

**SUPREME COURT OF SEYCHELLES**

---

**Reportable**  
[2020] SCSC 632  
MC 98/2019

**In the matter between**

**THE GOVERNMENT OF SEYCHELLES**  
*(rep. by Steven Powles and Nissa Thompson )*

**Applicant**

and

**PETER JAMES ROSELIE**  
*(rep. by Frank Elizabeth)*

**Respondent**

---

**Neutral Citation:** *Government of Seychelles v Roselie* (MC 98/2020) [2020] SCSC 632 (7 September 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:** 23 July 2020

**Delivered:** 7 September 2020

---

**ORDER**

1. 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.
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 pursuant to section 8 of POCA.
3. These orders are to be served on the Chief Executive of the Seychelles Licensing Authority and the Registrar General and they are not to effect any transfer of any of the vehicles or property contained in the Annexure attached to this order.

---

## JUDGMENT

---

### TWOMEY CJ

- [1] This application dated 30th October 2019 for freezing orders is 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 Respondent is a self-employed business person.
- [2] In particular, in this application, the Applicant is seeking two interlocutory orders pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act (hereinafter POCA) as amended: first an order prohibiting the Respondent or any person who has notice of the orders from disposing of or otherwise dealing with whole or any part of the properties, namely five vehicles: all BMW X5 XDrive 40e with a total value of SCR4,750,000.
- [3] Secondly, 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] The application was served on the Respondent and an entry of appearance was filed by his Counsel, followed by the Respondent's response affidavit filed on 14 January 2020.
- [5] A supplementary affidavit was also filed by the Applicant on 24 March 2020.
- [6] The application by the Applicant is based on the belief evidence of Superintendent Prinsloo. In particular, Superintendent Prinsloo has averred that from interviews with Kelvin Didon, Manager of the Investigation Unit of the Seychelles Revenue Commission, the Customs Division and the Directors of Your Choice Clearing Agency (Your Choice) and from his own investigations, he formed the belief that the Respondent

was 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.

### **The Applicant's belief evidence**

- [7] It is Superintendent Prinsloo's averment that the Respondent, the owner of an entity named Aquila Cars registered in Seychelles, in March 2019 instructed Your Choice to prepare documentation for the importation of five new BMW X5e vehicles into Seychelles and put them in contact with one individual named Sibtain Sikander (Sikander) with email address [houseofcars1@yahoo.com](mailto:houseofcars1@yahoo.com).
- [8] Your Choice informed Sikander by email to the address provided that they would require the Bill of Lading for the consignee (Aquila Cars), the Commercial Invoice, the Freight Invoice and the Proof of Payment of the vehicles and the Insurance Certificate for the importation of the vehicles into Seychelles. A Bill of Entry with number C7174 was registered at Customs on 25 April 2019 and the consignee declared as Roselie Aquila Cars for two new BMW X5e vehicles with Vehicle Identification Numbers and the country of origin stated as the United Arab Emirates.
- [9] Thereafter, a Bill of Lading dated 16 March 2019, an Insurance Certificate from AIG with insured amount of USD 113,894, an Import Permit dated 22 March 2019, a letter from the Respondent and a Commercial Invoice dated 21 February 2019 with an order to the amount of USD 103,540 were attached to the Bill of Entry numbered C7174, was provided.
- [10] On 10 May 2019, another Bill of Entry numbered C8108 was registered at Customs and the consignee declared as Roselie Aquila Cars for the import of three new BMW X5e vehicles with Vehicle Identification Numbers.
- [11] A Bill of Lading dated 17 March 2019, an Insurance Certificate from AIG with the insured amount of USD 170,841, an Import Permit, dated 22 March 2019, a letter from

the Respondent and a Commercial Invoice dated 21 February 2019 with an order to the amount of USD 155,310 were attached to the Bill of Entry numbered C8108.

