

28/09/2023.

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No: 2023-095451

In the *ex parte* application of:

The National Director of Public Prosecutions

Applicant

In re:

1. Portion 2 of Erf 144, 74171/2005, Limpopo, converted to Unit 5 SS Kruger Office Park, Limpopo.
2. Erf 1576, Louis Trichardt Extension 1, Limpopo
3. Portion 25 Farm Brakspruit 320, Limpopo
4. Erf 2580 Louis Trichardt, Limpopo
5. BMW 5 Series Sedan with registration number FY61SNGP
6. BMW 7 Series with vehicle registration number YKC623W
7. Rolls-Royce Phantom with vehicle registration number FC47XXGP

IN AN APPLICATION FOR A PRESERVATION OF PROPERTY ORDER IN

TERMS OF SECTION 38(1) OF THE PREVENTION OF ORGANISED CRIME

ACT, NO. 121 OF 1998

Private Bag X67, Pretoria 0001

2023 -09- 28

ORDER

GD PRET 002

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

On 28 September 2023

Before the honourable Justice Phalane J, in chambers.

Having read the notice of motion and its related affidavits and annexures, and having heard counsel for the Applicant,

IT IS HEREBY ORDERED THAT:

The Property

1 This order relates to the following property (hereinafter referred to as "**the property**"):

1.1 Portion 2 of Erf 144, 74171/2005, Limpopo, converted to Unit 5 SS Kruger Office Park, Limpopo.

1.2 Portion 2 of Erf 144, 74171/2005, Limpopo.

1.3 Erf 1576, Louis Trichardt Extension 1, Limpopo.

1.4 Portion 25 Farm Brakspruit 320, Limpopo.

1.5 Erf 2580 Louis Trichardt, Limpopo.

1.6 BMW 5 Series Sedan with registration number FY61SNGP.

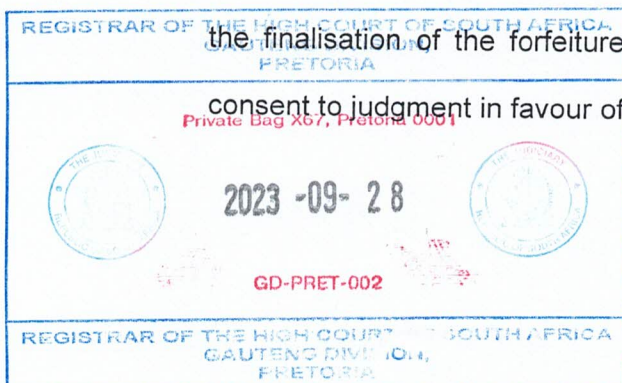
1.7 BMW 7 Series with vehicle registration number YKC623W.

1.8 Rolls-Royce Phantom with vehicle registration number FC47XXGP.

Prohibition against dealing in any manner with the property

2 In terms of section 38(2) of the Prevention of Organised Crime Act 121 of 1998 (**the POCA**), all persons with knowledge of this order, are, other than as required and permitted by this order, prohibited from:

- 2.1 removing, taking possession of or control over, dissipating, interfering with, diminishing the value of, pledging or otherwise hypothecating, attaching or selling in execution or dealing in any other manner with any of the movable property to which this order relates.
- 2.2 disposing of, further encumbering, dissipating, interfering with, attaching or selling in execution, diminishing the value of or dealing in any other manner with any of the immovable property to which this order relates.
- 3 The Registrar of Deeds shall endorse the title deed of the immovable property specified above with the restriction that the property, or property representing such property, shall not, without the prior leave of this honourable court, be attached, sold in execution, further mortgaged or otherwise encumbered; provided that such endorsement shall not prevent a transfer of the property effected in accordance with paragraph 7.
- 4 Notwithstanding the provisions of this order, any person who has financial obligations in respect of any of the property is ordered to fulfil such obligations, including any obligations relating to mortgage bonds, vehicle finance, rates, taxes, licences, utilities such as water and electricity accounts, and all interest accruing in respect of such obligations, pending the finalisation of the forfeiture proceedings unless such person signs a consent to judgment in favour of the Applicant.



