



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

EX- TEMPORE JUDGMENT

In the ex parte matter of:

Case no: HC-MD-CIV-MOT-POCA-2018/00332

PROSECUTOR-GENERAL

APPLICANT

IN RE: The positive balance held in the current First National Bank of Namibia Limited account number 62140656797 held in the name of Wilbard Pandeni Ipinge and the positive balance in First National Bank of Namibia Limited Unit Trust account number 90557280146 held in the name of Wilbard Pandeni Ipinge.

IN THE APPLICATION FOR A FORFEITURE OF PROPERTY ORDER IN TERMS OF SECTION 59 OF THE PREVENTION OF ORGANISED CRIME ACT, NO. 29 OF 2004

Neutral citation: *Prosecutor-General* (HC-MD-CIV-MOT-POCA-2018/00332)
[2019] NAHCMD 563 (12 September 2019)

Coram: GEIER J

Heard: 12 September 2019

Delivered: 12 September 2019

Released on: 11 February 2020

Flynote: Practice – Procedure – POCA - the court was requested to determine whether or not an application for a preservation of property order and the subsequent related application for a forfeiture of property order – brought in terms of POCA - are two separate and distinct applications – each to be launched by way of a substantive and separate application to be brought in terms of Rule 65 of the Rules of court - or whether they would constitute one application divided into two separate stages.

This request was made on behalf of the Prosecutor-General in spite of two High Court decisions – the decisions made in *Prosecutor-General v Kamunguma* and *Prosecutor-General v Paulo* – which where to the effect that an application for forfeiture is separate and distinct from the application for a preservation of property order and is not an integral part of the application for the preservation of property order - that it stands alone from the application for the preservation of property order – and is an application initiating new proceedings within the meaning of rule 65(1) and therefore had to be issued by the registrar before such an application was to be served on the affected person.

The court was requested to make its determination with reference to the pronouncements of the Supreme Court made in *Prosecutor-General v Uuyuni*.

The Court – for purposes of determining the questions so posed – considered that it had to establish what the *ratio decidendi* in *Uuyuni* was - and - on analysis of *Uuyuni* it found that the Supreme Court had accepted that the Namibian POCA- is a replica of the South African POCA legislation; that the Namibian POCA - like its South African counterpart - allows for 'a two- stage procedure of proceedings' - and with this came the acceptance that the Namibian POCA, like its South African counterpart - employs two stages in one procedure, as opposed to two separate procedures.; that the two stages are the *ex parte*- and *in camera* stage – where the first stage – is aimed at preserving property from being dissipated - and where the court only needs to be satisfied that the information contained in the affidavits show that the property in question is 'an instrumentality of an offence' or are 'proceeds of unlawful activities', on the face of reasonable grounds for such beliefs - and – where at the second stage - which is the forfeiture of property stage – an order can only be granted if the court is satisfied, upon the civil standard of proof, that the property to be forfeited, was either an 'instrumentally in an offence' or constitutes the 'proceeds of unlawful activity'; that

at the first stage the procedure in question is *in camera* and *ex parte* and at the second stage, a party can oppose such proceedings and give notice to oppose the granting of a forfeiture order in terms of Section 52(3).

The court also found that the Namibian Supreme Court in *Uuyuni* did also expressly approve the reasoning followed by the South African Constitutional Court in *National Director of Public Prosecutions and Another v Mohamed NO and Others* – in which that court had found that Section 38 of the South African Legislation forms part of a complex ‘two- stage procedure’, (Section 38 is the South African counterpart to the Namibian Section 51 of POCA), that there is a defence at the second stage of these proceedings; and that the provisions of the South African Chapter 6 of POCA - like its Namibian counterpart - are ‘*tightly intertwined as a matter of process and substance.*’

It was thus held that it appeared from the reasoning of the Supreme Court in *Uyuni* and from the principles which it applied in arriving at its decision and in motivating the grounds for reversing the court a quo’s decision, in a context in which a central consideration was that the procedure involved is comprised of two stages - as opposed to two separate proceedings - was not *obiter*.