- [12] On 3 May 2019, Customs requested a receipt from Your Choice showing the bank transfer for the amount paid, the currency and mode of payment for the vehicles. The Respondent went personally to Customs to explain the origin of the funds and handed over a contract between himself and the “International Centre for Strategic Studies” (ICSS) in Abu Dhabi dated 22 January 2019. He also handed over a “payment voucher” from Al Noor Motors FZD (Al Noor) dated 21 February for the amount of USD 258,850 as proof of payment for the vehicles. The payment voucher is to the effect that Al Noor paid the Respondent the money cash for the purchase of five BMW X5e vehicles inclusive of insurance and freight (CIF).
- [13] Customs asked Your Choice to provide documentation of the freight charges. Your Choice replied that the invoice supplied the cost, insurance and freight (CIF). Customs asked for other information relating to the classification of the imported goods, the quantity of goods on the invoice and other information on the Bill of Entry.
- [14] Superintendent Prinsloo avers that the customs officials were querying the fact that the same price was stated for the vehicles when two of them were imported from Melbourne and three of them from the UK as the freight cost could not have been the same and no source of funds or bank documents had been submitted by the Respondent to confirm the value of the vehicles. In any case, the value of such a vehicle based on Freight on Board (FOB) exclusive of freight cost and insurance would have been USD 74,232 and not USD 50,384 as suggested by the Respondent.
- [15] On 8 July 2019, Customs issued a letter to the Respondent informing him that he would need to submit the Bills of Export and supporting documents from UK Customs and Australian Customs. They also queried the source of the funds for the vehicles.
- [16] It is Superintendent Prinsloo’s averment that if the contract with ICSS as submitted by the Respondent was genuine he would have been paid the equivalent of USD 408,441.12 under its terms.

- [17] It is also Superintendent Prinsloo's averment that as part of his investigation he obtained information about the Respondent, namely that he was the owner of Ideal Financial & Management Services Ltd, that he had been a Senior Tax Auditor with experience in assessment, audit and investigation of business tax return in the Ministry of Finance from January 1988 to December 1994 and which put him in the unique position of identifying tax crimes, money laundering and other tax crimes.
- [18] Superintendent Prinsloo further avers that to date the Respondent has not been able to produce proof of payment for the vehicles and the contract which he alleges provided for the funds in cash is highly irregular. A search on the internet for ICSS proved elusive and it would be highly irregular to have such a company with no internet profile involve itself in contracts of that magnitude. Hence, the inevitable conclusion is that the contract is not genuine.
- [19] There were also several anomalies in the documentation provided by Your Choice to Customs. The letter in the documentation for the Bill of entry dated 25 April 2019 from the Respondent states that he had only managed to open a bank account the week before (that is, in the week of 15 April to 19 April 2019) and that transactions would henceforth be made from the account for "transparency and accountability".
- [20] However, a letter from El Nilein Bank in Abu Dhabi dated 29 January 2019 retrieved from the Respondent during a search at the Seychelles Airport on his return from Abu Dhabi on 15 October 2019 informs the Respondent that his savings account had been approved. The letter also appears to have been signed by the Respondent and the IBAN number of the account lacks a digit. It would therefore appear that the letter is a badly forged document.
- [21] Another document recovered from the Respondent when he was searched on 15 October 2019 is entitled "Acknowledgement" and states that the Respondent received 5,000,000 Dirhams for "implementing businesses which have been agreed between the parties in the signed contract on 22/01/2019" while the contract between the Respondent and ICSS provides that the Respondent was "to participate and render the consultancy services for financial and administrative audit programs being executed by the Centre". The contract

also provides for the first payment of 1,500,000 Dirhams to be made on 22 January 2019 and not the 5,000,000 as indicated on the Acknowledgement document. Again it would appear that this document is forged so as to deceive whoever it was meant to be presented to, most probably Customs.

