

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

FROM: The Registrar, Supreme Court of Appeal

DATE: 29 SEPTEMBER 2008

STATUS: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal today allowed with costs an appeal from a judgment of Mr Justice R D Claassen, sitting in the High Court, Pretoria, in which a restraint order issued under the Prevention of Organised Crime Act 121 of 1998 against the appellant, Mrs A Procopos of Pretoria, was confirmed in respect of her member's interests in two close corporations and her banking account at the Sunnyside branch of Absa Bank.

The appellant's daughter had been convicted on one hundred charges of fraud as well as contraventions of various statutes, all relating to a fraudulent investment scheme she had conducted as a result of which she had defrauded members of the public of amounts totalling R26.5 million. The appellant's daughter had caused amounts totalling R9.7 million to be paid into her mother, the appellant's bank account. In affidavits filed in the Pretoria High Court the appellant and her daughter said that the appellant had acted throughout in good faith, believing that her daughter was conducting an honest business and that the bank account was used as a conduit in respect of the moneys handled by her daughter. Mr Justice Claassen found that the probabilities were strong that the appellant received 'at least some of the money, no matter how little' for herself and he confirmed the restraint order only in respect of the remaining moneys in the bank account and the appellant's member's interests in the two close corporations. The appellant appealed against this order. The State cross-appealed contending that the Pretoria Court should have made an order restraining the

appellant's assets to the value of the total of the amounts deposited into the account, namely R9 761 607.

Mr Justice IG Farlam, with whom Mr Justice K K Mthiyane, Mr Justice V M Ponnann, Ms Justice M Maya and Ms Justice N Z Mhlantla (Acting Judge of Appeal) concurred, said that it could not be found that the version put up by the appellant and her daughter was so improbable and far fetched that it could be rejected out of hand without their being given the opportunity to give *viva voce* evidence and being subjected to cross-examination. He held further that there was no warrant for holding, as Mr Justice Claassen had done, that a gift of some sort was made to the appellant by her daughter.

Except insofar as it related to the moneys in the bank account (which the appellant admitted were being held for her daughter) the order given in the High Court was set aside and replaced by an order that the appellant and her daughter were to be subject to cross-examination in respect of the evidence set forth in their affidavits. The State's cross-appeal was dismissed with costs.