

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 629
CM55/2018

GEORGES MICHEL
(rep. by Mr. Juliette)

Applicant

and

THE REPUBLIC

First Respondent

FINANCIAL INTELLIGENCE UNIT

Second Respondent

NATIONAL DRUGS ENFORCEMENT AGENCY
(all respondents rep. by Mr. Kumar)

Third Respondent

Neutral Citation: Georges Michel v The Republic & Ors (CM55/2018) [2019] SCSC
(18 July 2019).

Before: F. Robinson, sitting as a Judge of the Supreme Court

Summary: This court's decision in relation to the value of the vessels is based on the market value of the vessels in 2013 and 2018, the condition of the vessels in 2013 and 2018, and the expressed agreement of the experts on a number of matters pertaining to the valuation of the vessels

Delivered: 18 July 2019

ORDER

Orders the release of the four vessels and awards the sum of 12,000,000/- rupees to the applicant, and orders the respondents jointly and/or severally to pay to the applicant the said sum of 12,000,000/- rupees. Further orders that the said sum of 12,000,000/- rupees shall be paid in three consecutive instalments by the respondents jointly and/or severally, as follows:

- (a) the sum of 4,000,000/- rupees shall be paid to the applicant or into the bank account of the applicant held with a bank in Seychelles, on or before the 31 July 2019;
- (b) the sum of 4,000,000/- rupees shall be paid to the applicant or into the bank account of the applicant held with a bank in Seychelles, on or before the 31 October 2019; and
- (c) a final sum of 4,000,000/- rupees shall be paid to the applicant or into the bank account of the applicant held with a bank in Seychelles, on or before the 31 January 2020.

If the said sum of 12,000,000/- rupees is not paid in full by the 31 January 2020, interest on the said sum or any amount thereof shall be payable at the legal rate of four per cent thereon, as

from the 31 January 2020, until payment of the entire sum of 12,000,000/- rupees. This court makes no order as to costs.

ORDER

F. Robinson, J

1. Restraint orders were made in Criminal Side No. 10 of 2013, in terms of section 27 (1) of the Anti-Money Laundering Act, 2008, as amended, on the 31 January 2013.
2. The applicant, Mr. Georges Michel, by way of notice of motion supported by an affidavit of facts, is asking this court to make the following orders:

"1. This Honourable Court be pleased to order the return of the Applicant's Passport which was impounded by this Honourable Court in the criminal matter CO2/2013.

2. This Honourable Court be pleased to order the release of the Applicant's 3 MCB Bank Accounts that have been under a restraining order in the criminal matter CO2/2013 since January 30th 2013.

3. This Honourable Court be pleased to order the release and return of the Applicant's non-monetary assets and properties that have been under a restraining order in the criminal matter CO2/2013, in the same state and conditions as found on that date, to the Applicant."

3. This court is concerned with the application made to make an order of release of the vessels, namely *MA Vie*, *Charita*, *Marie Louise* and *Liberty Now* in the "*same state and condition as found*" on the date of the restraining order, the 31 January 2013. This court mentions that the applicant and the second respondent entered into a Compromise
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Agreement, on the 1 April 2018, in relation to a Silver Toyota Harrier (jeep) and a Clear Silver Kia Sportage (jeep), (the Compromise Agreement refers).

4. Before considering the evidence in this case, this court mentions that the applicant and the respondents endeavoured to reach an amicable settlement in this matter. This court observes that, although the parties did not manage to settle this matter, the parties at the trial did their best to assist the court irrespective of party considerations. Both experts, Mr. Idney Basset and Mr. Greg Lawen, marine surveying experts, agreed on a number of matters concerning the 2018 valuation of the four vessels. The two experts expressed some disagreement on the 2013 valuation. Mr. Lawen valued the vessels to the sum of 16,764,300/- rupees, whereas Mr. Basset valued the vessels to the sum of 22,000,000/- rupees. The documents pertaining to the expertise of both Mr. Basset and Mr. Lawen and the marine surveying reports and other miscellaneous documents are before this court as exhibits.
5. This court heard the testimony of Mr. Basset and Mr. Lawen in relation to the value of the four vessels and that of Mr. Georges Michel.
6. *The evidence of Mr. Basset.* Mr. Basset produced independent reports on behalf of the applicant. With reference to the marine surveying report, Mr. Basset opined that the market value of the four vessels in 2013 was 22,000,000/- rupees. When told by Counsel that the applicant is willing to accept the sum of 19,425,000/- rupees representing the market value of the four vessels in 2013, in spite of his marine surveying value of the vessels to the sum of 22,000,000/- rupees, Mr. Basset replied that he will stand by his valuation, but he has no issue if the applicant were to accept the said sum. Mr. Basset also accepts that the applicant will have to deduct the sum of 6,300,000/- rupees from the said amount of 19,425,000/- rupees.
7. Mr. Basset explained in detail how he came to value the vessel to the sum of 22,000,000/- rupees. He explained that he used the "*comparative method*" and also based his valuation on the condition of the vessels, to arrive at the market value of the vessels. He has an extensive database with over one thousand vessels, including comparable vessels. He also consulted the international boat database which also contains comparable vessels. He added that he has surveyed over five hundred vessels

including comparable vessels and been involved in the sale of about one hundred vessels.