- [22] The Al Noor payment voucher referred to above appears to be on an Al Noor Motors letterhead but the website on the document is [www.carsforafricaexport.com](http://www.carsforafricaexport.com). An internet search revealed that the domain carsforafricaexport.com is for sale and therefore not in use by anyone. Further the e-mail address of Al Noor Motors according to their official website is info@almoormotrs.com but the email on the payment voucher is sales@carsforafricaexport.com. Again the only conclusion that can be drawn is that the payment voucher is a forged document.
- [23] Superintendent Prinsloo also avers that the Al Noor commercial invoice dated 21 February 2019 sent by the Respondent to Your Choice for clearing the vehicles is markedly different to the commercial invoice also dated 21 February 2019 sent by Al Noor itself to Your Choice in that inter alia, the date format appears differently, the chassis number and colour of one of the vehicles is different and the second invoice of the same date has extra columns added to indicate the shipping method and the currency. The discrepancies also indicate that the documents were forged and /or unprofessionally done. A commercial invoice is an important document used by a buyer to have funds released from its bank account to the seller and also a supporting document for insurance claims on the shipment.
- [24] The insurance policy produced seems to have been issued a month after the vehicles were shipped and is only a quote and not an issued final policy. The policy could not be traced on the insurers database and is an indication that it also a forgery.
- [25] It is further averred that when Your Choice requested Sikander to provide a Bill of Export for the two cars from Australia, Sikander stated that there was no Bill of Export but only a Certificate of Export supplied by the Australian Chamber of Commerce. Sikander also sent a letter dated 10 June 2019 pertaining to be from one Kevin Smith from Queensland Chamber of Commerce and the Australian Chamber of Commerce and

Industry stating that “the shipment under waybill number 9104 was dispatched from the port of Melbourne and was discharged at Port Victoria, Seychelles” and that the Certified Declaration of Origin for the shipment was stated as 6833385 yet the waybill number originally submitted by Sikander for the vehicles coming from Australia was stated as MBE 0313787 and the Certified Declaration of Origin as 678679.

- [26] It is also averred that Certificate of Origin supplied by Sikander dated 13 May 2019 states that the exporter of the vehicles is Serendib Sourcing Pty Ltd (Serendib) and not Al Noor Motors with the country of origin stated as USA making it impossible for the Queensland Chamber of Commerce to issue a Certificate of Country of Origin for the vehicle when it was in fact manufactured in the USA. Further checks on Serenib indicate that it specialises in crops, spices and other products but not vehicles making it likely that the certificate is yet another forged document.
- [27] The Applicant further avers that as the Respondent could not provide Customs with any documentation to verify the CIF value and the proof of payment for the vehicles, they were seized on 24 June 2019. The documentation provided by the Respondent are false documents submitted with the intention of deceiving Customs by pretending that the Respondent paid Al Noor Motors USD 258,850 for the purchase of five vehicles, which deceit led Customs to issue an import permit to allow the vehicles to be imported into Seychelles. In the circumstances, the vehicles are considered as proceeds of crime.
- [28] It is the Applicant’s belief that the Respondent and Sikander conspired to mislead Customs by supplying false documentation to cover up the origin of the funds used to purchase the vehicles and that the Respondent is not the beneficial owner of the vehicles but conspired with another person who purchased the vehicles but who cannot legally import vehicles into Seychelles. In this endeavour official and unofficial documents were forged to obtain an import permit.
- [29] In this regard, it is Superintendent Prinsloo’s belief that there is reasonable and credible evidence to suspect that vehicles are the proceeds of forgery and uttering, money laundering and conspiracy to commit a crime.

[30] Attached to the Affidavit is all the documentation referred to in the Affidavit.

### **The Respondent's Reply Affidavit**

[31] The Respondent's reply affidavit contains several averments explaining anomalies in the documentation produced to Customs.

[32] In particular, the Respondent avers that the payment voucher allegedly issued by him for the purchase of the vehicles is clearly a mistake as the payment to Al Noor Motors was made by him and not vice versa.

[33] With regard to proof of payment for the cars he avers that he did provide proof of payment and explained that Al Moor Motors could have sourced the cars from Australia and the UK as they did not have them in stock either prior to or at the time of purchase. The price estimated for the vehicles by the Applicant do not take into account factors affecting the price of a vehicle including where it is sourced, the amount of taxes in different jurisdictions, expenses of import and export and relationships between manufactures and dealers and to assume that the price for a BMW X5e is the same throughout the world is naïve and misconstrued.

