**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, JOHANNESBURG)**

**REPUBLIC OF SOUTH AFRICA**

**CASE NO: 037201/2024**

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

23/09/2025
DATE

SIGNATURE

**THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS** Applicant

and

**TYRELL BLYTHE VENTER** First Respondent

**INNOCENCHIA LAUDECHIA VENTER** Second Respondent

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**JUDGMENT**

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Mahosi, J

*Introduction*

[1] This matter comes before this Court by way of an application for the reconsideration of an order granted in terms of section 38 of the Prevention of Organised Crime Act[1] ("POCA") on an *ex parte* basis on 18 April 2024. The order, granted, preserved the respondents' immovable property, pending the final determination of a forfeiture application under Chapter 6 of the POCA.

[2] The applicant, the National Director of Public Prosecutions ("the NDPP"), alleges the property is the proceeds and an instrumentality of the offence of dealing in drugs, a scheduled 1 offence under POCA. The first and second respondents ("the respondents") are the registered owners of the property and seek the reconsideration of the preservation order. They deny the allegations and challenge both the procedure followed and the substantive merits of the NDPP's case.

*Factual background*

[3] The core allegations of the NDPP, as contained in the founding affidavit, are that the property described as Erf 753 Florida Township, Registration Division IQ, Province of Gauteng, held by Deed of Transfer T44295/2015, and situated at Number 37 Sixth Avenue, Corner of Ruth Street, Florida, 1710 ("the property") is used by its tenants as a base for the dealing in narcotics. The affidavit details several police operations, including surveillance and information from confidential sources, indicating a high frequency of short-duration visits to the premises at all hours, consistent with drug trafficking.

[4] In January 2022, an investigation called "Operation Dragoon" was initiated to gather intelligence on illegal activities at a property. Sergeant Petrus van der Linde led this investigation, which uncovered ongoing drug dealing, specifically cannabis, by an individual named Brian Matemela. An undercover agent successfully made a controlled purchase of cannabis from Matemela for R400. The property featured controlled access and a high boundary wall. Following the controlled buy, search and arrest warrants were

[1] Act 121 of 1998.

issued and executed on 24 May 2022. Although Matemela was not present during the raid, the first respondent was present, and the police warned him of the illegal activities taking place on the property.

[5] Nevertheless, the illegal activities persisted at the property. Between July and October 2022, at least three arrests were made for narcotics possession linked to the property. On 27 October 2022, Sergeant Van der Linde and colleagues served the respondents with a written warning advising of the continued illegal activities and warning them to cease them. However, the drug-related offences continued, resulting in several arrests from November 2022 to October 2023.

[6] The respondents, in their pleadings, do not squarely engage with the detailed allegation of police surveillance. Instead, they deny that the tenants are drug dealers because the latter assured them they are not. They confirm that the police advised them of the suspected drug activity on the property. They state that, upon advice, they warned the tenants and threatened them with eviction. They contend that the applicant has provided no proof of drug dealing and argue that even if the tenants were dealers, their activities do not render the property itself illegal.

*Issues for determination*

[7] Two issues fall for determination. The first is whether it was appropriate for the NDPP to approach the Court on an *ex parte* basis for the preservation order. The second is whether, on the evidence, there were and are reasonable grounds to believe that the property is an instrumentality of an offence referred to in Schedule 1 of POCA.

*Applicable law*

[8] The relevant statutory framework is clear. Section 38 of POCA permits the NDPP to apply *ex parte* for an order prohibiting any person from dealing in property which is, on reasonable grounds, believed to be an instrumentality of a scheduled offence. An "*instrumentality of an offence*" is defined in POCA as "*any property which is concerned in the commission or suspected commission of an offence*." A property is an instrumentality if it plays a sufficiently direct or functional role in the commission of the

crime. It is not merely the scene of the crime. Instead, it must be shown to have been used to facilitate the commission of the offence. Thus, a house used as a depot for storing and distributing drugs plainly qualifies as such an instrumentality.[2]

[9] The test for a preservation order is whether the Court, on the facts presented, holds a reasonable belief that the property is an instrumentality of crime. This is a *prima facie* standard, lower than the balance of probabilities required for a final forfeiture order. The purpose of the order is to prevent the property from being disposed of or diminished in value pending the final forfeiture application.