8. When cross-examined, Mr. Basset stated that the vessels in issue are long liner vessels used for fishing tuna like species and sea cucumbers. He explained that the vessels are not pleasure boats and are not designed for pleasure. He also explained that there is a demand for such vessels, but that their owners are not willing to sell them most probably because such vessels are used for sea cucumber fishing every six months. He added that sea cucumber fishing is a very lucrative business.
9. *The evidence of Mr. Georges Michel.* There is no dispute between these parties that Mr. Michel is the owner of the four vessels in issue. He mentioned that the vessels were seized by order of the Supreme Court in 2013, and released in his possession in 2018. Mr. Michel explained that documents pertaining to ownership and purchase of the four vessels were seized by the National Drugs Enforcement Agency in relation to the main case Criminal No. 2 of 2013 – The Republic v Roy Brioche and Ors, and that the Agency did not return those documents to him after the completion of the case.
10. Mr. Michel accepted Mr. Lawen's 2018 marine surveying value of 6,300,000/- rupees and that of Mr. Basset's 2013 value of 22,000,000/- rupees for the four vessels. He did not accept Mr. Lawen's 2013 value of 10,464,300/- rupees, after having deducted the sum of 6,300,000/- rupees - (16,764,300/- rupees minus 6,300,000/- rupees). After having deducted the sum of 6,300,000/- rupees from the sum of 19,425,000/- rupees, Mr. Michel stated that he is willing to accept the sum of 13,125,000/- rupees representing the market value of the four vessels. Mr. Michel stated that one of his vessels, *Liberty Now* is undergoing repairs at the *Mazzorchi slipway* at the price of 6,000,000/- rupees (Exhibit A6 refers). Counsel for the respondent did not object to the production of Exhibit A6.
11. When cross-examined, Mr. Michel stated that, although according to the report of Mr. Lawen, he purchased the vessel *Marie Louise* from Mr. Rasool at the price of 475,000/- rupees, the vessel more than doubled its value within five to six months of being in his possession for the reason that he made the vessel sea worthy by replacing the engine of the vessel and putting other important marine equipment on board.

12. *The evidence of Mr. Greg Lawen.* Mr. Lawen who produced independent reports on behalf of the respondents, also used the comparative method analysis including the "recognized averaging" method in the survey of the four vessels and explained in detail, with reference to the said methods, how he arrived at the 2013 market value of the four vessels. He also based his valuation on the condition of the vessels.
13. When cross-examined, Mr. Lawen accepted Exhibit A6 for the reason that the price of about 6,000,000/- rupees for repairs to the vessel *Liberty Now*, is reasonable. Mr. Lawen clearly explained to this court that he will stand by his valuation, but he considered the amount of 13,125,000/- rupees representing the market value of the four vessels to be reasonable.
14. This court considered the evidence of both Mr. Basset and Mr. Lawen to be helpful in all the circumstances of the case and accepts their evidence in relation to the value of the four vessels. Mr. Lawen concluded that the sum of 13,125,000/- rupees representing the market value of the four vessels, is reasonable, although he stated that he will stand by his valuation. The applicant stated through Counsel that he will accept the sum of 12,500,000/- rupees representing the full market value of the four vessels.
15. Having considered the expert evidence of Mr. Basset and Mr. Lawen and their respective marine surveying report and other miscellaneous documents and the testimony of the applicant, this court is satisfied that the full market value of the four vessels is 12,000,000/- rupees.
16. This court makes order of release of the vessels *MA Vie*, *Charita*, *Marie Louise* and *Liberty Now* and awarding the sum of 12,000,000/- rupees to the applicant, the owner of the said four vessels and orders the respondents jointly and/or severally to pay to the applicant the said sum of 12,000,000/- rupees.
17. This court makes further order that the said sum of 12,000,000/- rupees shall be paid in three consecutive instalments by the respondents jointly and/or severally, as follows:

- (a) the sum of 4,000,000/- rupees shall be paid to the applicant or into the bank account of the applicant held with a bank in Seychelles, on or before the 31 July 2019;
- (b) the sum of 4,000,000/- rupees shall be paid to the applicant or into the bank account of the applicant held with a bank in Seychelles, on or before the 31 October 2019; and
- (c) a final sum of 4,000,000/- rupees to be paid to the applicant or into the bank account of the applicant held with a bank in Seychelles, on or before the 31 January 2020.

If the said sum of 12,000,000/- rupees is not paid in full by the 31 January 2020, interest on the said sum or any amount thereof shall be payable at the legal rate of four per cent thereon, as from the 31 January 2020, until payment of the entire sum of 12,000,000/- rupees. This court orders accordingly and makes no order as to costs.

Signed, dated and delivered at Ile du Port on the 18 July 2019.



F. Robinson

Sitting as a Judge of the Supreme Court