

Declaration of forfeiture

30A. (1) Whenever any person is convicted of an offence under Chapter 2, the court convicting him or her may, in addition to any penalty which it may impose in respect of that offence, declare –

(a) any movable property –

(i) which was carried on the person of the convicted person at the time of his/her arrest; or

(ii) found in close proximity of the convicted person at the time of his/her arrest; or

(iii) carried on his or her person or found in the close proximity of the convicted person whilst he or she was upon or in the vicinity of a venue as described in subparagraph (b)(iii);

(b) any immovable property which was used -

(i) to facilitate the commission of the offences;

(ii) which made the offences easier to commit or more difficult to detect; or

(iii) which was used as a venue to harbour or receive victims of the offences under Chapter 2,

to be forfeited to the State.

(2) Anything forfeited under subsection (1) must, if it –

(a) is in the possession or custody or under the control of the convicted person, be seized by the police SAPS; or

(b) was seized in terms of section 21, 22 or 23 of the Criminal Procedure Act, be kept by the (police) SAPS;

(i) for a period of 30 days from the date of the declaration of forfeiture; or

(ii) until a finding has been made by the court, on a balance of probabilities, in respect of an application brought by a person other than the convicted person (the applicant) within the 30 day period referred to in subparagraph (i), that the applicant has a legitimate interest in the forfeited property on one of the following grounds:

(aa) That the applicant acquired the interest in that property lawfully, in good faith and for consideration, whether in cash or otherwise; and

(bb) that the circumstances in which the applicant acquired the interest in that property were not of such a nature that he or she could reasonably have been expected to have suspected that it would comply with the requirements described in section 30(1); or

(cc) that the applicant could not prevent the situation arising as provided for in subparagraph (bb).

(3) In order to make a declaration of forfeiture or to determine any interest as provided for in this section, the court may refer to the evidence and proceedings at the trial or hear any further evidence, either orally or by means of affidavit or affirmation, as it deems fit.

(4) A court which makes a finding referred to in subsection (2)(b)(ii) that an applicant has a legitimate interest in the forfeited property in question, may-

(a) in the interests of justice or in the public interest, make an order subject to the conditions that court deems appropriate, including a condition requiring the applicant to take all reasonable steps, within the period determined by the court, to prevent the future use of the property as an instrumentality of an offence;

(b) if it finds that the property is owned wholly by the applicant, set aside the declaration of forfeiture and direct that the property be returned to the applicant or, if the State has disposed of it, direct that the applicant be compensated by the State to the extent to which the State has been enriched by the disposal; or

(c) if it finds that the applicant has an interest in the property-

(i) direct that the property be sold by public auction and that the applicant be paid out of the proceeds of the sale an amount equal to the value of the applicant's interest therein, but not exceeding the proceeds of the sale; or

(ii) if the State has disposed of the property, direct that the applicant be compensated by the State in an amount equal to the value of the applicant's interest therein, but not exceeding the enrichment of the State by the disposal.

(5) Any person who is aggrieved by a finding or order made by a court under subsection (2)(b)(ii) or (4) may appeal against that finding or order as if it were a conviction by that court and the appeal may be heard either separately or jointly with an appeal against the conviction as a result of which the declaration of forfeiture was made or against a sentence imposed as a result of such conviction.