THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT, CAPE TOWN

Case No.: 23596/2012

In the matter between:

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	**Applicant**

and

NAAYM MOOI	**First Defendant**
MOOI BROTHERS	**Second Defendant**
DELAMAINE CEDRIC DE KLERK	**Third Defendant**
DELWRAY CLOTHING CC t/a NEW MARKET CLOTHING	**Fourth Defendant**
MIKO AIR INVESTMENTS t/a KAYDEE FINANCIAL SERVICES	**Fifth Defendant**
GOLDEN MONEY MAKERS 109 CC t/a JAYTEE INVESTMENTS	**Sixth Defendant**
YUMNIE ENTERPRISE SOLUTIONS CC	**Seventh Defendant**
JEROME REGINALD VAN BLERK	**Eighth Defendant**
TREVOR VAN BLERK	**Ninth Defendant**
PRISCILLA VAN BLERK	**First Respondent**
MOHAMED ZAAID MOOI	**Second Respondent**
ZULFA MOOI	**Third Respondent**
MOHAMED ALI MOOI	**Fourth Respondent**
VAN BLERK INVESTMENT CC	**Fifth Respondent**
GILLIAN VAN BLERK	**Sixth Respondent**

JUDGEMENT: 18 OCTOBER 2013

BOZALEK, J:

[1] On 18 December 2012 the applicant obtained a provisional restraint order in terms of s26 of the Prevention of Organised Crime Act, No 121 of 1998 ('POCA') against the first and third to ninth defendants and the first to fifth respondents. There were various extensions of the provisional order on return dates until, on 30 July 2013, the applicant sought a final order against the first and fifth to ninth defendants and first and fifth respondents.

[2] The second defendant is no longer a party to the proceedings whilst the proceedings against the third and fourth defendants were postponed to a later date. No order was sought against the second to fourth respondents because of a failure to serve the provisional restraint order and papers upon them.

[3] At the hearing Mr Titus appeared on behalf of the applicant and Mr Wynne on behalf of all those defendants and respondents against whom a final order is now sought, save for the first defendant. The applicant also sought the joinder of the ninth defendant's wife, to whom he is married in community of property, as sixth respondent as well as a provisional restraint order against her share of the joint estate.

BACKGROUND

[4] The restraint proceedings have their origin in the activities of the first defendant who was employed as a financial advisor at the Claremont branch of First National Bank between August 2005 and August 2009. During that period, it is alleged, he defrauded scores of the bank's customers of up to R26mil by persuading them to make bogus or worthless investments. Instead, the clients' funds were channelled into a series of bank accounts belonging to, controlled by or

linked to, *inter alia,* the first to ninth defendants. More particularly, the applicant's case against the eighth defendant is that he directly benefitted from the defrauding of the investors in an amount of R3 174 000 through the receipt of R400 000 from an FNB client, one Jassiem; R2 330 000 received by the sixth defendant, a company in which he and his brother, ninth defendant, each had a 50% membership; R100 000 from an FNB customer, Kwezi Kati, through eighth defendant's membership of the fifth defendant, being another company which eighth defendant controlled and; R344 000 through his control of the fourth defendant in which, the applicant alleges, he and the ninth defendant had signing powers. All of these monies are traced back to FNB customers who, it is alleged, were initially defrauded of their funds by the first defendant.

[5] The applicant's case against the ninth defendant arises by virtue of his 50% share of the sixth defendant which received R2 330 000 of the funds allegedly defrauded from various FNB clients.

[6] It is also the applicant's case that the fraudulent enterprise amounted to a pyramid scheme run by a syndicate of which the eighth and ninth defendants were members.

[7] Complaints from FNB's customers began to stream in after the first defendant left its employment in August 2009. Police investigations commenced and eventually led to the first to ninth defendants being charged in the Specialised Commercial Crime Court in Bellville with 32 counts of fraud and 5 counts of contravening the provisions of the Financial Advisory and Intermediary Services Act, No 37 of 2002.

[8] The charges against the defendants have been temporarily withdrawn pending the outcome of criminal proceedings against the first defendant in Johannesburg.

[9] Pursuant to the granting of the initial restraint order a *curator bonis* was appointed. On 17 January 2013 he reported that he had placed holds on eight FNB and ABSA bank accounts held in the names of the eighth defendant reflecting a total balance of just less than R6mil.

[10] In relation to the ninth defendant the curator reported that upon investigation he had found that the defendant had three bank accounts holding funds of approximately R2mil, a vehicle, as well as two fixed properties in which he appeared to have an interest.

