CIV/APN/445/2015

IN THE HIGH COURT OF LESOTHO

In the ex- parte application of:-

THE DIRECTORATE ON CORRUPTION AND ECONOMIC OFFENCES Applicant

In re: Black BMW 320 D Vehicle with Registration no. CM 295 Chassis No. WBAVC 360 XOne62171 and Engine No. 81646271, a Charcoal BMW 1 Series with Registration No.CM 091 Chassis No. WBAUD9200PL94404 and Engine No. 94276543 and a White Toyota Dyna with Registration No.CM 094 Chassis No. JTT31LYM209996185 with Engine No. 485438.

JUDGMENT

Coram : Hlajoane J

Date of Hearing : 26th September, 2016.

Date of Judgment: 17th August, 2017.

SUMMARY

Application in terms of section 88 (1) of Money Laundering and Proceeds of Crime Act 4 of 2008 (MLPCA) property believed to be proceeds of crime in terms of section 7(1) © and (d) read with section 7(2) and section 31(2) of the Prevention of Corruption and Economic Offences Act 5 of 1999 (PCEO).

Annotations

Statutes

1. Section 99 (1) of the Constitution of Lesotho 1993
2. Section 88 (1) of Money Laundering and and Proceeds of Crime Act No.4 of 2008
3. Section 4 of the Prevention of Corruption and Economic Offences Act (PCEO) No.5 of 1999
4. Section 38 of the Prevention of Organized Crime South African Act No.121 of 1998
5. Section 17 of the Constitution of Lesotho 1993

Books

Cases

1. National Director of Public Prosecutions v Mohamed 2002 (4) S.A 843

2. National Director of Public Prosecutions v Phillips and Others 2002 (4) S.A WLD

3. National Director of Public Prosecutions v Van Heerden 2004 (2) SACR 26 at 33-34

[1] This is an **ex parte** Application filed by the office of the **Directorate on Corruption and Economic Offences (DCEO)** appointed in terms of **Section 99 (1) of the Constitution**[1]. The Application is in terms of **Section 88 (1)** of **Money Laundering and Proceeds of Crime Act**[2] (MLPCA).

[2] The order sought which also has set out the road map regarding the filing of the opposing papers is framed as follows:

THE PROPERTY.

(i) An order is granted in terms of **section 88(2) of the Money Laundering and Proceeds of Crime Act 4 of 2008 (MLPCA)** preserving three vehicles, namely,

[1] The Constitution of Lesotho 1993
[2] Act No. 4 of 2008

(a) Black BMW 320 D vehicle with registration number CM 295 chassis number WBAVC360XONE62171 and engine number 81646271.

(b) Charcoal BMW 1 Series with registration number CM 091 chassis number WBAUD9200PL94404 and engine number 94276543.

© White Toyota DYNA with registration CM 094 chassis number JTT31LYM209996185 with engine number 48538,

Held under the custody and control of Principal Investigating Officer of the **Directorate on Corruption and Economic Offences (DCEO)** and registered under RCU1 62/15 (**the vehicles**);

(ii) In terms of **section 88(2)** of the **MLPCA** and subject to the provisions of this order, all persons with knowledge thereof are prohibited from disposing of, further encumbering, dissipating, interfering with, attaching or selling in execution, diminishing the value of or dealing in any other manner with the moveable property to which this order relates;

(iii) The property shall be kept in the custody of Principal Investigating Officer at the DCEO premises until the expiration of this order in terms of section 90 of

MLPCA or until the conclusion of the forfeiture application.

[3] SERVICE AND PUBLICATION.

(iv) The Applicant shall in terms of **section 89** of the **MLPCA**, as soon as practicable after the making of the Preservation Order, cause a notice of the Order including **Annexure "A"** hereto, to be published in the **Government Gazette.**

(v) The Applicant shall cause notice of this Preservation Order together with the copies of the papers used in support of this application, to be served by the sheriff on **Molisana Sekoala** at Maputsoe Ha Chonapase in the district of Leribe as well as any other person who becomes known to the Applicant as having interest in the property.

