

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2021] SCSC  
MC 53/2020

In the matter between:

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

**Applicant**

and

**MARCUS DUGASSE**  
*(rep. by Joel Camille)*

**1<sup>st</sup> Respondent**

**DAVIS LESPERANCE**  
*(rep. by Basil Hoareau)*

**2<sup>nd</sup> Respondent**

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**Neutral Citation:** *GOS v Dugasse & Ors* (MC 53/2020) [2021] SCSC  
(19 November 2021).

**Before:** Burhan J

**Summary:** Application for Interlocutory Orders under Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) and an Order for the Appointment of Receiver under Section 8 of POCA granted.

**Heard:** 24<sup>th</sup> November 2020, 21<sup>st</sup> April 2021, 11 June 2021 and 23 August 2021.

**Delivered:** 19 November 2021

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**ORDER**

I proceed to grant the reliefs as prayed for and issue:

- (1) An Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the two Respondents or such other person having notice of the making of this Order, from dispensing of or otherwise dealing with or diminishing the value of whole or any part of the property set out in Annexure of the Notice of Motion.
- (2) An Order pursuant to Section 8 of the POCA, appointing Superintendent Hein Prinsloo to be a Receiver of all or part of the property to manage, to keep possession or dispose of

or otherwise deal with any other property in respect of which he is appointed in accordance with the Court's directions.

(3) A copy of this Order to be served on both Respondents.

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## ORDER

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### **BURHAN J**

- [1] This is an application by the aforementioned Applicant seeking Interlocutory Orders pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the two Respondents from disposing of or otherwise dealing with whole or any part of the property i.e. SCR 255,100.00 (two hundred and fifty five thousand one hundred) details of which are set out in annexure to the Notice of Motion dated 5<sup>th</sup> August 2020. The application also seeks an Order pursuant to Section 8 of the POCA, appointing Mr. Hein Prinsloo to be receiver of the said property. It is also sought that notice be served on the Respondents.
- [2] Accordingly, notice was served on the Respondents and an entry of appearance on behalf of both Respondents Marcus Guylio Dugasse and Marcus Andrew Lesperance was made by Attorney at Law Mr. Basil Hoareau on the 21<sup>st</sup> of September 2020. Thereafter the 2<sup>nd</sup> Respondent Davis Lesperance filed his reply affidavit dated 14<sup>th</sup> September 2020 and the 1<sup>st</sup> Respondent Marcus Dugasse filed his reply affidavit dated 14<sup>th</sup> of October 2020 referring to his Attorney at Law being Mr. Joel Camille.
- [3] The matter was thereafter fixed for hearing on the 24<sup>th</sup> of November 2020. On the said date Superintendent Mr. Hein Prinsloo was cross examined on his affidavit dated 5<sup>th</sup> August 2020. He admitted the money was not seized from Mr. Dugasse. The money totalling a sum of SCR 135, 000.00 was deposited in the Supreme Court as bail money by one Flavia Ragel Capricieuse (the girl friend of Mr. Dugasse) to secure release of Mr. Dugasse, as cash bail had been ordered in a sum of SCR 120.000.00 by the Supreme

Court, in a case in which he was an accused in a charge of drug trafficking. Mr. Prinsloo admitted that the Mr. Dugasse was in remand at the time the money was deposited in Court. He further stated that he was informed that the money had been raised by Mr. Dugasse by selling his vehicle to one Mr. Balette but when he checked a week later, the vehicle had not been registered in the name of Mr. Balette and was still in Mr. Dugasse's name. He admitted that Mr. Balette was not a party to the proceedings. He further explained that the sums deposited in Mr. Balette's account prior to withdrawal did not come from legitimate earnings nor from his work with government agencies. In May 2020 and June 2020, Mr. Balette received "Financial Assistance for Jobs Retention" and therefore the money could not be from this source either.

- [4] Witness Prinsloo stated that it was in respect of Mr. Lesperance the other accused in the case, that Mrs. Myriam Lesperance (referred to by Mr. Hoareau inadvertently as Myriam Lesperance as per Mr. Prinsloo's affidavit Myriam D'Unienville) had deposited a sum of SCR 120,000.00 as bail which money was in the custody of Court. He further explained that after a Section 3 application under the POCA, the money was now in the hands of the Receiver on an order from Court. Mr. Prinsloo admitted that he was not involved in the investigation of the main drug case filed against both the accused. He also stated in paragraph 30 of his affidavit that on the 24<sup>th</sup> of June one Myriam Patricia D'Unienville paid the said sum of SCR 120,000.00 for bail for Mr. Lesperance and as proof of origin of payment filed a document which indicated that one Rino Barry D'Unienville had won an amount of SCR 39,325.00 at "Pallagames" on 7<sup>th</sup> of November 2016 (HP5). As proof of funds she had further produced a lease agreement between herself and Kevin D'Unienville and Ocean Bay Co Pty Ltd represented by one Marie Louise (HP6). An interview with Marie Louise indicated that the lease agreement was signed in 2014 but due to excessive drug activity was terminated in September 2016. Myriam D'Unienville had also produced a cash withdrawal slip of SCR 100,000.00 from MCB account number 201488 held in her name. The cash withdrawal slip was dated 22<sup>nd</sup> February 2017 (HP7) and the withdrawal was for "guest house renovation" but apparently the money had been kept for three years without being deposited or utilised for renovations. Further it was brought to the notice of Court that Rino the son of Myriam was also in custody for having been involved in drug trafficking with the Respondents Dugasse and Lesperance.

