

**THE REPUBLIC OF SEYCHELLES**

**IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT VICTORIA**

Civil Side No 144 of 2009

The Financial Intelligence Unit  
Applicant

versus

Clive Lawry Allisop  
Respondent

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*David Esparon, Principal State Counsel for the Applicant*

*Anthony Juliette for the Respondent*

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**RULING**

**Egonda-Ntende CJ**

1. The applicant is the Financial Intelligence Unit, herein after referred to as the FIU, by virtue of Section 2 of the Proceeds of Crime (Civil Confiscation) Act, hereinafter referred to as POCCCA. The respondent is an adult male of Pointe Laure, Mahe who was found in possession of some property that was the subject of an interim order issued under section 3 of the POCCCA. The applicant now seeks interlocutory orders under section 4 of POCCCA in respect of the same property by an application dated 10 July 2009.
2. The applicant seeks an interlocutory order pursuant to section 4 of POCCCA prohibiting the respondent or such other person as this court may order or any person having notice of the making of this order from disposing of or otherwise dealing with the whole or any part of the property set out in the motion or diminishing its value. Secondly the applicant seeks a further order pursuant to

section 8 of POCCCA appointing Declan Barber, Director of FIU, Receiver of all the property set out in the motion on the following terms:

'a) To take possession of the property forthwith and hold the same to the credit of this suit pending further order of the Court.

b) To retain the said property in the interest bearing deposit account at Nouvobanq, Victoria, Seychelles.

c) That any instrument of withdrawal from the said account be countersigned by the Registrar of this Court, or such other person that the Court shall direct.

d) That the Receiver shall report by affidavit filed in this suit as the Court may from time to time direct.

as this Court shall from time to time direct.

f) Liberty to apply.'

e) To pay out all or part of the said money

3. The applicant further seeks that the respondent pay the applicant costs of these proceedings.

4. The property in question is: a) €33,030 found in the wheel; b) R 551,350 found in the wheel; c) R 7,000 found in a rice steamer; d) R 17,000 found in the cash box.

5. The grounds upon which this application is based are set out in the motion. Firstly it is the belief of Mr Liam Hogan, Deputy Director of the FIU under section 9 of POCCCA that:

'a) the respondent is in possession or control of specified property set out herein above which constitutes directly or indirectly benefit from criminal conduct;

b) the respondent is in possession or control of specified property which was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct and;

c) that the total value of the property referred to above is not less than R 50,000.'

6. Secondly that there is confidential information that the respondent is a drug trafficker. Thirdly the possession in suspicious circumstances by the respondent of a large sum of cash and his attempts to conceal possession of the same. Lastly that the criminal conduct is drug trafficking and money laundering. The affidavits of Liam Hogan and Brian Nicette were filed in support of this application and by reference reliance is placed on the earlier affidavits sworn and filed in the section 3 proceedings for an interim order.

7. The respondent opposes this application. He denies any allegations that the money

seized from his home is the benefit from criminal conduct or directly or indirectly acquired from property, either wholly or partly, that is derived from benefit from criminal conduct. He filed an affidavit in support of his case and also cross examined Mr. Hogan and Mr. Nicette.

8. The facts that are not in dispute are that on 17 November agents of NDEA conducted a search at the home of the respondent, in his presence and that of other people. The search was seeking for drugs. They found no drugs but found substantial sums of money concealed in various and unusual places. €33,030 was found in the spare wheel of a car as was R 527,350. R 7,000 was found in a rice steamer. And R 17,000 was found in the cash box.
9. Neither the NDEA nor the FIU is in a position to initiate through the Attorney General the commencement of a criminal prosecution of the respondent on the ground that there is not sufficient evidence in their position to warrant a criminal prosecution. However, Mr. Hogan now believes there is sufficient evidence to prosecute respondent for money laundering.
10. The respondent claimed that he had a garage and imported spare parts. He had no licence from the Seychelles Licensing Authority to run any of the said business. There were no income tax returns in respect of any income made by the respondent and his partner, Yvette Sifflor.
11. Apart from the foregoing facts not in dispute or which have not been controverted by the respondent, in the opinion of Mr. Hogan the sums of money seized from the respondent could not have been income from a garage/workshop, given the significant sums involved. The spare parts that had been imported were not financed through any bank loans.
12. Mr Hogan stated in part during cross examination.

