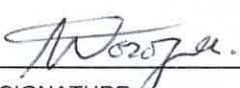


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: **077715/2024**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
29/10/2026	
DATE	SIGNATURE

In the matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

and

ANGELO AGRIZZI

Defendant

JUDGMENT

MOSOPA, J

Introduction

[1] This is an application for a confiscation enquiry with the view to making a confiscation order against the defendant in terms of section 18 of the Prevention of Organised Crime Act 121 of 1998 ("POCA"), brought by the National Director of Public Prosecutions ("State") as the applicant.

[2] South African Revenue Service ("SARS"), as an interested party, made representations in the confiscation proceedings in terms of section 20(5) of POCA. Also, the liquidators of African Global Operations, Bosasa Properties Proprietary, Bosasa Youth Development Centres Proprietary, RF Leitchman and TV Odell in their representative capacities, filed their representations as interested parties.

[3] All the parties mentioned were legally represented during the confiscation enquiry, except for Mr Agrizzi (defendant), a party in the enquiry who addressed the court and the state's counsel, Adv Saller who was together with Adv Matyolo. Counsel representing SARS only advised court that the defendant's matter at the Tax court is still pending and no other counsel representing interested parties addressed the court. It needs to be noted that such proceedings do not have any bearing to the current proceedings. This court did not receive any applications from the interested parties to be admitted to the proceedings as *amicus curiae*.

[4] The enquiry was heard on 30 July 2026, after hearing the parties, I then reserved judgment. The application was heard virtually as the defendant is now living in Italy and was connected to this court from that country.

Legal framework

[5] Section 18 of POCA provides:

"(1) Whenever a defendant is convicted of an offence the court convicting the defendant may, on the application of the public prosecutor, enquire into any benefit which the defendant may have derived from—

(a) that offence;

(b) any other offence of which the defendant has been convicted at the same trial; and

(c) any criminal activity which the court finds to be sufficiently related to those offences,

and, if the court finds that the defendant has so benefited, the court may, in addition to any punishment which it may impose in respect of the offence, make an order against the defendant for the payment to the State of any amount it considers appropriate and the court may make any further orders as it may deem fit to ensure the effectiveness and fairness of that order."

[6] Section 18(5) provides that no application referred to in subsection (1) shall be made without the written authority of the National Director. The applicant has complied with this provision.

[7] Section 1 of POCA defines “proceeds of unlawful activities” as follows:

“any property or any service advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived.”

[8] In turn, “property” is defined in POCA as:

“money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof.”

It was noted by the Supreme Court of Appeal, and endorsed by the Constitutional Court, that one of the reasons for a wide ambit of the definition of “proceeds of crime” is that sophisticated criminals will seek to avoid proceeds being confiscated by creating a complex system of “camouflage”.¹

[9] The Constitutional Court in *S v Shaik and Others*,² set out the approach the court should adopt in exercising the discretion provided in section 18 as follows:

“[69] First, a court considering what will constitute an appropriate amount as contemplated by section 18 will have regard to all the circumstances of the criminal activity concerned. Secondly, in considering what will be appropriate, a court will bear in mind that the definition of ‘proceeds of unlawful activities’ in the Act makes it possible to confiscate property that has not been directly acquired through the commission of crimes. It also makes it possible to confiscate property that has been acquired not through crimes of which the defendant has been convicted, but through related criminal activity. One of the key considerations a court will take into account will be the extent to which the property to be confiscated derived directly from the criminal activities. In most circumstances it will be entirely appropriate that all direct profits of crimes of which

¹ *S v Shaik and others* 2008 (5) SA 354 (CC) at para 25.

² *Id* at para 69 and 71.

the defendant has been convicted be confiscated. So, a bank robber caught red-handed in possession of R50 million which he or she has just stolen from the bank may quite appropriately be required to pay that money back. In these circumstances, the primary purpose of the Act – to ensure that a criminal does not enjoy the fruits of his or her crime – will be directly served.

