IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

Case No. D1514/2025

In the matter between:

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE — **Applicant**

and

YUSUF ISMAIL KAJEE — **First Respondent**

ZAKKIYAH VAWDA — **Second Respondent**

IMRAAN IQBAL VALLY — **Third Respondent**

TEN WINTERS (PTY) LTD — **Fourth Respondent**

AMALGAMATED TOBACCO MANUFACTURING (PTY) LTD — **Fifth Respondent**

AFRIAG (PTY) LTD — **Sixth Respondent**

FAIRLEIGH COMMERCE (PTY) LTD — **Seventh Respondent**

DRK LOGISTICS (PTY) LTD — **Eighth Respondent**

PLUS0 (PTY) LTD — **Ninth Respondent**

DODO AFRICA (PTY) LTD **Tenth Respondent**

DRK TACTICAL (PTY) LTD **Eleventh Respondent**

DE ROBILLARD KAJEE (PTY) LTD **Twelfth Respondent**

TIANJIN PENGBO WEIYE SA (PTY) LTD **Thirteenth Respondent**

WOODWACKERS INTERNATIONAL CC **Fourteenth Respondent**

KAJEE VAWDA INVESTMENTS (PTY) LTD **Fifteenth Respondent**

SUMAIYA MAHOMED DAWOOD TAYOB N.O. **Sixteenth Respondent**

ABDOOL KADER TAYOB N.O. **Seventeenth Respondent**
[In their capacities as trustees of the Cameron Family Trust, IT4697/1993/PMB]

NADIRA JASAT N.O. **Eighteenth Respondent**

ZAKKIYAH VAWDA N.O. **Nineteenth Respondent**

SHAMEELA JASAT N.O. **Twentieth Respondent**
[In their capacities as trustees of the ZVK Trust, IT001105/2013/PMB]

ORDER

The following order shall issue:

1. The reconsideration application by the ninth and tenth respondents is dismissed.
2. The provisional preservation order granted on 27 February 2025 against the ninth and tenth respondents is confirmed.
3. The ninth and tenth respondents shall bear the costs of the application, including all costs previously reserved, on scale C, jointly and severally, the one paying the other to be absolved, including the costs of two counsel.

JUDGMENT

Singh J:

Introduction

[1] The applicant, the Commissioner for the South African Revenue Service (SARS) obtained a provisional preservation order (the preservation order) in terms of s 163 of the *Tax Administration Act* 28 of 2011 (TAA) against 20 respondents on an *ex parte* basis. The preservation order was granted in chambers on 27 February 2025. The ninth respondent, Plus0 (Pty) Ltd (Plus0) and the tenth respondent, Dodo Africa (Pty) Ltd (Dodo), anticipated the return day of the preservation order and in their reconsideration application, seek to have the preservation order discharged *in toto.* SARS seeks the confirmation of the preservation order against Plus0 and Dodo.

[2] SARS is represented by Mr *Sigogo SC* together with Mr *Molea.* Plus0 and Dodo are represented by Mr *Swanpoel SC* together with Mr *Boonzaaier.*

The common cause facts

[3] The following are common cause on the papers:

(a) The preservation order was obtained without notice to any of the respondents, including Plus0 and Dodo.

(b) The preservation order was executed at Plus0 and Dodo's place of business on 11 March 2025. All the business operations of Plus0 and Dodo fell into the hands of the *curator bonis,* who had been appointed pursuant to the preservation order.

(c) Plus0 carries on business as a logistics company in the field of perishable food items.

(d) Dodo is a property holding company, while Plus0 is its tenant.

(e) Both Plus0 and Dodo have their registered offices at 5[…], […]th Avenue, Bredellah, Kempton Park, Gauteng.

(f) Ms Tamara De Robillard (Ms De Robillard) is the director of Plus0 and Dodo. Her sister, Ms Charlene de Robillard, is a co-director of Plus0.

(g) Ms De Robillard was previously, for some three months, a director of the eighth respondent, DRK Logistics (Pty) Ltd (DRKL).

The issues

[4] The issues in dispute were crystallised in the parties' practice notes as the following:

(a) As a point *in limine,* whether the court hearing the preservation application had the necessary jurisdiction in respect of Plus0 and Dodo.

(b) Whether there were irregularities in the execution of the preservation order at Plus0 and Dodo's premises.

(c) The admissibility of hearsay evidence in respect of the accountant, Mr Patel.

(d) Whether SARS failed to disclose material information which, if it had been communicated to the court hearing the application *ex parte,* would have resulted in the preservation order being refused.

(e) The costs of the preservation application, including the costs which were reserved on 10 April 2025.