It was thus held further that the reasoning employed by the Supreme Court in this regard and its pronouncement on the applicable legal position should thus be regarded as binding on the lower courts of Namibia.

It was held further that this court was sitting as a lower court and that it was thus bound to follow the *ratio decidendi* of the Supreme Court - as expressed in *Uuyuni* - by virtue of the *stare decisis* principle and the hierarchy of court decisions as decreed in Article 81 of the Constitution , in which circumstances the Court was obliged to follow the decision made in *Uuyuni*, which finding in turn absolved it from deciding whether or not the High Court decisions made in *Kamunguma* and *Paulo* were decided wrongly.

Summary: The facts appear from the judgment.

ORDER

1. The property which is presently subject to a preservation of property order granted by this Honourable Court under the above case number on 26 September 2018, namely: the positive balance held in the current First National Bank of Namibia Limited account number 62140656797 held in the name of Wilbard Pandeni Ipinge and the positive balance in First National Bank of Namibia Limited Unit Trust account number 90557280146 held in the name of Wilbard Pandeni Ipinge ("the property"), is hereby forfeited to the State in terms of section 61 of the Prevention of Organised Crime Act, 29 of 2004 ("POCA").
2. The aforesaid property is to remain under the control and supervision of W/O Shikongo of the Anti-Money Laundering and Combating of Financing and Terrorism: Asset Recovery Sub-Division or, in W/O Shikongo's absence, any authorised member of the Anti-Money Laundering and Combating of Financing and Terrorism: Asset Recovery Sub-Division in Windhoek, in whose control the property is under the preservation order, and in W/O Shikongo's absence, any authorized member of the Anti-Money Laundering and Combating of Financing and Terrorism: Asset Recovery Sub-Division, until the expiration of the statutory periods as set out in section 61 (8) of POCA.
3. W/O Shikongo, or in his absence, any authorised member of Commercial Crime Investigation Unit: Anti-Money Laundering & Combating of Financing and Terrorism: Asset Recovery Sub-Division is hereby directed to:
 - 3.1 To pay the positive balance held in the current First National Bank of Namibia Limited account number 62140656797 held in the name of Wilbard Pandeni Ipinge and the positive balance in First National Bank of Namibia Limited Unit Trust account number 90557280146 held in the name of Wilbard Pandeni Ipinge into the Asset Recovery Account:

Ministry of Justice –POCA

Standard Bank account number 589245309

Branch Code: 08237200

4. Any person whose interest concerned is affected by the forfeiture order, may within 15 days after he or she has acquired knowledge of such order, set the matter down for variation or rescission by the Court.
5. This order must be published in the Government Gazette as soon as practicable after it is made.
6. Orders 1 and 3 will not take effect before 30 days have expired after the notice of this order was published in the Government Gazette or before an application in terms of section 65 of POCA or an appeal has been disposed of.

JUDGMENT

GEIER J:

[1] The forfeiture of property application in this case was brought on notice of motion, supported by affidavits, setting out the facts on which the applicant relied in support of that application.

[2] It was an application filed on the same court file and under the same case number as the related preservation of property application, which had preceded it, and which had been granted.

[3] As there were two High Court judgments to the effect that a forfeiture of property application, brought in terms of the Prevention of Organised Crime Act 29 of 2004 (POCA), should have been brought by way of a separate substantive application, the court directed the applicant to address a number of questions – and - in the first instance - why the forfeiture application was not brought in compliance with these judgments i.e. *Prosecutor-General v Kamunguma*¹ and *Prosecutor-General v Paulo*².

¹ *The Prosecutor-General v Kamunguma* (POCA 01/2016) [2017] NAHCMD 302 (20 October 2017).

² *The Prosecutor General v Paulo* (POCA 13/2015) [2017] NAHCMD 337 (22 November 2017).