[34] With regard to the payment of 5,000,000 Dirhams from ICSS he avers that he received "credit" for the sum on his account and avers further that he has requested proof of payment and that these are being prepared by ICSS and that it is not irregular for an institution to pay a third party sums owed to a party to a contract as alleged by the Applicant.

[35] He further avers that it is also not unusual that a company with contracts for substantial amounts not to own a website as averred by the Applicant. He further avers that the contract submitted is genuine. He explains that he is a business consultant and passionate about entrepreneurship. He was doing a project which involved incubating young Seychellois companies in Israel and Dubai. In 2016, he had an eye operation in Sri Lanka and at that time was in regular contact with a Seychellois chef working in Dubai through Facebook who invited him over. He visited him in Dubai and returned for a holiday with his family in 2018. During the holiday he requested the Respondent to send him a CV



and after his return to Seychelles out of the blue he got a call from someone named Sultan at the ICSS who told him that he had seen his CV and that he was interested in him joining their Risk Assessment Department. He went over for an interview and entered into negotiations about moving with his whole family there.

- [36] On his return to Seychelles, he realised that “Seychelles is a niche market without a niche product” and he came up with two possibilities for investments namely an executive car rental business and an escort service. He also proposed a risk assessment test case for a company named ADNOC to sell petrol to Seychelles with Abu Dhabi subsidising the cost and worked on the project and in doing so went back and forth to Abu Dhabi.
- [37] In 2019, his son fell ill and he took him to Abu Dhabi for treatment. Whilst there, he tried to open a bank account with a Sudanese bank but was not successful. On the same trip he signed the contract with ICSS and was given a copy of the contract at the airport.
- [38] Subsequently, he was contacted in Seychelles and told that he was the recipient of a good deal and that “each car would cost him USD 51,000 from Al Noor Motors and that his account with ICSS would be debited to pay for the cars.
- [39] The Respondent avers that he then went to Your Choice who advised him of the documentation he would require for importing the cars. It informed him that he would have difficulties as he had paid for the cars in cash. He returned to Abu Dhabi and opened a bank account with ADIB Bank and while there Your Choice informed him that he would need to write a letter to explain why he had paid cash for the cars. He wrote the letter in a hurry and forgot to insert the date on it. The import permit was approved.
- [40] He avers that he had no intention of deceiving Customs and that documents found on him when he was searched was not meant for Customs. He avers that he was made to sign a document after signing the contract with ICSS to confirm the disbursement of funds to him by instalments for internal purposes only. On the Acknowledgement of Disbursement, the payments to be disbursed were erroneously printed to be paid at different intervals for the total amount of 5,000,000 Dirhams but the sum tallies with the amount on the contract.

[41] He avers that he cannot explain the discrepancies in the commercial invoices as he was not the author of the documents and cannot state whether they are forgeries but that he did receive them from Al Noor Motors. He avers that with regard to the insurance documents he was not directly involved in obtaining insurance for the vehicles and that he had minimal knowledge of shipping and clearing and that is why he had contacted Your Choice.

[42] He further averred that he was not responsible for any other discrepancies in any of the documents submitted, he did not notice the errors but only spontaneously forwarded them to the clearing agent. With regard to the Bill of Entry he had great difficulty in obtaining it from Al Noor but he had no intention of deceiving Customs. He had not paid Al Noor directly. He could not provide proof of payment because he had not directly paid for the five vehicles but he had never forged any document. He had also not conspired with Sikander to mislead customers or to provide false documents to cover up the origin of the funds.

#### **Affidavit of Sibtain Sikander**

[43] Attached to the Respondent's affidavit are two other affidavits: one, an affidavit from Sibtain Sikander of Al Noor Motors who depones that on 21 February 2019 he sold five vehicles to the Respondent and that he was paid USD 258,850 for the vehicles by "Mohamed" in cash. He further avers that he was advised to ship the cars to the Respondent in Seychelles.

#### **Affidavit from Mohamed Touati**

[44] Two, an affidavit from Mohamed Touati of ICSS who depones that he is the coordinator of ICSS and the Respondent had a credit with ICSS. As the Respondent was unable to open a bank account in time to receive the money it was put as a credit in the company's books in his favour.

