IN THE SUPREME COURT OF SEYCHELLES

MA359/2016

(Arising in MC37 of 2015)

[2017] SCSC 14

MVI CONSULTING LTD

VS

THE FINANCIAL INTELLIGENCE UNIT & ORS

Heard: 18th January 2017

Counsel: Mr. Frank Elizabeth Rouillon for the Applicant

Mr. Barry Galvin for the Respondent

Delivered: 18th January 2017

ORDER

M. TWOMEY, CJ

[1] In these proceedings the Parties will be referred to as follows: the Financial Intelligence Unit (FIU) as the Applicant and the company MVI Consulting Ltd as the Respondent.

[2] On 2 December 2015 Karunakaran J made an interlocutory order pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act, 2008 (POCA) prohibiting the Respondent or such other persons having notice of the making of his order from disposing of or otherwise dealing with the whole or any part of property, namely USD 600,3330.54 standing to credit in USD account number XXXX in the name of MVI

Consulting Limited together with interest that might accrue thereon at BMI Offshore Bank Limited.

[2] On 18January 2017, the Respondent filed a notice of motion notifying the court of its intention to move for an order to discharge the section 4 order granted on 2 December 2015 and to release the monies in the bank account frozen by the said order.

[3] The notice of motion is supported by the affidavit of Mikhail Grigoriev of Anse Etoile (sic) representing Miss Valeria Melnikova the director of the Applicant Company.

[4] The Applicant has in response filed a plea in limine litis in which it takes issue with the affidavit of Mr. Grigoriev (the Deponent).

[5] In summary the Applicant has submitted that the averments in the affidavit are hearsay and not based on facts in his personal knowledge. In this respect it contravenes Rule 6(1) of POCA which provides that *"the deponent of an affidavit shall only aver as to facts within his or her personal knowledge."*

[6] Rule 6(1) applicable to proceedings taken under POCA should be distinguished from the provisions of section 170 of the Seychelles Code of Civil Procedure which allows both belief averments and knowledge averments.

[7] In *Union Estate Management (Proprietary) Limited v Herbert Mittermeyer* (1979) SLR 140, Sauzier J in explaining what constitutes a proper affidavit stated:

"...an affidavit which is based on information and belief must disclose the source of the information and the grounds of belief. It is therefore necessary for the validity of an affidavit that the affidavit should distinguish what part of the statement is based on information and belief and that the source of the information and grounds of belief should be disclosed.

[8] In *Erne v Brain and ors* SC 127/2011 (unreported) the Supreme Court stated:
"The Court has on countless occasions laboured the point that affidavits are evidence and are therefore subject to the same rules of admissibility as other evidence. In the

present affidavit it may well be that the Deponent may have been told by the Plaintiff what her wishes are but that is hearsay evidence and is inadmissible. The Deponent may however have personal knowledge of some of the facts but that it is not stated in his affidavit. That distinction is essential and will validate or invalidate an affidavit. In this case it is the latter that applies "[16]

[9] Similarly, and even more so in this case given the strict provisions of Rule 6(1,) I find that the Deponent's averments are not facts within his personal knowledge. In the circumstances the affidavit is not valid and leaves the motion groundless.

[10] The Respondent' application is therefore dismissed in its entirety with costs.

Signed, dated and delivered at Ile du Port on

M Twomey
Chief Justice