[4] The court also asked the applicant to address the question whether that part of the Supreme Court decision, in *Prosecutor-General v Uuyuni* 2015 (3) NR 886 SC, was obiter, where it makes reference to a 'two- stage' procedure to be followed in preservation of property- and forfeiture proceedings brought in terms of POCA.

[5] Three further questions were raised, but I believe, given the outcome of this decision, that the need for their determination, save for the one requiring the applicant to indicate whether or not the preservation of property had lapsed, has fallen away.

[6] It should possibly also be mentioned that the preservation of property order and the subsequent application for forfeiture had been served and published, as was required, and that both applications had remained unopposed.

[7] After the forfeiture application had been set down on the managing judge's case management roll for 30 January 2019, it was removed by notice and then set down again, on the residual court roll, for 15 February 2019.

[8] Subsequent to the residual court hearing, I then assigned a date for argument and required counsel for the applicant to address the questions formulated by the court in its order.³

[9] Heads of argument were duly filed, addressing all the questions.

[10] Upon the considerations of those heads of argument, which were thoroughly presented, and for which I wish to express my gratitude, it appeared that the first question would turn on the enquiry whether the court would be bound by the principle of *stare decisis* and in which consideration the court would also have to consider whether or not it should follow the two referred to High Court judgments of *Kamunguma* and *Paulo*.

³ 1. Why a new substantial (separate) application should not have been made for the forfeiture of the property application?

2. Why the judgments of *The Prosecutor-General v Kamunguma* and *The Prosecutor - General v Paulo* are not followed by the PG's office;

3. Why the Supreme Court reference to the two-stage procedure of forfeiture proceedings referred to in *The Prosecutor-General v Uuyuni* is not *obiter dictum*;

4. Why the counsel for the applicant should not be held in contempt of court for not following the above judgments of the High Court;

5. Why the Honourable Court should not find that the preservation of property order has lapsed.

[11] The second question - which recognised that the court would have to consider whether or not the Supreme Court judgment in *Uuyuni* was *obiter* or not – would however obviate the need to determine the first question should the court come to the conclusion that the decision made by the Supreme Court in *Uuyuni* was not *obiter*, but binding on it, in which event the court would simply have to follow it.

[12] The three other questions were only ancillary to these main enquiries and I believe, as I have said above, that the need for their determination will fall away.

[13] It so appears that the central enquiry is dependent on the determination of the nature of the Supreme Court decision, as made in *Uuyuni*.

[14] The argument mustered in this regard in the applicant's heads of argument was formulated as follows.

‘41. The literal meaning of *obiter dictum* is a “saying by the way” and *ratio decidendi* is refers to the reason for the decision, and not its concrete result.⁴

42. In the Appellate matter *Pretoria City Council v Levinson*⁵ the court held that:

“...As I understand the ordinary usage in this connection, where a single judgment is in question, the reasons given in the judgment, properly interpreted, do constitute the *ratio decidendi*...” [Emphasis provided]

43. Furthermore in *Likanyi v S*⁶ Frank AJA (dissenting) our Supreme Court held that:

“...The same approach is followed in South Africa where that country's Constitutional Court stated the position as follows:

[30] But the fact that a higher court decides more than one issue, in arriving at its ultimate disposition of the matter before it, does not render the reasoning leading to any one of these decisions obiter, leaving lower courts free to elect whichever reasoning they prefer to follow. It is tempting to avoid a decision by higher authority when one believes it

⁴ Herbstein & Van Winsen; Fifth Edition; p. 33.

⁵ *Pretoria City Council v Levinson* 1949 3 SA 305 (A) at 317.

