



Supreme Court of South Africa,  
*Public Prosecutor v. Staden*, Case No:  
730/2011(28 Nov 2012)

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# Keyword and Procedure

- ▶ Keyword: Restrain order, seizure of property, written and oral testimony, disclosure, standard of proof
- ▶ Procedure and Parties: lower judge allowed the provisional restraint order requested by public prosecutor (PP) not to dispose of property, as proceed of fraud. Mr. Staden-accused- opposed and filed an appeal to high court which decided in his favor. The public prosecutor appealed to the Supreme Court to request for the confirmation of the order issued by lower court.

# Applicable Rule/Standard

- ▶ ...What is required is only that it must appear to the Court on reasonable grounds that there might be a conviction and a confiscation order...(para.10)
- ▶ In order to succeed in confirming the restraint (as opposed to the confiscation) order the NDPP [public prosecutor] must show only that there are reasonable grounds for believing that a confiscation order may be made at the conclusion of the criminal trial, on the probability... (para. 24)
- ▶ Property subject to constraint order shall belong to the accused (para.26)

# Argument/Evidence

## Prosecutor

1. Only oral statement of Mr. de Vries, one of employee against Mr. Staden can not be disclosed due to prejudice to Mr. Vries (para.6), and will be disclosed during hearing (para.16)
2. CD on statement was provided to Mr. Staden although without index for document researching (statement) (para.16)
3. Property belonging to Mr. Staden (para.28)

## Mr. Staden:

1. No all statements were disclosed by PP based on his duty to disclose
2. He did not denies that property belongs to him (para. 28)

# Conclusion

- ▶ There are evidence that property belongs to Mr. Staden
- ▶ PP conducted in good faith not to disclose some statements
- ▶ Staden got CD, and although not index, he can use other function to search for document (statement), but he did not (para.19)
- ▶ Therefore, the order of the high court is set aside and replaced with the following order: *'The provisional restraint order granted on 12 December 2008 is confirmed. The respondent is ordered to pay the costs of the application including those of senior counsel.'* (para. 34)

# Note on Resource

▶ For the whole decision:

▶ <http://www.measboralaws.com/images/pdf/verdict/fdcdd6b4edcf345500809aa21667e71e.pdf>

▶ For summary of the decision:

<http://www.measboralaws.com/images/pdf/books-magazines/6f0607d9378ed8f1534df8c7d059d7d9.pdf>