[11] Answering affidavits on behalf of the eighth and ninth defendants and the first respondent, the eighth defendant's wife, were filed in mid-April 2013. The eighth defendant described himself as an entrepreneur and stated that he had already made disclosure under oath of all his assets and interests. He stated further that he did not oppose the entire restraint application but limited his objection to the proportionality of the order insofar as it related to the alleged proscribed activities ascribed to himself, fifth, sixth and ninth defendants and the first respondent. The eighth defendant denied that there was any basis upon which he or any of these parties could be convicted on any of the preferred charges. He explained that upon legal advice he would only canvass his defence fully at the criminal trial but that in essence all the disputed monies were received

in the ordinary course of business of the fifth, sixth or ninth defendants and himself, none of whom were involved in any nefarious activities.

[12] Insofar as the applicant alleged that he had received a total of R3.174mil of FNB clients' monies, the eighth defendant noted that this sum constituted the entire benefit attributed to himself and his fellow defendants and stated that it should in fact be R2.83mil. Of this latter sum, he explained, R2.33mil was remitted to him by the first defendant in respect of a debt owed (presumably to himself) by one Deon de Klerk, a brother of the third defendant. He denied the allegation that he had signing powers or control over the fourth defendant during the periods when substantial sums of money, allegedly emanating from clients of FNB who were defrauded by the first defendant, were paid into its bank accounts.

[13] The eighth defendant admitted receiving R400 000 in his personal capacity from an FNB client, one Jassiem, as well as R100 000 from another client, Kwezi Kati, which funds he stated he received in the ordinary course of business. In relation to the sum of R344 000, he denied only receiving it through his involvement with fourth defendant, but not that he did not receive it at all.

[14] The eighth defendant furnished details of the fixed property belonging to him restrained by the curator as well as his bank accounts mentioned earlier and attributed a value of R7.564mil in total to these assets. He disclosed additional assets, being the value of his shares in the fifth and sixth defendants and two other companies. He also disclosed that the first respondent, his wife, had assets of approximately R125 000. Finally, the eighth defendant expressed the view that

the restraint order should be proportional to the benefits which he allegedly had received as a result of proscribed activities as set out by the applicant.

[15] A similar stance was adopted by the ninth defendant who attributed a total value of R4.539mil to the three fixed properties, eight bank accounts and one motor vehicle belonging to him and now embargoed by the *curator bonis*. He too disclosed that, in addition to the above assets, he held shares in the fifth and sixth defendants as well as another company and that his wife, whom the applicant now seeks to join as sixth respondent, had assets of approximately R312 000. The ninth defendant admitted the applicant's allegations that he was a 50% member of the sixth defendant, the other shareholder being the eighth defendant, and that the sixth defendant had received approximately R2.33mil of the monies diverted from FNB clients/investors. He stated that the funds had been received in the ordinary course of the sixth defendant's business as a registered credit provider.

[16] During the hearing it emerged that the sum of R1mil had been released by the curator, no doubt with the consent of the applicant, to the eighth and ninth defendants as well as the motor vehicle belonging to the latter.

THE LAW

[17] Section 25 of POCA provides that a restraint order may be made:

> *'(a) when –*
>
> *(i) a prosecution for an offence has been instituted against the defendant concerned;*
>
> *(ii) either a confiscation order has been made against that defendant or it appears to the court that there are reasonable grounds for believing that a confiscation order may be made against that defendant; and*
>
> *(iii) the proceedings against that defendant have not been concluded; or*

(b) when -

(i) that court is satisfied that a person is to be charged with an offence; and

(ii) it appears to the court that there are reasonable grounds for believing that a confiscation order may be made against such person.'

[18] Section 18 provides that a confiscation order may be made against a defendant convicted of an offence/s where that defendant has derived a benefit from that offence or from *'any criminal activity which the court finds to be sufficiently related to those offences'.* The amount of any confiscation order may not, in terms of s18(2), *'exceed the value of the defendant's proceeds of the offences or related criminal activities, as determined by the court...'*

[19] Section 19 provides that the value of a defendant's proceeds of unlawful activities *'shall be the sum of the values of the property, services, benefits or rewards received retained or derived by him …. in connection with the unlawful activity carried on by him or her or any other person.'*

[20] Finally, s26 provides that the court may make a restraint order:

'(a) in respect of such realisable property as may be specified in the restraint order and which is held by the person against whom the restraint order is being made;

(b) in respect of all realisable property held by such person, whether it is specified in the restraint order or not;

(c) in respect of all property which, if it is transferred to such person after the making of the restraint order, would be realisable property.'