Curator bonis

5 In terms of section 42 of the POCA, Shawn Williams of GCW Administrators (Pty) Ltd with telephone number 0827183648, is appointed as *curator bonis* over the property (**the *curator bonis***). The *curator bonis* shall have all such powers, duties and authority as provided for in the POCA and in this order and shall, in addition, be subject to the applicable provisions of the Administration of Estates Act 66 of 1965, as well as the supervision of the Master of the High Court.

6 The *curator bonis* is authorised to assume control of the property, take care of the property, administer the property and do anything necessary to preserve the property while the order is in force.

7 It is provided that the *curator bonis* may dispose of some or all of the property or property representing such property:

7.1 on 30 days notice to the owner and bondholder of immovable property if the obligations in respect of the property concerned are not being met; or

7.2 by agreement with all parties who have a legal interest in the property concerned in order to defray the costs of administering the property.

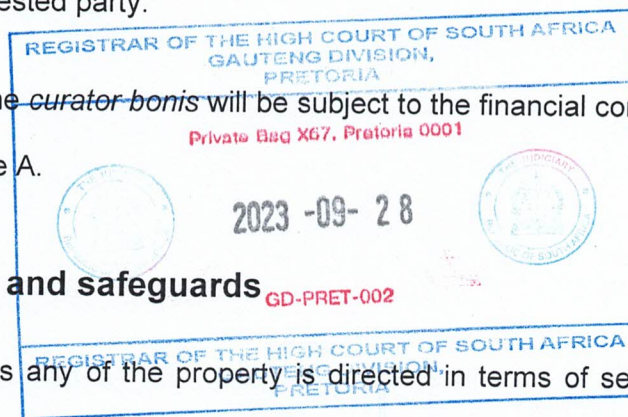
8 Notwithstanding the provisions set out above, and where appropriate, the *curator bonis* is entitled to pay any expenses related to preserved property, which would ordinarily be carried by the owner, out of any income derived from the property or from income derived from other preserved property of the owner.

- 9 In the event of the sale of immovable property in accordance with this order, the *curator bonis* may facilitate the sale and pay the commission of the estate agent in terms of the sale agreement, as well as other fees and costs attendant on the transfer of the property, after the proceeds of the sale have been received and registration of the property has taken place.
- 10 The *curator bonis* may release property which is under preservation if the proceeds of the unlawful activity have been paid over to an interest-bearing account controlled by the *curator bonis* on agreement between the Applicant and interested party. Such funds will be kept in the interest-bearing account until finalisation of the forfeiture application.
- 11 Where it is expedient for the effective execution of the order, the *curator bonis* may authorize in writing any person who, in his view, is capable of acting on his behalf, to exercise on his behalf any of the powers, duties and authority conferred on him and such authorization must be made available on request to an interested party.

- 12 The appointment of the *curator bonis* will be subject to the financial controls as set out in Annexure A.

Surrender of property and safeguards

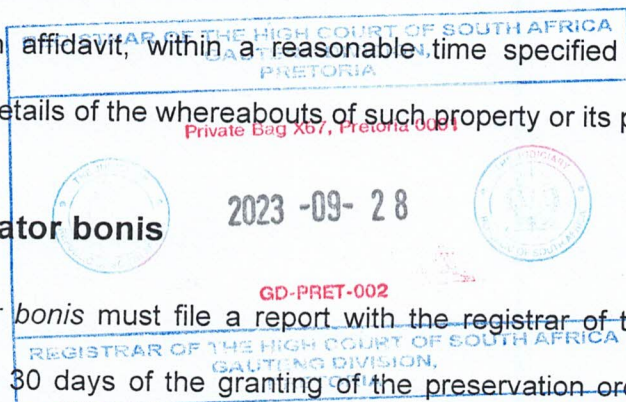
- 13 Any person who holds any of the property is directed in terms of section 42(1)(b) of the POCA to surrender the property forthwith into the custody of the *curator bonis*, failing which any member of the South African Police Service (or other agency if the facts render it necessary or appropriate) is hereby authorised, on the instruction of the *curator bonis*, to seize the relevant property and place it in the custody of the *curator bonis*.



