

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

Miscellaneous Application No. 146 of 2010

(Arising from Civil Side No. 144 of 2009)

Clive Lawry Alissop

Applicant

Versus

The Attorney General

Respondent

Antony Juliette and Frank Elizabeth for the Applicant

David Esparon for the Attorney General

RULING

Egonda-Ntende CJ

1. The applicant, in this application is seeking an order from this court, pursuant to section 7(1) (a) of the Proceeds of Crime (Civil confiscation) Act, releasing the sum of SR200,000 to him as fees for his attorneys and reasonable living expenses.

2. The relevant portions of his application state,

‘5. The applicant avers that he has retained the services of two attorneys namely Mr. Anthony Juliette and Mr. Frank Elizabeth to conduct those cases on his behalf.

6. The applicant avers that he needs part of the property mentioned in paragraph1 here above which property is subject to an interim order and an interlocutory order which orders are still in force, to discharge reasonable living expenses and other necessary expenses in or in relation to proceedings under this Act, incurred by the applicant.

7.

8. The applicant prays for an order that a lump sum in the sum of SR200,000 be released to him pursuant to section 7(1) (a) of the Act.'

3. The affidavit in support of this application is a two paragraph affair. It states as follows,

'1. I am the deponent above-named.
2. I aver that all the averments contained in the petition are true and correct to the best of my information, knowledge and belief.'

4. For the respondents Mr. Liam Hogan the Deputy Director of the respondent swore an affidavit in opposition to this application to the effect that the applicant had failed to show by evidence that the requested payment was essential as required under section 7(1) (a) or (b) of the Act. That it would be contrary to the intention of the Act if money was to be paid out from property that appears to be a benefit from criminal activity except on the basis of cogent vouched financial information supplied by the applicant. This information had been requested for but the applicant had failed to supply it to the respondents.

5. Mr Anthony Juliette, learned counsel for the applicant, submitted that the court should take judicial notice of the fact that a person requires to eat, and no further evidence was necessary to show that the applicant needed money for reasonable living expenses. Mr. Frank Elizabeth, learned counsel for the applicant submitted that the applicant had hired two counsel in relation to actions before the Constitutional Court and the Court of Appeal and needed to pay them. The applicant was suffering financial hardship and has been unable to meet his legal expenses.

6. Mr. David Esparon learned Principal State Attorney, for the respondent opposed this application. He submitted that the applicant had failed to put

evidence before the court upon which it could determine that the payment was essential. He prayed that this application be dismissed.

7. Section 7 of POCA states,

‘(1) At any time while an interim order or an interlocutory order is in force, the Court may, on application to it in that behalf by the respondent or any other person affected by the order, make such orders as it considers appropriate in relation to any of the property concerned if it considers it essential to do so for the purpose of enabling—

(a) the respondent to discharge reasonable living and other necessary expenses including legal expenses in or in relation to proceedings under this Act, incurred or to be incurred by or in respect of the respondent and his dependants; or

(b) the respondent or the other person to carry on a lawful business, trade, profession or other occupation to which any of that property relates.

(2) An order made under this section may contain such conditions and restrictions as the Court considers necessary or expedient for the purpose of protecting the value of the property concerned and avoiding any unnecessary diminution thereof.’

8. It appears from the foregoing provisions that when a court considers an application of this nature it must consider ‘it essential’ for the purposes set out in the section to be able to allow the application. The person applying must establish that he is bereft of income or resources to sustain the expenses he intends to sustain or reimburse. In this instance he ought to show that he is deprived of any income or resources that would otherwise be available to meet the expenses that he intends to incur or he has incurred.

9. As was suggested by FIU in a letter to the applicant’s lawyers attached to the affidavit of Mr Liam Hogan the applicant would have to disclose financial information in relation to himself and his affairs upon which it would be possible to determine if it is essential to allow the release of the sum of money requested for.

10. I am unable to agree with Mr Anthony Juliette that this court should take judicial notice of the fact that everyone eats food and therefore allow this application. It is true that the present applicant has retained attorneys to act for him and those attorneys are not legal aid attorneys. The applicant must incur a charge on account of that. Nevertheless he must disclose by way of affidavit or oral evidence, information as to his financial means that would show that apart from the property now held under receivership he has no other means to meet this expense.

11. In the result I agree with the respondents that this application does not meet the threshold upon which this court should consider it essential to allow the application. The application is dismissed with costs.

Signed, dated and delivered at Victoria this 4th day of March 2011.

FMS Egonda-Ntende
Chief Justice