Point *in limine:* Lack of jurisdiction

[5] Plus0 and Dodo submitted that they are *peregrini* to this court, as their registered addresses and assets are situated in Gauteng. Consequently, this court did not have jurisdiction to grant the preservation order against them. It was submitted by Mr *Swanepoel* that insofar as SARS relied on s 21(2) of the *Superior Courts Act* 10 of 2013 (the SC Act) which provides that, *'a division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction'* Plus0 and Dodo are not parties to a cause over which this court has jurisdiction, as contemplated in the said section. In oral submissions, *Mr Swanepoel* submitted that in the event (and it was not conceded) that either Plus0 or Dodo had tax liabilities, such tax liabilities would be due and payable at SARS's offices in Kempton Park, Gauteng. Any alleged joint wrong doing by Plus0 and Dodo therefore, did not confer jurisdiction on this court. He submitted, on this ground alone, that the preservation order against Plus0 and Dodo ought to be discharged *in toto*.

[6] Mr *Sigogo* placed reliance on s 21(2) of the SC Act and submitted that this court has jurisdiction over any person residing or being within the area of jurisdiction of another court's division, provided that such a party is a party to the cause in

relation to which this court has jurisdiction. He submitted that it is common cause that Plus0 and Dodo had been joined as parties where this court's jurisdiction extends over the majority of the respondents. He further, in his written heads of argument, submitted that SARS's investigation had established a symbiotic relationship, alternatively a collusive arrangement amongst the respondents, including Plus0 and Dodo, who were participating in the furtherance of a co-ordinated scheme of tax evasion and an abuse of juristic persona involving the dissipation of assets (the scheme). This was being done to frustrate the collection of tax liabilities due and payable by all the respondents, as well, as a probable tax liability, individually or cumulatively, by them. Mr *Sigogo* submitted that the objection to this court's jurisdiction by Plus0 and Dodo is technical and ill-conceived. He placed reliance on *Permanent Secretary, Department of Welfare, Eastern Cape and Another v Ngxuza and Others,*[1] where the Supreme Court of Appeal stated:

> 'There can, in my view, be no doubt that the Constitution requires that, once an applicant has established a jurisdictional basis for his or her own suit, the fact that extra jurisdictional applicants are sought to be included in the class cannot impede the progress of the action'.

[7] SARS further relied on *Road Accident Fund v Legal Practice Council and others,*[2] where the court stated that questions of convenience, avoiding a multiplicity of applications, along with the additional costs, are further considerations in conferring jurisdiction upon a court.

[8] Plus0 and Dodo have contended that the basis upon which SARS joined them was because Ms De Robillard was a director of the eighth respondent, DRKL, for some three months. An analysis of the papers, however, reveals that this is not the only basis. There were transfers of motor vehicles from DRKL to Plus0. There was also a transfer of a motor vehicle from the twelfth respondent, De Robillard Kajee (Pty) Ltd to Plus0. DRKL itself was the recipient of a loan on Ms De Robillard's version, from the fourth respondent, Ten Winters (Pty) Ltd (Ten Winters). DRKL

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[1] *Permanent Secretary, Department of Welfare, Eastern Cape and Another v Ngxuza and Others* 2001 (4) SA 1184 (SCA), para 22.
[2] *Road Accident Fund v Legal Practice Council and Others* 2021 (6) SA 230 (GP) para. 17.

extended a loan to Dodo, which, on Dodo's own version, was used to acquire its immovable property. DRKL also paid certain expenses for Dodo in 2023.

[9] For the aforegoing reasons, it is clear to me that for SARS to have pursued Plus0 and Dodo where their registered offices are, would have been inconvenient and would have given rise to a multiplicity of applications. I am therefore satisfied that the court granting the preservation order had the necessary jurisdiction in respect of Plus0 and Dodo, as this court has jurisdiction in respect of the majority of the respondents. In the premises, the point *in limine* of lack of jurisdiction raised by Plus0 and Dodo is dismissed.

Irregularities in the execution of the order

[10] Plus0 and Dodo, in their heads of argument, submitted that the execution of an order must be meticulous and according to the letter thereof. They further submitted that not every failure to comply with the order will justify the discharge or setting aside of the order but the test is whether the execution is so seriously flawed that the court should show its displeasure by setting aside the order.[3] Plus0 and Dodo contended that some 20 people, including members of the South African Police Services (SAPS) and Hawks armed with automatic weapons, and SARS's security personnel entered Plus0's premises and stopped its business activities. These people were aggressive and intimidating. Neither the sheriff, nor any independent supervising attorney was present. It was further contended that the *curator bonis* was not present at the execution of the order despite him, being the only person authorised to execute the order and to enter the premises. The further complaint was that the *curator bonis* was supposed to have served the preservation order, together with a copy of the application papers, but no application papers accompanied the order.

[11] In its replying affidavit, SARS furnished an affidavit by Mr Hendrik Strydom (Mr Strydom) who was at the premises on the instructions of the *curator bonis*. He admitted that SAPS and security personnel were used because the *curator bonis* had

[3] *Retail Apparel (Pty) Ltd v Ensemble Trading 2243 CC and others* 2001 (4) SA 228 (T) at 233I to 234A.

received information that there was a possibility of violent responses by Plus0 and Dodo when the order was going to be served. The premises, therefore had to be secured as a safety precaution. Mr Strydom was unable to refute Ms De Robillard's allegations against the SAPS officials any further as he was not present. He further submitted that the only reason SARS officials were present was to assess whether there was a need for security guards and to deploy them at the discretion of the *curator bonis*. Once the premises had been secured, he then attended to give effect to the order.

