

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC ...
CO114/2021

In the matter between of:

MUKESH VALABHJI
(rep. by Mr France Bonte)

Applicant

and

THE ANTI-CORRUPTION COMMISSION
(rep. by Michael Skelley)

1st Respondent

THE REPUBLIC
*(rep by the Attorney General
Mr Thachet)*

2nd Respondent

THE COMMISSIONER OF POLICE
(rep by the Attorney General)

3rd Respondent

SEYCHELLES TRADING COMPANY LTD
(rep by Mr Chang Leng)

4th Respondent

Neutral Citation: The Republic v/s Valabhji & Ors CO114/2021) [2022] SCSC 31
October 2022.

Before: Govinden CJ,
Heard: 31 October 2022
Delivered: 31 October 2022

RULING

GOVINDEN CJ

[1] I have read the Application of the 1st Accused dated the 27th of September 2022 in which he has applied amongst several other Orders, for him to access and ensure the proper

safekeeping of wines, champagne and vintage liquor, herein after refer to as “*alcoholic beverages*,” from his premises at Morne Blanc Mahe.

- [2] His Application is duly supported by his affidavit. I have also carefully scrutinized the Affidavit in reply of the Chief Executive Officer of the Seychelles Trading Company in which custody the alcoholic beverages are presently found. I have also carefully read and the affidavit produced by the Anti-Corruption Commission (the ACCS) and that of the Commissioner of Police and the several written statements and documents in support.
- [3] I have also carefully listened to the several submissions made in favour and against the Application.
- [4] Having given careful consideration to all the issues raised before me I find that the following are the pertinent provisions of the law applicable to the facts in issue before the Court.
- [5] Section 58(1) of the Anti Corruption Commission Act it says “*where in course of an upon investigation into an offence under this Act, the Chief Executive Officer or an Officer of the Commission has reasonable grounds to suspect that any moveable or immovable property, in this case moveable, is derived or acquired from corrupt practices is subject of an offence or is evidence relating to an offence the Officer shall with a warrant seize the property.*”
- [6] Section 58(2) “*An Officer who seizes any property pursuant to Sub Section(1) shall prepare an inventory in triplicate or all moveable property seized under that Section with details of the places in which the property is found in the presence of the officers if any assisting that officer or a representative or the accused person or the accused person himself if present and an independent witness and the same shall be signed by all of them.*”
- [7] Section 58(3) “*The officer who prepares the inventory or list referred to in Sub Section (2) shall served a copy of same on the owner of the property or on the person from whom the property was seized then and there itself and if the owner or the person from whom the property was seized refuses to accept the same or refuses to sign the inventory the*

copy of the inventory are signed the other persons specified in Sub Section 2 shall be delivered to the owner or the person from the property was seized by registered post.”

[8] Section 59(1) *“The Chief Executive Officer or an Officer of the Commission who initiates the seizure shall effect the seizure by removing the moveable property from the custody or control of the person from whom it is seized and placing it under the custody of such other person or authority and at such place as that Officer may determine.”*

[9] Section 60(1) *“The Chief Executive Officer or an Officer of the Commission may be written notice to the person whose subject to an investigation in respect of an offence alleged or suspected to have been committed under this Act or against who a Prosecution for an offence has been instituted direct that the person not to dispose of otherwise deal with any specified property in such Notice without the consent of the Chief Executive Officer or the Officer of the Commission as the case maybe.”*

[10] Section 60(4) *“A Notice issued under one shall in respect of an investigation within the jurisdiction have effect from the time of service and shall continue to be in forced for a period of 9 months or until cancel by the Chief Executive Officer.”*

[11] Section 62 *“The Commission may commence proceedings for forfeiture of explain property under this Section against a person where”-*

(a) After due investigation the Commission is satisfied that the person has unexplained asset.

(b) The person has in the course of the exercise by the Commission of its powers of investigation or otherwise been afforded a reasonable opportunity to explain the discrepancies between the assets concerned and the person known legitimate source of income and the Commission is not satisfied that an adequate explanation of that disproportion has been given.”

[12] So, reading the law of the ACCS this is what I find relevant of the case that is before me.

[13] Having securitized these provisions of law it is clear to me that ensuring the safety and safekeeping of provisionally seized assets, being moveable, is the duties of the custodians

of the assets. That is in this case of the STC and the ACCS, who has the responsibility to ensure that the alcoholic beverages are property kept, refrigerated and stored in a place that will ensure that no deterioration in their qualities occurs.

[14] It is also clear that it is up to the ACCS to ensure as to where the beverages are kept. According to the Applicant's request, he says that he or his lawyers and agents be allowed to inspect the places of custody of the alcoholic beverages; this cannot be maintained in law. The same applies for his Application that his expert makes an independent assessment of the management of the beverages.

[15] It speaks to reason when I read the law to also note that the Application to return the alcoholic beverages to the Applicant also suffers from the same deficiencies.

[16] It is clear that in law the Applicant is only entitled to the following orders:-

(1) For an inventory of the alcoholic beverage as seized from his premises, provisionally by the ACCS, as signed by the Seizing Officer or the Chief Executive Officer to be served upon him, if it is not served.

(2) For a written Notice to be issued by the CEO of the ACCS or Seizing Officer to be served upon him directing him not to dispose or otherwise deal with the beverages being the subject matter of the seizure.

[17] In Seychelles, as in many Commonwealth Countries with similar democratic set up as ours, once a person is charged with a criminal offence the person loses certain rights and privileges. One of them is that the law sometimes allows the prosecuting entity to provisionally seize alleged instrumentalities and proceeds of crime. The Court's duties in these instances is to ensure that the Seizing entities comply with the letters of the law with respect to the seizure. In this case the Court has addressed its mind to those provisions and is satisfied that they are in compliance with the law.

[18] Accordingly the Application is dismissed.

Signed, dated and delivered at Ile du Port on 31st October 2022

Govinden CJ