- 14 Before any seizure of property takes place, the person from whose possession property is to be seized, must be afforded a reasonable opportunity, under the supervision of the *curator bonis* and/or any member of the SAPS (or other agency if the facts render it necessary or appropriate) who may be present, to summon a legal representative to be present during the seizure.
- 15 If it should appear to the *curator bonis*, from circumstances of which he shall keep a contemporaneous note, that the right to summon a legal representative is being made the occasion of needless or unreasonable delay, or that the person concerned appears to be using the delay to create an opportunity to dissipate, conceal or divest themselves of property or in any other manner obstruct the *curator bonis* in carrying out his functions under this order, the *curator bonis* may, after warning those present that the search is to commence, authorise the members of the SAPS to proceed with the seizure forthwith, whether or not the legal representative is then present.
- 16 If any of the property is not surrendered to the *curator bonis* or seized and placed in his or her custody in accordance with this order, the *curator bonis* is authorised to require the person who holds or who held such property to disclose on affidavit, within a reasonable time specified by the *curator bonis*, full details of the whereabouts of such property or its proceeds.

Report by curator bonis

- 17 The *curator bonis* must file a report with the registrar of this honourable court within 30 days of the granting of the preservation order which shall



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contain an inventory of the property taken into his custody in terms of this order, in which he shall set out the steps that have been taken by him to give effect to this order, and make any further recommendations as he may deem fit regarding any other steps he might be required to take in order to give effect to the order. The *curator bonis* must file supplementary reports containing additional relevant information as and when such reports become necessary.

Fees and expenditure of *curator bonis*

- 18 The fees and expenditure of the *curator bonis* must, in terms of section 42(2) of the POCA, be paid from the forfeited property. In the event of no forfeiture order being granted, then such fees and expenditure must be paid by the State, provided further that interest on expenditure incurred by the *curator bonis* is paid by the State at the prime lending rate of the major financial institutions from the date of expenditure until the date of final payment.

Service and publication

- 19 The Applicant must in terms of section 39 of the POCA cause notice of this order, in the form set out in Annexure B, together with documents supporting the application, to be served by the sheriff on the following individuals or their legal representative on their request:

- 19.1 2SP Investment with Trust number IT 7417/05 represented by Ntshengedzeni Alfred Nevhutanda (trustee) with ID number 530616 5995 081, residing at 62 Rosemary Street, Annlin,

Pretoria. (As registered owner of Portion 2 of Erf 144, 74171/2005, Limpopo).

19.2 Fulufhelo Promise Kharivhe with ID number 800329 0676 085 residing at Unit 2, SS Violet, Monavoni Extension 15, Centurion in the following capacities:

19.2.1 In her personal capacity as registered owner of Erf 1576, Louis Trichardt Extension 1, Limpopo.

19.2.2 In her capacity as director of Thwala Front (Pty) Ltd as registered owner of Erf 2580 Louis Trichardt, Limpopo.

19.2.3 In her personal capacity as registered owner of a BMW 5 Series Sedan with registration number FY61SNGP.

19.3 Collin Mukondeleli Tshisimba with ID number 780515 5531 085 residing at 4 Rockey Place, Monavona, Centurion. (As registered owner of Portion 25 Farm Brakspruit 320, Limpopo).

19.4 Meshack Makhubela with ID number 850310 5924 083, residing at 34 Roodeberg, Equestria, Pretoria. (As registered owner of BMW 7 Series Sedan M760 LI Auto, with registration number HF65ZGGP).

19.5 Malwandla Solly Siweya aka Rirhandzu Siweya with ID number 750422 5401 086, residing at 13 Lourie Close, Meyersdal. (As registered owner of Rolls-Royce Phantom with Registration number FC47XXGP).

20 The sheriff is authorised to effect service by way of electronic means in the form of a CD, DVD or USB memory stick.

21 In the event the sheriff has not been able to serve on any of the above persons, publication in the Government Gazette will be regarded as sufficient service.

22 The Applicant must further in terms of section 39 of the POCA cause notice of this order, in the form set out in Annexure A, to be published in the Government Gazette as soon as practicable after the order is granted.

Entry of appearance to oppose forfeiture order

23 Any person who has an interest in the property and who intends opposing the application for an order forfeiting the property to the State or applying for an order excluding his or her interest from a forfeiture order in respect of the property, must enter an appearance giving notice of his or her intention in terms of section 39(3) of the POCA.