[45] He paid Al Noor Motors for the cars on behalf of the Respondent from wages owed to the Respondent under the contract signed on 22 January 2019.

### **The Applicant's Supplementary Affidavit**

[46] In a Supplementary Affidavit sworn on 24 March 2020, Superintendent Prinsloo avers that the forgery of a policy of insurance is an offence for which one is liable to imprisonment life and that the offence of conspiracy to deceive is contrary to section 336 of the Penal Code and that the reference to payment vouchers is a reference to the Payment Voucher on Al Noor Motors paid to the Respondent and the two commercial invoices.

### **Cross Examination of the Respondent on his Affidavit**

[47] In cross examination, the Respondent reiterated that he had paid USD 258, 850 for the cars and that this was a substantial amount of money and obviously the payment for an insurance policy was essential in case something happened to the vehicles *en route*. He stated however that he did not have the insurance policy documents. He stated that the ICSS who had contracted his services would have been responsible for paying Al Noor Motors for the cars, the insurance and the freight. He only waited for the cars in Seychelles.

[48] He agreed that he had no documentation to prove that the cars were bought for USD 51,770 each and that they were cheaper than what they would normally fetch. The price as quoted to him included the insurance and freight.

[49] He agreed that it did not make sense that each car including their insurance and freight would cost the same although they would have come from Australia and the UK. He also could not explain why the documentation with the Seychelles Revenue Commission indicated that the country of export for the cars was the UAE but stated that ultimately that this was a mistake by the clearing agent. Similarly, the draft bill of lading was also incorrect in stating that the cars allegedly from the UK came from UAE and listed the incorrect chassis numbers.

[50] He also did not have a Bill of Export for the cars which would have shown the owner of the vehicles and their value although he had requested the documentation from Al Noor.

- [51] He admitted that he had experience as a tax auditor in the Ministry of Finance and another twenty-four years as a private tax accountant, business consultant, lecturer. With his company Pro Tax, he earns about SR 25,000 monthly and with other income from his businesses altogether SR 300,000 to SR 400, 000 annually. He had a number of accounts in Seychelles including USD and SCR accounts.
- [52] He did not own any properties and lived with his in-laws. He had met Dean Camille on Facebook and he had put him in touch with businessmen in Abu Dhabi. A man named Sultan at ICSS whose surname he did not know had then phoned him and he had been invited for an interview in September or October 2018 in Abu Dhabi. They then offered him the job of risk assessment for projects in different countries but did not take it up but instead came up with the idea of ADNOC selling Seychelles fuel at cost price and another project relating to the recapitalising Air Seychelles. They said they would consider the projects. He had wanted to create his own investment business with cars in Seychelles.
- [53] When he had gone to meet Sultan he had been met at the airport by Mohamed Touati, Sultan and another person. They had put him up at the Fairmount Hotel and Sultan had called on him every day trying to persuade him to come to work for them in Abu Dhabi. He then came up with the idea of Executive Car Rental and went through his plan with Sultan. He had submitted the business plans at the airport to Sultan. He had pursued the Escort Service plan in Seychelles but sometime in 2019 had been informed by the Licensing Authority that this plan had been rejected.

#### **Cross Examination of Mohamed Touati on his Affidavit**

- [54] Mr. Mohamed Touati stated that he was the coordinator of ICSS, which had changed its name in February or March 2019 from International Centre for Risk Assessment to International Centre for Strategic Study. It had 30-50 employees. He did not know who the director of the ICSS was. He knew a Mr. Sultan but he did not know his title or position in the company. He did not know the turnover of the company. Sultan was responsible for administration. He received an annual salary of Dirhams 216,000 but it had been less two years ago.

- [55] He knew the Respondent. He had come to UAE in April 2018 or 2019 and had met Sultan. He had only met him last year twice - once at the hotel and once when he came to the company. At the first meeting at the Ritz Carlton Hotel, he and the Respondent signed the contract. That was in January 2019 and Mr. Sultan had been present. He did not know the contents of the contract as it was made by Management. The contract was for Dirhams 5,000,000. He did not know how much had been paid to the Respondent so far. He paid cash to Al Noor as directed as he was a friend with the Respondent. The Respondent had also taken Dirhams 950,000 cash from the company.
- [56] Sikhander was a friend of the Respondent and he talked with the management of ICSS. Subsequently he was told by management to take an envelope containing cash to Sikhander. He did not know what the money was for. The money was the Respondent's and it had not paid into his account as he did not have an account in the Emirates.

