

## 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**

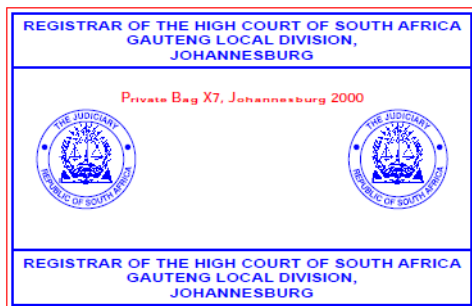
Defendant / Respondent

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### Founding Affidavit

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**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; and

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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FOUNDING AFFIDAVIT

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I, the undersigned,

SKHUMBUZO MAPHUMULO

do hereby make oath and say that:

- 1 I am a male attorney and Deputy Director of Public Prosecutions of the Republic of South Africa, and I have been duly appointed as such in terms of section 15 of the National Prosecuting Authority Act 32 of 1998 (**the NPA Act**).
- 2 I am a functionary in terms of section 1 of the NPA Act, which is under the control of the applicant. I have been duly authorised by the applicant to bring this application on behalf of the applicant.
- 3 The facts deposed to herein are derived from documentation at my disposal or within my personal knowledge, unless the contrary is stated or the context indicates otherwise and are, to the best of my knowledge and belief, both true and correct.



#### THE APPLICANT

- 4 The applicant in this matter is the National Director of Public Prosecutions, appointed in terms of section 10 of the NPA Act read with section 179 (1) (a) of the Constitution of the Republic of South Africa, 1996. The applicant's principal place of business is located at the VGM Building, 123 Westlake Avenue, Weavind Park, Silverton, Pretoria.

#### THE RESPONDENT

- 5 The respondent is JACOBA MAGDALENA GELDENHUIS, an adult female person who, to the knowledge of the applicant, resides at 18 Montagu, Fiskaal Street, Glen Marais, Kempton Park.

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- 6 The respondent has an interest in some of the property forming the subject of this application, being the sum of R3 000 000 together with interest thereon in FNB account number 62047917713 held in her name.
- 7 The respondent has not filed a formal notice of intention to oppose the making of a forfeiture order, but she has filed an affidavit in terms of section 39 (5) of the Prevention of Organised Crime Act 121 of 1998 (the **POCA**). For convenience, the applicant considers the respondent's affidavit as a formal application for exclusion of her alleged interest from the operation of any forfeiture granted by this Court.



#### THE PROPERTY

- 8 This application concerns the following funds:
- 8.1 the amount of **R399 198.88** together with interest thereon held in ABSA account number 4097470165 in the name of Classic Financial Services (One) (Pty) Ltd with registration number 2004/031624/07;
- 8.2 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;
- 8.3 the amount of **R3 000 000** together with interest thereon held in FNB account number 62047917713 in the name of the respondent with ID number 5410130145085;

- 8.4 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; and
- 8.5 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 by Classic Financial Services (One) (Pty) Ltd prior to and subsequent to the granting of the preservation order referred to in paragraph 9 hereunder.



- (hereinafter collectively referred to as **the property**).
- 9 The property is presently subject to a preservation of property order granted by this honourable court on 10 October 2022, in terms of section 38 of the POCA. A copy of the preservation order is attached hereto and marked as annexure **SM1**.
- 10 For reasons that will be dealt with below, I submit that the property is the proceeds of unlawful activities.

#### **JURISDICTION**

- 11 It is submitted that this honourable court has jurisdiction to entertain this application by virtue of the fact that it granted the preservation order. This application flows from the preservation order.
- 12 The preserved funds are held electronically on the respective banks' databases which are situated at the banks' respective head offices in

Johannesburg. The property is thus located within this honourable court's jurisdiction.

- 13 The incidents that led to the seizure of the property took place within the jurisdictional area of this honourable court.
- 14 The respondent is resident within the jurisdictional area of this court.
- 15 I therefore respectfully submit that this honourable court has jurisdiction to hear the matter.



