

IN THE SUPREME COURT OF SEYCHELLES

ATTORNEY GENERAL

VS

WILLIAM DOMINIC DUGASSE

Civil side no: 09 of 2009

Attorney General Mr. R. Govinden for the Applicant

Mr. Hoareau for the Respondent

ORDER

Burhan J.

[1] On the 22nd of January 2009 the Attorney General made application under section 34 (2) read with section 34 (4) of the Anti Money Laundering Act (Amendment) Act 2008 (AMLA) for seizure of cash in a sum of USD 10,000 (United States Dollars ten thousand) and € 6000 (Euros six thousand) which had been found in the possession of the respondent William Dominic Dugasse. On the 23rd of January 2009 A.R Perera CJ issued a seizure order.

[2] Thereafter on the 30th of November 2009 the Attorney General, based on the proceedings and orders already made in the case and on further affidavits filed by Mr. Liam Hogan and Mr. Evan Seeward agent NDEA (National Drug Enforcement Agency), made application under section 35 (1) of the AMLA for a forfeiture order in respect of the aforementioned amounts of cash.

[3] When one considers the affidavit of Mr. Declan Barber dated 22nd of January 2009 (P1), he clearly states that he personally had information that the respondent was to travel from Mahe to South Africa and was in possession of large sums of foreign exchange which was to be used for the purchase of controlled drug and subsequent importation of the controlled drug to Seychelles. It is clear from the affidavit filed, that acting on this information which Mr. Declan Barber had heard and perceived himself, agents had on the 9th of January 2009 questioned the respondent in the departure lounge at the airport and had taken the aforementioned sum of foreign currency into custody, which was in fact found in the possession of the respondent who was about to leave the island to South Africa.

[4] The affidavit filed by Mr. Liam Hogan dated 16th November 2009 (P3a), states that the said sums of money seized from

the respondent and described in these proceedings constitutes directly or indirectly, benefit of criminal conduct or was intended to be used in connection to criminal conduct by the respondent William Dugasse. The criminal conduct referred to by Mr. Liam Hogan as set out in paragraph 4 of the affidavit, being the importation into Seychelles of controlled drugs and the subsequent sale and supply of those drugs within Seychelles.

- [5] From the facts averred in the said affidavit and the affidavit filed by agent Evan Seeward of the NDEA who was personally involved in the said investigation, it could be reasonably inferred and there are reasonable grounds to believe that the respondent was arrested on the 1st of June 2009, detained in police custody and subsequently charged for aiding and abetting the trafficking in a controlled drug, namely 531.6 grams of Heroin, an offence under the Misuse of Drugs Act Cap 133. The respondent has not sought to deny the fact that he was arrested, detained and subsequently charged in respect of the said offence. Learned Attorney General submitted at length on the lies stated by the respondent during the course of the said investigation. and relied on the case of **Bujar Muneka v Commissioner of Customs & Excise [2005] EWHC 495.**

[6] The respondent in his affidavit dated 3rd February 2009, stated that he never had been arrested for drug offences before but the affidavit of Inspector Winsley Francoise dated 2nd March 2009 (P2b) supported by exhibit A, shows that he had been arrested for a drug offence as far back as 8th July 2002. The respondent in his affidavit further stated, the foreign exchange he had was to purchase spare parts for the engine of his boat but he seems to have received quotations for purchase of engine parts (exhibit B of affidavit P2b) only after his detention at the airport on the 9th of January 2009. The respondent stated he had an agreement in respect of the running, maintenance and chartering of the boat with one Hans Harkle but has not produced any such agreement.

[7] It appears that all the respondent's contentions made in respect of his business enterprises and how he came by the cash, remain only as mere statements made by him and are not substantiated in anyway. When one considers the aforementioned facts together, this court is satisfied that there are reasonable grounds to believe that the said money, taken into custody on the 9th of January 2009 constitutes directly or indirectly benefit from criminal conduct or was intended by the respondent to be used in connection with criminal conduct namely the importation

into Seychelles of controlled drugs and the subsequent sale and supply of those drugs within Seychelles.

