



The appellants argued that the previous decisions of this Court in *Phillips v NDPP* (2003 (6) SA 447 (SCA)) (*Phillips*) and *Singh v NDPP* (2007 (2) SACR 326 (SCA)) (*Singh*) were definitive on the issue. In *Phillips*, this Court found that a restraint order granted under Chapter 5 of POCA was appealable. *Singh* involved a preservation order under Chapter 6. This Court commented in its judgment in *Singh* that the NDPP had correctly conceded that the order was appealable, following *Phillips*.

In its judgment today this Court rejected the submission that *Phillips* and *Singh* were determinative on the issue of the appealability of a preservation of property order. The Court identified material differences between restraint orders, under Chapter 5, which were considered in *Phillips*, and preservation orders under Chapter 6. The procedure encapsulated in s 38(1) read with s 39 was unique to the asset forfeiture regime under Chapter 6 of POCA. It deliberately positions the right to *audi alteram partem* within the post-preservation order phase. That the legislative scheme did not envisage, as a general principle, a route to opposition prior to the grant of a preservation order. This, together with other features of Chapter 6 demonstrated the legislative objective of insulating preservation orders from challenge pending the forfeiture process. This was because of the indispensable role that a preservation order played in securing proceeds and instrumentalities of crime. That objective would be compromised if preservation orders were susceptible to appeal. Furthermore, the Court held that a preservation and a forfeiture order shared a distinct symbiotic relationship not shared by restraint and confiscation orders under Chapter 5 of POCA. The Court in *Singh* had not given consideration to the unique features of the asset forfeiture regime under Chapter 6 of POCA, and was not determinative of the issue either. As such, the SCA found that preservation orders under Chapter 6 were not intended to be appealable.

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