#### **PURPOSE OF THE APPLICATION**

- 16 This application is brought under section 48 of the POCA to obtain an order declaring the property forfeited to the State on the ground that the property is or constitutes proceeds of unlawful activities as defined in the POCA.
- 17 In terms of section 38(2) of the POCA, the High Court is empowered to grant a preservation order if there are reasonable grounds to believe that a specified property is the proceeds of unlawful activities or an instrumentality of an offence referred to in Schedule 1 to the POCA, or both.
- 18 In terms of section 48(1), an application to declare property forfeited to the State may be made by the applicant in respect of property that is subject to a preservation order while the order is still in force.

## REQUIREMENTS FOR FORFEITURE ORDER IN TERMS OF SECTION 50 OF THE POCA

- 19 This court is empowered to grant a forfeiture order in terms of section 50 (1) of the POCA, if the court finds on a balance of probabilities that the property is an instrumentality of an offence referred to in Schedule 1 to the POCA or the proceeds of unlawful activities as defined in the POCA, or both.



## COMPLIANCE WITH THE PRESERVATION ORDER

### Service

- 20 In terms of paragraph 5 to subparagraph 5.4 of the preservation order, the applicant was directed to effect service of the preservation order and all documents filed in support of the application on the following persons, who at the time were the only persons known to the applicant to have an interest in the property,:

20.1 Classic Financial Services (One) (Pty) Ltd (**Classic Financial Services**), Jacobus Stefanus Geldenhuis (**Geldenhuis**) and the respondent at number 18 Montagu, Fiskaal Street, Glen Marais, Kempton Park; and

20.2 Murry Pierce Kilgour (**Kilgour**) at number 63 Herschel Road, Fish Hoek, Cape Town.

- 21 Service was effected on Classic Financial Services, Geldenhuis and the respondent on 19 November 2022 and on Kilgour on 8 February 2023. Copies of the sheriffs' returns of service are attached hereto marked as annexures **SM2**, **SM3**, **SM4** and **SM5**, respectively.

### Publication in the Government Gazette

- 22 In terms of paragraph 6 of the preservation order, the applicant was ordered to cause a notice of the preservation order to be published in one issue of the Government Gazette as soon as practicable after obtaining the order.
- 23 In terms of section 40 of the POCA, a preservation order will expire 90 days after the date on which notice of the order is published in the Government Gazette, unless an application for a forfeiture order in respect of the property is pending before the expiration of such period. The notice in the present matter was published in Government Gazette number 47663 on 9 December 2022. A copy of the notice is attached hereto and marked as annexure **SM6**.
- 24 The present application to which this affidavit relates will be instituted before the expiry of the 90-day period referred to in section 40 of the POCA. I accordingly submit that the preservation order is still in force and that the requirements of section 48 (1) have been satisfied.
- 25 Having published the notice of the order in the Government Gazette and having served on the known persons who may have an interest in the property, the respondent is the only person who has indicated her intention to apply for her alleged interest to be excluded from the operation of the forfeiture order sought herein. The respondent filed an affidavit setting out the basis of her defence in terms with section 39 (5) of the POCA on 16 February 2023.



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26 Further, it has since been brought to the attention of the applicant that there may in fact be numerous other individuals who may have various interests in the property for reasons that are unknown to the applicant at this stage. Thus, it is submitted that it will be in the interest of justice for these individuals to be afforded a fair and equal opportunity, after the granting of the forfeiture order, to lodge any objections they may have against the respondent's large claim that may effectively reduce the funds that may ultimately be available in the pool for distribution to *bonafide* claimants. It is for this reason that the applicant is of the view that the respondent's claim should not be considered in isolation.



27 As will be apparent herein, the applicant does not request that the matter be finalised without such possible claimants being fairly afforded ample time to make out a case for possible exclusions of their alleged interests from the operation of the forfeiture order in terms of section 52 or 54 of the POCA, if they so wish.

28 At this stage the applicant only seeks a forfeiture order in respect of the property and that a *curator bonis* be appointed to thereafter assist the applicant and this honourable court to evaluate all present and future claims that may be submitted by potential claimants subsequent to the granting of the forfeiture order and, where possible with the leave of this Court, deserving claimants be accordingly re-imbursed by the *curator* on a *pro-rata* basis. I address this aspect in detail hereunder.

