IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 121

Criminal Revision No 2 of 2025

Between

Public Prosecutor

… *Applicant*

And

Gumede Sthembiso Joel

… *Respondent*

GROUNDS OF DECISION

[Criminal Procedure and Sentencing — Disposal of property]
[Criminal Law — Offences — Endangered species]

Public Prosecutor
v
Gumede Sthembiso Joel

[2025] SGHC 121

General Division of the High Court — Criminal Revision No 2 of 2025
Vincent Hoong J
1 July 2025

4 July 2025

Vincent Hoong J:

Introduction

1 In the court below, the Respondent pleaded guilty to and was convicted of two offences under s 5(1)(*a*) punishable under s 5(2) of the Endangered Species (Import and Export) Act 2006 (2020 Rev Ed) ("ESA").[1] The Respondent received a global sentence of 24 months' imprisonment, and on 3 February 2024, he was repatriated to South Africa after he completed serving his sentence.[2] On 22 January 2025, a disposal inquiry ("DI") was heard to determine how certain items seized from the Respondent would be disposed of.

2 At the DI, the Prosecution sought the forfeiture of three items ("the

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1 1st Affidavit of Ivan Chua Boon Chwee dated 28 March 2025 ("ICBC's 1st Affidavit") at para 4.

2 ICBC's 1st Affidavit at para 4.

Respondent's items"), namely:

(a) one silver/white coloured Apple iPhone with black coloured phone casing (the "iPhone");

(b) one silver coloured Apple Macbook (Model No: A1278) (the "Macbook"); and

(c) one white coloured Apple Macbook charger with cable (the "Charger").[3]

3 At the close of the DI, the District Judge ("DJ") ordered that the Respondent's items be returned to him.[4] The Prosecution, being dissatisfied with the DJ's order, has since applied to this court for the DJ's order to be set aside and substituted with a forfeiture order in respect of all three of the Respondent's items.[5] At the hearing before me, I set aside the DJ's order and ordered that all three of the Respondent's items be forfeited to the State. I set out below the reasons for my decision.

4 Preliminarily, it is apposite to recall the applicable threshold for the court's revisionary jurisdiction. The High Court's revisionary jurisdiction, provided for in ss 400 and 401 of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"), should be exercised "sparingly" and the threshold that must be crossed before the court will act to grant any relief is that of "serious injustice". This, in turn, entails the finding that there is "something palpably wrong in the decision that strikes at its basis as an exercise of judicial power" (see *Rajendar*

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3 ICBC's 1st Affidavit at p 25 (Exhibit ICBC-2).

4 Record of Hearing ("ROH") at pp 25–26.

5 Notice of Criminal Revision dated 28 March 2025 at para 6.

Prasad Rai and another v Public Prosecutor and another matter [2017] 4 SLR 333 ("*Rajendar*") at [24]).

5 On this basis, I proceeded to assess the DJ's order. I first considered whether the Respondent's items were susceptible to forfeiture. After finding that they were, I then considered whether this court should exercise its discretion to set aside the DJ's decision and order the forfeiture of the Respondent's items.

Issue 1: Are the Respondent's items susceptible to forfeiture?

6 The court's power to dispose of property at the conclusion of a trial or inquiry is found in s 364 of the CPC.[6] In particular, s 364(2)(*a*) of the CPC extends this power of disposal to three categories of property, namely:

(a) any property in respect of which an offence is (or was alleged to have been) committed;

(b) any property which has been used (or is intended to have been used) for the commission of any offence; and

(c) any property which constitutes evidence of an offence.

7 In the court below, the DJ found that the Respondent's items were used for the commission of the two ESA offences on which he was convicted.[7] In arriving at this finding, the DJ referred to the legal test set out in *Public Prosecutor v Mayban Finance (Singapore) Ltd* [1997] 3 SLR(R) 216 ("*Mayban Finance*"), which held that an item of property would be deemed to be "used"

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6 *The Criminal Procedure Code of Singapore: Annotations and Commentary* (Jennifer Marie, Mohamed Faizal Mohamed Abdul Kadir gen eds) (Academy Publishing, 2012) at para 19.002.

