



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 16 July 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Nyhonyha N O and Others v NDPP (Case no 972; 973 & 974/22) [2024] ZASCA 113 (16 July 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment, wherein the appeals were dismissed, with costs, such costs to include those of two counsel, against the decision of a specially constituted full court of the Gauteng Division of the High Court, Johannesburg (the full court).

This matter involved appeals by several parties against a restraint order granted by the full court. The restraint order was sought by the National Director of Public Prosecutions (NDPP) under the Prevention of Organised Crime Act 121 of 1998 (POCA) in relation to alleged corruption, money laundering and fraud offences committed by directors of Regiments Capital (Pty) Ltd, which is in liquidation, Regiments Fund Managers (Pty) Ltd and Regiments Securities (Pty) Ltd (the Regiments Group of companies).

The Regiments Group had provided financial advisory services to state-owned entities such as Transnet and the Transnet Second Defined Benefit Fund (the Fund). The NDPP alleged that the Regiments directors, Dr Eric Anthony Wood, Mr Magandheran Pillay and Mr Litha Mveliso Nyhonyha, had engaged in unlawful activities that resulted in over R1 billion being paid to the Regiments Group, constituting the proceeds of crime. The Fund sued the appellants for some R848 million in losses which it allegedly suffered as a result of the Regiments Groups' unlawful conduct. Although the appellants denied the allegations, they paid approximately R639 million in settlement of those claims.

The appellants in this case were various entities and trustees who were holding property on behalf of the Regiments directors. They were cited as defendants in the NDPP's restraint application, as the NDPP alleged that the property they held qualified as 'realisable property' under section 14(1) of POCA and should be included in the restraint order.

The NDPP contended that the property held by the appellants should be included in the restraint order, as it constituted 'realisable property' belonging to Mr Nyhonyha and Mr Pillay under POCA. The NDPP argued that the focus should be on who controls the property, rather than on formal ownership.

The appellants, on the other hand, argued that their property should not be included in the restraint order, as they did not hold the property on behalf of the Regiments directors. They contended that the NDPP had to 'pierce the corporate veil' to include their property, which was not warranted in the circumstances.

The full court upheld the NDPP's appeals and confirmed the provisional restraint order, subject to a variation of the amount, and the exclusion of Regiments Capital. The full court held that the appellants' property (excluding that of Regiments Capital, which was in liquidation) should be included in the restraint order under section 14(1) of POCA.

The SCA granted the appellants special leave to appeal only on the issue of whether they held 'realisable property' within the meaning of section 14(1) of POCA on behalf of Mr Nyhonyha and Mr Pillay, such that their property could be restrained under the NDPP's application.

The SCA held that the purpose of a restraint order under POCA is to preserve assets pending the final determination of criminal proceedings, in order to ensure that no person can benefit from their wrongdoing. The Court noted that the focus is not on formal ownership, but on who controls the property or has its use and benefit.

The SCA held that the full court was correct in finding that the appellants' property should be included in the restraint order, as they were holding the property on behalf of Mr Nyhonyha and Mr Pillay. The Court explained that when a person stands in a particular relationship to the property, such that they have an 'interest' in it, they will be considered to be 'holding' it for the purposes of POCA, even if they are not the registered owners.

The SCA further held that POCA is intended to have a broad reach, in order to prevent sophisticated criminals from concealing their interest in the proceeds of crime through clever restructuring of their affairs. The Court held that the high court's decision was in line with this purpose and the principles established in previous judgments.

As a result, the SCA dismissed the appeals, with costs, including the costs of two counsel where so employed.

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