

ABSA Bank Ltd v Fraser and Another	
Supreme Court of Appeal - 2005/386	Hearing date: 19 September 2005 Judgment date: 24 November 2005
Criminal law – restraint order in terms of ss 25 and 26 of the Prevention of Organised Crime Act 121 of 1998 – effect on defendant’s concurrent creditors – properly interpreted s 33(1) does not exclude concurrent creditor’s interests in restrained property; defendant’s legal expenses interest in restrained property has no preference over proven concurrent claims.	

## Summary of Judgment

In a judgment delivered today, the Supreme Court of Appeal has ruled that when a restraint order is granted in respect of property under the Prevention of Organised Crime Act 121 of 1998 (POCA), this does

not give a defendant a preferent claim for his legal expenses over the interests of an unsecured concurrent creditor. Mr Trent Gore Fraser was arrested in November 2003 and indicted on charges relating to racketeering and money laundering and drug trafficking. He is at present in Durban Central Prison awaiting trial. In November 2004 the National Director of Public Prosecutions (NDPP) obtained a restraint order in respect of a house in Fourways, Johannesburg, registered in the name of a close corporation which Fraser owned. One of the primary objects of POCA is to divest criminals of the proceeds of their criminal activities. The statute provides for confiscating property of convicted criminals, and permits the property of a defendant to be restrained pending his trial on criminal charges. It transpired that Fraser had concealed his interest in the house from ABSA, which had an outstanding judgment against him, totalling (with interest) well over R1m. The NDPP informed ABSA of the restraint order obtained over Fraser’s property, which led ABSA to intervene in the proceedings. Meanwhile Fraser applied under s 26(6) of POCA for provision for his reasonable legal expenses to be made from the proceeds of the property. The Durban High Court granted his request, even though ABSA objected. On appeal, the SCA set aside the order of the High Court. The SCA held that a defendant whose property has been restrained enjoys no preference over his concurrent creditors. The SCA granted ABSA an order that ensured that proceeds to the value of its claim against Fraser would be retained.

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