[71] A third consideration relevant to determining what constitutes an ‘appropriate’ amount will be the nature of the crimes that fall within the express contemplation of the Act. The closer the crimes or criminal activity concerned to the ambit of organised crime, the more likely it will be that the appropriate amount will constitute all the proceeds of the unlawful activities as defined in the Act. The reason for this is that the larger the value of the confiscation order, the greater the deterrent effect of such an order. The Act clearly seeks to impose its greatest deterrent effect in the area of organised crime; and so where organised crime is involved, the purpose of general deterrence will often be best achieved by a maximum confiscation order, although of course that will always be subject to a full consideration of all the relevant circumstances. In asserting this principle, too, it is important to bear in mind the difficulty of prosecuting organised crime successfully as is noted in the preamble to the Act. The difficulties are many. To name just one, crime syndicates are often organised in a manner that makes it possible for senior members of the syndicate to evade prosecution, because many of the crimes committed are committed by junior members of the syndicate.”

[10] The Supreme Court of Appeal in *National Director for Public Prosecutions v Ramlutchman*,³ when dealing with the court’s approach in relation to the confiscation amount to be made an order of court, stated:

“In approaching this question a court will bear in mind that the enquiry as to whether the proceeds should be confiscated is not the same enquiry to be undertaken when resolving disputes of facts in motion proceedings. The purpose of confiscating proceeds of crime is to ensure that criminals realise that they cannot benefit from the ill-gotten gains and that crime does not pay. When considering the amount to be confiscated a court must have regard to the extent to which the property to be confiscated derived directly from the criminal activities. In certain instances, as in the present case, where the entire contract amount was not retained by the respondent, a

³ [2016] ZASCA 202 at para 21.

balancing act must be done by a court in the exercise of its discretion to determine the precise amount to be confiscated.”

[11] The onus of proof is not on the State in the enquiry, and the test applicable is proof on a balance of probabilities.⁴ In *Ramlutchman*⁵ the SCA quoted with approval what was stated in *York Timbers (Pty) Ltd v National Director for Public Prosecutions* 2015 (3) SA 122 (GP) and held that;

“Section 18(1) places a true onus on the state, I respectfully disagree. What the section provides is that the presiding officer must have regard to all the evidence and facts placed before him or her before making an appropriate order. If the presiding officer is not satisfied with the evidence placed before him (as the regional magistrate was), to make a confiscation order, he or she is entitled to call for such further evidence as may be necessary to assist him or her. In the present matter the regional magistrate did not do so.”

[12] In *National Director of Public Prosecutions v Gardener*,⁶ the following was stated, when dealing with the purpose of the confiscation order:

“It is plain that confiscation and sentence are to be treated separately – for good reason. The purpose of sentencing is to punish an offender for his or her criminal wrongdoing. The severity of a sentence is primarily intended to reflect the defendant’s culpability in relation to the offence for which he or she is being punished. The main purpose of a confiscation order is to deprive offenders from deriving any benefit from their ill-gotten gains. The achievement of this purpose may have a punitive effect but this is not its rationale. The severity of a sentence, therefore, generally ought not to have a bearing on the exercise of a court’s discretion whether to make a confiscation order; especially so in this case because, in the sentencing proceedings, the high court had taken into account the repayments as an indication of remorse on the respondents’ part, ie a mitigating factor. In my view the high court should therefore not have had regard to the prison sentences it imposed on the respondents in deciding on the appropriateness of a confiscation order.” (Footnotes omitted.)

[13] In *Shaik*, also dealing with the offence of corruption, the court stated:

⁴ Id at para 28.

⁵ 2017 (1) SACR 343 (SCA), at para 28.

⁶ 2011 (4) SA 102 (SCA) at para 23.

[72] Pursuant to the third consideration just mentioned, it is necessary now to consider the nature of the offence of corruption as it relates to the purposes of the Act. Corruption is a very serious offence and is regarded as such not only in South Africa but internationally. Indeed, the World Bank estimates that corrupt governments and their business partners take over \$1 trillion in bribes each year. It is hard to assess the effect of corruption on the political and economic life of a nation, yet it is clearly very harmful. As the preamble to the recent South African legislation on corruption, the Prevention and Combating of Corrupt Activities Act 12 of 2004 recognises, corruption undermines the “institutions and values of democracy and ethical values and morality” and jeopardises development and the rule of law. Corruption is therefore antithetical to the founding values of our constitutional order. Indeed, as this Court held in *South African Association of Personal Injury Lawyers v Heath and Others*:

‘Corruption and maladministration are inconsistent with the rule of law and the fundamental values of our Constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. They are the antithesis of the open, accountable, democratic government required by the Constitution. If allowed to go unchecked and unpunished they will pose a serious threat to our democratic state.’ (Footnotes omitted.)