[4] ENTRY OF APPEARANCE TO OPPOSE FORFEITURE ORDER.

(vi) Any person who has interest in the property and who intends:

- To oppose the application for an order forfeiting the property to the State; or

- To apply for an order excluding his or her interest from the forfeiture order in respect of the property;
- Must enter an appearance giving notice of such an intention in terms of **Section 89** (3) of the **MLPCA**.

(vi) An appearance must be delivered to the Applicant;

- In case of a person upon whom service is effected in under this Order within 14 days as specified in **Section 89** (4) of the **MLPCA** after such service; and
- In the case of any other person, within 14 days after the date upon which notice of this Order is published under in terms of paragraph 4 *supra*.
- An appearance in terms of **Section 89** (5) of the **MLPCA** include full particulars of the address chosen for the delivery of the documents concerning further proceedings in this matter, and must be accompanied by an affidavit setting out:
  - (a) Full particulars of the opposing party's identity
  - (b) The nature and extent of his or her interest in the property concerned; and
  - © The basis of the defence upon which he or she intends to rely on in opposing the forfeiture order or in seeking to have his or her interest excluded from the operation of the forfeiture order.

(ix) **RULE NISI AND RETURN DATE.**

The provisional order herein is returnable on ....day of December 2015 and a rule nisi be and is hereby issued calling upon any person having interest in the property to show cause on this return date;

(a) Why such provisional order should not be confirmed pending the application for a forfeiture order under Section 97 of the MLPCA and the finalization of such forfeiture proceedings; and

(b) In the event of any person having an interest in the property opposing this application, why such opposing party should not be ordered to pay costs of this application.

(x) **OPPOSITION OF RULE NISI.**

The person having an interest in the property and wishing to oppose the confirmation of this provisional order is directed to:

(a) Notify the Applicant in writing within 48 hours of service hereof of their intention to oppose the confirmation of the provisional order; and

(b) Deliver any answering affidavit together with any relevant documents, within 14 days of delivery of the notice of opposition.

(c) Further and/or alternative relief.

TAKE FURTHER NOTICE that the affidavit by **Borotho Matsoso** and **Mohau Mokhochane** will be used in support of this Application.

TAKE FURTHER NOTICE that the Applicant has appointed the address of his Attorneys of record referred to below as the address at which he will accept notice and service of all process in these proceedings.

KINDLY PLACE THE MATTER ON THE ROLL ACCORDINGLY.

[5] The founding affidavit has been filed by Borotho Matsoso, the Director – General at the Directorate on Corruption and Economic Offences (DCEO), having been duly appointed as such in terms of **section 4** of the **Prevention of Corruption and Economic Offences Act (PCEO)**[3] (as amended). He is also Director – General of Anti-Money Laundering Authority established in terms of section 11 of **Money Laundering and Proceeds of Crime (MLPCA)** *supra.*

[3] Act No. 5 of 1999

[6] The Director General in his affidavit explained the reasons for submitting that there are reasonable grounds for the Court to believe that the vehicles as shown above are proceeds of crime under **section** 7(1) © **and** (d) read with **section** 7 (2) and **section 31 (2) of the PCEO** relating to a person failing to give a satisfactory explanation in relation to unexplained property and or wealth, and **section 25 (1) (a) (i) of the MLPCA** relating to money laundering offences and as a "serious offence" in terms of **section 2 of MLPCA.**

[7] Mohau Mokhochane filed a supporting affidavit as the Principal Investigation Officer at DCEO, investigating a criminal case registered as DCEORCU1 62/15 regarding an offence in contravention of the sections as depicted in the preceding paragraph. The relevant charge sheet is attached to the papers.

[8] Mokhochane has deposed to the fact that a complaint was received at his office of a Mosotho male at Maputsoe who seemed to be living beyond his means and the suspicion being that he dealt in illegal diamonds. Having been allocated that matter, Mokhochane proceeded with investigations that led him to Sekoala. In his investigations he established that Sekoala held two separate accounts from different Banks, namely FNB Account No. 62205510854 and Ned Bank Account No.