24 Such notice must be delivered to the Applicant:

24.1 in the case of any person specifically identified for service in terms of this order, within 14 calendar days of service; and

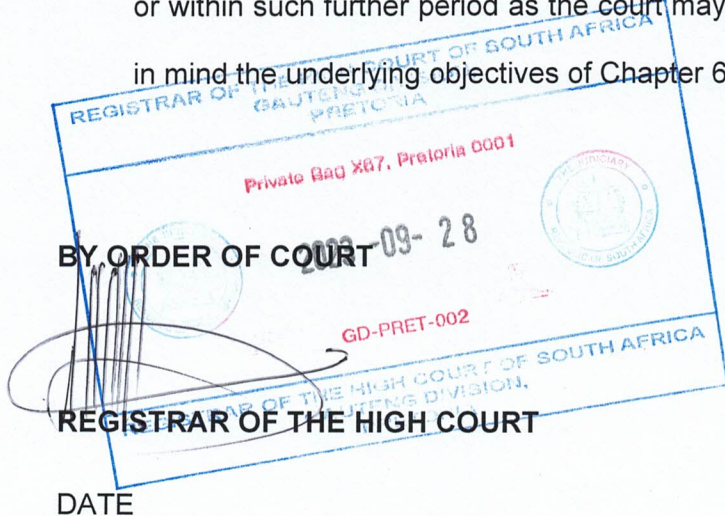
24.2 in the case of any other person, 14 calendar days after the date when a notice of the order was published in the Government Gazette.

25 A notice in terms of section 39 must contain full particulars of the chosen address for the delivery of documents concerning further proceedings in this matter and must be accompanied by an affidavit setting out:

25.1 the full particulars of the identity of the person giving the notice.

- 25.2 the nature and extent of his or her interest in the property concerned.
- 25.3 whether he or she intends opposing the making of the forfeiture order, or whether he or she intends applying for an order excluding his or her interest in that property from the operation of the order.
- 25.4 whether he or she admits or denies that the property concerned is an instrumentality of an offence referred to in schedule 1 of the POCA or is the proceeds of unlawful activities and the basis for such defence.
- 25.5 if he or she intends applying for the exclusion of his or her interests from the operation of the forfeiture order, the basis for such an application.
- 26 Any person who is affected by the order may on good cause shown, apply for reconsideration. Such application shall be made:
- 26.1 in instances where the person is able to justify the application on grounds of urgency, upon 3 days' notice (or such shorter period as the court may determine on good cause shown).
- 26.2 in other instances, upon at least 7 days notice to the Applicant and all other persons identified in this order as being persons who may have an interest in the property.
- 27 Such an application must be made not later than 8 days after the person applying for reconsideration becomes aware of the existence of the order,

or within such further period as the court may consider reasonable, bearing in mind the underlying objectives of Chapter 6 of the POCA.



ANNEXURE A

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: 2023-095451

In the *ex parte* application of:

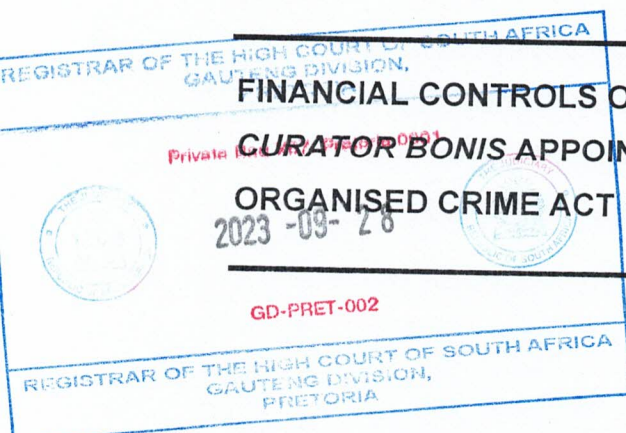
The National Director of Public Prosecutions

Applicant

In re:

1. Portion 2 of Erf 144, 74171/2005, Limpopo
2. Erf 1576, Louis Trichardt Extension 1, Limpopo
3. Portion 25 Farm Brakspruit 320, Limpopo
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**IN AN APPLICATION FOR A PRESERVATION OF PROPERTY ORDER IN
TERMS OF SECTION 38(1) OF THE PREVENTION OF ORGANISED CRIME
ACT, NO. 121 OF 1998**



