

## COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA  
**Gauteng Local Division, Johannesburg**

CASE NO: **2022-036292**

In the matter between:

**The National Director of Public  
Prosecutions**

Plaintiff / Applicant / Appellant

and

**Jacobus Stephanus Geldenhuys ,Jacoba  
Magdalena Geldenhuys ,Classic  
Financial Services (One) (Pty) Ltd,Marry  
Pierce Kligour**

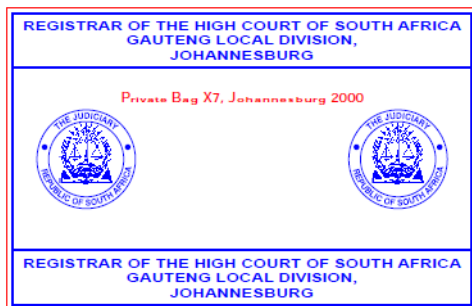
Defendant / Respondent

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### Draft Order

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ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng  
Local Division,Johannesburg**

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

Case No: **036292/2022**

In the matter between:

**THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

**APPLICANT**

and

**JACOBA MAGDALENA GELDENHUIS**

**RESPONDENT**



**In re:** The amount of **R399 198.88** together with interest thereon held in ABSA account number 4097470165 held in the name of Classic Financial Services (One) (Pty) Ltd with registration number 2004/031624/07;

The amount of **R10 395 192.44** together with interest thereon held in Nedbank account number 1195277571 in the name of Classic Financial Services (One) (Pty) Ltd with registration number 2004/031624/07;

The amount of **R3 000 000** together with interest thereon held in FNB account number 62047917713 in the name of Jacoba Magdalena Geldenhuis with ID number 5410130145085;

The amount of **R5 750 000** together with interest thereon held in Nedbank account number 1009637290 in the name of Murry Pierce Kilgour with ID number 5905195084087.

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**DRAFT ORDER**

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On \_\_\_\_\_ 2023

Before the Honourable Justice \_\_\_\_\_

**HAVING** read the documents filed of record and having considered the matter: -

**THE FOLLOWING ORDER IS MADE:**

- 1 An order is granted declaring forfeit to the State certain property, which is presently subject to a preservation of property order granted by this Honourable Court under the above case number on 10 October 2022, in terms of section 50 of the Prevention of Organised Crime Act 121 of 1998 (**the POCA**), namely, the amounts of:



- 1.1 **R399 198.88** together with interest thereon held in ABSA account number 4097470165 held in the name of Classic Financial Services (One) (Pty) Ltd with registration number 2004/031624/07;
- 1.2 **R10 395 192.44** together with interest thereon held in Nedbank account number 1195277571 in the name of Classic Financial Services (One) (Pty) Ltd with registration number 2004/031624/07;
- 1.3 **R3 000 000** together with interest thereon held in FNB account number 62047917713 in the name of the respondent;
- 1.4 **R5 750 000** together with interest thereon held in Nedbank account number 1009637290 in the name of Murry Pierce Kilgour; and
- 1.5 including, but not limited to, all further unknown deposits and interest thereto that may have been made or added into the aforementioned ABSA and Nedbank accounts held in the name of Classic Financial Services (One) (Pty) Ltd prior to and/or

subsequent to the granting of the preservation of property order referred to above.

(collectively referred to as **the property**).

- 2 On the date when the forfeiture order takes effect the property is to be forfeited to the State and vest in the *curator bonis* on behalf of the State, subject to any excluded interests in terms of section 52 or 54 of the POCA.



#### **Appointment of curator bonis**

- 3 Mr Trevor Hills of PriceWaterCoopers, is hereby appointed as *curator bonis* subject to the applicable provisions of the POCA and the Administration of Estates Act 66 of 1965, as well as the supervision of the Master of the High Court.
- 4 After obtaining letters of curatorship in terms of section 32 (1) of the POCA, the *curator bonis* is hereby authorised and required to take the property mentioned in paragraphs 1.1 to 1.5 into his/her possession or under his/her control, to take care of such property and to administer it.
- 5 The *curator bonis* shall have such powers, duties and authority as provided for or implied in the POCA and such further powers as are specified or implied in this order and under the Administration of Estates Act.
- 6 The *curator bonis* will be entitled to deal with the property and is accordingly authorised to hold the necessary signing powers on such accounts, and to give directions to banking institutions in control of the property, to exercise effective control of the property and to take care of the property or to administer the property.

7 This order will thus operate as a power of attorney for the *curator bonis* to deal with the property in terms of this order.

8 Within two weeks of publication of the notice relating to the granting of this order in the Government Gazette, the *curator bonis* is required and directed to serve on the applicant's attorney, and to file with the Registrar of this Court, together with a copy for delivery to the Master of the High Court, an interim report in which he shall include:



8.1 a copy of his letter of curatorship;

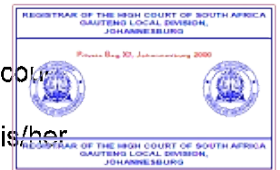
8.2 the details and proof of his bond of security;

8.3 a description and value of the property of which he has taken possession or control of in terms of this order; and

8.4 the manner in which he has thus far dealt with or intends to deal with the property taken into his possession or under his control.