⁶ *Likanyi v S* (SCR-2-2016)[2017] NASC (4 August 2017) at par. 101.

to be plainly wrong. Judges who embark upon this exercise of avoidance are invariably convinced that they are 'doing the right thing'. Yet, they must bear in mind that unwarranted evasion of a binding decision undermines the doctrine of precedent and eventually may lead to the breakdown of the rule of law itself. If judges believe that there are good reasons why a decision binding on them should be changed, the way to go about it is to formulate those reasons and urge the court of higher authority to effect the change. Needless to say this should be done in a manner which shows courtesy and respect, not only because it relates to a higher court, but because collegiality and mutual respect are owed to all judicial officers, whatever their standing in the judicial hierarchy.¹⁷ [Emphasis provided]

44. The Court held further that:⁸

“...What is binding on lower courts is the ratio decidendi (reason of or for the decision) of the higher court. It is the principle underlying the decision that is binding on lower courts and not the order or concrete results (also sometimes loosely referred to as the decision as pointed out above). In context this is obvious as the parties to a particular legal suit is bound by a final decision or order and no other court will pronounce itself in respect of the same matter involving the same parties. This is simply the effect of the principle of *res judicata*. In contrast the principle(s) pronounced (*ratio decidendi*) may be relevant to other similar cases.

[104]..... To summarise the principle of *stare decisis* in general terms; a court is bound by the *ratio decidendi* only of higher courts unless it was rendered *per incuriam* or there was subsequent overriding legislation and this court will follow its own past decisions unless satisfied it is wrong when it will overrule it. It goes without saying that where no binding principle is laid down the doctrine does not apply.⁹ Lastly, only a pronouncement of law can constitute a *ratio decidendi*.¹⁰ [Emphasis provided]

And:

“...[106] ...The relief granted in the *Munuma* judgment and repeated in the majority judgment is granted without any reasons explaining or justifying it.

There is simply no motivation for the relief. There is thus at present no *ratio decidendi*

⁷ Camps Bay Ratepayers' and Residents' Association and Another v Harrison and Another 2011 (4) SA 42 (CC).

⁸ Likanyi v S (SCR-2-2016)[2017] NASC (4 August 2017) at par. 103.

⁹ R v Welcome 1957 (3) SA 22 (N).

¹⁰ R v Wells 1949 (3) SA 85 (A) at 87-88.

in respect of this relief and no other court is thus obliged to order similar relief where a similar case is dealt with it.”[Emphasis provided]

45. In the *Uuyuni* – case the court set out the reasons in paragraphs 15 -26 as to why it disagrees with the court *a quo*’s interpretation of section 98 of POCA.

46. With regard to the finding of the court *a quo* that the order of 11 April 2012 was a nullity for having been obtained *in camera* without any basis for such a hearing as required by Art 12(1)(a) of the Namibian Constitution and s 13 of the High Court Act 16 of 1990, the Supreme Court further set out its reasons in par. 27 – 33 of the said judgment as to why it disagreed with the court *a quo*. In par. 28 of the said judgment the Supreme Court quoted with approval the South African case *National Director of Public Prosecutions v Mohamed NO and Others* 2002(4) SA 843 (CC) where the Constitutional Court of South Africa stated the purpose of POCA in paras 16 to 19 and 22. The relevant extract of the case refers to the process in the South African POCA as (one) “a complex, two- stage procedure” vis-à-vis two procedures:

“...[17] Section 38 forms part of a complex, two-stage procedure whereby property which is the instrumentality of a criminal offence or the proceeds of unlawful activities is forfeited.....

[18] There is, however, a defence at the second stage of the proceedings when forfeiture is being sought by the State. ...

[19] The forfeiture process provided for in chap 6 of the Act commences when the National Director applies *ex parte* in terms of s 38 of the Act to a High Court for a preservation order....

....The National Director must then within 90 days of the grant of the preservation order apply for the forfeiture of the property. At that stage, affected parties are entitled to a full hearing to determine whether the property should be forfeited or not.

[22] The provisions of chap 6 are therefore complex and tightly intertwined, both as a matter of process and substance. At the initial stage of the proceedings, when the National Director launches an *ex parte* application for a preservation of property order... [Emphasis provided]

47. At par. 29 the Supreme Court further holds that “...The Namibian POCA is a replica of the South African Act” and that “The Namibian POCA like its South African counterpart also allows for a (one) two stage procedure of proceedings” (insertion and emphasis provided).