Analysis

[14] The defendant was charged with three counts of corruption and one count of money laundering and pleaded guilty to such and entered into a plea and sentence agreement in terms of section 105A of the Criminal Procedure Act 51 of 1977 (the Act), with the State. The defendant was sentenced on 6 November 2025 on the strength of his plea and sentence agreement. All the charges stem from his tenure as the Chief Operating Officer (“COO”) of Bosasa.

[15] His trial matter was separated from that of his co-accused for that purpose, but mainly for the reason of ill-health. Makhoba J ordered that the defendant be linked to the courtroom from his house for the purpose of trial proceedings. The defendant was legally represented at that stage.

[16] The defendant admitted the following in his section 105A plea and sentence agreement:

- 16.1 Under the leadership of the Chief Executive Officer (“CEO”) of Bosasa, Mr Gavin Watson, a deeply entrenched system of corruption spanned over two decades and was designed to illicitly secure and maintain government contracts estimated to be approximately R2.37 billion.
- 16.2 He provided various mechanisms to Bosasa, allegedly employed to exert influence and secure preferential treatment. Those methods ranged from direct cash payment to a more elaborate scheme of illicit benefits and obfuscation of financial trails.
- 16.3 R75.7 million in bribes was reportedly paid between 2000 and 2016 to secure contracts worth over R2.37 billion.
- 16.4 Bosasa utilised techniques such as the creation of fictitious or inflated invoices, the siphoning of cash from peripheral operations like canteens and mine hostels, and the use of “ghost employees” on its payroll to generate illicit funds. The bribery schemes were poorly documented, with most agreements being verbal and payments predominantly made in cash to minimise the paper trail.
- 16.5 Corruption was not merely a tool used by Bosasa, but rather the very foundation upon which its apparent success was built. His own admission that he was personally involved in preparing cash bundles for bribes implies that such activities were considered routine operational duties within the company’s hierarchy, further underscoring the normalisation of these practices.
- 16.6 He, being a primary source of the Bosasa group of companies, its CEO, its COO and its directors ran the entire Bosasa business operations based on widespread corruption and bribery.
- 16.7 When Bosasa was tipped off about an impending SIU raid, Gavin Watson instructed him and other associates to destroy evidence. The tactics of obfuscation and evidence destruction demonstrated a calculated and deliberate effort to conceal illicit activities, making detection and subsequent prosecution significantly more challenging.

[17] In his plea and sentence agreement, the defendant did not agree to the confiscation order being made in terms of the provisions of section 18(1) of POCA but recorded that he intends to oppose such application. This led to the enquiry being delayed.

[18] On 11 June 2026, by agreement between the parties, the confiscation enquiry was postponed to 30 July 2026. The defendant was granted leave to file a further affidavit in the confiscation enquiry. The applicant was also granted leave to reply to such affidavit. The parties filed their respective heads of argument, which I deem to be of assistance to this Court.

[19] An affidavit submitted in the State Capture Commission (“SCC”) was also considered by the State, which also formed part of the defendant’s admissions in his plea and sentence agreement. The applicant also relied on the restraint order application, which was confirmed against the defendant on 28 November 2024. Section 18(6) of POCA does not limit the court in determining the confiscation order to only evidence led at trial, but makes the following provision:

“A court before which proceedings under this section are pending, may—

- (a) in considering an application under subsection (1)—
 - (i) refer to the evidence and proceedings at the trial;
 - (ii) hear such further oral evidence as the court may deem fit;
 - (iii) direct the public prosecutor to tender to the court a statement referred to in section 21(1)(a); and
 - (iv) direct a defendant to tender to the court a statement referred to in subsection (3) (a) of that section”

[20] Evidence was adduced in these proceedings which went far beyond the charges that the defendant was arraigned with. We heard evidence of Bosasa bribing union officials, who in return secured the contract of canteen services in the mines. Home improvements of certain individuals and purchasing vehicles to secure tenders outside the Department of Correctional Services (“DCS”).