[12] In relation to the allegations of harassment and intimidation, this court must adopt the *Plascon Evans rule*[4] and the version of Plus0 and Dodo must be accepted in this regard. If one accepts the version of Plus0 and Dodo, then the alleged acts of intimidation and harassment were unfortunate and unnecessary. Situations where there are acts of intimidation and harassment can have dire consequences. Part of SARS's function on a regular basis, is to invoke the provisions of s 163 of the TAA, as it did in this instance. SARS is therefore cautioned, in future, to ensure the presence of the sheriff, who would be an independent party, when orders are executed. As unfortunate as these events may have been, in my view, not much turns on this point and it does not advance Plus0 and Dodo's case in seeking the discharge of the preservation order.

The admissibility of the allegations relating to the accountant Mr Patel

[13] Plus0 and Dodo objected to the admissibility of the evidence obtained from Mr Patel, an accountant of the ATM Group of Companies (ATM Group), on the basis that same constituted hearsay evidence. SARS did not have a confirmatory affidavit from Mr Patel. This issue was not pursued by Plus0 and Dodo at the hearing of the opposed motion and, in my view, correctly so. Nonetheless, it was raised in Plus0 and Dodo's answering affidavit and addressed by SARS's counsel in their oral submissions.

[14] SARS submitted that the allegations in respect of Mr Patel were obtained pursuant to an interview held with him in terms of s 47 of the TAA. Section 47

[4] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

empowers SARS to gather relevant material in the form of, *inter alia,* interviews for the purposes of an audit. The interviews were conducted directly by Mr ParbhooKumar Moodley (Mr Moodley) who deposed to the founding affidavit, as well as Ms Matiho Pearl Sebaya (Ms Sebaya) who deposed to the supporting affidavit. SARS submitted that the responses by Mr Patel were direct responses to questions posed by Mr Moodley, hence allegations pertaining to Mr Patel were not hearsay. SARS further submitted that the requirement for it to obtain a confirmatory affidavit from Mr Patel is untenable as he is employed by the ATM Group of Companies. It was submitted that there was nothing untoward in SARS relying on information gathered from Mr Patel during the interview.

[15] It is trite that hearsay evidence is governed by the provisions of s 3 of the Law of Evidence Amendment Act 45 of 1988. In terms of s 3(1), the court must have regard to:

'(i) the nature of the proceedings;
(ii) the nature of the evidence;
(iii) the purpose for which the evidence is tendered;
(iv) the probative value of the evidence;
(v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;
(vi) any prejudice to a party which the admission of such evidence might entail; and
(vii) any other factor which should in the opinion of the court be taken into account…'

Having regard to the fact that Mr Patel worked for the ATM Group, which includes the fourth, seventh, eighth, eleventh, eighteenth, nineteenth, and twentieth respondents, I am in agreement with the submissions made by SARS that it would have been untenable to obtain a confirmatory affidavit from him in the circumstances where SARS brought the preservation application *ex parte*, as this would have defeated the purpose of this application.

[16] Having determined the points *in limine*, it is necessary to consider the relevant legislation and case law in respect of preservation applications. However, the

material allegations in the parties' respective affidavits first require consideration, as Plus0 and Dodo have also alleged that SARS did not place all material facts before the court hearing the *ex parte* application and, on that basis, the preservation order must be discharged in *toto*.

The material allegations relied upon by SARS in its affidavits

[17] SARS alleged that pursuant to an application for a search and seizure warrant brought on 21 February 2022, over 215 000 documents were recovered from various respondents. These documents were analysed as part of an investigation into allegations of non-compliance with the TAA, including non-declaration and under declaration of tax by the various respondents in that application. It is critical to mention at this point that SARS refers to 'respondents' in its founding affidavit. I will deal with the reference to 'respondents' later in this judgment.

[18] SARS initially focused on the tax and the financial affairs of the fourth and fifth respondents, as their activities pointed to tax evasion in respect of their income derived from, *inter alia*, the sale of tobacco and tobacco products.[5] In respect of the fourth respondent, it had failed to submit tax returns and the gross income of the fifth respondent was substantially less than cash inflows into its bank account.[6]

[19] As a result of the aforesaid analysis, SARS increased the scope of its audit to include the other respondents. SARS alleged that the evidence pointed to the first respondent as being the person in control of the fourth and fifth respondents who formed part of the ATM Group. SARS alleged that major sources of funds were dispersed through various bank accounts held in the names of the respondents, without taxes being paid.

[20] According to Mr Patel, the ATM Group comprised the fourth, fifth, seventh, eighth and eleventh respondents and included the ZVK Trust, amongst other entities.[7] SARS alleged that the ATM Group was controlled by the first respondent.