[5] Mr. Marcus Dugasse the 1<sup>st</sup> Respondent gave evidence and admitted being arrested on the 15<sup>th</sup> of May 2021 for drug related offences on the 21<sup>st</sup> of April 2021. He stated he was remanded and bail ordered in a sum of SCR 120,000.00. His family had arranged for the sale of his vehicle to raise the money. The person Mr. Balette who bought the vehicle from him he stated, works with his dad. He admitted he had transferred the vehicle after he came out from prison in July. He stated he did not know how Mr. Balette came to have that money but to his knowledge, he would cut wood and work with his father. Under cross examination, he admitted the money paid for his vehicle by Mr. Balette was his now, as he had sold and transferred his vehicle to him for the said amount. He admitted it was his decision to use the said money to keep bail for him. The transfer of the vehicle sold S17570 was done in July 2020. He further admitted that Flavia Rachel Capricieuse was his girlfriend. He denied being a drug dealer. It appears from his evidence that the said Flavia had paid an addition SCR 15,000 from her money as bail money totalling SCR 135,000.00 when the amount ordered by Court was only SCR 120,000.00. It was also brought to his notice that the account of Mr. Balette was over SCR 100,000.00 and on the 9<sup>th</sup> of June two cash deposits of SCR 35,000 each, totalling 70,000.00 were paid into the account by Mr. Balette. He denied the suggestion that it was he who had arranged for the deposit of the said money. Learned Counsel for the Applicant further pointed out that during the period 9<sup>th</sup> June and 25<sup>th</sup> June 2020, a total of SCR 120,000.00 was paid into Mr. Balette's account and on the 23<sup>rd</sup> of June 2020 a sum of SCR 120,000.00 was paid by Mr. Balette for the purchase of Mr. Dugasse's vehicle.

[6] On the 11 of June 2021, Mr. Lesperance the 2<sup>nd</sup> Respondent was cross examined on his affidavit dated 14<sup>th</sup> September 2020. He admitted he had stated the money in a sum of SCR 120,000.00 was paid for his bail by his sister Myriam Patricia D'Unienville. He stated that his sister does not do any drug dealing but runs a guest house. He admitted her son was Rino Barry D'Unienville. He admitted he too had been arrested for the same case. He admitted that Rino had won the money a sum of SCR 39,325.00 at the Praslin games in 2016 which was four years before the money was paid into the court. Mr. Lesperance stated that in respect of the other source of income being from a guest house, he was unaware that the lease agreement had been terminated four years ago. In regard to

the withdrawal of SCR 100,000.00 in 2017 too he stated he was unaware. Thereafter the 2<sup>nd</sup> Respondent closed his case.

[7] Submissions were filed by the Applicant on the 28<sup>th</sup> of June 2021 and by the 1<sup>st</sup> Respondent on the 23<sup>rd</sup> of August 2021. Although several dates were given to learned Counsel Mr. Basil Hoareau to file his submissions, no submissions have been filed up to date.

[8] Learned Counsel for the Applicant Mr. Powles in his submissions dated 28<sup>th</sup> June 2021, referred to the law as contained in Section 4 of the POCA which requires proof that:

a) A person is in possession or control of –

(i) Specified property and that the property constitutes, directly or indirectly benefit from criminal conduct; or

(ii) Specified property that was acquired , in whole or in part , with or in connection with the property that directly or indirectly constitutes benefit from criminal conduct and

(b) The value of the property or the total value of the property referred to in sub paragraphs (i) and (ii) of paragraph (a) is not less than R 50,000.

[9] It is apparent from the annexure contained in the Notice of Motion that the item sought to be forfeited is cash, amounting to SCR 255,100.00. There is no challenge from the Respondent regarding the value of the cash seized by the Officers of the FCIU (Financial Crime Investigation Unit). Therefore the value as required under Section 4 (b) POCA is established in that the amount seized exceeds SCR 50,000.00.

[10] It is the contention of learned Counsel for the 1<sup>st</sup> Respondent as borne out by the facts set out in his affidavit that Mr. Prinsloo being neither the Director nor Deputy Director of the FCIU has no authority to sign the said belief affidavit. Learned Counsel Mr. Powles submitted that the Act has since then been amended and the said requirement removed, thereby giving Mr. Prinsloo the authority to sign the said affidavit. When one peruses the said amending Act POCA 2017 Act 10 of 2017 section 2 (d) clearly states the amendment in section 9(1) is deleting the words “ Director or Deputy Director “ and

substituting thereof the words “ a police officer”. Mr. Prinsloo being a Superintendent of police, therefore has the authority to sign the said affidavit.