THE EXISTING ORDER AND THE ORDER SOUGHT

[21] The provisional order granted by Van Staden AJ on 18 December 2012 applied to certain property specified in a schedule of assets but also to *'all other*

property held by the defendants at the time of granting of this order or subsequently, whether in their respective names or not, including all property held for or on behalf of the defendants by any person or entity and further including the shareholding of the defendants in any company' as well as *'all property that would be realisable property, if transferred to defendants and respondents or to any third party on behalf of the defendants, at any time after the granting of this order;'*.

[22] The order now sought by the applicant is the making final of the provisional restraint order in respect of *'all realisable property of the first, fifth to ninth defendants held in their names and the first and fifth respondents and any other persons or entities but limited to the value of R26, 450 438.00 subject to subsequent adjustment in accordance with the Consumer Price Index.'*

THE ARGUMENTS AND THE ISSUES

[23] On behalf of his clients (whom I shall refer to collectively as 'the defendants') Mr Wynne argued that the applicant was entitled to confirmation of the provisional restraint order only to the extent that it was proportional to any alleged benefit which might be ascribed to the defendants i.e. limited to the amount of R3 174 000.00 being the amount ascribed to them by the applicant alternatively R2 830 000.00 being the lesser amount that could be ascribed to the defendants on their version.

[24] In response for the applicant, Mr Titus argued that the case against the defendants was that they acted as members of a syndicate with a common purpose and as such they could be held jointly and severally liable for any confiscation order which might be granted flowing from the criminal charges. He

relied in addition on evidence to the effect that, whilst criminal complaints already reported to the South African Police by FNB clients/investors involved R9.914mil, further investigations by the police revealed other unreported cases of fraud involving the same branch of FNB and some of the same defendants involving a further R16, 540mil. In these circumstances, Mr Titus submitted, given that the value of the alleged benefits derived by the syndicate would not be less than R26, 450mil, it would be appropriate for the final restraint order to be capped at this level and for there to be no proportional reduction of the restraint order commensurate with the defendants' admitted involvement.

[25] The issue in this present case is therefore whether it is appropriate to limit the impact of the restraint order on the assets of the defendants in direct proportion to their admitted involvement in the subject matter of the existing criminal charges, more particularly limited to the amount of money which certain of them admit to receiving and which emanated from the clients/investors who were allegedly defrauded.

[26] In *National Director of Public Prosecutions v Rautenbach* 2005 (1) SACR 530 (SCA) it was held that when considering an application for a restraint order, it is required only that it must appear to the Court on reasonable grounds that there might be a conviction and a confiscation order. Whilst the Court must be apprised of at least the nature and tenor of the available evidence, and cannot merely rely upon the opinion of the National Director of Public Prosecutions, it is nevertheless not called upon not to decide upon the veracity of the evidence. It need ask only whether there is evidence that might reasonably support a conviction and a

consequent confiscation court order (even if all that evidence has not been placed before it) and whether that evidence might reasonably be believed.

[27] The Court held further that a *'confiscation order'* is directed at confiscating the benefit that accrued to the offender whether or not he or she is still in possession of the particular proceeds. Once it is shown that a material benefit accrued, the offender may be ordered to pay to the state the monetary equivalent of that benefit even if that means that it must be paid from assets that were legitimately acquired. The majority of the Court held that POCA does not require as a prerequisite to the making of a restraint order that the amount in which the anticipated confiscation order might be made must be capable of being ascertained, nor does it require that the value of the property that is placed under restraint should not exceed that amount of the anticipated confiscation order. In this regard Nugent JA stated as follows at para 56:

> *'Where the requirements of the Act have been met a Court is called upon to exercise a discretion as to whether a restraint order should be granted, and if so, as to the scope and terms of the order, and the proper exercise of that discretion will be dictated by the circumstances of the particular case. … Where there is good reason to believe that the value of the property that is sought to be placed under restraint materially exceeds the amount in which an anticipated confiscation order might be granted, then clearly a Court properly exercising its discretion will limit the scope of the restraint (if it grants an order at all), for otherwise the apparent absence of an appropriate connection between the interference with property rights and the purpose that is sought to be achieved - the absence of an "appropriate relationship between means and ends, between the sacrifice the individual is asked to make and the public purpose that [it] is intended to serve" - will render the interference arbitrary and in conflict with the Bill of Rights.'*

[28] In the *State v Shaik and Others* 2008 (2) SACR 165 (CC) the Constitutional Court considered at length the provisions in POCA relating to confiscation orders

and held that given the definition of the *'proceeds of unlawful activities'* in the Act, the benefits of crime that may be confiscated are not limited to the nett proceeds of crime only but include any property, advantage or reward derived, received or retained directly or indirectly in connection with the result of any unlawful activity. It held further that the court determining the amount to be confiscated has a discretion in doing so which will only be interfered with on appeal where the court is satisfied that the lower court acted unjudicially or misdirected itself or where the appellate court is of the view that the amount confiscated is disturbingly inappropriate.