032020052828. That both accounts received suspicious large sums of money between the period of February and October 2014 amounting to M1,227,329.22 (One million, two hundred and twenty seven thousand, three hundred and twenty nine and twenty two cents). In both accounts, shortly after deposit, the money was withdrawn.

[9] The investigator then proceeded with the lifestyle enquiry on Sekoala and discovered that he is unemployed and has no clear source of income but living a lavish lifestyle that is not within his means. On further enquiry he discovered that during the same period Sekoala purchased three vehicles in cash in Vereeniging in the Republic of South Africa. The said vehicles are as described above.

[10] A letter was then written to Sekoala under **Section 7 (1) © and (d) of the PCEO Act** as amended requesting him to give answers to questions he was asked and also to make a full declaration of his assets and sources of income. Sekoala failed to provide satisfactory answers and was thus remanded under **Section 7 (2)** as shown on Annexure attached.

[11] The Investigation team thus came to the conclusion that the vehicles shown above were proceeds of unlawful activities because of the following factors:

- A lifestyle enquiry into Sekoala's life and affairs did not Match his lavish lifestyle.
- Sekoala happened to be a well known illegal diamond dealer within the Lesotho Mounted Police Service (LMPS) as evidenced by cases brought before Courts of law for dealing in diamonds per the charge sheets attached from both Leribe and Butha-Buthe.
- Numerous efforts requesting him to declare his assets and sources of income have been fruitless.
- When formally called to the offices of the DCEO to explain himself his explanations were not supported by any proof, and an investigation report has been attached.

[12] Based on the above the conclusion was that Sekoala was concealing and or disguising the illicit origin of his money and his inability to provide satisfactory explanation constituted an offence. So that this prompted the conclusion that the vehicles constituted proceeds of unlawful activities as he was unable to say where the monies in his accounts originated from.

[13] In opposing the confirmation of the preservation order and the release of his vehicles, Sekoala has deposed to the following;

That he acquired skills as a qualified bricklayer, carpenter and welder. He acquired the qualifications of bricklaying and carpentry at 'Matheko Youth Centre Thaba-Tseka. He has attached the certificate from the said Centre showing he attended a course from January 1997 to December 1998 on Carpentry, Bricklaying and Agriculture and another certificate from the Ministry of Health for having successfully completed the Technical Course on V.I.P. latrine construction.

[14] He had worked both in South Africa and Lesotho for various contractors hence the skills he acquired. He has thus used his skills as and when he had found relevant work. He has also shown that his parents are traditional medicine healers and has attached the licence for his mother. As such he developed active interest in the profession of his mother and came to learn of a number of medicines for various purposes. But as an apprentice, he has yet not been licenced. He has also shown that in the absence of his mother he does concurrent apprenticeship under one nkhono Mantsape Rose Matooane of Kolonyama. He has attached the licence for the lady whom he said was at the time in Welkom. He has also shown that some Basotho do pay

handsomely for such services at times. An example was one Sandawana.

[15] But in response to the document attached as a licence for Sekoala's mother as a traditional healer, the Director General as the Applicant turned to say that in fact that document is not even a licence but a booklet intended for the purposes of making withdrawals and deposits at the bank, Post Office Savings Bank in Bloemfontein. The fact that Sekoala's parents are traditional healers has also been disputed as the document referred to has even been obtained in a foreign jurisdiction, Bloemfontein.

[16] The letter addressed to Sekoala requesting him to disclose his source of income for a period of ten years from 2005 was as already said earlier on, made pursuant to **section** 7(1) © **of PCEO Act 1999** as amended and not in terms of the MLPCA as is the case before Court. Sekoala argues that since the letter does not in any way refer to **section 31(2) of the PCEO Act** as amended, it is not permissible for the Applicant to place reliance on the section in the present Application as there was no notice or reliance on it in the first place. That also since the same letter has not referred to **section 25 (1) (a) of the MLPCA** read with **section 2** of the same Act, it is again not permissible to rely on

that Act when it was never the subject of enquiry in that letter. And lastly that there has been no reference to **section** 7 (1) (d) **of the PCEO Act** which has been also relied upon in this Application.

