

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 272
MC 05/2021

REPUBLIC
(rep. by Nissa Thompson)

Applicant

and

ROY RICHARD BRADBURN
(rep. by Daniel Cesar)

Respondent

Neutral Citation	<i>Republic v Roy Richard Bradburn</i> (MC 05/2021)[2021]SCSC272 delivered on 28 May 2021
Summary	Application under sections 74(3) and 74(2) of the AMLCFT
Before:	Vidot J
Heard:	27 May 2021
Delivered:	28 May 2021

ORDER

VIDOT J

- [1] This is an application made in terms with Sections 74(3) and 74(2) of the Money Laundering and Countering and Financing of Terrorism Act (AMLCFT Act). Attached to the Notice of Motion is an affidavit sworn by Karyn Pouponneau, a sergeant of the Police Force and currently attached to the Financial Crime Investigation Unit (“FCIU”).
- [2] The Respondent was stopped and searched when he was leaving Seychelles on his way to Dubai on 07th May 2021. Cash in different currencies, namely Euros, US Dollars and Dirhams was discovered in his possession. There were in all US\$8,048 amounting to SR124,974.98, €410, amounting to SR7,621.00 and Dirhams 1,550 , amounting to

SR6,386.00, giving a grand total of SR138,971.97. The FCIU became suspicious of the source of fund and suspected that they had reasonable grounds to believe;

- i. That the cash represents proceeds of crime or intended to be used in connection with criminal conduct; and
- ii. That the cash seized were in foreign currency and when converted into Seychelles Rupees is not less than the prescribed sum of SR50,000; that the cash amounted to SR138,971.97.

[3] Karyn Pouponneau further avers in her affidavit that she is of the view that the detention of the cash seized beyond 14 days is justified while its origin or derivation is further investigated or consideration is given to the institution of criminal proceedings against the Respondent for an offence with which the cash is connected. As provided for under the AMLCFT Act, the cash was seized and detained for a period of 14 days which time period expired on the 21st May 2021, thus this application. The Application prays to Court to extend that period to the prescribed of not in excess of 60 day period. In fact the initial 14 day period has as stated expired but I note that application was filed prior to that expiration period.

[4] The grounds enumerated and relied on for the further detention of the cash as per the Notice of Motion are as follows;

- iii. That the Respondent was unable to provide satisfactory proof and explanations of the origin of the cash which was found in his possession when he was searched at the Seychelles International Airport;
- iv. That the Respondent's accounts of the origin of the cash changed numerous times whilst he was being interviewed by the FCIU;
- v. That preliminary checks on his bank account show occasional deposits being made and the source of the said deposits are still unknown at this point;

- vi. That the FCIU still awaits for further particulars of the Respondent's financial records to ascertain the source of the deposits made;
- vii. That after the cash was seized the Respondent did not travel to Dubai as planned but before exiting the airport, a phone conversation he had was overheard by an FCIU officer present and in the said conversation he was heard stating "*Boss pa pe kapab monte. Zafer I sal, napa larzan.*" (Boss, I am unable to travel. Things are not looking good, I have no money) and;
- viii. That the cash seized pursuant to section 74(2) of the AMLCFT Act on 07th May 2021 lapses on the 21st May 2021 and that the investigation by the FCIU is on-going and as per section 74(3) of the same act , the FCIU requires a court order to continue detaining the cash seized.

[5] Ground (roman) v above does not convince me as an acceptable ground for the continued detention of the cash. Firstly, the officer who allegedly heard the conversation is not identified and in common Creole parlance the words that the Respondent was allegedly heard uttering could have a completely innocent meaning.

[6] Mr. Cesar, Counsel for the Respondent requested that Karyn Pouponneau be called to the witness stand for cross-examination. That is a request that the Court willingly acceded to. His examination focussed mainly on and sought to elucidate from Karyn Pouponneau the fact that the Respondent has allegedly explained to the FCIU the source of fund and the purpose for which the money was to be used. He explained that the cash was divided in different envelopes as the Respondent did not want to mix moneys for different transactions. He was going to purchase spares and other items necessary for improving his business. The witness explained that the Respondent was someone who was under the radar of the FCIU. This is because he had been convicted before of drugs related offences but Mr. Cesar counter argued that the Respondent has paid for his mistakes and was sentenced for such crime. However, he said that he had no objection for the continued detention of the cash but find that the period requested to be exceedingly long.

- [7] On her part, the witness is insisting that the time requested is reasonable and explained that due the Covid-19 situation prevailing in the country, it is sometimes difficult to obtain from entities documents or information necessary for the investigation because people are working remotely or the workforce is reduced due to workers being isolated after contracting or being exposed to the virus.
- [8] As much as I understand and appreciate the Applicant's position, I have to bear in mind that the Covid-19 pandemic is affecting all of us. Some people are now clutching at straws in order to ensure their livelihood whilst others are slowly sinking into destitution. The situation is particularly stressful for self-employed people like the Respondent. They cannot afford to have their cash, if legitimately acquired, just being left idle. I need to balance the need for the Applicant to conduct thorough and competent investigation and the Respondent necessity to ensure survival in difficult times.
- [9] Therefore I will accede to the application and in terms with section 74(3) allow the FCIU to continue the detention of the cash but will restrict that detention to 45 days,

Signed, dated and delivered at Ile du Port on 28 May 2021

M Vidot J