[11] The other objection taken up by both the Respondents is that Court cannot rely on hearsay or information provided in Mr. Prinsloo’s affidavit as there is nothing to support his belief evidence. Learned Counsel Mr. Powles relied on the case of **Government of Seychelles v Sifflore et al [2019] SCSC 612**, where Court rejected the argument that Superintendent Prinsloo was unable to give evidence based on “facts that are not within his personal knowledge”. Superintendent Prinsloo was therefore allowed to rely on information told to him by others. In this instant case, I observe his belief evidence is in addition supported by documentary evidence annexed to it namely HP1, HP3, the relevant cash deposit slips crediting money into Mr. Balette’s MCB account 94927, the bank statement of Account number 94927 of Mr. Balette (HP2). Further document HP5 a receipt, indicates the winnings of Mr. Rino Barry D’Unienville totalling a sum of SCR 39,325.00 was as far back as the 7<sup>th</sup> of November 2016. Further other documents HP6 indicate that the lease agreement between Mrs Myriam D’Unienville and Ocean Bay Co Pty Ltd represented by Mrs Maria Louise was as far back as the 16<sup>th</sup> day of November 2014. His evidence that the lease was terminated due to excessive drug activities, raids by the ANB and therefore the lease agreement was terminated in September 2016 remains unchallenged as Mr. Lesperance states he was unaware of such facts. In addition his belief evidence that the cash withdrawal of Mrs Myriam D’Unienville was as far back as 22<sup>nd</sup> February 2017, is supported by the annexure HP7.

[12] I therefore hold that the essential elements of Mr. Prinsloo’s belief evidence have been supported by necessary documentary evidence. I find it hard to believe that the said winnings in the year 2016 and the cash withdrawal in the year 2017 were the same moneys that were utilised to keep bail for the 2<sup>nd</sup> Respondent Lesperance several years later in 2020. Further, it is clear from the trail of bank deposits that money was placed in the account of Mr. Balette within the period 9<sup>th</sup> June and 25<sup>th</sup> June 2020 totalling a sum of SCR 120,000.00 in order that Mr. Balette would have sufficient funds amounting to SCR 120,000.00 to pay Mr. Dugasse for purchase of a vehicle, in order that the said sum could be kept as bail money for Mr. Dugasse, on the basis that Mr. Dugasse had sold his vehicle

to raise the said sum. It is also clear that Mr. Balette's did not have any legal source of income to explain the sudden deposits in his account during the period 9<sup>th</sup> and 25<sup>th</sup> of June 2020.

[13] It is apparent from the above that for the purposes of Mr. Balette having sufficient funds in his account to purchase Mr. Dugasse's vehicle, funds which source cannot be legally explained were deposited into his account during the short period of time set out in the aforementioned paragraph. It is with these illegal funds that Mr. Balette purchased the vehicle of Mr. Dugasse thereby giving the false belief that Mr. Dugasse raised his bail money by selling his vehicle legally. It is also clear to this Court that Mr. Balette has no source of legitimate income to explain how he came by this large amount of money to buy a vehicle in this short period of time. It is also clear from the evidence before Court that the two Respondents are presently facing charges under the Misuse of Drugs Act.

[14] For the aforementioned reasons and having considered the facts arising from the affidavits filed by both the Applicant and the Respondent, the documents attached to the said affidavits, the facts arising from the evidence led and the cross examination and the submissions of both parties, I am satisfied that the belief evidence by way of affidavit of Mr. Hein Prinsloo can be accepted as it is supported by the annexures referred to herein. I am further satisfied that the Applicant has established on a balance of probability, that the money deposited as bail for both Respondents totalling a sum of SCR 255,100.00, constitutes benefit from criminal conduct and its value is over SCR 50,000.00.

[15] Learned Counsel for the Applicant referred to the case of **Financial Intelligence Unit v Contact Lenses Ltd & Ors [2018] SCSC 564 at [15]** where it was held that "*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*"

[16] The Respondents have failed to give any credible explanation as to the origin of such an amount of cash and the explanations given for reasons contained herein cannot be accepted. The Respondents have failed on a balance of probability to establish that the specified property SCR 255,100.00 is not from proceeds of crime.

[17] I therefore proceed to grant the reliefs as prayed for and issue:

- 1) An Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the two Respondents or such other person having notice of the making of this Order, from dispensing of or otherwise dealing with or diminishing the value of whole or any part of the property set out in Annexure of the Notice of Motion.
- 2) An Order pursuant to Section 8 of the POCA, appointing Superintendent Hein Prinsloo to be a Receiver of all or part of the property to manage, to keep possession or dispose of or otherwise deal with any other property in respect of which he is appointed in accordance with the Court's directions.
- 3) A copy of this Order to be served on both Respondents.

Signed, dated and delivered at Ile du Port on 19 November 2021

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Burhan