## FACTS RELIED UPON BY THE APPLICANT

### The Property as Proceeds of Unlawful Activities

29 The applicant respectfully refers this honourable court to the documents and annexures filed in support of the preservation application, under the same case number. The papers filed in support of the present application continue from those filed in support of the preservation application and the facts relied upon are the same facts as per the preservation application. To avoid prolixity and burdening the court file with repetitive material, the latter papers are accordingly incorporated herein, and the honourable court is respectfully referred thereto.



30 The full facts in support of the fact that the property is proceeds of unlawful activities are set out in the affidavits of Ahzur Mohamed (**Mohamed**), a forensic accountant in the employ of the Financial Intelligence Centre (**FIC**) and Charlotte Breytenbach (**Breytenbach**), an investigator in the employ of the Financial Sector Conduct Authority (**FSCA**), which are filed in support of the preservation application, and this honourable court is respectfully referred thereto. As those affidavits are incorporated in this present application, it is unnecessary to burden this honourable court with a restatement of these facts and submissions.

31 Furthermore, in their supporting affidavits filed in the preservation application Mohamed and Breytenbach deal in detail with the facts relied upon which demonstrate that the property is the proceeds of unlawful activities. Mohamed and Breytenbach's affidavits together with their annexures can be found on the Court Online file under the same case number.

32 For clarity purposes, Breytenbach deposed to two affidavits, the first affidavit on 7 October 2022 (**Breytenbach's first affidavit**), which was submitted to the FIC in support of an application by the FIC to place a hold on the ABSA and Nedbank accounts held in the name of Classic Financial Services, in terms of section 34 of the Financial Intelligence Centre Act 38 of 2001 (**FICA**). Breytenbach's first affidavit is annexed as AM1 to the supporting affidavit of Mohamed filed in the preservation application.



33 Breytenbach deposed to another affidavit on 20 October 2022 (**Breytenbach's second affidavit**), in which she supplemented certain aspects of her first affidavit. This affidavit also forms part of the preservation application.

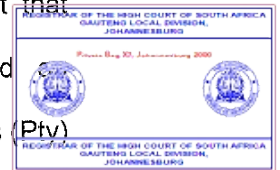
34 In the said affidavits Breytenbach sets out particulars of the investigation conducted by the FSCA regarding the unlawful conduct of Geldenhuis and Classic Financial Services. She also details her analysis of the bank account statements of Classic Financial Services which led to the discovery of the property.

35 Mohamed's affidavit details the FIC's investigation into bank accounts held in the names of Classic Financial Services, Geldenhuis and other persons and entities associated with them. That affidavit sets out the flow of funds in and between the identified bank accounts.

36 I point out further that a summary of the legislative background applicable to this matter is set out in the founding affidavit deposed to by myself in support of the preservation application, which I do not intend repeating here and the court is furthermore also referred thereto.

37 In summary, the facts as contained in the affidavits of Mohamed and Breytenbach are the following:

37.1 On 22 August 2022, the FSCA received a complaint that Geldenhuis was soliciting investments from members of the public. On 20 September 2022, the FSCA instructed Breytenbach and others to conduct an investigation regarding the complaint that was received by the FSCA. The investigation focused Geldenhuis, Classic Financial Services and Pecunia Systems (Pty) Ltd (**Pecunia Systems**);



37.2 Pecunia Systems was authorised as a Financial Services Provider (**FSP**) on 6 December 2005 under licence number 1132 in terms of the relevant provisions of the Financial Advisory and Intermediary Act 9 of 2017 (**FAIS Act**). The current director is listed as Dewald Geldenhuis (**D Geldenhuis**) with ID number 8310175029086. Geldenhuis is a former director of Pecunia Services. He resigned from his position on 20 August 2010;

37.3 Classic Financial Services is not an authorised FSP in terms of the FAIS Act, nor is it a juristic representative of an authorised FSP. Geldenhuis is listed as its sole director and was appointed as such on 20 January 2005;