7 ROH at p 25, lines 1–5.

in the commission of an offence so long as it was "directly related and substantially connected" to the offence (at [26]). The use of the item need not be an essential ingredient of the offence, and the court ought not to distinguish between using the item in "*facilitating* the commission of the offence" and using it "*in* the commission of the offence" [emphasis added] (at [26]).

8 However, as the Respondent rightly pointed out in his written submissions,[8] the DJ's finding that the Respondent's items were "used" for the commission of the ESA offences was incongruous with the reasoning that the DJ relied upon in substantiating this finding. Indeed, immediately after making this finding, the DJ proceeded to observe that the Macbook would "show" that the Respondent "was aware of the illegality of his intended course of action", which would "aid the Prosecution should the matter go on for hearing on the issue of *mens rea*".[9] The DJ then made a similar observation in respect of the iPhone, that it "contain[ed] incriminating communications which could be used to establish the issue of *mens rea*".[10] Quite apart from the fact that the offence in s 5(1)(*a*) of the ESA is a strict liability offence that has no *mens rea* element, the DJ's observations appeared to go towards the limb set out in [6(c)] above (*ie*, the property constitutes evidence of the offences) rather than the limb in [6(b)] (*ie*, the property was used for the commission of the offences).

9 The DJ did not err in finding that the iPhone, Macbook, and Charger were used for the commission of the offences because they were directly related and substantially connected to the offences.

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8 Respondent's Written Submissions dated 13 June 2025 ("RWS") at paras 34(a) and 36.

9 ROH at p 25, lines 5–8.

10 ROH at p 25, lines 9–12.

The iPhone

10 The iPhone was used to coordinate material aspects of the offence. It was through the iPhone that the Respondent's supplier of rhinoceros horns, one Jaycee Israel Marvatona ("Jaycee"), requested the Respondent to transport rhinoceros horns from South Africa to Laos, transiting in Singapore.[11] The iPhone was also used by the Respondent to provide Jaycee with his passport details to facilitate the flight booking to Singapore and Laos, and to apply for an eVisa to enter Laos.[12] On 3 October 2022, the Respondent received, on the iPhone, a Laotian eVisa approval letter which Jaycee applied for on his behalf for use after transiting through Singapore.[13]

11 Additionally, the iPhone was used to facilitate the Respondent's receipt of financial reward for the offences. Sometime in or before September 2022, Jaycee informed the Respondent that he would make the Respondent's participation in smuggling the rhinoceros horns "worthwhile" and give him cash.[14] On 3 October 2022, the Respondent used the iPhone to send his company's bank account details to Jaycee, who then deposited a sum of ZAR 9,000 (approximately $670) into the account.[15]

12 The Respondent submitted that the iPhone was not used for the commission of the offences. He argued that he only used it for communications on rhinoceros horns in general, as opposed to the specific instance of smuggling

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11 ICBC's 1st Affidavit at p 21 (Exhibit ICBC-1).

12 ICBC's 1st Affidavit at p 21 (Exhibit ICBC-1).

13 Supplementary Affidavit of Ivan Chua Boon Chwee dated 4 April 2025 ("ICBC's 2nd Affidavit") dated 4 April 2025 at p 25 (Exhibit ICBC-2A).

14 ICBC's 1st Affidavit at p 21 (Exhibit ICBC-1).

15 ICBC's 2nd Affidavit at p 24 (Exhibit ICBC-2A).

rhinoceros horns on 4 October 2022.[16] I disagreed with this submission. The iPhone was used to coordinate logistical preparations for the specific act of smuggling on 4 October 2022. The Respondent used the iPhone to provide Jaycee with his passport details to facilitate the booking for his flight into Singapore on 3–4 October 2022, and to apply for an eVisa to enter Laos thereafter. He also received the Laotian eVisa on the iPhone. These messages facilitated the preparation of the offences and were not just a general discussion about rhinoceros horns. They were directly related and substantially connected to the offences, leading to the DJ's finding that the iPhone was used for the commission of the offences.