'I should point out to the court that we are considering and seeking to charge him with money laundering and I will put before the court evidence of his movement of cash and his history. Mr Allisop is not a person who has been employed in the State since 2002. He has paid no tax. He is not recorded as a farmer. He is not recorded as a fisherman. He is not licensed in any capacity here. Mr. Allisop and his partner, Yvette Sifflore between them they have moved over two million and six million rupees into accounts. The bulk of these had been cash lodgements. I will show/ produce to court that in fact they had done parallel lodgements, that is a system where you hide, you use different accounts, you hide the amounts by putting it on the same day. You do not breach the rupee threshold. In Mr. Allisop's account he has moved almost R 600,000 and in his partner's account she has put in almost a quarter of a million rupees. They have

travelled abroad,. Mr. Allisop has travelled on 14 occasions abroad. His partner has travelled on 9 occasions abroad at a cost of SR 199,000. If you do not consider the average wage of that period was R 2,000 for a tradesman and these people are not working, not recorded as working, have no profits recorded, they also owned at the time 4 vehicles to the value of R 250,000. Mr Allisop has claimed an application for boat charter license and he owns a boat to the value R100,000, that he was in position to put R 375,000 into the operation of boat chartering yet and without loan or without support from anybody else. Yet he is not employed, has never worked, is never recorded as working. Yes I believe I have a case to make for money laundering.'

13. In reply the respondent stated in his affidavit that he is businessman, without disclosing the nature of his businesses or their location(s), who had been targeted by the NDEA on many occasions. He has previously been searched in person and his premises for drugs but all this has been in vain. That since his money was seized he waited for 6 months to see if he would be charged but he has not been charged to date. This application is merely a response to his own suit (Civil Side No 117/09) filed against the NDEA and Government for the return of his money and other property.
14. The respondent denies that he has ever been involved in crime or criminal activity and that there is no need for the appointment of a Receiver. He further states that there is no reasonable and credible basis for Mr. Hogan's belief that the money in question is the wholly or partly, directly or indirectly the proceeds of criminal activity or benefit of crime. There is no justification for holding the respondent's property and the same should be released.
15. Mr. David Esparon, learned Principal State Counsel, appearing for the Applicant submitted that the applicant had established the necessary basis for an interlocutory order to issue from this court. The belief of Mr. Hogan was based upon circumstantial evidence before the court. The current proceedings are civil in nature and there was no requirement that a person is charged or convicted of an offence first before these proceedings can issue.

16. Mr. Anthony Juliette, learned counsel for the respondent, submitted concealment of money is no crime and everyone does conceal money. The state appeared to be relying only on the belief of Mr. Hogan. This was not enough. In any case the belief had to be based on reasonable grounds. No such grounds had been disclosed. The belief was not supported by any evidence.
17. Mr. Juliette further submitted that for approximately 2 years the applicant or government had failed to charge his client with any offence. On their affidavits they indicate that there is not enough evidence to commence criminal proceedings against his client. As the applicant or Government had failed to charge the respondent, it is clear that there is no reason why this application should succeed. It was only brought because the respondent had commenced proceedings against Government for the recovery of his money and other property that was confiscated from his home.
18. The starting point in considering this application must be a consideration of the law on the point and determine what has to be established at this stage if this application is to succeed. I will then proceed to relate the evidence to the law before coming to a final decision on this application.

19. Section 4 of POCCCA states in part,

'(1) Where, on an inter partes application to Court, in that behalf by the applicant, it appears to the Court, on evidence, including evidence admissible by virtue of section 9, tendered by the applicant, that –

(a) a person is in possession or control of --

(i) specified property and that the property constitutes, directly or indirectly, benefit from criminal conduct; or

(ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct; and

(b) the value of property or the total value of the property referred to in sub paragraphs (i) and (ii) of paragraph (a) is not less than R50,000,

the Court shall make an interlocutory order prohibiting the person specified in the order or any other person having notice of the making of the order from disposing of or otherwise dealing with the whole or, any part of the property, or diminishing its value, unless, it is shown to the satisfaction of

the Court, on evidence tendered by the respondent or any other person, that --

- (i) the particular property does not constitute, directly or indirectly, benefit from criminal conduct and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct; or
  - (ii) the total value of all the property to which the order would relate is less than R50,000: Provided that the Court shall not make the order if it is satisfied that there would be a risk of injustice to any person (the onus of establishing which shall be on that person), and the Court shall not decline to make the order in whole or in part to the extent that there appears to be knowledge or negligence of the person seeking to establish injustice, as to whether the property was as described in subsection (1)(a) when becoming involved with the property.
- (2) An interlocutory order –
- (a) may contain such conditions and restrictions as the Court considers necessary or expedient; and
  - (b) shall provide for notice of it to be given to the respondent and any other person as directed by the Court, who appears to be affected by it unless the Court is satisfied that it is not reasonably possible to ascertain the whereabouts of the respondent or that person.'

20. The elements necessary for an application under section 4 of POCCCA to succeed are (a) if it appears to court on the evidence adduced including section 9 evidence, (b) that a person is in possession or control of specified property which constitutes, directly, or indirectly, benefit from criminal conduct; or specified property that was acquired, in connection with property that, directly indirectly, constitutes benefit from criminal conduct; and (c) the value of the property is not less than R50,000 the Court shall make an order prohibiting the person specified in the order from disposing of or otherwise dealing with the whole or any part of the property or diminishing its value unless

'it is shown to the satisfaction of the Court, on evidence tendered by the respondent or any other person, that

- (i) the particular property does not constitute, directly or indirectly, benefit from criminal conduct and was not acquired, in whole or in part, with or in connection with property, directly or indirectly, constitutes benefit from criminal conduct; or
- (ii) the total value of the property which the order relates is less than R50,000.'

21. The applicant is under an obligation to prove 3 elements and when it does an order should issue unless the respondent puts on evidence that negatives or destroys elements (b) or (c). There is a two stage process. If the applicant succeeds in establishing the 3 elements and the respondent adduces no evidence to negative the last 2 elements, on a balance of probability, the application succeeds and the interlocutory order would issue.

22. The applicant contends apart from the section 9 evidence that the concealment of substantial sums of money in the manner the respondent did coupled with the absence of any lawfully licensed business activity by the respondent and his partner, who have not been in any employment for a considerable period of time is sufficient circumstantial evidence to lead to the conclusion that the respondent appears to be in possession of money that is either the benefit of criminal activity or it is money wholly or partly derived from property that is the benefit of criminal activity.
23. I can't conceive of a legitimate businessman who, instead of banking his money, be it savings or working capital, in the bank, keeps it stashed away in the spare tyre of a car or rice cooker. It may be possible that may be this is another method acceptable in the business community of Seychelles to keep money or savings. Unfortunately no evidence has been adduced to that effect by the respondent.
24. However, even if one gave the respondent the benefit of doubt, with regard to the concealment of the substantial sums of money, the applicant has shown that the respondent carries on no licensed or legitimate business activity known to the state. Neither is he employed nor has he been employment in the recent past. This coupled with the manner of concealment of the substantial sums of money is sufficient, in my view to establish on a balance of probability, unless evidence to the contrary is put forth, that the the sums in question appear to be the benefit from criminal activity, hence the concealment.
25. It was open to the respondent to do more than he did. The respondent has not done so on this occasion. What is on record is basically a bare denial of the case put forth by the applicant and a claim, without more, that he is a businessman. Nevertheless the door is not closed upon the respondent. He may do so under section 4(3) of POCCCA and be able to recover this property if he can negative

what has been established by the applicant. But until he does so, I am satisfied on the evidence before me this application should succeed as all the necessary elements have been proved to the standard required under section 4 of the POCCCA.

26. In the result I allow this application and issue 2 of the orders requested for. The respondent or any other person having notice of this order, is prohibited from disposing of or otherwise dealing with the whole or any part of the property, the subject matter of this motion, or diminishing its value. Pursuant to section 8 of POCCCA I appoint Declan Barber, Director of FIU, Receiver of all the said property, to hold the same, on the terms set out herein above.

27. The matter of costs shall abide the final result related to the specified property herein referred to.

Signed, dated, and delivered at Victoria this 8<sup>th</sup> day of November 2010

FMS Egonda-Ntende  
**Chief Justice**