[21] The main contention of the applicant is that Bosasa, of which the defendant was its COO, and its subsidiaries were used as corporate vehicles to unlawfully secure government contracts through corruption of senior government officials, with a view to

benefit and enrich all persons involved, including the defendant and also other members of Bosasa. It was a criminal enterprise that operated systemically to infiltrate the state. As a consequence, the defendant contends that, he cannot individually be held liable for the total value of Bosasa's unlawful activities and its unlawful proceeds. Bosasa has since been liquidated.

[22] The State alleges that the unlawful activities in which the defendant has been involved due to Bosasa's corrupt activities and related criminal activities amount to R1 666 582 825.73. The defendant admitted that the purpose of the gratifications was to either motivate Mr Mti and Mr Gillingham (who were the officials of the Department of Correctional Services) at the time to act illegally, dishonestly, unauthorisedly, or in a biased manner in exercising their powers by awarding contracts to Bosasa. Also, to reward Mr Smith, who was a member of Parliament at the time, for acting illegally, dishonestly, without authorisation, or in a biased manner in exercising his powers as a member of Parliament not to pursue any investigations against Bosasa and its subsidiaries. Mr Smith has since entered into a plea and sentence agreement with the State, and he is now sentenced. Mr Mti and Mr Gillingham's criminal trial is still pending in the Pretoria High Court.

[23] Further contention of the State is that, on the admission of the defendant relating to his role in the corruption scheme, he acted in concert in furtherance of common purpose with other executives of Bosasa in conducting Bosasa's criminal enterprise from 2004 until 15 December 2016, when he resigned from Bosasa. The known value of the defendant's criminal activities by the State, flowing from his testimony and admission mainly in the State Capture Commission ("SCC"), is R7 118 000.00.

Three-phase approach by the court in determining the confiscation order

[24] The provisions of section 18(1) enjoin a court, when the defendant is convicted of an offence (like in *casu*), on application by the State, to consider a benefit which the defendant has derived, as a result of:

24.1 the offence he has been convicted of;

24.2 any other offence to which the defendant has been convicted at the same trial; and

24.3 any related criminal activity.

[25] The word “benefit” is described in section 12(3) of POCA as:

“a person has benefited from unlawful activities if he or she at any time, whether before or after the commencement of this Act, received or retained any proceeds of unlawful activities.”

[26] The defendant was convicted on certain admissions he made relating to his role in criminal conduct in corruption and money laundering following a plea and sentence agreement entered into with the State. Such was during his tenure as the COO of a corrupt-ridden enterprise, in his own admission, at Bosasa. The corrupt activities were systematic and not isolated incidents. The State also relied on SCC affidavits and the testimony of the defendant at the SCC, even though he is raising a right against self-incrimination against such evidence. The defendant’s contention, in my view, is flawed, as the current proceedings are civil, even though stemming from criminal proceedings. POCA makes it a requirement that, for the enquiry to be initiated, the defendant must first be convicted.

[27] In *Secretary of the Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma*,⁷ the Constitutional Court, when dealing with evidence emanating from the Commission and its admissibility, stated:

“In exchange for compelling witnesses to testify before the Commission, regulation 8(2) prohibits the use in any criminal proceedings of evidence adduced at the Commission. This prohibition does not apply to a trial relating to an offence under section 6 of the Commissions Act or regulation 12. The prohibition extends to derivative evidence that may come to light as a result of the witness’s testimony before the Commission. That evidence is inadmissible in criminal proceedings.” (Footnotes omitted.)

⁷ [2021] ZACC 2 at para 24.

[28] Section 13 of POCA is plain and makes the following provision:

“(1) For the purposes of this Chapter proceedings on application for a confiscation order or a restraint order are civil proceedings and are not criminal proceedings.

(2) The rules of evidence applicable in civil proceedings apply to proceedings on application for a confiscation order or a restraint order.

(3) No rule of evidence applicable only in criminal proceedings shall apply to proceedings on application for a confiscation order or restraint order.

(4) No rule of construction applicable only in criminal proceedings shall apply to proceedings on application for a confiscation order or restraint order.