9 Within two months after the publication of the notice relating to the granting of this order in the Government Gazette the *curator bonis* shall, with the assistance of the applicant where necessary, collect and assess all claims lodged by claimants by way of exclusion applications in terms of section 52 or 54 of the POCA and as quickly as possible determine the legitimacy of each claim, and thereafter compile one final comprehensive report with his recommendations as to how each approved claim should be dealt with on a *pro rata* basis and also set out the grounds for the rejection of any claim therein.

- 10 The curator, with the assistance of the Financial Sector Conduct Authority (FCSA) and the applicant, shall serve his final comprehensive report on the applicant and each known claimant via e-mail or otherwise, and thereafter file the said report with the Registrar of this Court and the Master of the High Court, including his full statement of account for consideration by the Master and this Court.
- 11 The Master shall consider the curator's report and his statement of account and thereafter serve the applicant's attorneys before filing his/her recommendations as regards the curator's fees and/or statement of account at least within 10 days of receipt of all the relevant documents from the curator and before the hearing date in respect of the exclusion applications.



#### **Service of the order**

- 12 The applicant is forthwith directed to send, in any suitable manner, all the papers filed in support of the forfeiture application and a copy of this order, including the preservation papers and Government Gazette publication in terms of section 50(5) of the POCA, to the FCSA, for immediate publication on its official website. The FCSA is directed to publish same without delay, but by no later than the 5<sup>th</sup> day of receipt of the documents in question.
- 13 The *curator bonis* is directed to forward a copy of this order by email to authorised or responsible officials at ABSA, FNB and Nedbank, who will, per instructions of the *curator bonis*, transfer the property into the bank account to be nominated by the *curator bonis* for the purposes of the enforcement of this order.

### Exclusion of interests from the operation of the order

- 14 Any person whose interest in the property concerned is affected by the forfeiture order is hereby directed to serve on the applicant's attorneys and file with this Court, at any stage but by no later than the 45<sup>th</sup> day from the date of publication of the notice regarding this order in the Government Gazette, his/her application for the exclusion of his/her interest from the operation of this forfeiture order or varying the operation of the order in respect of such property.



- 15 For any exclusion application filed in terms of section 54 or 52 of the POCA or as provided herein to be considered by the *curator* it shall, without exception, meet all statutory requirements. All potential claimants/applicants are therefore hereby alerted to the relevant POCA provisions and legal consequences of giving false evidence in such exclusion applications as follows:

**54. Exclusion of interests in forfeited property.**—(1) Any person affected by a forfeiture order who was entitled to receive notice of the application for the order under section 48 (2), but did not receive such notice, may, within 45 days after the notice of the making thereof is published in the Gazette, apply for an order excluding his or her interest in the property concerned from the operation of the order, or varying the operation of the order in respect of such property.

(2) The application shall be accompanied by an affidavit setting forth—

*(a) the nature and extent of the applicant's right, title or interest in the property concerned;*

*(b) the time and circumstances of the applicant's acquisition of the right, title, or interest in the property;*

*(c) any additional facts supporting the application; and*

*(d) the relief sought.*

*(3) ...*

*(4) ...*

*(5) At the hearing, the applicant may testify and present evidence and witnesses on his or her own behalf, and may cross-examine any witness who appears at the hearing.*

*(6) The National Director or the curator bonis concerned, or a person authorised in writing thereto by them, may present evidence and witnesses in rebuttal and in defence of their claim to the property and may cross-examine a witness who appears at the hearing.*

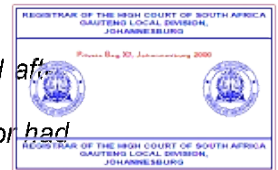
*(7) In addition to the testimony and evidence presented at the hearing, the High Court may, upon application by the National Director or the curator bonis concerned, or a person authorised in writing thereto by them, order that the testimony of any witness relating to the property forfeited, be taken by commission and that any book, paper, document, record, recording, or other material not privileged be produced at the taking down of such testimony by commission.*



*(8) The High Court may make an order under subsection (1), in relation to the forfeiture of the proceeds of unlawful activities, if it finds on a balance of probabilities that the applicant for the order—*

*(a) had acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of that interest; and*

*(b) where the applicant had acquired the interest concerned after the commencement of this Act, that he or she neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities.*



*(8A) ....*

*(9) (a) When a person who testifies under this section—*

*(i) fails to answer fully and to the best of his or her ability any question lawfully put to him or her; or*

*(ii) gives false evidence knowing that evidence to be false or not believing it to be true, he or she shall be guilty of an offence.*

*(b) When a person who furnishes an affidavit under subsection (2) makes a false statement in the affidavit knowing that statement to be false or not believing it to be true, he or she shall be guilty of an offence.*

*(c) A person convicted of an offence under this subsection shall be liable to the penalty prescribed by law for perjury.*

16 Each claimant shall have 15 days, after receiving the curator's final report and any other papers served and filed by the applicant in connection with

the curator's report and *curator's* fees, to file and serve his or her opposition papers (if any). The applicant and the *curator* shall then file their replying affidavits (if any) within 10 days of receiving the last set of opposition papers (if any).

- 17 In the interest of justice and to ensure that no person is favoured at the expense of others, all the exclusion applications shall automatically be consolidated in terms of section 54(4) of the POCA before the applicant sets the matter down for further determination by this court at a date to be determined by the Registrar, including the application for exclusion filed by and on behalf of Ms Jacoba Magdalena Geldenhuis with ID number 5410130145085.



**BY ORDER OF THE COURT**

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**THE REGISTRAR**