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[5] Preservation application, para 42 at page 72.
[6] Preservation application, para 42 at page 72.
[7] Preservation application, para 50 at page 74.

This allegation was made pursuant to the information gathered from Mr Patel during his interview.

[21] SARS's allegations in respect of Plus0 were the following:

(a) A substantial amount was transferred from Plus0's bank account from the period 30 September 2023 to 31 July 2024 into DRKL's account, in the total amount of R96 105 512.00. These deposits were questionable given that Plus0 had only been registered in 2023[8].

(b) A total amount of R1 769 870.83 was received into the bank account of Plus0 over the same period with the narration of *'DRK'* or DRK Tactical[9]. DRK Tactical is the eleventh respondent in the preservation application.

(c) Plus0 had submitted income tax returns for 2024 and declared a gross income of R127 175 330.

(d) A search on the SARS's computerised system revealed that several vehicles, mainly trucks that were registered in the name of Plus0, were previously registered in the name of DRKL.[10] A sampling of the vehicles revealed further that at least five of the vehicles changed hands from De Robillard Kajee (Pty) Ltd, (the twelfth respondent) to DRKL and then to Plus0.

(e) SARS submitted that this continuous cycle of registering the same vehicles in the name of related entities required scrutiny;

(f) In the case of one motor vehicle, there was a change of ownership from the sixth respondent to the twelfth respondent and then to Plus0[11].

(g) There was a material over-declaration of income in the sum of R23 421 321. by Plus0 for the 2024 year of assessment. SARS acknowledged that whilst this may include income accrued to Plus0, but not yet received, the other reasonable conclusion is that Plus0 received income into other bank accounts or through other means of cash which were untraceable by SARS and therefore incapable of being audited with a measure of accuracy.

(h) Due to the over-declaration of income, SARS has not calculated any potential tax liability for Plus0 but this did not derogate from the fact that the

[8] Preservation application, para 39 at pages 196.
[9] Preservation application, para 392 at page 197.
[10] Preservation application, para 497 at page 218.
[11] Preservation application, para 497 at page 218.

correctness of Plus0's declaration is doubtful and the subject of further investigations.[12]

(i) Plus0 had an outstanding tax debt of R527 947.23 emanating from its original assessment for the 2024 year of assessment.[13]

(j) On 9 October 2024, Plus0's tax practitioner conceded the tax indebtedness but requested a suspension of the payment incorporating a request for the remission of interest and penalties.[14]

(k) In addition, Plus0's annual financial statements revealed that there was a loan to Dodo for R20 million. Plus0 also made a payment of rental for R6 million to Dodo. This created the impression that R26 million was paid to Dodo. However, an analysis of Plus0's bank account for 18 and 22 December 2023, revealed that the sum of R27 005 000 was paid to Dodo in three tranches.[15] SARS submitted that this was yet another possible overstatement of expenses for the loan that was advanced.

(l) In summary, SARS alleged that there was a suspicious relationship between DRKL, Dodo and Plus0, with the *'common denominator',* being Ms De Robillard. This made it imperative for SARS to scrutinise the flow of funds between these companies.

[22] SARS relied on the following allegations in support of its preservation application in respect of Dodo:

(a) Dodo was registered on 15 May 2019 and submitted tax returns for the period from 2018 to 2023 wherein it declared a nil amount in respect of income because it was dormant and never traded.

(b) Ms De Robillard was the sole director of Dodo. In a further supplementary affidavit, SARS attached the share certificate of Dodo, which reflected that on 15 May 2019, the twelfth respondent was the registered share holder of 100 fully paid up shares in respect of Dodo. The sole director of the twelfth respondent is the second respondent, who is the wife of first respondent.[16]

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[12] Preservation application, paras 414 – 417 at pages 201-202.
[13] Preservation application, para 420 at page 202.
[14] Preservation application, para 421 at page 203.
[15] Preservation application, para 423 at page 203-204.
[16] Reconsideration application, paras 22 and 23 at pages B5-7 to 8.

(c) Despite having declared no gross income for 2023, Dodo claimed expenses relating to municipal and other charges in the sum of R42 638 and declared assets in the sum of R2 931 480 with a total liability of R2 974 80.

(d) If Dodo never traded in the 2023 year of assessment, it was not entitled to claim any expenses.

(e) Further credence to the fact that Dodo never traded is that it had no bank account in the 2023 year of assessment.

(f) Despite having no bank account or trading, it nonetheless purchased the immovable property which Plus0 leases.[17]

(g) Ms De Robillard's father, Mr Paul De Robillard had, during September 2020 requested Standard Bank to increase the transaction and profile limits of the sixth respondent, DRKL and Dodo.[18]

(h) On 29 April 2021, Mr De Robillard requested Standard Bank to send Dodo's bank statements to an e-mail address belonging to DRKL.