The court further held that:

"... That first stage of the proceedings is consistent with the purpose of the Act to preserve the property from being dissipated and allow the interested party to raise a defence at the forfeiture stage. In the first stage of the proceedings the court need only be satisfied that the information contained in the affidavit that the property concerned is an instrumentality of an offence or proceeds of unlawful activities shows on the face of it that there are reasonable grounds for that belief. The balance of probabilities test only arises at the second stage, the application for forfeiture order. See s 61(1). An *ex parte* application is one brought for the benefit of one party to a proceeding in the absence of the other or without the adverse party having had notice of its application. By its nature an *ex parte* application only the one party would be in court and the adverse party is only served with the application and the court order thereafter." [Emphasis provided]

48. The Court again reiterated the two – stage nature of forfeiture proceedings in par. 38 and 39 of the said judgment before making its order.

49. It is respectfully submitted that the above reference(s) to the two –stage, interlinked and intertwined nature of a preservation application and a forfeiture application by the Honourable Court in the Uyuni – matter constitute *ratio decidendi* and not *obiter dicta* in as far as it forms part of the motivation or reason of the Honourable Court's order.

50. It should be noted by this Honourable Court that the court in the Prosecutor - General v Paulo¹¹ case referred to the legal exposition of the Honourable Justice Ueitele in support of his finding that an application for preservation of property and an application for forfeiture are two distinct, separate applications.¹² In light of the recent Supreme Court decision in the Kamunguma- case as set out above, the aforesaid legal position as set out in Prosecutor - General v Paulo, has been overturned and the above issue is as such *cadit quaestio*.'

[15] When one then - for purposes of determining whether or not the relevant findings in *Uyuni* are *obiter* or not - considers the principles underlying the decision of the Supreme Court - and with it its possible binding effect on lower courts - it appears – on analysis - that the Supreme Court's decision was founded on the following:

¹¹ Refer fn 7 above.

¹² The Prosecutor-General v Kamunguma (POCA 01-2016) [2017] NAHCMD 302 (20 October 2017) par.30, 31. 32.

1. the acceptance that the Namibian POCA- is a replica of the South African POCA legislation;¹³
2. that the Namibian POCA - like its South African counterpart - allows for 'a two-stage procedure of proceedings' - and with this comes the acceptance that the Namibian POCA, like its South African counterpart - employs two stages in one procedure, as opposed to two separate procedures;
3. that the two stages are the *ex parte*- and *in camera* stage – where the first stage – is aimed at preserving property from being dissipated - and where the court only needs to be satisfied that the information contained in the affidavits show that the property in question is 'an instrumentality of an offence' or are 'proceeds of unlawful activities', on the face of reasonable grounds for such beliefs - and – where at the second stage - which is the forfeiture of property stage – an order can only be granted if the court is satisfied, upon the civil standard of proof, that the property to be forfeited, was either an 'instrumentally in an offence' or constitutes the 'proceeds of unlawful activity';¹⁴
4. that at the first stage the procedure in question is *in camera* and *ex parte* ¹⁵ and at the second stage, a party can oppose such proceedings and give notice to oppose the granting of a forfeiture order in terms of Section 52(3). Here it should maybe be mentioned that a party can also apply to have a particular asset excluded from a forfeiture of property order.¹⁶

[16] In *Uuyuni* the Supreme Court also expressly approved¹⁷ the reasoning followed by the Constitutional Court in *National Director of Public Prosecutions and Another v Mohamed NO and Others*¹⁸ - which it cited with approval - and were the Court stated:

'[17] Section 38 forms part of a complex, two-stage procedure whereby property which is the instrumentality of a criminal offence or the proceeds of unlawful activities is forfeited. That procedure is set out in great detail in ss 37 to 62 of the Act, which form chap 6 of the Act.

¹³ See *Uuyuni* at [29].

¹⁴ See *Uuyuni* at [29].