**FINANCIAL CONTROLS ON EXPENDITURE INCURRED BY THE
CURATOR BONIS APPOINTED IN TERMS OF THE PREVENTION OF
ORGANISED CRIME ACT 121 OF 1998**

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1 As soon as possible after property is attached, the *curator bonis* must assess, in consultation with the representative of the National Director of Public Prosecutions, the cost and other implications of holding the property and determine the most appropriate management of each asset, including the cost of administering the asset and any possible depreciation in its value. In particular, the *curator bonis* must consider:

1.1 whether a motor vehicle subject to a credit agreement should be returned to the credit provider, realised early with the consent of the defendant or otherwise, stored for later realisation or whether the defendant's ownership equity in the vehicle should be bought out;

1.2 whether a business is viable and the best strategy for its management, including an early sale of the business or its stock.

1.3 whether it is more advantageous to store movables or release them to the defendant, subject to suitable arrangements to preserve their value.

1.4 whether fixed property can be sold with the consent of the owner;

1.5 whether a sale of movable assets by private treaty or to a person dealing in such property is not a more cost-effective method of realising the asset than at public auction.

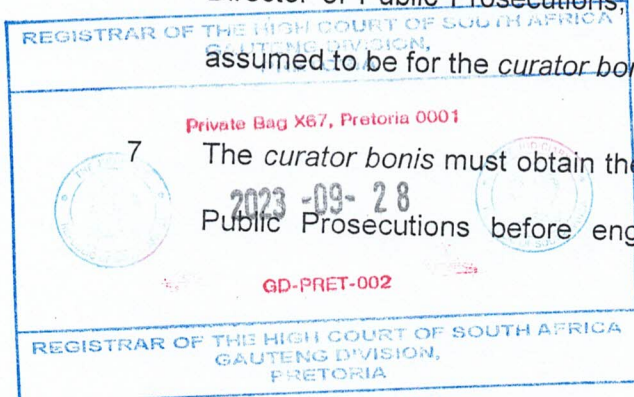
Method of disposing of assets

2 The *curator bonis* must use the most cost-efficient method of disposing of an asset and, if necessary, must actively market the asset and solicit offers.

- 3 The *curator bonis* should only resort to a sale at public auction where there is no less expensive or effective method of realising the asset.
- 4 Where there is an existing offer for the asset, any sale at public auction shall be subject to a reserve price equal to the amount of the existing offer.

Service providers engaged by the *curator bonis* in the performance of his mandate

- 5 The *curator bonis* must either:
 - 5.1 engage a service provider approved by the National Director of Public Prosecutions at a tariff agreed between the National Director of Public Prosecutions and that service provider,
 - 5.2 engage a service provider at a rate that does not exceed the approved tariff set out below, or
 - 5.3 obtain prior written quotations from 3 similar service providers before selecting the most appropriate quotation, and in his next quarterly report thereafter, provide the quotations and reasons for selecting the service provider at that tariff.
- 6 If the *curator bonis* intends to appoint a service provider to manage a going concern, the *curator bonis* must obtain the prior approval of the National Director of Public Prosecutions, failing which the manager's fees shall be assumed to be for the *curator bonis*' account.



7 The *curator bonis* must obtain the prior approval of the National Director of Public Prosecutions before engaging the services of any attorney or

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advocate for either litigious or non-litigious work, failing which the legal fees shall be assumed to be for the *curator bonis*' account.

Quotations and accounts by service providers

8 If a quotation is required, it must itemise the various services to be rendered and show the rate or other method used to calculate the amount of the quotation.