(i) During 18 December 2023 to 30 September 2024, Dodo received substantial amounts into its bank account and made payment of the sum of R23 880 970.77 during the 2024 year of assessment.[19]

(j) Dodo did not have any probable tax liability but its tax affairs required scrutiny;

(k) The fact that Plus0 had advanced a loan to Dodo prior to Dodo opening a bank account was also questionable.

(l) SARS alleged that there was a suspicious relationship between DRKL, Plus0 and Dodo, with Ms De Robillard being the common denominator in her capacity as a director of Plus0 and Dodo, as well as being a previous director of DRKL.

The Reconsideration Application

[23] Having summarised the allegations pertaining to Plus0 and Dodo, it is necessary to consider the responses of Plus0 and Dodo, as set out in their reconsideration application.

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[17] Preservation application, paras 438-440 at page 207.
[18] Reconsideration application, para 25.1 at page B5-8.
[19] Preservation application, para 445 at page 208.

[24] Plus0 and Dodo alleged that SARS failed to act with the utmost good faith and make full disclosure of all material facts which would have influenced the court's decision. SARS made a sweeping statement that the search and seizure proceedings were against most of the respondents but it did not disclose to the court that Plus0 and Dodo were not cited as respondents in those proceedings. No information, whatsoever, obtained in the documents which were seized, impugned either Plus0 or Dodo or pertained to them. Both Plus0 and Dodo were tax compliant at the time the application was brought. SARS had granted a request by Plus0 for the suspension for its tax obligations under s 164 of the TAA. Plus0 and Dodo learnt for the first time when reading this application of SARS's allegations and suspicions regarding their tax affairs as SARS had at no stage made any enquiries from either entity regarding those suspicions. Most of the other respondents were notified and interviewed but this was not a luxury afforded to Plus0 and Dodo.

[25] Ms De Robillard alleged the following in respect of Plus0:

(a) TJCAZ Share Trust is the 100% shareholder in Plus0. Ms De Robillard and her siblings are beneficiaries of the trust.

(b) Plus0 conducts business from 33 Pomona Road, Kempton Park, Gauteng, which is leased from DRKL. Plus0 also leases an immovable property from Dodo to house its fleet of vehicles.

(c) She denied that Plus0 is a 'front' for registering vehicles or a role player in the scheme but is a tax compliant business committed to the perishable foods logistics industry.[20] In June 2022, her sister, Ms Charlene De Robillard, requested her to take a position at DRKL, as another director had resigned in May 2022 and she accepted the position.

(d) At the time she joined, De Robillard Kajee (Pty) Ltd, the twelfth respondent, was the sole shareholder in DRKL.

(e) She began making enquiries about DRKL's financial records, and in particular, about a loan of approximately R46 million from Ten Winters. Mr Patel and DRKL's accountants were unable to provide satisfactory information regarding this loan. Due to the substantial amount of the loan, there was no value in the shares of DRKL.

[20] Reconsideration application, para 66 at page B44.

(f) She did not know Ten Winters or any of the associated persons referred to in SARS's affidavit.[21]

(g) She was not satisfied with the explanation regarding Ten Winters loan account or what it was for and she decided to form a new logistics company.

(h) She resigned from DRKL three months after becoming a director in July 2023.

(i) She engaged DRKL to assist Plus0 and utilised DRKL's airline freight account as Plus0 did not have an airline freight account.

(j) She denied that Plus0 and Dodo had or has had 'any affiliation, association, or dealings with any of the other respondents, save for DRK Logistics.'[22]

(k) She did not know any of the alleged role players (companies or individuals) referred to or implicated in the SARS's founding affidavit.[23] She further did not know the other respondents.[24]

(l) There was no basis for Mr Moodley to have been satisfied that a preservation order was justified against Plus0 and Dodo as there were no potential tax liabilities by either of them.

(m) There was no allegation made by Ms Sebaya that there was a risk of dissipation, disposal or removal, moreover because SARS had not conducted any audit or sought any information from either Plus0 or Dodo.

(n) There was no evidence implicating either Plus0 or Dodo in any scheme, tax evasion, abuse of juristic personality or dissipation of assets. Plus0 and Dodo were effectively innocent bystanders who had been dragged into the proceedings.

(o) She denied that DRKL formed part of the ATM Group and further that DRKL was run by 'an individual named Mr Kajee,' during the time that she was involved with that entity.

(p) At all material times, SARS was aware that Plus0 disputed its alleged tax liability of R527 947.23 in respect of the 2024 income tax year assessment and had lodged an objection against the relevant assessment. SARS was further aware that it had suspended Plus0's obligations to make payment of the disputed tax debt on 9 October 2024 pending the outcome of the

[21] Reconsideration application, para 75.1 at page B46.
[22] Reconsideration application, para 82 at page B48.
[23] Reconsideration application, para 83 at page B48.
[24] Reconsideration application, para 84 at page B48.

objection. The suspension of payment rendered Plus0 fully tax compliant in terms of s 256(3)*(b)* of the TAA. SARS misled the court to believe that Plus0 was non-compliant.