[17] It is clear from the above that Sekoala is saying that the Application is based on irrelevant facts which he had been called upon to answer in the letter addressed to him by the Applicant, having been legally advised that section 88(1) **of the MPLCA** cannot be legally invoked as machinery for his alleged failure to reply to questions in terms of **section** 7(1) © **of the PCEO Act as the PCEO Act** has sufficient machinery under **section** 7(2) and that there is a presumption of innocence which would operate even at the criminal trial pursuant to **section** 7(2) **of the PCEO** Act. It has also been Sekoala's belief that the Applicant ought to have provided facts that constitute a reasonable ground that he has acquired money or assets through the instrumentality of a serious offence or that they are proceeds of crime but that has not been the case.

[18] Applicant's Counsel in dealing with this matter started first by explaining the importance of Assets forfeiture. In that it used to be based on conviction but that lately it has been extended to non-conviction and it is civil in nature. It is independent of

criminal prosecution. That money laundering is general in nature as is both conviction and non-conviction based. The case at hand is on **Section 88(1) and (2) of MLPCA Act 2008**. It is framed in the following words:

Section 88 (1):

"The authority may by way of an ex parte application apply to the High Court for an order prohibiting a person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property referred to in subsection (2).

(2) The High Court shall make an order referred to in section (1) if there are reasonable grounds to believe that the property concerned –

(a) is an instrumentality of a serious offence; or

(b) is the proceeds of unlawful activities."

[19] The section relied on requests that the Applicant must have reasonable belief that the products are from unlawful activities. The Director General at para 18 of his affidavit showed that when Sekoala was called to their offices to come and give explanation, the explanations furnished were unreliable and were not supported by any proof. He has attached his investigation report.

The report showing that huge sums of monies were deposited and immediately the money was withdrawn and property bought.

[20] As pointed out by the Applicant, Part v of the MLPCA established a two stage asset forfeiture mechanism. The preservation application being the first stage of this proceedings, with the second phase involving an application for a forfeiture order by the Court. Applicant argued further that the basis for **section 88** is for Applicant to have had reasonable grounds to believe that the property concerned is the proceeds of unlawful activities. So that the Application has not been based on the letter but on the facts which are relevant to justify the jurisdictional requirement as envisaged by the MLPCA.

[21] The Respondent referred to para 5 and 6 of the Director General's affidavit for understanding the inter-phase between **section 7 of the DCEO Act** and **section 25 of the MPLCA Act**. Para 5 referred to gives the description of the three vehicles in issue.

[22] Para 6 of the affidavit is about the submission by the Applicant for having believed that there were reasonable grounds for the Court that the vehicles are proceeds of crime under **section 7 (1) © and (d)** read with **section 7 (2)** and **section 31 (2) of the DCEO**

relating to a person failing to give a satisfactory explanation in relation to unexplained property and or wealth, and **section 25(1) (a) (i) of the MLPCA.**

[23] Respondent referred to the case of **National Director of Public Prosecutions v Mohamed**[4] for issuance of a *rule nisi*, and that the Applicant is entitled to move for a final preservation order.

[25] Respondent referred to the case above in responding to Applicant's view which according to me, parties seem to be in agreement. Applicant has pointed out that MLPCA has created two distinct mechanisms for the forfeiture of the proceeds and instrumentalities of crime. Part iv providing for the forfeiture of the benefits derived from crime, and its mechanisms being only involved when criminal proceedings are pending and forfeiture only taking place after conviction, hence why commonly referred to as "criminal forfeiture" as it is based on and follows a criminal conviction. But confiscation order in terms of Part v is not dependent on a criminal conviction.

[26] But as argued by the Applicant we have criminal forfeiture and civil forfeiture which may tend to be misleading as both are civil

[4] 2002 (4) S.A 843

remedies. The only difference being that one is dependent on criminal conviction whereas the other is not. What both remedies seek to achieve is to deprive a defendant of the proceeds of crime.