9 In relation to auctioneers, the quotation must stipulate:

9.1 any fee for removing the assets, and the rate at which this is calculated;

9.2 any storage fees, and the rate at which this is calculated;

9.3 any fee for inspecting or valuing the assets, and the basis on which it is calculated;

9.4 any fee for cleaning the assets, and the rate at which this is calculated;

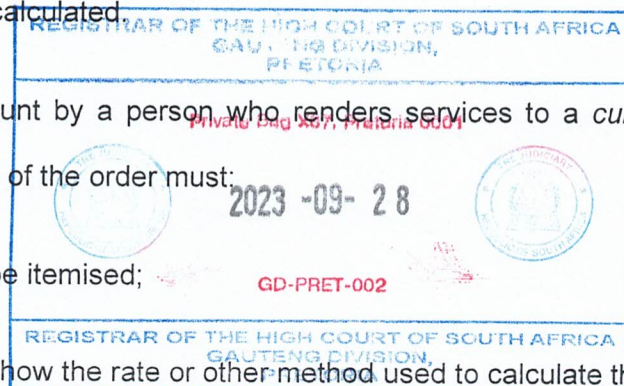
9.5 any advertising costs;

9.6 the fees of the auctioneer, and the basis on which these are calculated.

10 Any account by a person who renders services to a *curator bonis* in the execution of the order must:

10.1 be itemised;

10.2 show the rate or other method used to calculate the amount due;

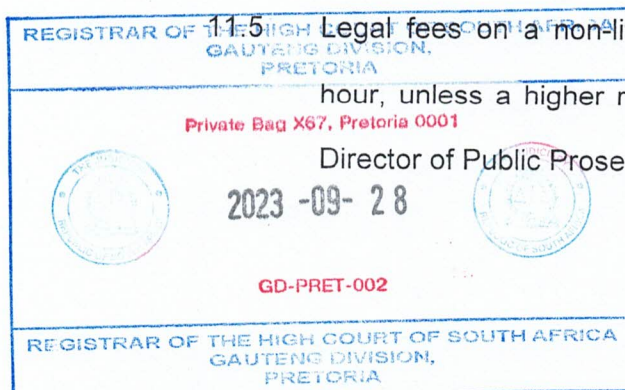


- 10.3 be supported by a certificate that the account is a true and proper reflection of the work done and that no hidden profits have been made.

Tariffs

- 11 The following maximum tariffs are approved:

- 11.1 The fees of an auctioneer shall not exceed 7.5% of the proceeds from the sale of immovable property and 10% of the proceeds from the sale of movable property;
- 11.2 The fees of a valuer of immovable property shall be whichever is the lesser of the basic *ad valorem* tariff and the time charge prescribed from time to time by the South African Council for the Property Valuers Profession in terms of the Property Valuers Profession Act;
- 11.3 The fees for the valuation of movable property shall not exceed the fee for appraisers prescribed from time to time by the Master of the High Court in terms of the Administration of Estates Act;
- 11.4 The inclusive costs of storage of motor vehicles shall not exceed R300 per month;



- 11.5 Legal fees on a non-litigious matter shall not exceed R500 per hour, unless a higher rate is expressly approved by the National Director of Public Prosecutions.

Travel and accommodation

12 Air travel expenses at economy rates will be payable to the curator in addition to any fee if the travel is:

12.1 undertaken with the prior written approval of the National Director of Public Prosecutions; or is

12.2 necessary to directly execute the court order.

13 Motor travel expenses will be reimbursed in terms of the Tariff for the Use of Motor Transport published periodically by the National Treasury on www.tau.treasury.gov.za if the travel:

13.1 involves a return trip of more than 60 km; and

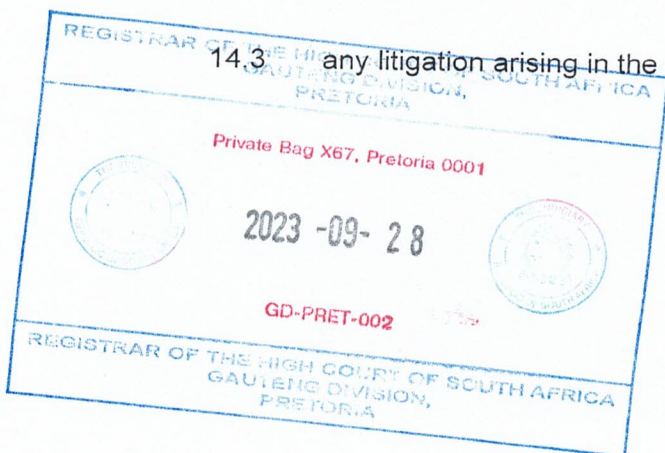
13.2 is necessary to directly execute the court order.