¹⁵ see *Uuyuni* at [38].

¹⁶ See Section 63 of POCA.

¹⁷ See *Uuyuni* at [38].

¹⁸ 2002 (4) SA 843 (CC) (2002 (2) SACR 196; 2002 (9) BCLR 970; [2002] ZACC 9).

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, chap 6 needs to be understood in contradistinction to chap 5 of the Act. 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.

[18] There is, however, a defence at the second stage of the proceedings when forfeiture is being sought by the State. An owner can at that stage claim that he or she obtained the property legally and for value, and that he or she neither knew nor had reasonable grounds to suspect that the property constituted the proceeds of crime or had been an instrumentality in an offence (the innocent owner defence).

19] The forfeiture process provided for in chap 6 of the Act commences when the National Director applies ex parte in terms of s 38 of the Act to a High Court for a preservation order. Section 38(2) of the Act provides that the High Court shall make such an order:

"if there are reasonable grounds to believe that the property concerned —

- (a) is an instrumentality of an offence referred to in Schedule 1; or
- (b) is the proceeds of unlawful activities. H

'Once the preservation order is granted, notice must be given to all persons known to the National Director to have an interest in the property; and a notice of the preservation order must be published in the Gazette in terms of s 39(1). Thereafter, within 14 days of notice of the order, an affected party who wishes to oppose the grant of a final forfeiture order must enter an appearance of his or her intention to oppose that order. The National Director must then within 90 days of the grant of the preservation order apply for the forfeiture of the property. At that stage, affected parties are entitled to a full hearing to determine whether the property should be forfeited or not.

[22] The provisions of chap 6 are therefore complex and tightly intertwined, both as a matter of process and substance. At the initial stage of the proceedings, when the National Director launches an ex parte application for a preservation of property order, a Court must grant the order if it is satisfied that there are reasonable grounds to believe that the property is the proceeds of unlawful activities or the instrumentality in a crime. Thereafter, the preservation order may be varied or rescinded in terms of ss 44 and 47. If the preservation of property order

remains in force, then — within 90 days — the National Director must apply for an order of forfeiture. In the absence of such application the preservation of property order will lapse.’¹⁹

[17] It so appears that the Constitutional Court inter alia found :

(a) that the South African counterpart to the Namibian Section 51 of POCA - that is Section 38 of the South African Legislation - forms part of a complex ‘two- stage procedure’.²⁰

(b) that there is a defence at the second stage of these proceedings; ²¹

(c) that the provisions of the South African Chapter 6 of POCA - like its Namibian counterpart - are ‘*tightly intertwined as a matter of process and substance.*’²²

[18] It would thus appear from the reasoning of the Supreme Court in *Uyuni*²³ and the principles which it applied in arriving at its decision and in motivating the grounds for reversing the court a quo's decision, in a context in which a central consideration was that the procedure involved is comprised of two stages - as opposed to two separate proceedings - was not *obiter*. This finding then means that the reasoning employed by the Supreme Court in this regard and its pronouncement on the applicable legal position should thus be regarded as binding on the lower courts of Namibia.

[19] This court sits as a lower court and it is thus bound to follow the *ratio decidendi* of the Supreme Court as expressed in *Uuyuni* by virtue of the *stare decisis* principle and the hierarchy of court decisions as decreed in Article 81 of the Constitution.²⁴

[20] In such circumstances it follows that I am bound by the decision made in *Uuyuni* and that I am thus obliged to follow it.

¹⁹ *National Director of Public Prosecutions and Another v Mohamed NO and Others* op cit.

²⁰ *National Director of Public Prosecutions and Another v Mohamed NO and Others* at [17].

²¹ *National Director of Public Prosecutions and Another v Mohamed NO and Others* at [18].

²² *National Director of Public Prosecutions and Another v Mohamed NO and Others* at [22].

²³ Following the reasoning applied in *National Director of Public Prosecutions and Another v Mohamed NO and Others*.

