* 1976 (3) SA 378 (A) at 386A.

stated, was a loan emanating from the bank account of Richbar CC belonging to his friend, Aaron Mlambo. No particulars of the loan were given, including whether it was in writing or oral. Since a close corporation was involved, and Mlambo was a friend, the very least one would expect would be an excerpt from the books of that entity. If this was not available, it would be expected that Moyane would say why this was the case.

[16] On 2 February 2010, another electronic payment of R60 000 was made into the bank account of Palm Motors. The explanation given by Moyane for this payment is that it was made by his business associate, John Thembe, for sub-contracting work Moyane's Chihudho Trading CC had performed on his behalf. Thembe had obtained a tender from Eskom to provide certain services to it. Thembe provided such services through a close corporation in which he held an interest, namely Delta Blue Trading CC. Delta Blue Trading sub-contracted the performance of some of the services to Eskom to Moyane's Chihudho Trading CC. The payment was thus made pursuant to the subcontracting agreement. Moyane had asked Thembe to transfer monies due to him directly into the account of Palm Motors instead of Chihudho Trading CC. Moyane produced no underlying documentation by way of either invoices, book entries for either close corporation, or contracts in support of his assertion that the amount paid to Palm Motors was for work Chihudho Trading CC had rendered on behalf of Thembe's Delta Blue Trading.

[17] On 19 March 2010, two cash deposits in the amounts of R150 000 and R94 000, respectively, were made into the account of Palm Motors. The bank deposits indicate that the person who deposited R150 000 was EN Ngwenya, and the payer of R94 000 was John Thembe. Moyane stated that the cash deposit of R150 000 from Ngwenya was a fee for a truck that Ngwenya had rented from Moyane and his brother. Ngwenya is deceased and thus cannot confirm this payment. But the fact that Ngwenya is no longer available to confirm this payment does not absolve Moyane from his obligation to secure confirmation of payment from his brother, the truck's co-owner, unless, of course, the payment was not disclosed to him. Regarding the payment of R94 000, Moyane explained that it was paid by Thembe in terms of a

subcontracting agreement entered through Chihudho Trading CC for work done in accordance with the arrangement he had with Thembe.

[18] On 20 March 2010, a cash deposit of R35 000 was made into Palm Motors's account. Thembe is reflected in the bank deposit slip as the payer of this amount. Moyane's version is that it was another payment for services rendered by Chihudho Trading CC to Thembe's Delta Blue Trading. There are no supporting documents such as invoices for the payment received from Thembe. The financial accounts of Chihudho Trading CC were not disclosed to indicate how payments received from Thembe were treated from an accounting point of view. A further deposit of R9 400 was also made by Thembe, presumably also for subcontracting work.

[19] Finally, a cheque payment of R70 000 was made to Palm Motors on 23 March 2010. Moyane claimed that it was from his personal funds. The cheque was drawn against Chihudho Trading CC's account held with First National Bank, Nelspruit. A copy of this bank account indicates that between 30 November 2009 and 19 March 2010, no activity took place on this account. On 19 March 2010, two cash deposits in the amount of R11 200 and R60 000, respectively, were made into this account. Upon payment of the total purchase price, Palm Motors transferred the vehicle into Moyane's name.

[20] Moyane further stated that he generated sufficient income from his two close corporations to be able to afford the vehicle. He alleged that he is a member with 50 per cent interest in Chihudho Trading CC and a director of Advisor Progressive College CC, and that these entities are a source of his income. But he did not provide financial statements for these two entities in support of his claims. And, as indicated, there are no records of any salary or drawings paid into his personal account.

[21] As I have alluded to, within three months of acquiring the vehicle, in June 2010, Moyane transferred it into Sithole's name for no consideration. Sithole is physically challenged and unemployed. He is a recipient of a disability grant

from the South African Social Security Agency, and he does not have a driver's licence.

[22] Moyane admitted that he transferred the vehicle to Sithole. This he did for two reasons, namely to keep it beyond the reach of his wife in the event of a divorce and secondly, to provide Sithole with some form of an asset he could liquidate as and when he needed money. Moyane explained that Sithole had been seriously injured in a motor vehicle collision in November 2008, and it was out of compassion that he gave Sithole his vehicle.

[23] From the investigations conducted by the police regarding the cross-border movement of the vehicle, it emerged that between 25 February 2011 and 21 June 2011, Moyane used the vehicle on six occasions. On these occasions, Moyane travelled through Lebombo and Beitbridge Border Posts. Again, accompanied by one Charmaine Mtshali, Moyane went through the Beitbridge Border Post on 17 March 2011.

[24] Between 30 April 2010 and 9 July 2011, Sithole travelled through Lebombo Border Post on six occasions, not as a passenger or driver but as a pedestrian. From the evidence regarding the vehicle's movement, it does not seem that Sithole used it. Even when the police seized it on 30 September 2011, it was driven by Moyane's wife, and Sithole was nowhere near the vehicle.