(5) Any question of fact to be decided by a court in any proceedings in respect of an application contemplated in this Chapter shall be decided on a balance of probabilities.”

[29] The defendant waived his right in his criminal proceedings and admitted evidence that was adduced at the SCC to be used against him. However, currently we are not in criminal proceedings, as that stopped immediately after the defendant was convicted. He did not express his intention of appealing against the findings of the criminal court, and in my view, that is the end of his criminal trial. Currently, we are in the civil proceedings, and the limitation on the use of evidence adduced in the commission is not extended to these proceedings.

[30] His plea and resultant sentence settle the first hurdle. This will not only relate to his convicted offences, but also to unlawful activities linked to the offences he has been convicted of. What the defendant is placing in dispute is the value of the benefit, simply illustrating that he had derived a benefit. Section 18(2) lays out the manner in which the computation of such value can be made and order the defendant to pay it to the State, and provides as follows:

“The amount which a court may order the defendant to pay to the State under subsection (1) —

(a) shall not exceed the value of the defendant's proceeds of the offences or related criminal activities referred to in that subsection, as determined by the court in accordance with the provisions of this Chapter; or

(b) if the court is satisfied that the amount which might be realised as contemplated in section 20(1) is less than the value referred to in paragraph (a), shall, not exceed an amount which in the opinion of the court might be so realised.”

[31] From the above, it is plain that the provisions of section 20(1) becomes applicable if I invoke the provisions of section 18(2)(b). The state contends that the provision of section 18(2)(b) is not applicable, because it will only be applicable if the court is "satisfied" of the property to be realised. Further that, the court cannot be satisfied with the dishonest and non-frank disclosure by the defendant, the fact that he concealed properties that he owns abroad.

[32] The State contended that the fixed date for the purpose of computation of time of such value in terms of section 22(3) is 6 February 2019, when the defendant was arrested and appeared in the Magistrates Court. The seven-year period before the fixed date is 6 February 2012, a computation period the defendant did not dispute.

[33] The State further contended that the benefit which the defendant derived can be categorised into the following:

33.1 known proceeds of the defendant's criminal activities, which will include but not limited to the following,

33.1.1. R25 978 591.75 held by the curator in trust,

33.1.2. the defendant's earnings from 2012 up until 2017 to the value of R46 862 944.61,

33.1.3. estimated monthly expenses R 1 099 914.93 for 13 months which in total is R15 014 285,

33.1.4. R7 million cash which was used to bribe officials,

33.2 presumptions as stipulated by section 22(3) of POCA, and

33.3 the property held by the defendant at or since his conviction.

[34] Most of the allegations made by the State were not placed in dispute by the defendant. An allegation which is not denied or admitted in the answering affidavit is deemed to be admitted by the defendant.

[35] The defendant in his second affidavit concedes that he has failed to make full disclosure as per the order of 6 November 2025, mainly since his ability has been

hampered by (a) the freezing of all his accounts, leaving him with no means to instruct forensic accountants or obtain expert reports, (b) the seizure and retention of his MacBook Pro by the *Curator Bonis*, (c) the refusal of the liquidators of African Global Operations (Pty) Ltd (previously Bosasa) and their attorneys to provide him with access to financial records and (d) also the passage of time.

[36] The State compared the disclosure affidavit in the restraint application, confiscation affidavit, the *curator's* affidavit and found that:

36.1 In the disclosure affidavit, the defendant averred that he has no open accounts as they were closed by various banks in 2019/2020 in South Africa and a zero balance exists. Various bank accounts are disclosed in the confiscation affidavit for the first time, which were not disclosed to the *curator*. He only disclosed his Bitcoin account in the confiscation affidavit and not in the disclosure affidavit.

36.2 In the disclosure affidavit, he failed to disclose his 50% membership in Spilacraft CC, which is the owner of the property in Ruimsig, but did so in the confiscation affidavit.