14 *Inter alia*, travel for the following purposes will not be deemed travel necessary for the direct execution of the court order:

14.1 the administration or accounting required for the curatorship, including visits to the Master, the National Director of Public Prosecutions and the curator's financiers or auditors;

14.2 the management of any business under curatorship where such travel is payable by the business concerned;

14.3 any litigation arising in the curatorship.



- 15 If accommodation is necessary for the travel referred to above, the expenses associated with such accommodation will be reimbursed at the rate for 3 star or similar accommodation in the area.

Other expenses

- 16 In his final *curator bonis*' report or when requesting any draw down on expenses from the National Director of Public Prosecutions, the *curator bonis* shall certify that the expenses claimed were incurred solely in the execution of his mandate in terms of the order of court.

Kickbacks

- 17 A *curator bonis* who, directly or indirectly, accepts or agrees or offers to accept from any other person any gratification in relation to the performance of any part of his mandate, whether for his or her benefit or for the benefit of another person, other than an interim payment by the National Director of Public Prosecutions or a fee approved by the Master of the High Court, shall in his first report to the Master thereafter declare:

17.1 the name and address of the person who provided the gratification;

17.2 the name and address of the person for whose benefit the gratification was provided;

17.3 the nature and value of the gratification; and

17.4 the circumstances in which the gratification was offered and accepted.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Private Bag X67, Pretoria 0001

2023 -09- 28

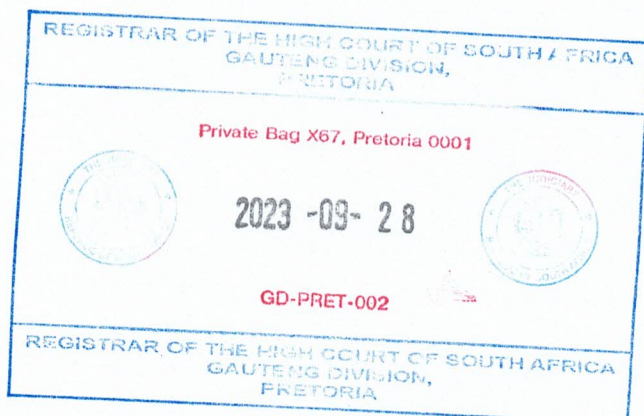
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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

- 18 The attention of the *curator bonis* is further drawn to the provisions of sections 12, 13 and 14 of the Prevention and Combating of Corrupt Activities Act, 2004.

Legal costs

- 19 The *curator bonis* shall only pay legal costs for any person subject to curatorship if ordered to do so by a court or with the prior written consent of the National Director of Public Prosecutions. If such costs are to be taxed, the National Director of Public Prosecutions shall be given notice of the taxation and be entitled to attend and make representations.
- 20 Litigious costs incurred by the *curator bonis* within the course and scope of his mandate shall be taxed and the National Director of Public Prosecutions shall be given notice of the taxation and be entitled to attend and make representations.



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ANNEXURE B

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No: 2023-095451

In the *ex parte* application of:

The National Director of Public Prosecutions

Applicant

In re:

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**IN AN APPLICATION FOR A PRESERVATION OF PROPERTY ORDER IN
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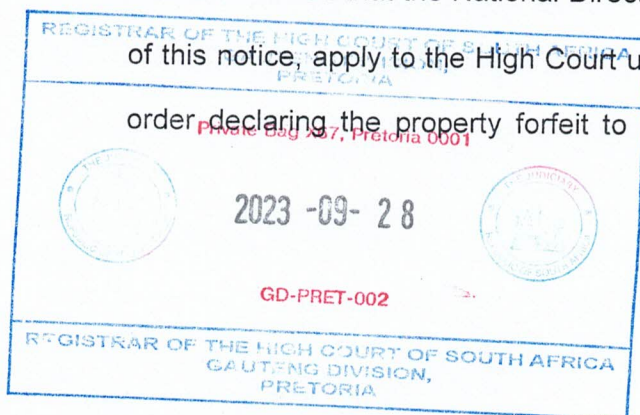
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, Private Bag X67, Pretoria 0001	
Notice in terms of section 39 of the Prevention of Organised Crime Act 121 of 1998 (POCA)	
	
