

## 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**

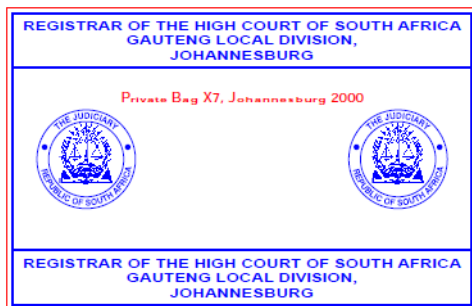
Defendant / Respondent

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### Notice (Other)

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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:**

In the urgent *ex parte* application of:

**The National Director of Public Prosecutions**

**Applicant**

**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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**NOTICE OF AGREEMENT OR OPPOSITION TO MEDIATION**

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**TAKE NOTICE THAT** the Applicant does not agree to the referral of this matter to mediation.

The Applicant does so for the following reasons:

1. The present application is brought in terms of provisions contained in chapter 6 of the **Prevention of Organised Act 121 of 1998 (POCA)**. The POCA makes no reference to, or provision for, mediation in, or relating to, these provisions. Its asset forfeiture provisions are constructed in such manner that mediation is neither appropriate nor fits within the architecture of the provisions.
2. Preservation proceedings are interim in nature. A final order that is determinative of the issues in terms of which the relevant property is to be dealt with is made at a second stage that follows the current preservation proceedings, namely forfeiture proceedings in terms of section 48 of POCA. The existence of the preservation order and the final outcome in the matter depends therefore on the outcome of future subsequent proceedings as well as steps that are taken between the preservation and forfeiture applications. Decisions reached by way of mediation therefore could not or would not be final in nature nor capable of final enforcement. Unnecessary costs would also be incurred as a result.
3. In addition, the applicant is, from the outset, unable to bind itself with finality to any agreements made in preservation proceedings since future proceedings follow in which another court must apply its mind and make findings.
4. The current proceedings are contained within chapter 6 of POCA which are non-conviction-based proceedings. Whilst they do not depend on a prosecution or a successful outcome thereof, these proceedings arise from criminal activity and are thus indirectly associated with the underlying criminal case. As a result, these proceedings run parallel to and may be impacted by the associated criminal proceedings. Decisions that are taken by the prosecution and which are still to be taken, as well as findings made by a criminal court, may impact the final outcome of the current proceedings and the case as a whole – and vice versa. The present proceedings are therefore not to be viewed in complete isolation, that is, separate from the criminal proceedings. In addition, such interfacing between these and the criminal proceedings may impact a suspect / accused's constitutional rights. Mediation is therefore not appropriate.



5. These proceedings are *in rem* in nature, that is, they target certain property and not a specific person. Mediation is therefore not possible.
6. Whilst a party is identified in the application, it is on the basis that he / she *may* have an interest in the property which interest is a legal one. It is therefore not clear who, if anyone, should or could be mediated with if mediation was to take place in these proceedings. It must be borne in mind that recognition of a party in chapter 6 cases requires such party to take certain prescribed steps in terms of section 39 of POCA after the granting of a preservation order. In the absence of such, the applicant is legally unable to mediate with any party at this stage.
7. The applicant is a government entity. It is therefore bound by specific procurement rules before a supplier (mediator) can be appointed. The appointment of a mediator would require a formal procurement process to be embarked on and costs of such supplier to be budgeted for. Such procurement process takes a significant amount of time to be finalised which is not in the interests of the parties nor in the spirit of both the mediation and asset forfeiture processes. In addition, a mediator must be one who is agreed to by the parties. The applicant is not able in terms of the aforesaid prescripts to unilaterally agree to the procurement of a particular service provider that may be recommended by a third party. Furthermore, the prescripts are aimed at ensuring that a fair and equitable system of appointment is applied especially to properly manage government funds and avoid corruption. They cannot be avoided. Finally, a procurement process may or may not result in a mediator being appointed that is acceptable to any opposing party. It is a decision that is taken by the applicant alone. Input in the procurement process especially by entities outside of the National Prosecuting Authority is prohibited. The mediation route is therefore neither a workable nor useful option for the parties concerned.
8. The absence of mediation does not affect parties' rights. These rights and any other interests of third parties are safeguarded in terms of provisions in POCA and the Uniform Rules of Court.



9. A mechanism is included in section 39 of POCA that enables the applicant to reconsider the matter and make an election whether or not to proceed with the next stage of the case, that is, the forfeiture application. Such election is made on the basis of the affidavit that an interested party may file in terms of section 39(5) of POCA. As a result, the broad objectives of mediation that include limiting litigation and related costs are in an indirect sense achieved.

Dated at **JOHANNESBURG** on this **18<sup>th</sup>** day of **OCTOBER 2022**.



**The State Attorney**  
**Attorneys for the Applicant**

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**REF: P14/22/EMACHETHE (GELDENHUIS)**

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**To:           The Registrar of the**  
**Above Honourable Court**