37.4 In 2009 Geldenhuis was debarred for dishonesty by Momentum Metropolitan Life Limited (FSP No 6406) in terms of section 14(1), read with section 13(5), of the FAIS Act, which was recorded as such on the central register;

- 37.5 As a result of the debarment, Geldenhuis is prohibited from conducting a financial services business. As at the date hereof, the debarment has not been lifted;
- 37.6 The FSCA investigation revealed that Geldenhuis had been soliciting payments from members of the public through Classic Financial Services, on the basis that such payments would be invested in a “managed fund” on their behalf, which Geldenhuis prohibited from doing by virtue of his debarment and Classic Financial Services not being an authorised FSP;
- 37.7 In the premises Classic Financial Services and Geldenhuis contravened sections 7(1) and 13(1) of the FAIS Act, which constitute offences in terms of section 36 of that Act;
- 37.8 Two bank accounts, namely, ABSA account number 4097470165 (the **ABSA account**) and Nedbank account number 1195277571 (the **Nedbank account**), held in the name of Classic Financial Services were identified by Breytenbach as the accounts into which the “investor funds” were deposited;
- 37.9 She obtained statements for the said bank accounts from the relevant banks, in terms of section 131 of the Financial Sector Regulation Act and analysed them. Based on her analyses of the bank accounts, she referred the matter to the FIC to apply for the accounts to be placed on hold whilst the FSCA conducted a search and seizure operation on the premises of Classic Financial Services and Geldenhuis.



### The ABSA account

37.10 The account was opened by Geldenhuis who indicated in the opening documents that his source of funds was savings from his employment income, dividends and director's fees. Geldenhuis is the only signatory to the account;

37.11 Between 1 January 2019 and 31 August 2022, approximately R412 419 440 was deposited into the account. The deposits were in round figures and with ID numbers used as references;



37.12 There were also payments or transfers made from the account, in round figures, with initials and surnames of individuals as references. It is possible that further similar deposits may have been made subsequently; and

37.13 No activities or transfers were identified from the account that are indicative of any investment or trading in any financial product that could generate interest or any returns on investment.

### The Nedbank account

37.14 According to the account opening documents, the account was opened by Geldenhuis who is the only signatory to the account;

37.15 During the period 1 January 2019 to 31 August 2022, the account received approximately R83 513 962. Similarly, there were multiple deposits into the account in round figures with ID numbers as references;

- 37.16 There were also multiple payments or transfers from the account in round figures with initials and surnames as references;
- 37.17 Breytenbach noted from the account statement that there were two large transfers from this account, of R36 150 000 with reference "classic" and R24 694 452 with reference "Geldenhuis JS" respectively;
- 37.18 Similarly, no activities or transfers were identified from the account that are indicative of any investment or trading in any financial product that could have generated interest or returns on investment; and
- 37.19 On 20 September 2022 the account had a balance of R14 014 759. It is possible that further similar deposits may have been made subsequently.



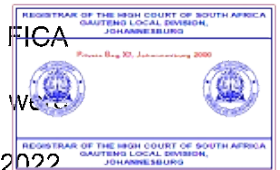
### FIC Intervention

- 37.20 Mohamed states in his affidavit in the preservation application that the FIC received a request from the FSCA to place a hold on the ABSA and Nedbank accounts in terms of section 34 of the FICA;
- 37.21 He obtained the records of the relevant bank accounts with contra-account information and balances from the banks in the terms of sections 27 and 32 of the FICA;
- 37.22 The information was supplied by the banks, and it recorded that as at approximately 16h00 on Friday 7 October 2022 the ABSA account had a balance of R9 339 553.88 and the Nedbank

account had a balance of R16 623 000.50. These amounts may have increased as it is possible that further deposits may have been made subsequently;

37.23 When analysing the information, he noticed the same or similar transactional patterns to those noticed by Breytenbach;

37.24 Mohamed issued the directives in terms of section 34 of the FICA to ABSA and Nedbank to freeze the accounts. The directives were to be executed by the banks at 8h00 on 11 October 2022.