²⁴ '81. A decision of the Supreme Court shall be binding on all other Courts of Namibia and all persons in Namibia unless it is reversed by the Supreme Court itself or is contradicted by an Act of Parliament lawfully enacted.'

[21] At the same time this conclusion absolves me from deciding whether or not the High Court decisions made in *Kamunguma* and *Paulo* were decided wrongly - in circumstances - where I am simply obliged to bow to the binding effect of the Supreme Court decision and the principles enunciated there.

[22] Consequently I consider myself duty-bound to acknowledge – as correct - the procedure adopted by the applicant in these proceedings now serving before the court i.e that the procedure followed by the applicant was thus in accordance with the sanctioned two-stage approach. i.e where applicant in this instance - at the first stage applied for- and was granted a preservation of property order *ex parte* and *in camera* - and where - the second stage was permissibly initiated through the application for a forfeiture order, as launched during January 2019, on the same case number and on the same case file which had been assigned originally to the application for the preservation of property, without the resort to a separate substantive application to be launched in terms of Rule 65 of the Rules of Court.

[23] This application - and I need to add this - was also timeously made - and before the granted preservation of property order would have lapsed in terms of section 53.

[24] The fact that the forfeiture application was only heard and determined now, does in my view not cause the expiration of the preservation of property order if regard is had to the provisions of section 53(1)(a).²⁵

[25] Turning now to the merits of the forfeiture application, I find that the applicant has discharged her onus in terms of section 61(1) and accordingly I grant the following relief:

1. The property which is presently subject to a preservation of property order granted by this Honourable Court under the above case number on 26 September 2018, namely: the positive balance held in the current First National Bank of Namibia Limited account number 62140656797 held in the name of Wilbard Pandeni Ipinge and the positive balance in First National Bank of

²⁵ (1) A preservation of property order expires 120 days after the date on which notice of the making of the order is published in the Gazette unless-


(a) there is application in terms of section 59(2) for a forfeiture order pending before the High Court in respect of the property which is subject to the preservation of property order; ... '.

Namibia Limited Unit Trust account number 90557280146 held in the name of Wilbard Pandeni Ipinge ("the property"), is hereby forfeited to the State in terms of section 61 of the Prevention of Organised Crime Act, 29 of 2004 ("POCA").

2. The aforesaid property is to remain under the control and supervision of W/O Shikongo of the Anti-Money Laundering and Combating of Financing and Terrorism: Asset Recovery Sub-Division or, in W/O Shikongo's absence, any authorised member of the Anti-Money Laundering and Combating of Financing and Terrorism: Asset Recovery Sub-Division in Windhoek, in whose control the property is under the preservation order, and in W/O Shikongo's absence, any authorized member of the Anti-Money Laundering and Combating of Financing and Terrorism: Asset Recovery Sub-Division, until the expiration of the statutory periods as set out in section 61 (8) of POCA.
3. W/O Shikongo, or in his absence, any authorised member of Commercial Crime Investigation Unit: Anti-Money Laundering & Combating of Financing and Terrorism: Asset Recovery Sub-Division is hereby directed to:
 - a. To pay the positive balance held in the current First National Bank of Namibia Limited account number 62140656797 held in the name of Wilbard Pandeni Ipinge and the positive balance in First National Bank of Namibia Limited Unit Trust account number 90557280146 held in the name of Wilbard Pandeni Ipinge into the Asset Recovery Account:

Ministry of Justice –POCA
Standard Bank account number 589245309
Branch Code: 08237200
4. Any person whose interest concerned is affected by the forfeiture order, may within 15 days after he or she has acquired knowledge of such order, set the matter down for variation or rescission by the Court.
5. This order must be published in the Government Gazette as soon as practicable after it is made.
6. Orders 1 and 3 will not take effect before 30 days have expired after the notice

of this order was published in the Government Gazette or before an application in terms of section 65 of POCA or an appeal has been disposed of.



H GEIER
Judge

APPEARANCE

APPLICANT:

A Keulder

Government Attorney, Windhoek