(q) There was no truth to the allegation that Plus0 was involved in a scheme rolling the registration of vehicles from one entity to another. All 49 vehicles and 57 trailers acquired by Plus0 from DRKL were acquired for value pursuant to payment of the sum of R35 million excluding VAT.

(r) The Purchase and Sale Agreement concluded between Plus0 and DRKL was attached as proof in support of these allegations.

(s) The payments from Plus0 to DRKL were in respect of the purchase of vehicles from DRKL, the use of services rendered by DRKL to Plus0 and rental for the premises situate at 33 Pomona Road, Kempton Park. In turn, she alleged that Plus0 also received payments from DRKL for the sale of diesel and logistical services as well as an erroneous payment of R1 652 945.99 into 'the wrong bank account', which was subsequently paid to Plus0.

[26] In relation to Dodo, Ms De Robillard alleged the following:

(a) She admitted that Dodo did not have any income for 2020, 2021, 2022 and 2023 and that it received its first rental income during 2024 after it concluded a lease agreement with Plus0 in November 2023.

(b) The loan facility by Plus0 to Dodo was to settle the loan facility provided by DRKL to acquire and develop the immovable property it owned.

(c) Dodo has been tax compliant.

(d) She admitted that a bank account for Dodo was opened during December 2023 and that Plus0's deposits into Dodo's account were an advance payment for rental in terms of a lease agreement.

(e) She denied that she is the 'common denominator' between DRKL, Plus0 and Dodo and that the allegations by SARS were speculative. DRKL paid Dodo's expenses until December 2023 in terms of a loan account.

The relevant legislation and case law

[27] Section 163(1) of the TAA regulates the granting of a preservation order and provides as follows:

'A senior SARS official may, in order to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full amount of tax that is due or payable or the official on reasonable grounds is satisfied, may be due or payable, authorise an *ex parte* application to the High Court for an order for the preservation of any assets of a taxpayer or other person. Further, between any person, subject to the conditions and exceptions as may be specified in the preservation order, from dealing in any manner with the assets to which the order relates.' (Underlining is my emphasis.)

[28] It is trite that an *ex parte* application is a departure from the ordinary principles applicable to applications. The courts have time and again held that *ex parte* applications should only be invoked where there is a good reason for the procedure, such as when the giving of the required notice would render any subsequent order, fruitless.[25] An applicant bears the onus of exercising the utmost good faith and must place all relevant material facts before the court, whether it is favourable to the applicant's case or not.[26] The court has a discretion to set aside an order or to preserve it, in the absence of material facts, being disclosed.[27] In appraising the matter, the court must first enquire whether there has been a serious non-disclosure on the statement of material facts as would entitle a to set aside the original order, and second, whether a court should do so, if this is found to be so.

[29] Section 163 (3) stipulates that a preservation order may be made if it is required to secure the collection of tax. It does, however, not state that the tax must currently be due and payable, nor does it state that the amount of tax must be quantifiable. It further does not state the circumstances under which the order must be made.

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[25] *Commissioner for the South African Revenue Services v Bachir and Others* [2016] ZAGPPHC 251, para 22.
[26] *Schlesinger v Schlesinger* 1979 (4) SA 342 (W).
[27] *Ibid* at 349B.

[30] In *Commissioner for the South African Revenue Service v Van der Merwe; In Re: Commissioner for South African Revenue Service v Van Der Merwe and others,*[28] the court stated:

'[43] No necessary implication exists which warrants reading a requirement of necessity into the statute. It follows therefore that for a court to determine whether a preservation order is required to secure the collection of tax in terms of s 163(3), it does not need to be shown that the grant of the order is required as a matter of necessity, or to prevent dissipation of assets. Rather, in making the assessment as to whether to grant the order or not, the court must be apprised of the available facts in order to arrive at a conclusion, reasonably formed on the material before it, as to whether a preservation order is required or not, to secure collection of tax. These facts must not amount to a statement of the applicant's opinion but must illustrate an appropriate connection between the evidence available and the nature and purpose of the order sought. It is not required of the court to determine whether the tax is, a matter of fact, due and payable by a taxpayer or other person contemplated in s 163(1) which will be determined by later enquiry. Rather, at the preservation stage, sufficient information is to be placed before the court to enable the court to determine whether such an order is required against the persons who it is sought.' *(Underlining is my emphasis.)*

[31] In *Commissioner, South African Revenue Services v Tradex (Pty) Ltd and others*,[29] the court, inter alia, dealt with the requirement contained in s 163(3) that a preservation order must be *'*required to secure the collection of tax*'.* The court referred with approval to the above-quoted dictum from *Van der Merwe.* The test formulated in *Tradex* is that the preservation of assets is said to be required 'if preservation would confer a substantial advantage in the collection of the tax'.[30] If a substantial advantage has been shown, it may be concluded that the element of need for the order has been met. The court in *Tradex* went on to state that 'required' in s 163 does not entail proof of an intention to dissipate on the part of the taxpayer.