However, due to some challenges faced by the FSCA in conducting the search and seizure operation, the directives were withdrawn prior to implementation;

37.25 The directives were reinstituted on 12 October 2022. However, when Mohamed made enquiries with the banks on that date, he was informed that significant amounts had been transferred out of the accounts;

37.26 In his affidavit, Mohamed drew schedules at paragraphs 20 to 23, setting out the outflows from the accounts and the values as at the time the FIC interventions were issued. He also attached to his affidavit, as annexure AM4, a money flow chart demonstrating the flow of funds from the ABSA and Nedbank accounts. In particular, the schedules and the chart show that between 10 and 12 October 2022 large amounts were transferred from the Nedbank and ABSA accounts, *inter alia* as follows:



37.26.1 R3 000 000 from the Nedbank account to FNB account number 62047917713 held in the name of the respondent;

37.26.2 R2 750 000 from the Nedbank account to Nedbank account number 1009637290 held in the name of Kilgour; and

37.26.3 A further R3 000 000 from the ABSA account to Nedbank account number 1009637290 held in the name of Kilgour.



#### **THE PROPERTY AS PROCEEDS OF UNLAWFUL ACTIVITIES**

38 Based upon the above, supported by the available evidence as contained in the supporting affidavits of Breytenbach and Mohamed filed in the preservation application and summarised herein, it is submitted that the property is proceeds of unlawful activities, on the bases that:

38.1 Geldenhuis was conducting the business of an authorised FSP as per the provisions of the FAIS Act through Classic Financial Services, by soliciting payments from members of the public on the understanding that such payments would be invested in a “managed fund” on their behalf;

38.2 Geldenhuis is debarred and therefore not permitted to practice as an FSP;

38.3 Classic Financial Services is not an authorised FSP;

38.4 Geldenhuis is the sole signatory to both the ABSA and the Nedbank accounts;

38.5 There are no transactions or evidence in both the ABSA and Nedbank accounts indicative of the fact that “investor funds” paid into these accounts were invested towards any products that would generate interest or returns on investments on behalf of the “investors”; and

38.6 Following the search and seizure operations conducted by the FSCA on the premises of Classic Financial Services and Geldenhuis, large amounts were quickly transferred from the ABSA and Nedbank accounts to *inter alia* bank accounts of the respondent and Kilgour. This is a clear indication of an attempt to dissipate the funds.



39 The respondent was married to Geldenhuis. According to the respondent's section 39 (5) affidavit (dealt with in more detail further below), they were divorced on 18 October 2022.

40 Kilgour's relationship with Geldenhuis is unknown to the applicant. However, as per the available evidence, no funds were noted to have been paid from his Nedbank account 1009637290 into either the Nedbank or ABSA accounts since their inception.

41 It is therefore submitted that, having regard to the totality of the facts as set out in the preservation application and this current application, and having regard of the definition of “proceeds of unlawful activities” as contained in section 1 (1) of the POCA, the property is proceeds derived from unlawful activities of *inter alia*:

- 41.1 contravention of the provisions of sections 7 (1) and 13 (1) of the FIAS Act – by rendering a financial service without being licenced or authorised to do so, which constitutes offence in terms of section 36 of that Act;
- 41.2 fraud – by misrepresenting to members of the public that Geldenhuis and Classic Financial Services are authorised FSP's, in circumstances where they were not; and further, by misrepresenting to members of the public that funds paid by them into the ABSA and Nedbank accounts were to be invested on their behalf in various financial investment products, whereas in truth and in fact such investments were never made;
- 41.3 theft – by usurping “investor funds” for personal use or benefit; and
- 41.4 contravention of the provisions of sections 4, 5 and 6 of the POCA, namely:
- 41.4.1 money laundering;
- 41.4.2 assisting another to benefit from proceeds of unlawful activities; and
- 41.4.3 acquisition, possession or use of proceeds of unlawful activities.



## **OPPOSITION**

The Respondent

42 As indicated above, the respondent is effectively applying for the exclusion of her alleged interest from the operation of any forfeiture order that may be granted. It follows by operation of law that the Court first has to grant a forfeiture order before it entertains any exclusion applications brought either in terms of section 52 or 54 of the POCA.