[29] Of some relevance to the present matter is that the High Court in the *Shaik* matter made joint and several orders for payment of the value of the three benefits in respect of which a confiscation order was made against each of the appellants, the one paying, the others to be absolved. Although the Supreme Court of Appeal overturned the confiscation order in relation to the third benefit on appeal, the confiscation order related to the remaining two benefits and its joint and several nature was left undisturbed by both the SCA and the Constitutional Court.

[30] Regarding the exercise of the discretion by the trial court the Constitutional Court noted that in most circumstances it would be entirely appropriate that all direct profits of crimes of which the defendant is being convicted be confiscated. However, a further consideration relevant in determining what constitutes an *'appropriate'* amount, will be the nature of the crimes that fall within the express contemplation of the Act. *'The closer the crimes or criminal activity concerned to the ambit of organised crime, the more likely it will be that the appropriate amount*

will constitute all the proceeds of the unlawful activities as defined in the Act. The reason for this is that the larger the value of the confiscation order, the greater the deterrent effect of such an order. The Act clearly seeks to impose its greatest deterrent effect in the area of organised crime; and so where organised crime is involved, the purpose of general deterrence will often be best achieved by a maximum confiscation order, although of course that will always be subject to a full consideration of the relevant circumstances. In asserting this principle, too, it is important to bear in mind the difficulty of prosecuting organised crime successfully as is noted in the preamble to the Act. The difficulties are many. To name just one crime syndicates are often organised in a manner that makes it possible for senior members of the syndicate to evade prosecution, because many of the crimes committed are committed by junior members of the syndicate."[1]

ANALYSIS

[31] Applying these principles to the present matter it is clear, firstly, that the fact that the value of the property sought to be restrained may exceed the amount of any anticipated confiscation order against the defendants is no absolute bar to a restraint order in such an amount. Secondly, it is noteworthy that the main argument advanced on behalf of the eighth and ninth defendants appears to presuppose that any confiscation order made by the trial court against them will not exceed the total of the monies which, on the evidence presently available to the applicant, directly or indirectly reached them from the FNB clients/investors.

[32] However, the reasoning underlying this argument is questionable in several respects. Firstly, it prematurely assumes that no other evidence will be

[1] At para [71] on page 193

forthcoming which links the eighth and ninth defendants to the receipt of further funds, over and above those already identified by the applicant. In this regard it is of some significance that, on the papers, none of the defendants has given any detailed account of how the investment scheme, to use a neutral term, operated, to what extent, if any, the defendants worked together in operating the scheme, to whom the monies flowed and where the vast bulk of that money eventually went. It is also relevant that, apart from those of the eighth and ninth defendants, the *curator bonis* has been unable to find any significant assets belonging to other defendants.

[33] The second respect in which the reasoning is questionable is the implicit assumption that no confiscation order may ultimately issue against the eighth and ninth defendants beyond the extent to which they are directly linked to the receipt of monies from the clients/investors. This is where the applicant's main argument comes in, namely, that a confiscation order could eventually be made against the eighth and ninth defendants hold them jointly and severally liable as members of a syndicate operating a pyramid scheme, for monies received by other members or by the syndicate as a whole.

[34] I have some reservations about this argument which, unfortunately, was not developed in any detail by counsel for the applicant. Firstly, the *'syndicate'* is neither a legal entity nor a defendant and no confiscation order is competent against it. Furthermore, any such co-extensive liability on the part of the eighth and ninth defendants will, as I see it, have to satisfy the requirements of s18 read with s19 of POCA. Before such an order can be made, presuming it is not founded on a criminal conviction/s returned against these defendants, the trial court will

have to be satisfied that the defendants derived a benefit from criminal activity that it is sufficiently related to the offences of which they were convicted. What is more, such co-extensive liability will be limited to the value of that particular defendant's proceeds, either of the offences or *'related criminal activities'.*

[35] The provisions in POCA for a confiscation order are thus not a license to hold a criminal defendant civilly liable through a confiscation order for the losses suffered by a complainant or complainants as a result of related criminal acts based on that defendant's vague association with such acts and irrespective of whether the defendant derived a benefit therefrom or not.

