

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2020] SCSC 487  
MC 5/2020

**In the matter between**

**THE GOVERNMENT OF SEYCHELLES**  
*(rep. by Steven Powles together with Mrs. Nissa Thomson)*

**Applicant**

and

- 1. TERRY ANDREW PORICE**
- 2. NICO FRANSCESCO JEAN LUC ISAAC**
- 3. WESTEROS (PTY) LTD**  
*(rep. by Clifford Andre)*

**Respondents**

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**Neutral Citation:** *Government of Seychelles v Porice and Ors* (MC 5/2020) [2020] SCSC 487 (27 July 2020).

**Before:** Twomey CJ

**Summary:** interlocutory application under s. 4 of POCA - personal knowledge, information and belief evidence in affidavit - prima facie case by Applicant - shift of onus of proof on balance of probability on Respondents – unexplained wealth

**Heard:** 20 June 2020

**Delivered:** 27 July 2020

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**ORDER**

Pursuant to section 4 of POCA, the Respondents or any other person are prohibited from disposing or otherwise dealing with whole or any part of the property specified in the annexure. Superintendent Hein Prinsloo is appointed as Receiver over all of the said property to manage, keep possession or dispose of, or otherwise deal with the property in respect of which he is appointed pursuant to section 8 of POCA. otherwise deal with the property in respect of which he is appointed.

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**JUDGMENT**

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**TWOMEY CJ**

1. These applications for freezing orders are brought by the Government of Seychelles by way of a notice of motion and supported by affidavits sworn by Hein Prinsloo,

Superintendent of Police attached to the Financial Crime Investigative Unit (hereinafter the FCIU). The Respondents are self-employed business persons and a proprietary company respectively.

2. In particular, the Applicant is seeking two interlocutory orders pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act (hereinafter POCA) as amended, prohibiting the Respondents or any person who has notice of the orders from disposing of or otherwise dealing with whole or any part of the property, namely the sum of SCR 228,375 in the denominations as specified in the Annexure to this order (the specified property).
3. The Applicant seeks a further order under section 8 of POCA, that is, the appointment of Superintendent Hein Prinsloo as a Receiver of the specified property to hold the same until further orders of this court.
4. Notice of the application was given to the Respondents and an entry of appearance made by their legal representative, Counsel Clifford André. An affidavit in reply of all the Respondents was subsequently filed by Counsel praying that the application be dismissed.
5. The application by the Applicant is based on the belief evidence of Superintendent Prinsloo. The main ground for these applications is that the Respondents are in possession or control of specified property that constitutes directly or indirectly, benefit from criminal conduct, or was acquired in whole or in part with or in connection with property that is directly or indirectly, constitutes benefit from criminal conduct. And that such property is in excess of R50, 000.00.
6. The application emanates from a search carried out on 23 December 2019 at the home of the First Respondent in which inter alia the sum of SR 228,375 together with herbal material, two penknives, a meat cleaver, three pairs of scissors, a white box and digital scales were found and seized. Subsequently, the Forensic Science Laboratory after analyses, found that the herbal material was 5.24 grams of cannabis

and that the penknives, and scissors had traces of hashish, the meat cleaver and white box traces of cannabis and the digital scale traces of heroin

7. In essence, the averments in Superintendent's Prinsloo's affidavit are to the effect that the First and Second Respondents in their attempts to conceal and disguise the true nature of the funds found at the First Respondent's home, and the aiding and abetting by the Second Respondent in an attempt to conceal and or disguise the true nature of the money constitute the offence of money laundering. In addition, the explanation given by the directors of the Third Respondent imply that the money found in the first Respondent's house originated from a contract between PUC and Uprising Construction which contract was denied by the owner of Uprising Construction.
8. Further, the traces of heroin, cannabis, hashish and the cannabis found is evidence of the First Respondent's drug dealings together with his numerous arrests for drug related offences between 2009 and 2019, indicating that the money acquired in whole or in part from criminal conduct of drug trafficking, conspiracy and money laundering.
9. In the Respondents' affidavit in reply it is accepted that the money was seized and the applicant is put to strict proof of its averments.
10. The first two Respondents were cross examined on the averments in their joint affidavits. The First Respondent was obviously under the influence of drugs on the day of the examination and admitted as much. The determinative effect of his demeanour together with his admission is that he is clearly involved in drugs. Further, his testimony in court when he was under the influence of drugs is unreliable and is disregarded by this court. I do not wish therefore to refer to it.
11. The Second Respondent was asked about the contract between the Third Respondent and Uprising Construction. He stated that he had been misunderstood when first interviewed by the FCIU and that it was the Third Respondent which had contracts with the PUC and which had subcontracted to Uprising Construction as

some of the works required a Class 2 licence which the Third Respondent did not have. The work carried out in this particular case however, was for a private individual and not for PUC and he disagreed with the contents of the affidavit which he had signed. He had initially thought that the money seized came from that contract but then after being shown documents by the First Respondent realised that the money seized had come from a loan “from a guy”. He agreed that no such evidence had been produced by them to the Court. He also agreed that when the First Respondent had said, when first questioned, that the money came from work done by the Third Respondent at Anse Soleil, that was not true.