43 The respondent contends in her section 39 (5) affidavit that the R3 000 000 paid into her FNB account by Geldenhuis on 11 October 2022 was done in accordance with a divorce settlement agreement that was entered into between herself and Geldenhuis on 12 July 2022, and on this basis she claims to be lawfully entitled to those funds.



44 Of importance, however, is the fact that the respondent does not dispute the origins of those funds, namely, that the funds are derived from unlawful activities. Her only contestation is that Geldenhuis was indebted to her in terms of their divorce settlement agreement and that the payment was made on the basis thereof.

45 I wish to, at this stage already, draw attention to the following:

45.1 A copy of the divorce settlement agreement relied upon by the respondent is annexed to her section 39 (5) affidavit as "Annexure E". I wish to highlight the following terms thereof:

45.1.1 The parties were married on 31 March 2000, out of community of property and with the exclusion of the accrual system (clause 2.1);

45.1.2 The agreement is not conditional on a decree of divorce being granted and is of full force and effect and binding on

the parties as of the effective date (clause 3) ("the effective date" being "the date on which the last party signing hereto signs the agreement" – clause 1.5);

45.1.3 Geldenhuis agreed to pay the respondent an amount of R15 million no later than 14 days from the date on which the decree of divorce has been handed down (clause 5.2); and



45.1.4 Geldenhuis agreed to pay the respondent a further once-off amount of R30 million on or before 31 December 2023 (clause 4.2).

45.2 There is no indication that the respondent had vacated the matrimonial home indicated as situated at 18 Montagu, Fiskaal Street, Glen Marais, Kempton Park, since the decree of the divorce was granted (alleged to have been on 18 October 2022):

45.2.1 the respondent does not state her residential address in her section 39 (5) affidavit; and

45.2.2 service of the preservation application and order was effected by the sheriff at the said address on 9 November 2022. The sheriff confirmed that the respondent was still residing at the said address at the time.

45.3 The payment into the respondent's bank account was made on 11 October 2022, before the date of divorce. In this regard I refer to the evidence of Mohamed pertaining to the timing of the various amounts that were transferred out of the Absa and Nedbank

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accounts in relation to the intended search and seizure operation of the FSCA.

46 From the foregoing it is submitted that:

46.1 it is highly unlikely, if not improbable, that the respondent did not know about Geldenhuis' illegal activities. They were married for a period of about 22 years and continued to reside together at the matrimonial home after the decree of divorce was allegedly granted;



46.2 In circumstances where Geldenhuis and the respondent were married out of community of property, with the exclusion of the accrual system, Geldenhuis nevertheless agreed in terms of the "divorce settlement agreement" to pay her a total amount of R45 million. This in circumstances where she would not have had any claim against his estate solely on the basis of the divorce;

46.3 The first payment to the respondent, ostensibly in terms of the "divorce settlement agreement", was made in circumstances where Geldenhuis appeared to have dissipated funds from the ABSA and the Nedbank accounts before the date of the "divorce"; and

46.4 The "divorce settlement agreement" was entered into shortly before the FSCA investigation was initiated.

47 In these circumstances the applicant will submit that the respondent:

- (a) does not have a valid defence against the granting of a forfeiture order; and
- (b) will not be able to demonstrate that she has met the requirements of the provisions of section 52(2) of POCA, which provides as follows:

*“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.”*

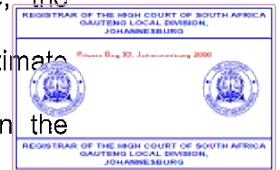
Murry Pierce Kilgour

48 Kilgour contacted the applicant's attorneys indicating that he is an investor and a victim of the scheme and that he intends to file an application for the exclusion of his interest from the operation of the forfeiture order. He was advised that the applicant recognises that there may be genuine victims of the scheme and was in the process of considering how best to accommodate the interests of such victims. It is therefore anticipated that Kilgour will also enter an appearance to these proceedings, which will be addressed later on its merits.