[27] The Respondent was strengthening his point to say that the Applicant ought to have applied for a *rule nisi* when he referred to the case of **National Director of Public Prosecutions v Mohamed** *supra*. The case concerned the constitutional validity of **section 38 of the Prevention of Organized Crime**[5] similar to our **section 88 of MLPCA**. The High Court Cloete J had declared the section to be constitutionally invalid to the extent that it requires the National Director of Public Prosecutions to bring an Application for a preservation of property order *ex parte* in every case and makes no provision for a rule nisi calling upon interested parties to show cause why a preservation of property and seizure order should not be made.

[28] The High Court found that **section 38** infringed the fair hearing component of **section 34** of their constitution and that such a limitation was not justifiable under section 36 of their constitution. **Section 34** provides;-

[5] South African Act No. 121 of 1998

"Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court... ."

[29] Ackermann J on appeal observed that the relief sought by the Respondents at the High Court was the striking down of the entire chapter of the Act, but the relief granted related to but one aspect of a single section in the chapter, namely a procedural aspect of **section 38** which had not been specifically raised by the Respondents in the High Court. It was therefore the court's view that the High Court was not entitled, given the broad attack on chapter 6 of the Act, to have considered only the procedural aspect of **section 38** and not make the order declaring the section to be constitutionally invalid. The order of the High Court was set aside and the matter was referred back to be dealt with afresh. So that the case is distinguishable from the case before court.

[30] In terms of **section 88 (i) of MLPCA** the Applicant approached the court for a preservation order *ex parte* and the court under subsection (2) is to form an opinion based on what has been placed before it. It is not for the court to just grant the order merely because the matter has been brought *ex parte*. The court is still left with the discretion to exercise, **section 88 (3).**

[31] Investigations showed that Respondent was unemployed but there were huge sums of monies deposited into his accounts, and immediately the money was withdrawn and property bought. It was thus left to the court's discretion to have granted the order *ex parte* in the circumstances of the case before it. The Mohamed decision also adopted the approach that in certain matters the Applicant may in some cases find it necessary to make its applications by way of a *rule nisi*, despite the right to move *ex parte* for a preservation order.

[32] The Court, Heher J, in **National Director of Public Prosecutions v Phillips and Others**[6] said the following;-

"In my view an application for a restraining order is analogous (though not identical) to an interim interdict and attachment pendent lite."

Meer J also in **National Director of Public Prosecutions v Van Heerden**"[7] said;

"A prosecution order under section 38 of POCA is akin to an interim interdict. Its aim is to preserve property for up to 90 days

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[6] 2002 (4 S.A WLD

[7] 2004 (2) SACR 26 at 33-34

pending proceedings for a forfeiture order under section 48 of POCA."

[33] **Section 88 of MLPCA** only requires that you must have reasonable grounds to believe, whilst **section 7 (2) of PCEO (Amendment 2006)** deals with failure to provide information. And **section 87 (1) of MLPCA** clearly stipulates that the proceedings under Part v are civil in nature. The two pieces of Legislation go hand in hand, that is the MLPCA and PCEO. They both deal with economic offences. It was therefore not surprising that the Applicant approached the Court under **section 88 (1) and (2) of MLPCA** but wrote a letter to the Respondent under **section 7 (1) b**. It was quite in order, as the two complement each other.

[34] The Respondent has challenged reliance on **section 88 (2)** by the Applicant in that the property has no direct or indirect derivative status with the alleged offence in **section 7 of PCEO Act. Section 88 (2) has (a) and (b)**

(a) must have reasonable ground, that property is an instrumentality of a serious offence

(b) is the proceeds of unlawful activities.

[35] It has been the Applicant's case that there has to be a connection between the unlawful proceeds and the property. The proceeds must in a way be the consequence of unlawful activity. This can be direct or indirect. If the property was purchased with the money obtained from unlawful activities, it will represent the proceeds of unlawful activity. The Respondent was unemployed. He has alleged that he bought the property at the time he was working in South Africa in 1998. No proof to indicate that indeed he was employed during that time. No letters of employment or payslips attached.