[10] It is a trite law that proceedings under Chapter 6 of POCA are *in rem* (against the property itself), not *in personam* (against the owner). Additionally, the culpability or knowledge of the owner is largely irrelevant to the question of whether the property was an instrumentality. The owner's innocence may be raised as a defence at the forfeiture stage under section 52, but it does not bar the granting of a preservation order.[3]

*Evaluation*

[11] On whether it was appropriate for the NDPP to approach the Court on an *ex parte* basis for the preservation order, I find no fault with the NDPP's decision. This is precisely the procedure contemplated by section 38 of POCA. The very nature of a preservation order is preventative. Its purpose is to surprise the respondents and "freeze" the asset to prevent its dissipation. Giving prior notice to the owners would have defeated this purpose, as it could have allowed for the sale or mortgaging of the property, or the destruction of evidence, before an order could be obtained.

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[2] See: *National Director of Public Prosecutions v RO Cook Properties Pty Ltd; National Director of Public Prosecutions v 37 Gillespie Street Durban Pty Ltd and Another; National Director of Public Prosecutions v Seevnarayan* 2004 (2) SACR 208 (SCA).

[3] See: *National Director of Public Prosecutions v Phillips* 2002 (4) SA 60 (W); *Prophet v National Director of Public Prosecutions* 2006 (1) SA 38 (SCA).

[12] Furthermore, upon a perusal of the founding papers, I am satisfied that the NDPP complied with its duty of *uberrimae fides* (utmost good faith), which requires an applicant in an *ex parte* application to make a full and frank disclosure of all material facts, including those that may be adverse to its case. The affidavit of Mr Skhumbuzo Maphumulo, as supported by Mr Rankutoatsana's affidavit, sets out the evidence with sufficient particularity and does not appear to conceal the owners' lack of direct involvement. The procedure was entirely appropriate.

[13] Concerning the issue of whether reasonable grounds exist to believe that the property is an instrumentality of an offence referred to in Schedule 1 of POCA, I am satisfied that the NDPP has met the required threshold for a preservation order. The detailed evidence of surveillance, the pattern of visitor traffic, and the two arrests linked directly to the property provide ample foundation for a reasonable belief that the property is being used as a nodal point for drug distribution. This evidence is not mere suspicion or conjecture. It is concrete, *albeit* circumstantial, evidence from an experienced law enforcement officer.

[14] The respondents' argument is unconvincing for several reasons. Their denial relies on the assurances of their tenants, which are self-serving and carry little weight compared to the objective evidence provided by the police. Additionally, their claim that there is no "proof" demonstrates a misunderstanding of the legal standard. The NDPP is not required to prove its case at this stage conclusively. It only needs to demonstrate reasonable grounds for belief. The evidence presented clearly meets this established standard.

[15] Furthermore, the respondents' argument that the tenants' activities do not render the property illegal is a misinterpretation of the law. The POCA does not declare property "illegal"; instead, it allows for civil forfeiture if the property is deemed an "instrumentality" of crime. It is the functional use of the property as a drug depot that brings it within the scope of the Act, rather than the personal culpability of the owners. In this context, the property, not the owner, is the respondent *in rem*.

[16] The respondents' actions upon being informed by the police are commendable. They may well form the basis of a powerful "innocent owner" defence at the forfeiture stage in terms of section 52 of POCA. However, for this interim preservation order, their personal innocence is not a bar. The focus remains squarely on the use of the property itself. The evidence establishes a reasonable belief that the property was used as an instrumentality of drug dealing.

*Order*

[17] Accordingly, the following order is made:

1. The respondents' application for the reconsideration and discharge of the preservation order granted on 18 April 2024 is dismissed.

2. The preservation order granted in terms of section 38 of the Prevention of Organised Crime Act 121 of 1998 in respect of the immovable property known as Erf 753, Florida Township, is confirmed.

3. The costs of this application shall be costs in the forfeiture application.

D. Mahosi J
Acting Judge of the High Court

Appearances

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| For the applicant: | Advocate A Dabula |
| Instructed by: | State Attorney |
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| For the respondent: | Advocate M Pinder |
| Instructed by: | Nishlan Moodley Attorneys |

Date of hearing: 16 April 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The date for hand-down is deemed to be 23 September 2025.