#### **Closing submissions by the Applicant**

- [57] The Applicant in closing submissions highlights the relevant law, namely section 4 of POCA which requires proof of possession or control of the specified property by the person and which property is directly or indirectly benefit from criminal conduct. Counsel for the Applicant has relied on the case of *Financial Intelligence Unit v Contact Lenses Ltd & Ors* (MC 95/2016) [2018] SCSC 564 (19 June 2018) for the principle that in such cases "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".
- [58] Counsel submits that the grounds for the beliefs by Superintendent Prinsloo that the Respondent is in possession or control of the specified property are the handing over of the false documentation to Customs leading them to issue an import permit, the creation of the false documentation (inter alia the AIG insurance certificate, the payment voucher), the forging and uttering of false documents which are offences under the Penal Code, and the concealing and disguising of the source of funds for the purchase of the cars which amounts to the offence of money laundering.

- [59] The Respondent, it is further submitted, has provided no credible explanation regarding the source of funds for the five vehicles and their purchase and this was not in any way helped by the testimony of Mohamed Touati.
- [60] The Applicant submits that while the so called ‘payment voucher’ from Al Noor Motors purports to show that \$258,850 was paid by the Respondent for the cars, it makes no sense not to have an insurance certificate for the cars as the Respondent would need the insurance if the cars were damaged *en route*. He submits that the failure to produce genuine insurance documents is because this would have indicated clearly who had insured the vehicles and for how much. Similarly, the Bill of Export would also have revealed the true owner and value of the vehicles and the Respondent has accepted that he has no Bill of Export.
- [61] Further, the Applicant submits, the coincidence of the cost of freight for two cars sent from Melbourne amounting to the same cost of freight as three cars sent from Southampton has not been explained. The production of the false documents, namely the certificates of insurance, the certificate of origin and letter from the Australian Chamber of Commerce and Industry and the commercial invoices are inadequate in explaining the transaction and if anything support the Applicant’s belief that the documents are false and designed to deceive Customs as to the true owner and value for the five vehicles.
- [62] With regards to the funds used to purchase the vehicles, the Applicant submits that the only evidence from Mohamed Touati is that he was given an envelope containing cash and asked to give it to Al Noor Motors but he could not assist the court with the source of the funds. The Respondent for his part has tried to persuade the Court that the money was his money held by ICSS on his account as part of a contract entered between them on 22 January 2019. The contract was submitted to Customs but no paper trail for the money was provided as the money was laundered money.
- [63] Mohamed Touati had no credible knowledge of ICSS and could not even give the surnames of persons in senior management. He was unsure of the company’s true name and when it had changed its name. The contract submitted contains no identifying details of ICSS with no address or registration number apart from “located in Abu Dhabi, United

Arab Emirates”. The contract contains several nonsensical clauses including that the Respondent’s “inheritance do not have the right of recourse to the first party with any financial rights” (sic). It is also inconceivable that the Respondent would leave such a large sum of money owing to him in the hands of the company. His explanation with regards to not having a bank account into which the money could have been paid is also not credible. The obvious conclusion, it is submitted, is that the contract was presented as a means to explain the source of the funds so as to conceal their true source.

[64] Ultimately, the Applicant submits, there are reasonable grounds for his belief which is prima facie evidence against the Respondent and which the Respondent is unable to rebut.

**The Respondent’s closing submissions.**

[65] The Respondent’s Counsel in closing submissions has also referred to the law, namely section 4 of POCA and relied on the same jurisprudence as the Applicant.

[66] He submits that on the law the Applicant’s submissions should fail namely as it has not been able to show that the specified property was in the Respondent’s possession. Relying on the ordinary dictionary meaning of possession the Respondent submits that he was neither in possession nor control of the said property as for all intent and purposes the five motor vehicles were and are at all material times in the possession and control of the Applicant.