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[28] *Commissioner for the South African Revenue Services v Van der Merwe;* In Re: *Commissioner for South African Revenue Services v Van Der Merwe and others* [2014] ZAWCH 59, *(Van Der Merwe)* para. 43.

[29] *Commissioner, South African Revenue Services v Tradex (Pty) Ltd and others,* 2015 (3) SA 596 (WCC) (*Tradex*).

[30] *Ibid* para 32.

What must be shown is 'that there is a material risk that assets which would otherwise be available for satisfaction of a tax debt, in the absence of a preservation order, no longer be available'.[31] The fact that a respondent believes that it is tax compliant is not a bar to a preservation order being granted.

[32] Lastly, in deciding a preservation application, the court must determine where the balance of probabilities lies on the issues relevant to the existence of the jurisdiction of facts and to then exercise its discretion.[32]

Evaluation of the issues

Prejudice suffered by Plus0

[33] The reconsideration application was brought in terms of Uniform rule 6(12)*(c).* The primary purpose of this sub-rule is to allow the party seeking a reconsideration to redress imbalances, injustices and oppression which may flow from the order.[33]

[34] Plus0 alleged, in its answering affidavit, that it is being prejudiced by being placed under curatorship as it will suffer reputational damage with its customers. Delayed payment of expenses will have a ripple effect of prejudice on its customers. It referred to three occasions, where payments were delayed, by the *curator bonis* and submitted that these instances were examples of the prejudice it endured by the preservation order and could endure in the future.[34]

[35] SARS, in its replying affidavit dealt with these issues adequately and explained that the delayed payments were due to *'teething'* problems when the *curator bonis* took over Plus0 and Dodo. It submitted that once the *curator bonis* and those assisting him settled in, no further problems arose. As at the date of the hearing of this matter, no further issues were raised regarding prejudice that either Plus0 or Dodo are suffering under curatorship.

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[31] *Ibid* para 35.
[32] *Lamola & Others v Commissioner for the South African Revenue Services* 2023 JDR 4834 (GP) para 38.
[33] *ISDN Solutions (Pty) Ltd v CSDN Solutions CC and others* 1996 (4) SA 484 (W) at 486 H-I.
[34] Reconsideration application, para 44 at page B37.

[36] I accept the explanation by SARS that there have been no further problems in the running of Plus0 and Dodo while under curatorship. This issue, therefore, requires no further consideration and I am of the view that there is no prejudice to Plus0 or Dodo as matters stand.

Material non-disclosure raised by Plus0 and Dodo

[37] In deciding whether the non-disclosures alleged by Plus0 and Dodo were material at the time the preservation order was granted, the question to be considered is whether the omissions by SARS were so material that had they been communicated to the judge who granted the preservation order, he would not have done so.

[38] The first complaint by Plus0 and Dodo was that SARS did not disclose that they were not parties to the application for a search and seizure warrant. Further, it was submitted that none of the documents, which were seized pursuant to the search and seizure warrant impugned Plus0 and Dodo. The schedule of the respondents in the search and seizure application indicates that the present first, second, fourth, fifth, sixth, seventh, eighth and twelfth respondents were respondents in that application.[35] That SARS did not disclose that Plus0 and Dodo were not respondents in the search and seizure application and that no documents implicating them had emerged, turns on nothing. SARS relied on the allegations in its founding and supporting affidavits in the preservation application to seek the preservation order against Plus0 and Dodo. The aforesaid non-disclosure, was therefore not material.

[39] The second complaint was that SARS did not disclose that Plus0 had made a request for the suspension of its tax obligations, which was granted by SARS. Mr *Swanepoel* argued that the failure to make this disclosure created the impression that Plus0 was non-tax compliant. In my view, the other allegations made by SARS against Plus0, namely that it had close links to the other respondents, such as DRKL and De Robillard Kajee (Pty) Ltd, the twelfth respondent, would not have resulted in the judge who granted the order refusing it, had the allegation been made by SARS

[35] Preservation application, at pages 322 - 325.

that Plus0's tax obligations had been suspended on 9 October 2024. In addition to the association between Plus0 and the other respondents whom I have mentioned, SARS also relied on the over-declaration of income by Plus0, which required consideration. As stated in *Tradex,* the fact that the taxpayer considers that it does not owe tax, does not bar a preservation order being granted.

[40] I am therefore of the view that the alleged non-disclosures complained of by Plus0 and Dodo of, were not so material that they would have led to the refusal of the preservation order.

Was the order necessary and is there a risk of dissipation?

[41] On the papers, the following emerges in respect of Plus0 and Dodo, even in giving Plus0 and Dodo, the benefit of the doubt that they were tax compliant:

(a) Ms De Robillard, upon becoming a director of DRKL requested the background and particulars regarding a substantial loan account in favour of Ten Winters (the fourth respondent). On her own version, she resigned from DRKL after being a director for some three months because she was not satisfied with the explanation furnished to her by the accountant, Mr Patel, regarding this loan account.