[36] The scope of any confiscation order will ultimately be determined by facts found in the criminal trial. However, in the event that the criminal court should find that the numerous alleged acts of fraud on the FNB customers constituted a pyramid scheme and that the eighth and ninth defendants were integral figures in such a scheme, it is possible that it might make a confiscation order against them extending beyond the amounts which the eighth and ninth defendants thus far admit to receiving. Such a confiscation order could be sought against eighth and ninth defendants in relation to monies received by co-defendants as fellow members of a criminal syndicate and may very well be competent given the broad definition of the *'proceeds of unlawful activities'* read with the provisions of s18 of POCA.

[37] It is material, moreover, at this stage to note that there are indications that the activities in which the first defendant was a lynchpin was in fact a pyramid scheme. There is evidence that a good number of the investors were promised

substantial returns and in fact received these for a limited period of time before they dried up. There is certainly no evidence that any of the monies which were stolen or diverted from the investors found their way into legitimate investments. The applicant's papers contain several allegations that what has been uncovered is a pyramid scheme or a series of pyramid schemes run by the first defendant and the other defendants.

[38] Given that it is common cause that a substantial amount of the funds allegedly defrauded from the investors reached the eighth and ninth defendants, or companies controlled by them, the applicant's allegations of them being parties to a pyramid scheme is by no means far-fetched. Furthermore, the eighth and ninth defendants' failure to explain in any detail the nature and the extent of their involvement in these affairs renders the possibility of them being found by the criminal court to be integral parties to such a scheme more likely.

[39] The eighth defendant concedes that he, or companies in which he had an interest or controlled, received approximately R3mil in funds which originated from the defrauded investors. His explanation for this is scanty in the extreme. Of all the monies received by him the only explanation he gives is in respect of the R2.33mil received through his control of the sixth defendant. In this regard he states that these funds were remitted to him by the first defendant (whom, it is alleged, was the lynchpin in all the alleged instances of fraud) in respect of a debt owed by one De Klerk, the brother of the third defendant. Why the first defendant would settle any such debt is left unexplained. Eighth defendant does not explain his relationship with the fourth defendant, another company which received large

sums of money from the defrauded investors. Nor does he explain how it came to be that he held funds of approximately R6mil in various bank accounts.

[40] The only further explanation in respect of the R2.33mil is a letter put before the Court by the applicant's investigator which the eighth defendant, on behalf of the sixth defendant, wrote to the first defendant in June 2008. This letter appears to state that R500 000.00 of the approximately R2mil which the sixth defendant received from the first defendant was in respect of an acknowledgment of debt owing by the third defendant and his wife. The letter explicitly states that certain of these payments were made by *'third party investors'* on behalf of the De Klerks. Even though it raises many more questions than it furnishes answers, the eighth defendant gives no explanation for the letter's contents nor any detail as to the circumstances in which he or the sixth defendant allegedly came to be owed an amount of at least R500 000.00 by the De Klerks.

[41] Even less information is forthcoming from the ninth defendant. He states that the funds which he received were in the ordinary course of the sixth defendant's business but gives no details either of the business in which it was engaged or how it came to receive the monies in question.

[42] Notwithstanding the admitted receipt by the eighth and ninth defendants, either directly or through companies in which they had an interest or some degree of control, of substantial sums of monies emanating from defrauded investors and which appears to have passed through the hands of the first defendant, they have elected to give no meaningful or detailed explanation as to the circumstances in which they received such funds. Nor have they given any explanation of what their

'ordinary business' comprises. Instead they have chosen to reserve their defence or the details thereof for the criminal trial. In these circumstances, given the possibility that further evidence may emerge during the criminal trial of the defendants' possible involvement in what may well have been a pyramid scheme, I consider that it would be inappropriate and ill-advised to limit the amount of the restraint order to only those sums which, on the evidence presently available, were directly received by the eighth and ninth defendants or their associated companies. In my view to grant such an order opens up the real possibility that a confiscation order which might later be made by the criminal court against the defendants might, to a substantial extent, be a *brutum fulmen.*

[43] To the extent, however, that the applicant seeks a restraint order capped slightly in excess of R26mil, I regard this as wholly unjustified. That figure represents an estimate of the total monies allegedly defrauded from the FNB clients/investors, but the fraud charges preferred against the defendants involve no more than R9, 914mil. There is no suggestion in the papers that additional fraud charges will be brought and, if they are, the applicant could in appropriate circumstances seek to extend the ambit of any restraint order. I see no justification for a restraint order of the proportions sought given the present limited ambit of the criminal charges, the lack of any indication that any defendant has assets approaching this level and the somewhat diffuse basis for the possible liability of the defendants, by way of a confiscation order, for sums in excess of those which they presently appear to have received. In the circumstances a capping of the restraint order at the level of R9, 914mil is in my view, quite adequate to safeguard the applicant's interest at present.