[67] He further submits that the reversed burden of proof on him is satisfied if he can show the court that the source of funds by which he purchased the vehicles was legitimate. It is his submission that his affidavit explains the source of the funds, namely his contract with ICSS and the ideas he had for the investments in Seychelles, namely executive car rental, escort services, low cost housing, risk assessment test case with regard to recapitalising and restructuring Air Seychelles and for ADNOC to sell petrol to Seychelles at cost price with Abu Dhabi subsidising the cost.

[68] The Respondent further submits that Mohamed Touati corroborated the source of funds and showed that the contract with ICSS was genuine and therefore that the funds were

from a legitimate commercial contract. Sibtain Sikander's affidavit also proves that Al Noor is a licenced car dealer and that he sold the five vehicles to the Respondent's company, Aquilla Cars.

[69] The Respondent also submits that he is a well-known business consultant in Seychelles with a clean record and that he has testified in several court cases and is well regarded and respected.

[70] He also submits that he is not required under section 4 of POCA to show that the chassis numbers of the vehicles are correct or that the insurance for the vehicles are genuine or that his documentation to import the vehicles are in order. He also submits that contrary to what the Applicant states that it is the Bill of Lading and not the insurance documents indicate the ownership of the goods (*Falcon Enterprise v Essack & Ors* (SCA 29/2016) [2018] SCCA 35 (14 December 2018)),

[71] The Respondent submits finally that he has been able to provide the source of the funds on a balance of probabilities and that the specified property was not acquired in whole or in part from criminal conduct.

### **The Law**

[72] It is trite that section 4 applications are decided on the belief evidence of the Applicant as explained in Section 9 of POCA. As pointed out in the Applicant's submission above, there is a shift in the evidential burden from the Applicant to the Respondent once the Applicant has produced prima facie evidence which is his reasonable belief evidence (*Contact Lenses Ltd & Ors supra*).

[73] Under section 4 of POCA, the Applicant does indeed have to satisfy the court of his belief that the Respondent was in possession or control of specified property constituting directly or indirectly benefit from criminal conduct, that it was acquired in whole or in part directly or indirectly from criminal conduct and that the value of the property is not less than SR50,000.

[74] In this respect, I must first deal with the issue raised by the Respondent that the Applicant has failed to prove that the specified property, that is, the five vehicles were in his



possession or control. This first of all begs the question of why the Respondent is defending the application in the first place. If the cars are not his then he may as well concede the case. It would appear that the specific point submitted by the Respondent is that the cars were either with Customs or with the police and as such not in his possession.

[75] In this context it must be pointed out that the concept of ownership is extremely fluid. Possession may be actual, adverse, conscious, constructive, exclusive, illegal, joint, legal, physical, sole, superficial. In his article “The Nature and Importance of Legal Possession” Joseph W. Bingham observes:

*“Commonly two principal elements are prescribed: (i) "an intent to control," or "an intent to appropriate to oneself the exclusive use of the thing possessed," or "an intent to exclude others" or "an intention to, possess"; and (2) "an actual control," or "a power of control," or "a power to exclude others," or "a power of using to the exclusion of others," or "an apparent power to control," or "an apparent power to exclude” (Michigan Law Review , May, 1915, Vol. 13, No. 7 (May, 1915), pp. 535-565, 549).*

[76] In summary, possession does not necessarily mean having physical custody of the property as is clearly intended by POCA. In any case, section 20 of POCA resolves this issues by providing that:

*“20. For the avoidance of doubt, in addition to the ordinary meaning of that phrase, a person shall be deemed for the purposes of this Act to be “in possession or control of property” notwithstanding that it, or any part of it —*

*(a) is lawfully in the possession of the police, an assets agent, officer of Customs or any other person, having been lawfully seized or otherwise taken or restrained;”*

*(b) is subject to an interim order or interlocutory order or any other order of the Court which —*

*(i) prohibits any person from disposing of or otherwise dealing with the property or diminishing its value;*

*(ii) contains any conditions or restrictions in that regard, or is to the like effect;*

*...”*

[77] In the same respect, the submission by Counsel for the Respondent that Bills of Lading and not insurance documents show ownership of imported goods is not helpful to his case. A Bill of Lading is essentially a receipt of freight services between a freight carrier and shipper. While the goods may have been shipped to the Respondent, the Bill of Lading does little to indicate how he paid for them.

