



CONSTITUTIONAL COURT OF SOUTH AFRICA

National Director of Public Prosecutions v Meir Elran

**CCT 56/12
[2013] ZACC 2**

**Date of hearing: 15 November 2012
Date of Judgment: 19 February 2013**

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today, the majority of the Constitutional Court upheld an appeal by the National Director of Public Prosecutions (NDPP) against a judgment of the Full Court of the South Gauteng High Court, Johannesburg (Full Court).

At the heart of the matter was the interpretation of section 44(2) of the Prevention of Organised Crime Act, 1998 (POCA) and the question when a defendant, against whose assets the NDPP has obtained a preservation order, may obtain an order for legal and living expenses from property that is subject to the preservation order.

In 2006, the NDPP obtained a preservation order under POCA against Mr Elran. The order was granted because there were reasonable grounds to believe that the property constituted the proceeds of illegal activity on the part of Mr Elran. Three years later, Mr Elran applied to the High Court for an order allowing him to fund his legal expenses from the property covered by the preservation order. In support of his application, he relied on affidavits from three years earlier, and did not provide any detailed information about charity and loans that he claims to have received since that time.

In terms of section 44, a High Court may permit payment of reasonable living and legal expenses from preserved property if an applicant meets certain requirements. The High

Court, and the Full Court, were both satisfied that Mr Elran had met these statutory requirements and granted payment of legal expenses.

In a judgment penned by Cameron J, concurred in by Mogoeng CJ, Froneman J, Van der Westhuizen J and Zondo J, the majority of the Constitutional Court concluded that the outcome reached by the High Court and the Full Court was wrong. The majority held that the wording of section 44(2) is clear. It specifically creates two preconditions that must be fulfilled before a High Court may grant living and legal expenses. The first precondition is need. The second precondition is disclosure. Where an applicant has failed to meet both of these requirements, a court does not have a power to grant an applicant expenses from preserved property. The majority held that by failing to disclose his liabilities, Mr Elran had not met those preconditions. In light of his non-disclosure, the Constitutional Court held that the High Court had no discretion to make an order for his legal expenses in his favour.

In a separate judgment, Zondo J concurred in Cameron J's judgment. However, Zondo J found that section 44 does not confer a discretion on a High Court to grant or refuse living expenses. Zondo J found that if a person in Mr Elran's position was found to have no unpreserved property from which he could meet his legal or living expenses and was also found to have disclosed his full interest in the preserved property and to have submitted a statement of his assets and liabilities as required by section 44, there could be no basis for the Court to refuse a provision of living or legal expenses.

In a dissenting judgment, Jafta J (with whom Moseneke DCJ, Nkabinde J and Yacoob J concur) concluded that he would have dismissed the appeal. The minority held that the requirement in section 44(2) is a minimum threshold that has to be fulfilled. However, it held that the requirement is not a precondition, but merely a consideration to be balanced in exercising the statutory discretion. Thus, even though Mr Elran's disclosure was incomplete, the minority was of the view that this did not bar the High Court from granting him legal expenses.