Possible further interested parties

49 Since the granting of the preservation order, representatives of the Asset Forfeiture Unit, Johannesburg, have been informed by the FSCA that it has been receiving, on an almost daily basis, notifications from individuals claiming that they are victims of the scheme, and they would like to be reimbursed/compensated for their losses. As mentioned above, the applicant recognises that there may be victims who may have legitimate grounds on which to apply for the exclusion of their interest in the property.



50 However, except for Kilgour, the names and particulars of all the possible victims are not known to the applicant. It is furthermore submitted that it would not be practical, nor cost effective, to effect service of the application on each individual potential victim. The applicant therefore submits that the most expedient manner of service of the application on all potential victims would be through publication of this application, together with the intended relief sought by the applicant, as well as the preservation papers, on the website of the FSCA, thereby notifying all persons who may have an interest in the property and calling upon such persons to serve on the applicant's attorneys and file with this court applications for exclusion of their interests from the operation of the forfeiture order prior to but by no later than the 45<sup>th</sup> day from the date of publication of the notice relating to the forfeiture order in the Government Gazette in terms of section 54 of the POCA, the relevant provisions which, for the benefit of such potential claimants, are quoted at length in the draft forfeiture order.



51 In addition to the foregoing, the applicant will, through the services of the FSCA, cause service of the application and forfeiture order (once granted) via email, on those persons who had already made contact with the FSCA and whose particulars are known to the FSCA. The latter has made an undertaking to our office in this regard. A copy of the email from Gerhard Van Deventer, a Divisional Executive in the Enforcement Department of the FSCA is attached hereto and marked as annexure **SM7**.



### **CURATOR BONIS**

52 It is respectfully submitted that, *in casu*, it would be in the interest of justice for this honourable court to appoint a *curator bonis* in terms of section 56(1) of the POCA, who will receive the property into his custody, pending the determination of any possible exclusion of interest applications as envisaged in section 54 or 52 of the POCA. The said curator will also deal with the property as envisaged in section 57 of the POCA which reads in part as follows:

**57. Fulfilment of forfeiture order.**—(1) *The curator bonis must, subject to any order for the exclusion of interests in forfeited property under section 52 (2) (a) or 54 (8) and in accordance with the directions of the Committee—*

*(a) deposit any moneys forfeited under section 56 (2) into the [Criminal Assets Recovery] Account;*

*(b) deliver property forfeited under section 56 (2) to the Account;*  
or

(c) dispose of property forfeited under section 56 (2) by sale or any other means and deposit the proceeds of the sale or disposition into the Account.

53 Mr Trevor Hills (**Hills**), a partner at PriceWaterhouseCoopers Advisory Services (Pty) Ltd, has accepted nomination to be appointed as the *curator bonis* in this matter.

54 It is submitted that it is proper that Hills be appointed as *curator bonis* in this matter and to act as such herein and in accordance with the provisions of the POCA and, save where otherwise provided in the POCA, the provisions of the Administration of Estates Act 66 of 1965 to the extent applicable. A confirmation email from Hills in this regard, accepting his appointment as *curator bonis* together with a copy of his *curriculum vitae* is attached hereto and marked as annexure **SM8**.



55 In particular, the *curator bonis* will be tasked with assessing the claims by the victims submitted by way of their applications for the exclusion of interest and determine if each claimant would be entitled to any reimbursement, and if so, to pay such claimant with the approval of this honourable court, on a *pro rata* basis, depending on the number of claims received and approved, the amount claimed *vis a vis* the total available value of the property, less curator fees and related expenses to be approved by the Master.

#### **POWERS, DUTIES AND AUTHORITY OF THE *CURATOR BONIS***

56 The POCA extends a number of powers, duties and authority to a *curator bonis* appointed by this honourable court. In addition thereto, the order

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sought places certain additional powers, duties and authority on the *curator bonis*. One such duty is the duty to report to this honourable court and to the parties involved in this matter on various aspects of his curatorship, including a description and the value of the property over which he has assumed control, in terms of the order, how he has dealt with the property and any recommendations that he has as to the further exercise of his curatorship.