[8] Section 35 (5) of the AMLA reads as follows,

“Where the Director or Deputy Director of the FIU states in proceedings under this section or section 34 on affidavit or, if the court so permits or directs, in oral evidence, that he believes, that -

(a) the cash constitutes, directly or indirectly benefit from criminal conduct; or

(b) is intended by any person for use in connection with criminal conduct,

then, if the court is satisfied that there are reasonable grounds for the belief aforesaid, the statement shall be evidence of the matters referred to in paragraph (a) or in paragraph (b) or in both paragraphs (a) and (b), as may be appropriate and the court shall make order detaining the cash under section 34 or forfeiting the cash under section 35, unless it is shown to the satisfaction of the court by or behalf of the person from whom it was seized, or a person by or on whose behalf it was being imported or exported that the cash did not constitute, directly or indirectly, benefit from criminal conduct; or was not intended by any person for use in connection with any offence.”

[9] When one considers the affidavit filed by the respondent in paragraph 21, he explains that the said foreign exchange in his possession has been earned by chartering his boat, diving and sea cucumber activities. However he has failed to provide any breakdown of accounts or tax returns to show that he carried out a successful business in chartering his boat or by diving or by way of a sea cucumber business and has failed even to show that he had licenses to carry out such businesses or even that he had registered such business enterprises.

[10] In the light of the facts stated in the numerous affidavits submitted by the learned Attorney General, the mere statement of the respondent to the effect that it was money earned from chartering his boat, diving and sea cucumber business does not suffice to satisfy court that the money concerned, did not constitute directly or indirectly benefit from criminal conduct or was not for use in connection with any offence.

[11] Learned counsel for the respondent submitted that the application to detain the money and to forfeit the money were different applications under section 34 and 35 of the

AMLA respectively. He further submitted that the evidence or affidavit filed in regard to the application for detention could not be used as evidence in the application for forfeiture. A reading of section 34 and 35 of the AMLA clearly shows that the application for forfeiture is made in furtherance to the application for detention in respect of the same proceeds. It is to be noted that paragraph 4 of the affidavit filed by learned Principal State Counsel Mr. David Esparon in support of the application under section 35 (1) of the AMLA reads as follows;

“This application is based upon the proceedings and orders already made here and orders made under section 34 of the Act of 2006/2008, the affidavits of Winsley Francoise and Declan Barbe sworn here in the nature of this case and the reasons offered by officer Malvina signed and addressed to the registrar of Supreme Court of Seychelles and the affidavits of William Dominic Dugasse of Anse Kerlan Praslin.”

[12] Thus it is apparent that the applicant has specifically included and pleaded the proceedings, orders and affidavits in respect of the application under section 34 of the AMLA as part and parcel of the proceedings of this section 35 application. Therefore it cannot be contended that court should disregard the facts and evidence tendered by the

applicant in regard to the detention of the said proceeds when considering the forfeiture of same.

[13] Learned counsel for the respondent also contended that the affidavits filed by the applicant contained only hearsay evidence and facts based on rumors. This court is inclined to agree with counsel for the respondent that all affidavits should as far as possible should be supported by copies of the documentary evidence on which the maker of the affidavit relies on, in order that court could satisfy itself that there are sufficient grounds for the belief that the cash constitutes or does not constitute, directly or indirectly benefit from criminal conduct or is intended by any person for use in connection with criminal conduct. In this instant case however the affidavit of Sergeant Seeward speaks to facts which are personally known to him as investigating officer and the respondent does not seek to deny the salient facts in the affidavit, regarding to his arrest, detention and subsequent framing of charges against him in respect of trafficking in a controlled drug namely 531.6 grams of Heroin.

[14] Mr. Declan Barber affidavit as stated earlier speaks of facts heard and perceived by himself from an informant, which was true to the extent that, a large sum of foreign exchange was in fact recovered from the respondent when he was

leaving for South Africa. Further, on considering the untruths and discrepancies in the affidavits filed by the respondent and the fact that his claim that the cash was from his boat chartering, diving and sea cucumber businesses is not substantiated in anyway, court is not satisfied in respect of the truth of the respondents contention that the said cash was in actual fact from his boat chartering, diving and sea cucumber businesses. In the case of **Bujar Muneka v Commissioner of Customs & Excise [SUPRA]** it was held, that no proper explanation for the source of money, no reasonable explanation as to why the money was been taken out of the country and discrepancies in his explanation were factors court could consider in arriving at a finding that the said cash constituted proceeds from criminal conduct.

[15] For the aforementioned reasons this court is satisfied on a balance of probabilities that that the said sum of cash constitutes, directly or indirectly benefit from criminal conduct or was intended by the respondent for use in connection with criminal conduct. Therefore a forfeiture order in terms of section 35 (1) of the AMLA is issued in respect of the cash already seized and detained in this case.

M. BURHAN

JUDGE

Dated this 7th day of October 2010