[25] Sithole denied that the vehicle was acquired with the proceeds of crime and/or acquired by way of an affected gift as defined in the Act.¹⁰ He claimed that he contributed to the purchase of the vehicle. However, Sithole provided

¹⁰ Section 12 of Prevention of Organised Crime Act 121 of 1998 defines it as follows:

'(1) In this Chapter, unless the context indicates otherwise—

"affected gift" means any gift—

(a) made by the defendant concerned not more than seven years before the fixed date;

(b) made by the defendant concerned at any time, if it was a gift—

(i) of property received by that defendant in connection with an offence committed by him or her or any other person; or

(ii) of property, or any part thereof, which directly or indirectly represented in that defendant's hands property received by him or her in that connection, whether any such gift was made before or after the commencement of this Act.'

neither proof of his employment nor the contribution he allegedly made in respect of the vehicle. He also failed to produce proof of his driver's licence. What he attached to his affidavit he deposed to in terms of s 39(5) of the Act is a copy of his identity document, not his driver's licence. Although Sithole had filed a notice to oppose forfeiture proceedings, he failed to file his answering affidavit. Moyane sought to justify Sithole's failure to file his answering affidavit on the basis that he was not available, and was in Mozambique. Moyane, though he claimed to have authority from Sithole to depose to an affidavit on Sithole's behalf, failed to provide proof of such authority.

[26] The full court considered the allegations on which the NDPP relied for the contention that the vehicle was the proceeds of unlawful activities and the version put up by Moyane to dispute the NDPP's allegations. To the extent that there were factual disputes between the NDPP's version and that of Moyane, it resolved those disputes in favour of Moyane on the basis that it could not be said that Moyane's version 'is palpably implausible, far-fetched, or so clearly untenable that [it] would be justified in rejecting it on the papers.'

[27] The full court stated that what the court of first instance 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. Although it was competent for the full court in the exercise of its discretion to make an order referring the disputes for oral evidence, notwithstanding that the NDPP had not asked for such referral, it declined to do so on the basis that the vehicle might have significantly lost its value having regard to the time that had passed since it was seized by the police in September 2011. This was not a correct basis for its failure to refer the disputed facts for oral evidence, if indeed, this was appropriate.

[28] In my view, the full court's approach to the assessment of the evidence was flawed. The evidence adduced by the NDPP in support of its case established that the vehicle is the proceeds of crime. The case for the NDPP was that the vehicle was acquired through money laundering. The majority of the funds to finance the vehicle emanated from various people and entities allegedly either as payment for services rendered by Moyane's Chihudho

Trading CC on behalf of such people or entities or as a loan to him. In relation to the cash deposit of R20 000 that Moyane paid to Palm Motors in September 2009, Moyane gave an untruthful version regarding its source. The NDPP established that it was not from the bank account, which he claimed was the source of the funds. If a cash deposit of R20 000 was from a legitimate source, why did he give an untruthful version about its origin?

[29] I am not satisfied that a real, genuine and bona fide dispute of fact existed in this matter. Moyane's averments regarding the source of funds for the purchase of the vehicle and his explanation why, shortly after its acquisition, he caused it to be registered in the name of Sithole, were of general nature and failed substantially to address the facts he disputed. He failed to produce documents to support his claims that the monies that were paid into the dealership's account on his instruction were from legitimate sources. These were all matters within his knowledge.

[30] Moyane made bald allegations unsupported by any evidence or reason, and which are designed simply to attempt to create disputes of fact. Moyane's denials and averments failed to destroy the factual foundation of the NDPP's case and are insufficient to raise a real, genuine or bona fide dispute regarding the facts alleged by the NDPP. The court of first instance correctly rejected them.

[31] In my view, the NDPP had made out a case for the relief it sought. From the totality of the facts, the inescapable inference is that the funds were derived from unlawful activities and that the vehicle was thus shown to have been the proceeds of crime. Moreover, the fact that shortly after its acquisition, it was registered in the name of Sithole shows that the whole purpose was to conceal or disguise its ownership.

[32] The full court should have approached the application upon the foundation that Moyane had failed to raise real, genuine and bona fide disputes of fact in relation to the source of funds used to finance the acquisition of the

vehicle and the reason for its registration in the name of Sithole. That being the case, there was no basis for referring the matter to oral evidence.¹¹

[33] In my view, the appeal should succeed. Regarding costs, it was correctly submitted by counsel for the NDPP that costs should be limited to costs of one counsel, even though the NDPP employed two counsel. This is the basis on which the costs order should be formulated.

[34] In the result, I make an order in the following terms:

- 1 The appeal succeeds with costs.
- 2 The order of the full court of the Gauteng Division of the High Court, Pretoria, is set aside and is replaced with the following:
 ‘1 An order is granted in terms of the provisions of s 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 the preservation of property order granted by this Court under the above case number 51250/2011 on 9 September 2011 namely a 2010 Volkswagen 364 Scirocco motor vehicle with registration number FGC 937 MP;
 2 The property shall vest in the State upon granting of the order;
 3 The appointment of a *curator bonis* is dispensed with;
 4 A duly authorised employee of the Asset Forfeiture Unit is authorised to:
 4.1 Assume control of the property and take it into his/her custody;
 4.2 Pay the proceeds of the property, once realized, into the Criminal Asset Recovery Account established under s 63 of the POCA, number 80303056, held at the South African Reserve Bank, Vermeulen Street, Pretoria.
 5 Any person whose interest in the property concerned is affected by the forfeiture order may within 20 days after he or she has acquired knowledge of such order, set the matter down for variation or rescission by the Court.
 6 The costs of the application are awarded to the applicant.’

D H Zondi
Judge of Appeal

¹¹ *Lombaard v Dropprop CC and Others* [2010] ZASCA 86; 2010 (5) SA 1 (SCA); [2010] 4 All SA 229 (SCA) para 26.

Appearances

For appellant: J L van der Merwe SC (with S de Villiers)

Instructed by: The State Attorney, Pretoria
The State Attorney, Bloemfontein

For respondent: M van der Westhuizen

Instructed by: Krause Attorneys Incorporated, Johannesburg
Honey Attorneys, Bloemfontein