### Prayer

- 57 The applicant accordingly seeks an order appointing Hills as the *curator bonis* in this matter.
- 58 Further, an order is sought directing ABSA, Nedbank and FNB to pay the property together with any interest earned on the property to the nominated bank account of the *curator bonis* dedicated for the purpose of enforcing this order.
- 59 Therefore, as part of the forfeiture order that is sought, per the draft order that is attached to the notice of motion, the applicant seeks, *inter alia*, the following orders, that:
- 59.1 the property be declared forfeit to the State in terms of section 48(1) of POCA. On the date when the forfeiture order takes effect the property is to be forfeited to the State and vests in the *curator bonis* on behalf of the State, subject to any excluded interests in terms of section 52 or 54 of the POCA;

59.2 publication of the order in the Government Gazette as soon as is practicable after the granting thereof in terms of section 50(5) of the POCA;

59.3 legitimate victims of the scheme may enter an appearance to the proceedings and file applications for exclusions of their interest from the operation of the forfeiture order within a period of 45 days from the date of publication of the notice relating to the forfeiture order in the Government Gazette in terms of section 54(1) of the POCA; and



59.4 the appointment of a *curator bonis* who will, amongst other duties, consider, assess and advise the applicant and the Court on the merits or demerits of applications for exclusion of interests that may be filed, and thereupon facilitate the reimbursement of any *bona fide* and deserving victims whose applications meet all the statutory requirements for the exclusion of their interest from the forfeited property, subject to the Court's approval.

60 It is submitted that the suggested approach will ensure that the interests of any potential victims of the crimes committed by Geldenhuis and Classic Financial Services will be sufficiently safeguarded.

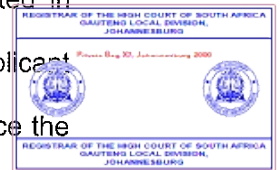
61 Furthermore, in the interest of justice, to ensure that the exclusion applications are not heard on a piecemeal basis and that no applicant for exclusion/claimant is favoured at the expense of others, the applicant hereby requests that all the exclusion applications be automatically consolidated in terms of section 54(4) of the POCA after the granting of the forfeiture order, before the applicant sets the exclusion applications

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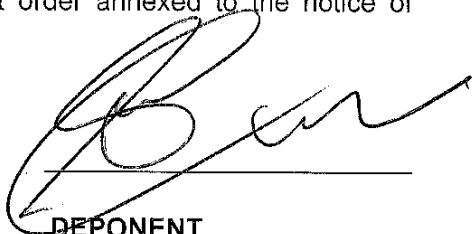
down separately for further determination by this court. This should also include the respondent's application for exclusion.

62 In other words, at this stage the applicant merely requests that the forfeiture order be granted first as required by law, with the merits or demerits of all exclusion applications being consequently determined separately with the assistance of the *curator bonis* to be appointed in terms of section 56(1) of the POCA as contemplated herein. The applicant neither has the expertise nor capacity to evaluate such claims, hence the request for the appointment of a qualified *curator bonis* to handle such potentially complex and competing claims.




## CONCLUSION

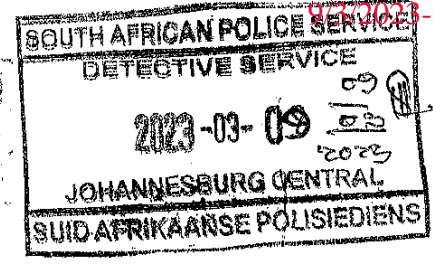
63 For reasons set out above, I submit that the factual and legal requirements for granting an order forfeiting the property in terms of section 50 and/or section 53 of the POCA have been met, and humbly pray for an order in terms of the draft order annexed to the notice of motion.

  
DEPONENT

Signed and sworn to before me at Johannesburg on this the 09<sup>th</sup> day of March 2023, by the deponent who acknowledges that he knows and understands the content of this declaration, that he has no objection to taking the prescribed oath and that he considers the said oath to be binding on his conscience.



 Capt  
#A Slweng



Commissioner of Oaths

Full Names: #layisea Arore Slweng

Designation: Capital -

Area: RSA

Address: Innes chambers  
84 pilchard Street  
Johannesburg.

