

## Rights of innocent parties married in COP under POCA

---

What is the position of an innocent party who jointly owns property attached and declared forfeit to the State under the Prevention of Organised Crime Act No 121 of 1998 (POCA) ? Should that party who is married to the guilty party in community of property suffer the consequences of the guilty party especially when he or she was unaware of the commission of the crime?

The Supreme Court of Appeal was called upon to decide on this issue in *Mazibuko v The National Director of Public Prosecutions* (113/08) [2009] ZASCA 52 (26 May 2009).

In the court's judgment, the forfeiture of the innocent party's interest in the property raised 'a number of constitutional issues' such as how would a forfeiture of that party's interest 'advance the main purpose of POCA?

The Court, per Bosielo AJA held that depriving that innocent party of her interest was 'constitutionally indefensible and therefore arbitrary' (para 23) and therefore in violation of her rights under section 25(1) of the Constitution.

Accordingly the SCA overturned the decision of the court which granted the order of forfeiture to the extent that upon disposal of the property as contemplated by section 57(1) of POCA the innocent party must be paid one half of the net proceeds of the property. It also held that the proceeds 'shall the separate property' of the innocent party and excluded from the joint estate of the appellants.

The full judgment can be accessed from the website of the Supreme Court of Appeal (<http://www.saflii.org/za/cases/ZASCA/2009/52.html>).

---

26 May 2009  
S A Jazbhay  
Omar & Jazbhay