The Macbook and Charger

13 The Respondent argued that the Macbook was not used for the commission of the offences. He said that "[t]here is nothing to suggest that the Macbook was used by [him] or to assist [him] in the commission of the ESA offences".[17] I rejected this argument. The Macbook was similarly used to undertake preparatory acts for the commission of the offences. A few hours before departing South Africa for Singapore with the rhinoceros horns, the Respondent used the Macbook to conduct research on the detection and seizure of rhinoceros horns at Singapore's checkpoints. The Respondent conducted internet searches using the Macbook with the search term: "is rhino horn illegal in Singapore" and accessed articles titled "26kg of rhino horn destined for Singapore found in hand luggage", "Singapore outlaws the sale of rhino horns", and "Singapore and Thailand Customs each seize 22kg rhino horns".[18] The

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16 RWS at para 36(c).

17 RWS at para 36(b).

18 ICBC's 1st Affidavit at p 33 (Exhibit ICBC-2).

Respondent's internet activity was not restricted to research on Singapore law in the abstract. These internet searches on the Macbook were made immediately before the offence and would have provided the Respondent with an insight into the legality of the very act he was soon to undertake and Singapore's prior enforcement track record. The information he obtained enabled him to assess the risks of detection and was obtained through the Macbook as a part of his planning and preparation for the offences.

14 Accordingly, I found that the Macbook was used for the commission of the offences as it was directly related and substantially connected to the offence. I noted that the Charger is a critical accessory of the Macbook which the offender had in his possession to power up the Macbook. Without the Charger, the Macbook would have been of little utility. It was therefore appropriate to view the Macbook and Charger together as a set, with both items operating in conjunction to enable the Respondent to conduct preparatory research and planning for the offences.

Issue 2: Should the Respondent's items be forfeited?

15 Having found that the iPhone, Macbook, and Charger were susceptible to forfeiture, I turned to consider whether they should be forfeited. As this court held in *Prime Shipping Corp v Public Prosecutor* [2021] 4 SLR 795 ("*Prime Shipping*"), forfeiture under s 364 of the CPC is discretionary, and thus, there is a need for the court to consider the policy and purpose behind an order for forfeiture, as well as its potentially draconian consequences, before exercising its discretion to issue such an order (at [34]). To that end, this court identified (at [37]) several distinct but interrelated purposes which may undergird a forfeiture order:

(a) First, there is a punitive purpose, as forfeiture can serve as a form of punishment by imposing an "additional penalty".

(b) Second, there is a deterrent purpose, as forfeiture can deter both potential offenders and the instant offender from committing similar offences in the future.

(c) Third, there is a preventive purpose, which is applicable where the property used to commit the crime is removed from circulation.

(d) Fourth, there is an equitable purpose, as forfeiture can be used to prevent a complicit or convicted claimant of the property from being unjustly enriched.

16 In the present proceedings, the Prosecution sought to invoke the deterrent purpose,[19] as well as the public policy rationale of international legal cooperation.[20] I shall address these in turn.

Deterrence

17 The Prosecution contended that forfeiture would deter others from committing ESA offences. Specifically, the Prosecution submitted that forfeiture would signal, "at a systemic level", that Singapore takes a firm stance against wildlife trafficking, and that potential offenders under the ESA run a financial risk when they opt to engage in such criminal conduct.[21]

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19 Applicant's Written Submissions dated 13 June 2025 ("AWS") at paras 39–43.

20 AWS at paras 44–51.

21 AWS at para 43.

18 The DJ was not persuaded by this argument. First, he considered that the Respondent's items were "clearly very ubiquitous items and are relatively affordable".[22] Presumably, this would lessen the deterrent effect of forfeiture because the Respondent or another hopeful offender could easily replace the forfeited items at little cost. Second, the DJ considered that forfeiting the Respondent's items would "not very much add to the punishment or contribute to the deterrent element", as the offender "has already been severely punished", having been given the maximum sentence of 24 months' imprisonment.[23]

19 In my judgment, the DJ's decision was "palpably wrong" in a way that "[struck] at its basis as an exercise of judicial power" (*Rajendar* at [24]). Having correctly found that the Respondent's items were used for the commission of the offences, the DJ wrongly exercised his discretion in deciding not to forfeit them, basing this decision on irrelevant considerations that were clearly contrary to the principles set out in the case authorities.