[36] Respondent later admitted that he was not employed but had several sources of income. The Respondent gave two contradicting statements about his sources of income first he was employed but later talks about several sources of income out of employments. But evidence shows that he bought the property in March and April of 2014 with deposits from one Digkwatlhe. Such evidence was never rebutted. No indication of any connection between the two of them. He has described his skills as qualified builder, carpenter, welder and apprentice medicine man.

[37] As pointed out by the Applicant, the Respondent has withheld these explanations in the papers, and the question to ask would be

why would such an important information not be maintained if at all genuine and honest? He had said some of the monies were given to him as gifts having performed miracles to clients as a medicine man. He had said all that to the investigator but withheld it in the papers. He could not also provide a licence allowing him to practice as a traditional doctor.

[38] Most questions are left unanswered, like, besides Digkwatlhe who else came for services, were services only offered to Digkwatlhe only and why did he make such huge deposits. Would it be unreasonable to have concluded that his explanations were devoid of any truth.

[39] In persuading the Court to dismiss the Respondent's affidavit, the Applicant referred to the case of **Rasello v Chali**[8] in which the Court per Molemela J had this to say;

"I found the first respondent's answering affidavit to be materially inconsistent with her previous sworn statement. Moreover her own attorney's letter also strongly militates against her claim as set out in the answering affidavit that she is the late Chali's widow. In the light of all these I have no hesitation to dismiss the first respondent's affidavit as false on this point

[8] Appeal Case No.A69/2012

wherever it is inconsistent with the founding affidavit and her previous statement as well as her attorney's letter."

[40] The Applicant further pointed out that the Respondent has stated in the papers that he is under the apprenticeship of his mother and one Mantsape. The information was not revealed to the investigator thus denying him chance to have dug deep down in those assertions.

[41] The Applicant even took the trouble of looking at the meaning of an apprentice in the Oxford Advanced Leaner's Dictionary. The word is defined as;

"A young person who has agreed to work for a skilled employer for a fixed period, usually for low wages, in return for being taught that person's skill."

As an apprentice, the Respondent would then earn his income from his mother and Mantsape, but surprisingly the evidence has shown that the large sums of monies that the received were from Dikgwatlhe.

[42] Besides, it has already been pointed out earlier on that "MGSI" purported to be Respondent mother's licence is in fact a Post

Bank booklet for depositing and withdrawing money. Even if it were to be said is a licence it would have permitted his mother to practice only in Swaziland and not in Lesotho. No confirmatory affidavits from either his mother or Mantsape.

[43] Applicant has attached to the Application the following charge sheets,

(a) "MMI" charged of contravening **section 7 (2) (b) of Prevention of Corruption and Economics Offences Act 5 of 1999** as amended and this was in 2015.

(b) "MM2" charged of theft by false pretences of an amount of M197,000.00 by representing that he sells or deals in diamonds.

© "MM3" charged with Robbery of money amounting to M55,000.00, firearm and sjambok belonging to one Bernard Truter.

To these allegations, the Respondent denied that he was not a diamond dealer and that he had never been convicted of such an offence. But the allegations for robbery charge talked about representation as a seller or dealer in diamonds. He has not specifically denied that he was ever charged. No need to have proved elements of an offence but to provide allegations of offence.

[44] It has also been stated that the Respondent after being deposited the large sums of monies, he would immediately withdraw the money to deposit it into another account. The monies were all deposited from South Africa into his Lesotho accounts, at FNB and Nedbank. That the Applicant has asked the Court to view it as money laundering as the source in South Africa was concealed.

[45] The Applicant has been challenged on having brought new issues in reply. Applicant has attached in reply a statement by 'Mampotseng Mphuthing. This was in support of what had already been said in the founding papers. The statement was by way of demonstration to connect the charges attached in the founding papers to illegal diamond dealing. This was in rebuttal to what was said in defence by the Respondent in relation to diamonds dealing. It cannot therefore be said to be bringing new issues in reply. Respondent could have applied for filing of further affidavit **Herbstein and Van Winsen 5th Edition 439-440.**

[46] The Respondent has argued that even though it is a civil matter presumption of innocence still apply since the charge sheets have been attached. But as already said since the proceedings

are by their nature civil, we cannot be talking of presumption of innocence as though we are dealing with a criminal case. The purpose of having attached the charge sheets has already been shown above. Even having relied on **section 12 (2) (a) of the Constitution**, is without merit as that section is applicable if proceeding are criminal.