### **The Substantive Issue in this case**

[78] There are difficulties with the documentation produced by the Respondent to Customs for clearing the vehicles he imported; even the Respondent concedes this point. The inconsistencies in the documentation are clearly detailed in Superintendent's Prinsloo's affidavit and in the Applicant's closing submissions and altogether the discrepancies listed are staggering. To go through all of them again would be an exercise in futile repetition. Suffice it to list a few of the inconsistencies: no insurance certificate has been produced – only a quotation - whereas it is common knowledge that no freight is shipped without insurance; whilst the cars were allegedly shipped from the UK and Australia, the freight costs appears the same from each country on the documentation; the country of origin of the goods is entered as UAE; the price for the cars seems under the average cost; the chassis numbers do not match on the documentation produced; and no Bill of Export could be produced.

[79] I find therefore that there is prima facie evidence produced 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.

[80] In the face of these irregularities and the Applicant's reasonable belief, the burden of proof shifts onto the Respondent to address what is the only substantive issue in this case - how did he obtain the funds to purchase the cars.

### **The Respondent's burden of proof**

[81] The Respondent has sought to explain where he received the funds to buy the five BMWs.

- [82] However, having read his affidavit and listened to his evidence in court, I am still unable to ascertain the provenance of the funds for the cars. I simply do not find the evidence produced, even on a balance of probabilities, credible.
- [83] I cannot understand what the alleged contract between the ICSS and the Respondent was about. If it was about the supply of “consultancy services for financial and audit program (sic)” as is stated in the contract, there is scant evidence of any such services having ever been provided by the Respondent. The Respondent has deponed in his affidavit and testified in court that he gave a few lectures but he had not done any formal audits. He was at pains to explain that the ideas he had about the executive car rental was his own endeavour and separate to the contract with ICSS. This begs the question why then would the ICSS pay him Dirhams 5,000,00? That is a substantial amount of money for a few lectures. It is simply not credible especially compared to the salary the coordinator of the ICSS was receiving (Dirhams 216,000 a year). And why would the ICSS find him a good deal with cars? The Court is simply not convinced that the relationship he allegedly had under a contract for services would somehow result in the ICSS enabling him to buy cheap luxury cars.
- [84] Many other matters to which the Respondent has testified to does not add up. An experienced businessman as he claims he is would not operate without a bank account and leave Dirhams 5,000,000 into the internal account of an employer he was not familiar with. I say he was not familiar with his employer simply for the fact that he did not even now their surnames not did the administrator of the centre, his witness Mr. Touati.
- [85] Further, the Respondent admitted that he did not own a house in Seychelles, that he lived with his parents-in law, he did not own a car or know how to drive – yet he wants the court to believe that he was going to open an executive car rental company. Again this does not add up.
- [86] Further, his means as analysed by the Applicant show that the he could not have afforded to purchase five BMWs. His assertion that he is a reputable business person and well respected is neither here nor there. It does not make his narrative more credible. If

anything his experience as a businessman and as a former employee of the Revenue Commission is more damning to his case than is helpful.

## **Decision**

[87] On this basis, I am satisfied on the Applicant's information, together with the belief evidence of Superintendent Prinsloo that there are reasonable grounds at this stage 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. This prima facie evidence against the Respondent has not been rebutted anyway.

[88] The Respondent has failed to show on a balance of probabilities that the specified properties retained were not from illegitimate sources.

[89] I am also satisfied that there is no risk of injustice to the Respondent or any person if I make the orders sought as he 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.

[90] 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.

[91] In the circumstances, I also make the following orders:

1. Pursuant to section 4 of POCA I prohibit the Respondent 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 7 September 2020.

---

M. Twomey

Chief Justice