20 First, the ubiquity and relative inexpensiveness of the Respondent's items were not relevant reasons for refusing to order forfeiture.

(a) The instrumentalities of crime may often be commonplace and low-value items (*eg*, to use the Prosecution's example,[24] a knife used to cause hurt). To hold that the ubiquity of an item militates against forfeiture would mean that many everyday items that are directly and substantially connected with the commission of offences cannot be forfeited. Such a principle would unjustifiably limit the deterrent and

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22 ROH at p 25, lines 15–16.

23 ROH at p 25, lines 23–27.

24 AWS at para 34.

preventive effects of forfeiture orders, as instrumentalities of crime that comprise easily obtainable or inexpensive items would, in many cases, be returned to the offender. Forfeiture would, under this paradigm, only apply readily to a small subset of seized items that are worth a relatively dear sum of money, or which are not easily obtained. This cannot be right. The court should be entitled to deprive an offender of the instrumentalities of crime in order to serve the deterrent and preventive purposes, even if the instrumentality is ubiquitous or inexpensive.

(b) It is true that the value of the item is relevant in considering whether forfeiture would be proportionate to the gravity of the offence (*Magnum Finance Bhd v Public Prosecutor* [1996] 2 SLR(R) 159 ("*Magnum Finance*") at [26] and [38]; *Prime Shipping* at [34]–[36]; [39]–[40]). Crucially, however, this consideration of value operates in the *opposite* direction of the DJ's reasoning. In both *Magnum Finance* and *Prime Shipping*, the court considered whether the value of the item sought to be forfeited was disproportionately *high* compared to the gravity of the offence and the complicity of the item's owner. Conversely, the DJ in this case refused to forfeit the Respondent's items because the value of those items was *low*. Applying the principles in *Magnum Finance* and *Prime Shipping*, the relatively low value of the Respondent's items would have been a factor that militated towards, and not against forfeiture.

21 Second, the fact that the Respondent had received a relatively severe sentence is also not a relevant consideration that militates against forfeiture. The authorities cited at [20(b)] above suggest that the gravity of the offence and the maximum punishment it entails are relevant considerations. Once again,

however, this consideration operates in the opposite direction of the DJ's reasoning. The court ought to be concerned with whether the forfeiture of an item imposes an overly *high* detriment on the owner of the item that is out of proportion with the punishment for the offence. In other words, the appropriateness of forfeiture scales in direct proportion with the severity of the offence and its punishment – the more serious an offence, the more justified an order of forfeiture would be. In holding that the severe sentence imposed on the Respondent militates *against* the granting of a forfeiture order, the DJ exercised his discretion in a manner that was not only contrary to the authorities, but in the complete opposite direction of what the authorities suggest.

22 The obvious incongruence between the DJ's decision and the authorities made this a case where the DJ's decision was "clearly wrong", and not just a case where the court hearing the criminal revision "would have come to a different decision" (*Ang Poh Chuan v Public Prosecutor* [1995] 3 SLR(R) 929 ("*Ang Poh Chuan*") at [28]).

23 The Prosecution rightly submitted that forfeiting the Respondent's items would be appropriate in this case. In *Hong Leong Finance Ltd v Public Prosecutor* [2004] 4 SLR(R) 475 ("*Hong Leong*"), the court considered an offence under s 23(2) of the Wholesome Meat and Fish Act (Cap 349A, 2000 Rev Ed) to be "serious" (at [27]). The maximum punishment for this offence is a fine not exceeding $50,000 or imprisonment for a term not exceeding two years or both. The court held that "due to the grave nature of the offence", it was "appropriate" to forfeit a vehicle used by the offender, but which belonged to a hire-purchase company (at [27]). In the present case, the offences of which the Respondent was convicted carry the same maximum punishment as that in *Hong Leong*, and thus can be considered equally serious offences, the gravity

of which warranted a forfeiture order. Moreover, the Respondent's items belonged to the Respondent himself (as opposed to an innocent third-party) and were of significantly less value than the forfeited vehicle in *Hong Leong*. Accordingly, if the forfeiture order in *Hong Leong* was considered appropriate, it would have been even more appropriate to grant the forfeiture order in the present case.