12. Section 4 applications are decided on the belief evidence of the Applicant as explained in Section 9 of POCA. This court has on numerous occasions explained the process and evidential burdens and standards of such applications which it again reiterates.
13. In *Financial Intelligence Unit v Contact Lenses Ltd & Ors* (MC 95/2016) [2018] SCSC 564 (19 June 2018) the Court summarised the approach to the law in this respect. It stated:

*In respect of the applicable legal provisions and jurisprudence to the present matter the courts in Seychelles have established in previous cases, namely FIU v Mares (2011) SLR 405, Financial Intelligence Unit v Sentry Global Securities Ltd & Ors (2012) SLR 331, and Financial Intelligence Unit v Cyber Space Ltd (2013) SLR 97 that the provisions of POCA should be interpreted to mean:*

*“...that once the applicant provides the Court with prima facie evidence that is, reasonable grounds for his belief in compliance with section 9(1) in terms of his application under section 4(1) of POCCCA, the evidential burden shifts to the respondent to show on a balance of probability that the property is not the proceeds of crime...” (Mares supra)*

*“...All that is necessary is “a reasonable belief” that the property has been obtained or derived from criminal conduct by the designated officer of the FIU. That belief pertains to the designated officer and hence involves a subjective element. It is therefore only prima facie evidence or belief evidence. No criminal offence need be proved, nor mens rea be shown...If the FIU relies on belief evidence under section 9 the court has to examine the grounds for the belief and if it satisfied that there are reasonable grounds for the belief it should grant the*

*order. There are appropriate and serious protections for the respondents as at different stages they are permitted to adduce evidence to show the Court that the property does not constitute benefit from criminal conduct. Their burden in this endeavour is that “on a balance of probabilities.” In other words, once the applicant establishes his belief that the property is the proceeds of crime, the burden of proof shifts to the respondent to show that it is not. Hence, unless the court doubts the belief of the officer of the FIU, which is reasonably made, it cannot refuse the order (Sentry supra).*

14. It is on this basis that I have examined the evidence in this case. I am satisfied that the information in the application, together with Superintendent Prinsloo’s belief evidence constitute reasonable grounds to suspect that the specified property constitutes directly or indirectly, benefit from criminal conduct, or was acquired in whole or in part with or in connection with property that is directly or indirectly benefit from criminal conduct. That is prima facie evidence against the Respondents.
15. The burden of proof then shifted to the Respondents to show on a balance of probabilities that the money seized was not from illegitimate sources.
16. In their joint affidavits, they do not explain the provenance of the money – they only put the Applicant to strict proof of its belief evidence. Belief evidence is not strictly proven – it is founded on supporting documents and other evidence to show that belief. It is prima facie evidence that must be disproved on a balance of probability by the Respondents and with respect to their evidence, I have to be convinced on a balance of probabilities that the specified property is from legitimate sources.
17. I do not find that the Respondents have succeeded in that endeavour. In fact, they have failed miserably to show that the money found in the First’s Respondent’s house did not emanate from drug trafficking.
18. I therefore find that the interlocutory order sought should issue on the belief evidence of Superintendent Prinsloo as I am satisfied that there are reasonable grounds for his belief.

19. I am also satisfied that there is no risk of injustice to the Respondents or any person if I make the orders sought as they may at any stage while the order is in operation cause it to be discharged or varied by satisfying the court that the property does not constitute directly or indirectly benefit from criminal conduct or was acquired or constitutes benefit from criminal conduct.

20. I therefore grant the application and issue an interlocutory order prohibiting the disposal of, dealing with or diminishing in value of the specified property. I further appoint Superintendent Prinsloo to be the Receiver of the said specified property to manage, keep possession or dispose of the same or otherwise deal with any property in respect of which he is appointed.

21. In the circumstances, I make the following orders:

1. Pursuant to section 4 of POCA I prohibit the Respondents or any other person from disposing or otherwise dealing with whole or any part of the property specified in the annexe to this Order.
2. Superintendent Hein Prinsloo is appointed as Receiver over all of the said property to manage, keep possession or dispose of, or otherwise deal with the property in respect of which he is appointed.
3. Costs of these proceedings will abide the final outcome of the case in relation to the specified property in this matter.

Signed, dated and delivered at Ile du Port on 27 July 2020.

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M. Twomey  
Chief Justice