36.3 He failed to disclose annuities and investments, which were identified through the *curator's* independent investigations, in Glacier Investment in the name of the Agrizzi Family Trust:

36.3.1 Glacier Personal Retirement Annuity, and

36.3.2 Glacier Partner Absa Investment.

36.4 The defendant in the confiscation affidavit disclosed:

36.4.1. Glacier Old Mutual Annuity, and

36.4.2. Liberty Annuity Investment.

36.5 He failed to disclose a loan of R1 750. 000 to his brother Claudio Agrizzi in the confiscation affidavit.

- 36.6 He failed to disclose the identities of individuals who have assisted him financially and further details as to amounts and arrangements with them.
- 36.7 He failed to disclose the identities of individuals he assisted and who allegedly received benefits from him.
- 36.8 He failed to explain the semi-formal loan agreements and why they are only available on request, and no documentary proof or confiscation or confirmation is attached.

[37] The defendant pledged his property in Italy as a security for his release on bail and surrendered his title deed of the aforesaid property to the State. The defendant clandestinely sold that property while the title deed was in the State's custody. The defendant does not dispute the fact that such title deed was in the custody of the State. The *Curator* was not alerted of such a sale and does not know how such sale materialised, as he was in possession of the original title deed to such property. The defendant blames the State's failure to disclose such material factor, in their *ex parte* application, without admitting or denying that aspect. The defendant went on and purchased two properties as a result of the sale of such property, and the balance was deposited into the bank account of his daughter. Such properties are currently registered under the names of his daughter. This was independently discovered by the *curator* without the defendant disclosing that to him.

[38] The State, after realising that the defendant dealt with his property in the manner described above, approached the court with the purpose of setting out new bail conditions for his release. The State contends that after bail was set and paid, he did not disclose where the bail money came from. It is further their contention that this falls under the bucket of non-disclosure by the defendant, despite being under an order to make such disclosure.

[39] I am not persuaded by the reasons proffered by the defendant as to why he could not provide full disclosure of his properties. Most of the properties that are alleged that he did not make frank and full disclosure of, did not require him to go and physically verify from the documents taken away from him. The issue of who paid the

bail money, for example, and the circumstances relating to his sale of the Italian property.

[40] Based on the above, I am not satisfied that, the amount that might be realised is less than the value of the defendant's proceeds. The defence that he is raising that he received his salary, bonus and gifts related to his performance in a legal manner cannot stand. The remuneration was received in him being instrumental in Bosasa's bribes, and such can be classified as a benefit from unlawful activity. I fully agree with the defendant that he was not the only person involved in the corrupt activities of Bosasa, but that on its own does not exonerate him because he was charged and convicted with acting in concert in furtherance of a common purpose.

[41] His pension money was generated as a result of his involvement in a criminal entity and cannot be shielded by the law. His reliance on section 37A(1) of the Pension Fund Act 24 of 1956 (PFA) is with no merit. Pension benefits are protected as a matter of social security policy. Sections 37A and 37D thus limit the circumstances under which deductions or reductions may be effected from a benefit. Section 37A(1) explicitly protects a "benefit... or right to such benefit" from being reduced, transferred or otherwise ceded or being pledged or hypothecated, or liable to be attached or subjected to any form of execution under a judgment or order of court.

[42] In *Sentinel Retirement Fund v Masonganyane*⁸, when dealing with this protection afforded by the PFA, sated,

"[17] A payment to a curator bonis does not divest a defendant of the ownership of the money. And there is nothing in POCA or in the terms of the restraint order that suggests the contrary. In this respect the position of a curator bonis differs from an executor, administrator, trustee in insolvency or liquidator. The court appoints a curator to take control and manage the property of a person, who by law – in this case by virtue of the restraint order – may not do so. The curator steps into the shoes of the defendant and administers the property in compliance with the order. A payment to the curator is, therefore, in truth and effect a payment to the defendant himself. It is akin to a payment made into a trust account of the defendant's attorneys. And once the payment is made to the curator it becomes the defendant's realisable

⁸ (1003/2017) [2018] ZASCA 126 (27 September 2018) at para 17.

property and subject to the same restraint as it would have been had it been paid directly to the defendant.”

[43] The State relied on common purpose to convict the defendant. Also, it would be disingenuous to separate his part in unlawful activities from that of Bosasa. Cash payments were used, and there was no proper recording, which suggests that corruption was far more than what the State was able to prove. The defendant has recourse under section 34 to approach the court if the realisable property is inadequate for the payment of the balance of the amount to be recovered under a confiscation order against him, for a variation of a confiscation order.