(b) Despite her reservations about DRKL's affairs, Ms De Robillard inexplicably was content with Dodo taking a loan from DRKL and for DRKL to pay certain expenses of Dodo. Ms De Robillard did not take this court into her confidence and state why a loan was allegedly obtained on behalf of Dodo from DRKL, given her reservations about DRKL's affairs. Further, no loan agreement between DRKL and Dodo was put up in the papers. All this court had regarding the loan, is the mere say-so of Ms De Robillard.

(c) Likewise, there was no explanation as to why despite her reservations about DRKL's affairs, Plus0 was content to purchase vehicles from DRKL. I have already mentioned the manner in which the vehicles changed ownership. I, particularly, refer to the motor vehicle being described as a BOX BODY BUSAF which was initially owned by Afriag (Pty) Ltd (the sixth respondent) and then transferred to De Robillard Kajee (Pty) Ltd (the twelfth respondent)

and then to Plus0.[36] The impression created by Plus0, in its affidavit, was that it only purchased vehicles from DRKL. This was clearly not the case.

(d) There was no explanation regarding Dodo's purchase and acquisition of its immovable property before it opened its bank account or where the loan amount purportedly received from DRKL to finance the acquisition of the property was paid into, in the absence of a bank account. Here too, Dodo did not take the court into its confidence. Instead the response to the allegations regarding the immovable property is a bare denial and an allegation that SARS's conclusions are, *'premised on Ms Sebaya's shameful speculation.'*[37]

(e) Ms De Robillard's steadfast denial that she did not know any of the respondents is not borne out on the papers. When she was the director of DRKL, De Robillard Kajee (Pty) Ltd (the twelfth respondent) was the shareholder of DRKL. This would have been in 2023.[38] As at 2023, the director of De Robillard Kajee (Pty) Ltd was Ms Zakkiyah Vawda (the second respondent), who is the wife of Mr Yusuf Ismail Kajee (the first respondent).[39]

(f) Further, the registered office of De Robillard Kajee (Pty) Ltd is the same as Ten Winters (the fourth respondent) and Amalgamated Tobacco Manufacturing (Pty) Ltd (the fifth respondent).[40]

(g) It also bears mentioning that at some point, a Ms Brita De Robillard was a co-director of De Robillard Kajee (Pty) Ltd (the twelfth respondent) together with Ms Vawda.[41] Ms Brita De Robillard has the same surname as Ms De Robillard. I do not accept that this is a coincidence.

(h) Further, despite distancing herself from any of the respondents, Afriag (Pty) Ltd (the sixth respondent) shared the same address as Plus0 being 33 Pomona Road, Kempton Park, Gauteng.

(i) Dodo also failed to mention that prior to the TJCAZ Share Trust, being the shareholder of Dodo, De Robillard Kajee (Pty) Ltd was the shareholder until 2024. The supplementary affidavit filed by SARS is replete with links between De Robillard Kajee (Pty) Ltd, DRKL and Dodo.

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[36] Preservation application, para 497 at page 218.
[37] Reconsideration application, para 143 at page B77.
[38] Preservation application, para 75 at page B46.
[39] Preservation application, para 486 at page 216.
[40] Preservation application, para 485 at page 216.
[41] Preservation application, para 487 at page 216.

[42] It is patently clear that Plus0 and Dodo did not take this court into their confidence and acknowledge these associations and dealings with the various respondents. The bare denial of knowledge or association with any of the other respondents is clearly misleading and untrue.

[43] Plus0 and Dodo, in my view, appeared to have laboured under the misconception that in the absence of a probable tax liability, a preservation order ought not to have been granted against them. Having regard to *Tradex* and the purpose of the order as set out in s 163(1) of the TAA, namely to prevent any realisable assets from being dissipated, which may frustrate the collection of tax which may be due or payable or where SARS has reasonable grounds to believe that such tax is payable, I am of the view that SARS has adequately demonstrated that Plus0 and Dodo have engaged in transactions with other respondents, they claim to be dealing with at arm's length or where they claim not to have any association with, or have no knowledge of at all.

[44] Plus0 and Dodo fall within the category of *'other person'* contemplated in s 163(1) of the TAA. I am therefore satisfied that the jurisdictional requirements for the preservation order have been met and that the order must be confirmed. Costs, including the reserved costs of 10 April 2025, must follow the result. This matter was considerably complex and spanned over 2500 pages. I am therefore, of the view, that costs on scale C is appropriate.

Conclusion

[45] In the circumstances, I make the following order:

1. The reconsideration application by the ninth and tenth respondents is dismissed.
2. The provisional preservation order granted on 27 February 2025 against the ninth and tenth respondents is confirmed.
3. The ninth and tenth respondents shall bear the costs of the application, including all costs previously reserved, on scale C, jointly and severally, the one paying the other to be absolved, including the costs of two counsel.

SINGH J

CASE INFORMATION

Date of Hearing	:	23 May 2025
Date of Judgment	:	24 June 2025

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