2023 -09- 28	
GD-PRET-002	
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA	

This notice is addressed to:

- 2SP Investment with Trust number IT 7417/05 represented by Ntshengedzeni Alfred Nevhutanda (trustee) with ID number 530616 5995 081.
- Fulufhelo Promise Kharivhe with ID number 800329 0676 085.
- Collin Mukondeleli Tshisimba with ID number 780515 5531 085.
- Meshack Makhubela with ID number 850310 5924 083.
- Malwandla Solly Siweya aka Rirhandzu Siweya with ID number 750422 5401 086.
- Any other person/s who have an interest in the property listed in the founding affidavit.

Take notice that:

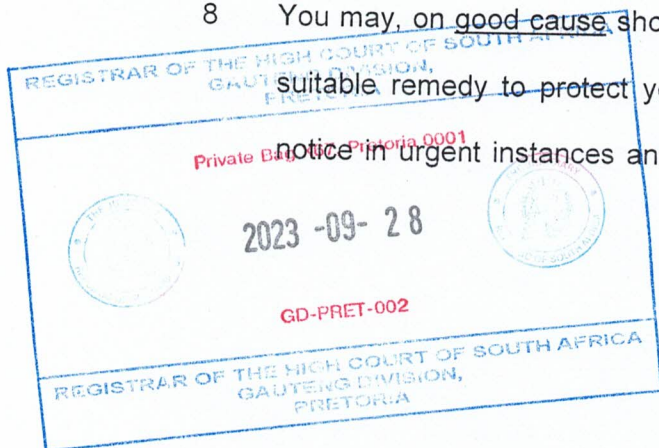
- 1 The National Director of Public Prosecutions (**National Director**) has obtained a preservation of property order (**the order**), a copy of which is attached to this notice, in terms of section 38(2) of the POCA in respect of the property.
- 2 If you have an interest in the property, you should understand that it is now at risk. You are advised to obtain legal advice on whether your interest can be protected and, if so, on how to protect it.
- 3 You are notified that the National Director will, within 90 days of publication of this notice, apply to the High Court under section 48 of the POCA for an order declaring the property forfeit to the state. The order will remain in



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force until the application for a forfeiture order is finalised, and until any forfeiture order that is made is satisfied.

- 4 If you intend to oppose the application for a forfeiture order, or you intend to apply for an order excluding your interest from a forfeiture order in respect of the property, you must enter an appearance in terms of the order. The requirements for such an appearance are set out in the order and are also dealt with in sections 39(3), (4) and (5) of the POCA. An appearance must comply with these requirements.
- 5 Your attention is specifically drawn to the 14-day time limit prescribed in section 39(4) for the entry of an appearance referred to in paragraph 4 above.
- 6 If you enter an appearance in terms of the order you will be entitled to be given 14 days notice of the application by the Applicant for a forfeiture order in respect of the property.
- 7 If you fail to enter an appearance in terms of the order or to comply with the above requirements, you will not be given notice of the application for a forfeiture order and you will not be entitled to appear at the hearing of the application. In such a case, the court may grant a default order forfeiting the property to the state under section 53 of the POCA.
- 8 You may, on good cause shown (including the non-availability of any other suitable remedy to protect your legitimate rights or interests), on 3 days notice in urgent instances and at least 7 days notice in other instances to



the Applicant, and within 8 days of becoming aware of the order, apply for reconsideration of the order.

- 9 You are specifically advised that even if you intend to apply for reconsideration of the preservation order in this case, you must, in addition, comply with paragraphs 4 and 5 above if you intend to oppose the forfeiture application at a later date. Failure to do so can result in a forfeiture order being granted against the property by default and without further notice to you.

Whenever this order states that you must deliver or serve any notice, affidavit or other process document on the Applicant, you must deliver or serve them on the Applicant at the following address:

THE STATE ATTORNEY

Applicant's Attorneys

Mr Kgaphola

316 Thabo Sehume Street

PRETORIA

Tel: (012) 309 1677

Email: KKgaphola@justice.gov.za

or CISibiya@npa.gov.za

Ref: **3564/23/Z56**