Section 22(3) presumptions

[44] The state urges me to invoke the provisions of section 22(3) of POCA, which states:

“For the purposes of determining the value of a defendant's proceeds of unlawful activities in an enquiry under section 18(1)—

- (a) if the court finds that he or she has benefited from an offence and that—
 - (i) he or she held property at any time at, or since, his or her conviction; or
 - (ii) property was transferred to him or her at any time since the beginning of a period of seven years before the fixed date,

the court shall accept these facts as *prima facie* evidence that the property was received by him or her at the earliest time at which he or she held it, as an advantage, payment, service or reward in connection with the offences or related criminal activities referred to in section 18 (1)”

[45] The defendant's admission that he can release his 50% share in Spilacraft to the State is one of the illustrations that he benefited. This close corporation and the involvement of the defendant in it, it is a benefit he derived from the CEO of Bosasa together with Mr Van Tonder, for his role in the criminal enterprise. I have already, elsewhere in this judgment, dealt with the fixed period and 7-year period before the fixed date. The defendant was not frank and honest in his disclosure, coupled with the fact that he concealed certain properties he held inside the country and outside the country, and this conduct makes me to agree with the State that the value of the benefit of the defendant must be calculated to equal the total value of criminal activities and

unlawful benefits derived by Bosasa. It is therefore my finding that the defendant benefited from unlawful activities and this application must succeed.

[46] Known properties of the defendant include, amongst others, his payment from Bosasa, his annuities, investments, bank accounts, etc., which the State included in the calculations of the value. The defendant disputes such amounts and contends that the State came up with different figures when calculating the value, indicating R2.7 billion, R1.7 billion and R7 million. The amount relating to corruption of tenders on the value of R2.7 billion was taken from his evidence adduced at the SCC. It cannot be factually correct that the State solely relied on his evidence from the SCC, without doing the independent verifications, as they are not relying on that amount to obtain a confiscation order. R7 million cash was bribes admitted by the defendant. This contention lacks merit as the defendant failed to show the actual value of his benefit. The defendant's reliance on the figure presented by Adv Johnson of the Investigating Directorate Against Corruption (IDAC) in Parliament is not evidence as it was not obtained under oath and not relevant for the current proceedings.

Costs

[47] The State is requesting costs in the event that they are successful, such costs to include costs of two counsel employed by the State. The purpose of awarding costs is to indemnify a successful party who incurred costs in instituting or defending an application or action.⁹ The State also recommended that such costs be awarded on Scale C to include costs of two counsel. From the papers it is clear that this matter is exceptionally complex, voluminous and was important for the State to employ two counsel.

[48] The High Court has inherent jurisdiction to regulate advocates' fees and has discretion whether to allow the fees of two counsel in terms of rule 69 of the Uniform Rules of Court. The fees of two counsel are considered and therefore allowed, subject to the rule.

Conclusion

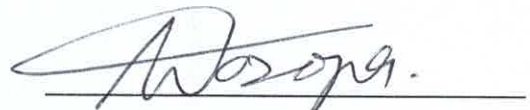
⁹ *Mancisco and Sons CC (in liquidation) v Stone* 2001 (1) SA 168 (W).

[49] It is therefore my considered view that this application should succeed. As stated in *Gardener*, the purpose of the confiscation order is not to punish the defendant, but the main purpose is to deprive the offender of any benefit from their ill-gotten gains.

ORDER

[50] In the result, the following order is made:

- 50.1 The defendant is ordered to pay the State the sum of R1 666 582 825.73 with interest calculated from the date of judgment until the date of final payment.
- 50.2 The *Curator bonis* fees are to be paid from the money derived from the defendant's realisable property paid to the State.
- 50.3 The defendant to pay costs to include costs occasioned by employment of two counsel on Scale C.



JUDGE MOSOPA
JUDGE OF THE HIGH COURT
PRETORIA

Appearances

For the Applicant:

Adv K Saller, and Adv X Matyolo

Instructed by:

National Director of Public
Prosecutions

For the Respondent:

Mr A Agrizzi (Self-Represented)

Heard on:

30 July 2026

Judgment delivered on:

29 October 2026