

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 660
MC 30/2021

In the matter between:

THE GOVERNMENT OF SEYCHELLES
(rep. by Steven Powles)

Applicant

and

GE-GEOLOGY LTD
(rep. by Frank Elizabeth)

Respondent

Neutral Citation: *Government of Seychelles v Ge-Geology Ltd* (MC 30/2021) [2021] SCSC 660 (15 October 2021).

Before: Burhan J

Summary: Preliminary Objections in respect of Notice of Motion – for an Interlocutory Order pursuant to Section 4 of POCA dismissed.

Heard: 22nd July 2021 and 29 July 2021

Delivered: 15 October 2021

ORDER

I proceed to dismiss the preliminary objections and make further order that the Respondent files his reply to the Notice of Motion and affidavit filed by the Applicants seeking an Interlocutory Order pursuant to Section 4 of POCA as set out in the Notice of Motion dated 9th April 2021.

RULING

BURHAN J

[1] The Government of Seychelles filed this application MC 30 of 2021 seeking an Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil confiscation) Act (POCA) prohibiting the Respondent Ge – Geology Ltd or such other person or any other person having notice of the making of this Order from

disposing of or otherwise dealing with whole or any part of the set out in the Table to the Notice of Motion being the sum of USD 7,244,968.97 standing to credit in the account of Ge-Geology Limited in account bearing number 500000001638 at the Al-Salam Bank of Maison Esplanade, Victoria Mahe. (SCR value 153,568,433.96). An application was also made to appoint Mr. Hein Prinsloo as receiver of the said specified property.

[2] Learned Counsel Mr. Elizabeth who appeared for the Respondent Ge- Geology Ltd thereafter filed a plea in limine litis taking up four preliminary objections to the hearing of the application for an Interlocutory Order. The preliminary objections taken were-

- 1) The action is bad in law as it fails to comply with the Rules.
- 2) The action amounts to an abuse of process in law.
- 3) The application is defective as there is no affidavit in support of the motion before the Court in law.
- 4) There is no evidence to support the application and it should be dismissed forthwith.

[3] Thereafter learned Counsel for the Respondent tendered his written submissions dated 29th of June 2021 and made oral submissions on the 22nd of July 2021.

[4] Learned Counsel for the Applicant Mr. Powles filed his written submissions on the 14th of July 2021 as borne out by the proceedings of that date and Mr. Powles also made oral submissions on the 29th of July 2021.

[5] I will proceed to deal now with each of the preliminary objections taken by learned Counsel for the Respondent Mr. Elizabeth.

[6] The first ground urged by learned Counsel for the Respondent is that Rule 8 (8) of the Proceeds of Crime Civil Confiscation Rules 2016 makes it mandatory on the Court to

dismiss an Application under Section 4 of the POCA, if the Applicant has filed a defective affidavit which fails to comply with Rule 6. He further submits that the affidavit filed by Mr. Hein Prinsloo contains documents which are not admissible as evidence and therefore cannot be treated as belief evidence. At the very outset I wish to state that this is a matter Court has to determine when going into the contents of the affidavit and the supporting documents relied on by the Applicant when dealing with the merits of the application. It is too premature at this stage to consider the merits of an application when a plea in limine- litis has been raised. I therefore dismiss this ground of objection raised by the Respondents on the basis that it is too premature to be decided on at this stage as it concerns the merits of the case.

[7] The next ground urged by learned Counsel for the Respondent Mr. Elizabeth is that the Applicant has filed 7 to 9 separate applications against his client between the period 2015 and 2017. This in itself amounts to an abuse of process. He further submitted that the proceedings commenced in 2015 had to be concluded due to a change in law as the money in banks were no longer considered as proceeds of crime. However learned Counsel for the Respondent himself admits in his submissions that a further change in the law occurred in 2020 when the Anti-Money Laundering and Countering the Financing of Terrorism Act was enacted which once again made it possible for the Applicants to proceed against Ge- Geology Ltd as was possible in the pre-2017 period.

[8] Lord Lane CJ and Sir Roger Ormrod in the case of *R v Derby Magistrates' Court, ex parte Brooks* [1985] 80 Cr App R 164 set out circumstances in which an abuse of process can occur. It was held -

"In our judgment, bearing in mind Viscount Dilhorne's warning in DPP v Humphreys [1977] AC 1 at 26 that this power to stop a prosecution should only be used "in most exceptional circumstances," and Lord Lane CJ 's similar observation in R v Oxford City Justices, ex parte Smith (1982) 75 Cr App R 200 at 204, which was specifically directed to Magistrates' Courts, that the power of the justices to decline to hear a summons is "very strictly confined," the effect of these cases can be summarised in this

way. The power to stop a prosecution arises only when it is an abuse of the process of the court. It may be an abuse of process if either (a) the prosecution have manipulated or misused the process of the court so as to deprive the defendant of a protection provided by the law or to take unfair advantage of a technicality, or (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation or conduct of his defence by delay on the part of the prosecution which is unjustifiable: for example, not due to the complexity of the inquiry and preparation of the prosecution case, or to the action of the defendant or his co-accused, or to genuine difficulty in effecting service. We doubt whether the other epithets which are sometimes used in relation to delay, such as "unconscionable," "inordinate," or "oppressive," do more than add an emotive tone to an already sufficiently difficult problem.