[44] In the result I consider that provisional order granted on 18 December 2012 should be made final but subject to the aforementioned cap.

COSTS

[45] As far as costs are concerned the defendants have not achieved substantial success in their attempt to limit the scope of the restraint order to the level of those funds which they admit receiving. There is, therefore, no reason why costs should not follow the result.

SIXTH RESPONDENT

[46] Ancillary relief sought on an *ex parte* basis was an order joining the ninth defendant's wife, to whom he is married in community of property, as sixth respondent. According to the ninth defendant's answering affidavit his wife has assets of her own of approximately R312 000.00 and, by virtue of the marriage, an interest in the ninth defendant's assets already under restraint. In the circumstances it is appropriate that she be joined as sixth respondent, that the papers be served on her so that she has an opportunity of opposing the granting of a provisional order in respect of her assets and, if needs be, granting her locus standi to approach the Court in terms of s29(6) or (10) with a view to varying or rescinding the restraint order in respect of the assets already disclosed by the ninth defendant.

[47] In the result the following orders are made:

1. *The provisional restraint order granted on 18 December 2012 in respect of all realisable property of the first and fifth to ninth defendants and the first and fifth respondents either held in their names or those of any other persons or entities, is confirmed;*

2. *The confirmation of the restraint order is subject to the provisions of paragraph 1.3 of the provisional restraint order granted on 18 December 2013.*

3. *The restraint order granted against the said defendants and respondents is limited to the value of R9, 914, 000.00, subject to subsequent adjustment in the value thereof in accordance with the consumer price index (CPI) adjustments.*

4. *The fifth to ninth defendants and the first and fifth respondents are to pay the costs of opposing the restraint application from the date of filing their notices to opposition to the confirmation of the provisional restraint order.*

5. *Mrs Gillian van Blerk, the wife of the ninth defendant and who is married to the ninth defendant, is joined as the sixth respondent in these restraint proceedings;*

6. *The realisable property held in the name of the sixth respondent is placed under a provisional restraint order.*

7. *The realisable property concerned is as follows –*

    7.1 R150 000 held in the First National Bank money market account number 62173001117; and

    7.2 A Ford Fiesta motor vehicle with registration number CA 865 414

    7.3 The sixth respondent is authorised to keep the vehicle referred to in paragraph 7.2 hereof, subject to the following conditions –

        7.3.1 she keeps the vehicle insured for the duration of this order;

        7.3.2 she may not sell, burden, pledge or otherwise encumber it;

        7.3.3 she maintains and takes the vehicle to be serviced at the requisite intervals when they fall due; and

        7.3.4 she allows the curator bonis a right of access to inspect the vehicle when the curator requires to do so.

8. *The applicant is directed to serve the provisional restraint order and all the papers filed in support thereof upon the sixth respondent.*

9. *The provisional restraint order made in paragraph 6 against the sixth respondent is returnable on **25 November 2013** and a rule nisi is issued calling upon the sixth respondent to show cause, if any, on the return date –*

   9.1 *why the provisional restraint order should not be confirmed pending the outcome of any confiscation proceedings that may follow against the ninth defendant; and*

   9.2 *should she oppose the confirmation of the order why she should not be ordered to pay the costs of her opposing this application.*

10. *The applicant is directed to give notice of this order by delivering a copy by facsimile or registered post or by hand to the First National Bank.*

11. *Should the sixth respondent intend to oppose the confirmation of this provisional order on the return day she must–*

    11.1 *within 5 (five) days of the service of this order on her, deliver her notice of intention to oppose; and*

    11.2 *furnish an address within 8 (eight) kilometers of the office of the Registrar of this Court to the applicant's attorneys of record at which she shall accept service of all notices, affidavits and other documents in these proceedings; and deliver her answering affidavit, if any within 15 days of notifying the applicant of her intention to oppose the application.*

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L. J. BOZALEK

JUDGE OF THE HIGH COURT