[47] After there was a suspicion about the lifestyle of Sekoala, he was written a letter in terms of **section 17 (1) © of PCEO Act** as amended to explain himself. The answers which Sekoala furnished to the investigator were found to be not satisfactory hence having approached the Court for intervention, **section 88 of MLPCA**. The offence falls under **section 25 of MLPCA**.

[48] The Respondent has also relied on the provisions of **section 17 of the Constitution**[9] against arbitrary deprivation of property. When a law is made, it is always to serve a particular purpose. The two pieces of legislation, MLPCA and the PCEO Act were enacted for dealing with corruption, money laundry and related offences. The two supplement each other.

[9] The Lesotho Constitution 1993

[49] Part V of **MLPCA** provides for the preservation and seizure of property as an interim measure pending an application for forfeiture. The purpose of such an order is to prevent property targeted for forfeiture from being disposed of, removed or destroyed before finalization of the forfeiture application. It cannot therefore be considered as an arbitrary seizure as the Respondent will, after the granting of preservation order be allowed time to answer and in some instances the property could be released by the Court. Preservation is only on interim order.

[50] As correctly said by the Respondent, section 88 requires that there has to be a reasonable suspicion that the property is an instrumentality of a serious offence, and a serious offence presupposes a known offence as defined in **section 2 of MLPCA.**

[51] The Applicant contended that the Respondent is unemployed and has no clear sources of income from his explanations. At one point the Respondent had said he got his money from work done as a bricklayer and the like, but at another though an apprentice he got monies from clients as a traditional healer. People he has mentioned have not supported what he said in the papers.

[52] Respondent has also not been able to explain the deposits into his accounts between the periods of February and March 2015 amounting to over a million maloti. The money was deposited into an account to be later withdrawn and deposited into another account and immediately withdrawn to buy vehicles in cash. This the Applicant has correctly labelled it as concealing the origin of the monies.

[53] It was therefore not unreasonable to conclude that the property seized has been bought from proceeds of crime as evidenced by the charge sheets that have been attached for robbery and theft by false pretenses. This was money laundering. Also that the crime of robbery and dealing in diamonds fits the definition of serious offences, under **section 2 (1) of MLPCA.**

[54] The Respondent has again argued that interim preservation order has lapsed in terms of **section 90 of MLPCA**. The section is framed as follows;-

"A preservation of property order shall expire 90 days after the date on which notice of the making of the order is published in the gazette unless –

(a) there is an application for a forfeiture order pending before the High Court in respect of the property, subject to the preservation of property order;"

So that the interim preservation order cannot be said to have lapsed because the application for forfeiture of same property is pending before this Court.

[55] Having read papers filed of record and heard Counsel on both sides the Court realized that a complaint was received that the Respondent, a Mosotho male of Maputsoe was living beyond his means, and the suspicion was based on charges before Court, that he was an illegal diamond dealer. The investigations revealed that the Respondent was unemployed but held two separate accounts at FNB and Nedbank.

[56] Further investigations revealed that both accounts received huge sums of monies between February and October 2014 amounting to over a million maloti. The money would be deposited in one bank and withdrawn and deposited into another bank here in Lesotho and shortly after that the money was immediately withdrawn and property in question bought in cash in South Africa.

MLPCA. This means that despite the *ex parte* nature of the order, interested parties may still be heard.

[61] The Court was mindful of the two stages of asset forfeiture mechanisms, being firs the preservation order and the last stage for forfeiture order.

[62] The Court has thus come to the conclusion that the Respondent's vehicles are proceeds of crime and Respondent has failed to give reasonable grounds for having acquired same. Under the circumstances the interim preservation order that was granted on the 3rd December, 2015 is made a final order of this Court.

A. M. HLAJOANE
JUDGE

For Applicant: Adv Matekane

For Respondent: Adv Teel KC