24 Additionally, I agreed with the Prosecution that deterrence is a critical consideration in the present case. With respect to specific deterrence, the present case is a particularly egregious instance of offending under s 5 of the ESA. The Respondent smuggled some $1.2m worth of rhinoceros horns into Singapore, making this one of the largest seizures of contraband products under the ESA in Singapore's history.[25] The Respondent's offending attracted the maximum punishment of 24 months' imprisonment under s 5(2) of the ESA, meaning that it is among "the worst type of cases" falling within s 5 of the ESA (*Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [44]). A strong deterrent signal should be sent to the Respondent and his co-conspirators. This can be achieved by augmenting the punishment for the offences with a forfeiture order targeting the items used to commit the offences.

25 I should also add that the deterrent rationale is particularly weighty when the items sought to be forfeited are electronic devices that were used to commit offences. Because of the ubiquity and accessibility of electronic devices with internet connectivity, would-be offenders have ready access to devices that can be abused to prepare for, coordinate, and execute criminal acts with relative ease. This includes sophisticated criminal schemes involving multiple persons

[25] AWS at para 2.

(like the one in the present case) that would not have been possible without the connectivity that such devices provide. Additionally, these devices provide criminals with ready access to encrypted communication and internet browsing platforms, which they can use to conceal their criminal acts or the traces of such acts. This in turn stymies efforts by law enforcement agencies to detect offences committed using these devices. It is therefore imperative that the abuse of electronic devices for criminal purposes is prevented and deterred, and the forfeiture of such devices is one avenue for doing so. In my view, therefore, where electronic devices are used to commit offences, the starting point should be to forfeit these devices.

26 I thus agreed with the Prosecution that the deterrent rationale justified the forfeiture of the Respondent's items. I found as well that the DJ's decision in respect of this factor was "palpably" or "clearly" wrong (in the words of *Rajendar* at [24] and *Ang Poh Chuan* at [28]). Serious injustice had been occasioned to the State because of the DJ's order. In *Lee Chen Seong Jeremy and others v Public Prosecutor* [2019] 4 SLR 867 at [112], the court held that "there was serious injustice because property which indisputably belonged to the petitioners was being retained by the [Commercial Affairs Department] without any legal basis for its retention". In the same vein, there was serious injustice in this case because the Respondent was allowed to receive property that should instead have gone to the State. The DJ's decision deprived the State of property that it should have received and compromised its interest in depriving an offender of further use of his devices which he had used to commit his criminal scheme. This warranted the use of the court's revisionary power to set aside the DJ's decision and order, in its place, that the iPhone, Macbook, and Charger be forfeited to the State.

International legal cooperation

27 The Prosecution, in its written submissions, made reference to a mutual legal assistance ("MLA") request from the Republic of South Africa,[26] through which the South African authorities expressly indicated that they are seeking possession of the Respondent's iPhone.[27] The Prosecution argued that this request militated towards the grant of a forfeiture order.

28 It was not necessary for me to comment on this argument because I had held, based on my analysis at [17]–[26] above, that a forfeiture order in respect of the Respondent's items was justified for the purpose of preventing their further use and in the interests of deterrence. In any event, the MLA request was irrelevant. The disposal inquiry was conducted by the DJ given the opposing positions taken by the parties in relation to the *disposal* of the Respondent's items. At no point had the Prosecution sought to *retain* the Respondent's items for the purpose of any investigations or legal proceedings arising from the MLA request, and the Prosecution's position throughout the proceedings had been that the property was to be *forfeited* to the State.

Conclusion

29 For the foregoing reasons, I allowed the Prosecution's application, set aside the order made by the DJ, and ordered that the iPhone, Macbook, and

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26 AWS at paras 3, 8, and 45–50.

27 AWS at para 45, citing ICBC's 2nd Affidavit at p 55.

Charger be forfeited to the State.

Vincent Hoong
Judge of the High Court

Hu Youda, Eric (Attorney-General's Chambers) for the applicant;
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