[9] It is apparent from what the Respondent himself submits that the Applicant had dropped the initial proceedings instituted against the Respondent due to a change in law which made it not possible to continue proceedings against the Respondent. I see nothing malicious or manipulative in the conduct of the Applicants in doing so. It cannot be said that they were attempting to deprive the Respondent of a protection of the law or take unfair advantage of a technicality nor has the conduct of the Applicant caused prejudice to the Respondent in the preparation of the defence by unjustifiable delay by the Applicant. This Court is aware that the Applicant, after the coming into operation of the AML & CFT Act 2020 filed proceedings under the said Act against the Respondent in this case but on receipt of necessary information from the banks, decided to proceed under the POCA and withdrew proceedings under the AML & CFT Act. This in the view of this Court was a step taken for the benefit of the Respondent and cannot be considered to be an abuse of process.

[10] Learned Counsel for the Respondent in his submissions and once again in his oral submissions submitted that the that facts set out in the affidavit of Mr. Hein Prinsloo do not indicate his personal knowledge of such facts but are based more on his opinion and should be disregarded as most of the documents attached are not originals and refer to news articles on internet. These matters too in the view of Court

are matters to be taken into consideration when dealing with the merits of the case and not at the stage of a plea in limine litis.

[11] Learned Counsel for the Respondent next submitted that the Notice of Motion is not in conformity with Form 1 in the Schedule as the addresses of the Attorney at Laws have not been inserted as provided for in the Form. Form 1 provides that the name and address of the attorney is to appear on the Notice. It is the contention of learned Counsel for the Applicant Mr. Powles that Rule 3 (2) provides that Forms in Schedule of the Rules shall be used, adapted as the circumstances may require. Mr. Powles further submitted that both Attorneys for the Attorney General have signed “for the Attorney General”. It is his contention that as the first page of the Notice of Motion of the Applicant indicates that the Applicant is represented by the Attorney General of National House, Mahe, Seychelles therefore the required address has already been provided and the Notice of Motion is not defective. Considering the fact that the Applicant in this case is being represented by Attorneys from the Attorney Generals Department and as the address of the Attorney General Department is on page 1 the Notice of Motion, it cannot be said that the address of the attorneys have not been provided in Form 1. The Notice of Motion taken as a whole document specifies the names and the addresses of the attorneys appearing for the Applicant which is their official address. The mere fact that it does not appear below their signature is a technicality which causes no prejudice, as the Respondent has been provided in the Notice of Motion, the names and official department address of the Applicant’s attorneys’ for contact and reply purposes which in my view suffices. In the case of **Hoareau & Ano v Karunakaran & Ors Constitutional Appeal SCA [2017] SCCA 33** the Seychelles Court of Appeal had this to say about technical objections at paragraph [23]. *“Nonetheless, the preconditions of being an aggrieved person and other similar technical objections such as the one raised concerning the motion, cannot bar the jurisdiction of the court, or let justice bleed at the altar of technicality. The court has vast powers under the Constitution, to do justice without technical restrictions and restraints; and procedures and reliefs have to be moulded according to the facts and circumstances of each case and each situation. . .”*

[12] The next objection by learned Counsel for the Applicant is that as the Jurat of the affidavit is on a separate page the affidavit should be rejected. The reason why the Jurat should be on the same page as the last paragraph of the affidavit is to prevent additional material being included after the signing of the said affidavit which would amount to tampering. There is no allegation of tampering by the Respondents. Learned Counsel for the Applicant Mr. Powles brought to the notice of Court that in the Jurat the deponent has further mentioned “*that all the averments mentioned in paragraph 1 to 94.*” The last paragraph in the preceding page is paragraph 94 and it contains three paragraphs which are in Roman numerals (i), (ii) and (iii) which go down to very bottom of the page. Once again I am of the view that objection is a mere technicality that has not caused any prejudice or injustice to the Respondent nor created any doubt in respect of the authenticity of the affidavit. In the case of **(Hawkins (1997) Cr App. R P 234)** wherein the Court of Appeal commented that “*the practice of the Court has in the past, in this and comparable situations, been to eschew undue technicality and ask whether any substantial injustice has been done.*” The deponent in the affidavit has specifically stated that he is employed as Superintendent in the Seychelles Police Force and further specified that he attached to the Financial Crime Investigation Unit sufficient details have been given of his location and address especially in a small jurisdiction like the Seychelles which has only one FCIU unit. The necessity to give his personal address in my view is not mandatory.

[13] For all the aforementioned reasons, I proceed to dismiss the preliminary objections and make further order that the Respondent files his reply to the Notice of Motion and affidavit filed by the Applicants seeking an Interlocutory Order pursuant to Section 4 of POCA as set out in the Notice of Motion dated 9th April 2021.

Signed, dated and delivered at Ile du Port on 15 October 2021

Burhan J