

SUPREMECOURT OF SEYCHELLES

Reportable
[2021] SCSC
MC 08/2021

In the matter between:

THE REPUBLIC OF SEYCHELLES
(rep. by Ms Nissa Thompson)

Applicant

and

JEAN-LUC PHILP ETHEVE

1st Respondent

ALANA SHANTY MARY PASCAL
(rep. by Mr C Andre)

2nd Respondent

Neutral Citation: *R v Etheve and Anor* (MC 08/2021) [2021] SCSC 476 (30 July 2021).

Before: Govinden CJ

Summary: Order of detention of cash Section 74 (3) and (4) of the AMLCFT Act 2020.

Heard: 26th July 2021

Delivered: 30th July 2021

ORDER

Court order that the cash seized by the Applicant as shown in the annexed to this judgment be detained whilst its origin or derivation is further investigated or consideration is given to the institution (whether in Seychelles or elsewhere) of criminal proceedings against the Respondents for an offence in which the cash is involved. This Order of detention shall expire in the 24th of September 2021.

GOVINDEN CJ

[1] This is an inter partes application made for an Order under section 74(3) of the Anti Money Laundering and Countering the Financing of Terrorism Act 2020, herein after

also referred to as the AMLCFT Act. The Applicant is seeking the sanction of the court for the continued detention of cash seized on the 14th July 2021 from the Respondents at the Seychelles International Airport for a period not exceeding 60 days. The cash seized is admittedly not less than SCR 50,000 and consist of Euro 6,000 and AED 17,500, which when converted into SCR amounts to approximately SCR 1,307,775.00. At the time of the seizure both Respondents, who are in a relationship, were about to board a flight bound for Dubai together with their luggage. A table annexed to the said application sets out the detailed particulars of the money seized including their different currencies and denominations.

- [2] It is the case of the Applicant that the Respondents were questioned as to the origins of the said cash in their possession and that they could not provide satisfactory information in regards to the cash and that at the time of this application the Financial Crime Investigation Unit (FCIU) was busy analysing documents provided by the Respondents to them a day after the seizure. That a preliminary analysis of the documents reveals that the sources of cash deposits on the Respondent's business accounts, which are alleged to be the sources of the foreign exchange seized, are still unknown and that request for information to agencies regarding the analysis are still pending.
- [3] The Application is supported by the affidavit of Inspector Terence Rosline, a Police Officer attached to the FCIU.
- [4] The Respondents vehemently opposes the Application. It is there case that they have produced enough information to the Applicant to show that they conduct their business in cash and that during the relevant period prior to the seizure they had in their account money in cash which is equivalent to or more than the ones seized by the Applicant. At any rate they argued that the immediate sources of the foreign exchange seized had been proven by various documents given to the FCIU the day after their seizure. Accordingly, their counsel submitted that at this juncture the Applicant has not proved reasonable grounds to suspect that the cash is the proceeds of criminal conduct on the part of the Respondents.

- [5] I have carefully considered both the Application and the Reply thereto, together with their accompanied affidavits and documentations. I have also given careful consideration to the submissions of the counsels of both parties in the light of the provisions of the AMLCFT Act and the determinations of this court and that of the Seychelles Court of Appeal on the applicability of its provisions. I have also taken account of all the surrounding circumstances regarding the Respondents, including but not limited to their financial abilities and their explanation given in relation to the property .
- [6] Following careful analyse of the evidence I am satisfied that an officer of the Seychelles Police Force on the 14th of July 2021 at the Seychelles International Airport searched without warrant, within the jurisdiction of the Republic of Seychelles, the luggage of the Respondents and found therein the cash seized in this matter. I am further satisfied that the sum seized is not less than the prescribed sum, and that the officer who seized the money had reasonable grounds for suspecting that it represents proceeds of crime, or is intended by any person to be used in connection with any criminal conduct and he had in law the authority to seek further information from the Respondents regarding the origin of the cash and their intended use and also notified the FCIU regarding such cash. This was done in accordance to Section 74(2) of the AMLCFT Act. Following which an investigation commenced and hence this application.
- [7] Under Section 74 of the Act (10) for the purposes of Section 74 —prescribed sum means, such sum as may be prescribed by the Minister from time to time and until such time, it shall be SCR50,000 or its equivalent in any currency. The prescribed sum has not been prescribed and therefore for the time being this sum is SCR 50,000.
- [8] This court also note further that under Section 75.(1) of the same legislation “Any person who physically transports, mails or ships or causes to be physically transported, mailed or shipped, to or from Seychelles, cash in an aggregate sum of SCR50,000, shall declare the particulars of the currency to the Customs Department in the manner and in such form as may be prescribed by regulations and the declaration form so submitted shall be provided to the FIU by the Customs Department.

(2) Any person who— (a) fails to make a declaration under subsection (1);

*or (b) knowingly makes a declaration under subsection (1), which is false or misleading,
commits an offence and is liable on conviction to a fine not exceeding double the amount of cash found in his or her possession in excess of the prescribed sum and the cash in his or her possession shall be liable to forfeiture.”*

[9] The Applicant has now applied to this court under Section 74(3) and (4) of the AMLCFT Act which prescribes as follows ; “ Cash seized under subsection (2) shall not be detained for more than 14 days unless the detention beyond 14 days is authorised by an order made by a Judge and such order shall be made where the judge is satisfied—

*(a) that there are reasonable grounds for the suspicion under subsection (1);
(b) that the detention of cash beyond 14 days is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in Seychelles or elsewhere) of criminal proceedings against any person for an offence in which cash is involved.”*

(4) An order under subsection (3) shall authorise the continued detention of the cash for such period not exceeding 60 days beginning with the date of the order, as may be specified in the order, and the Judge, may thereafter from time to time, by order, authorise the further detention of the cash but the aggregate period of detention shall not exceed 12 months from the date of the initial order.”

[10] Bearing in mind the totality of the above I find that it is established on a balance of probabilities that the amount of cash in the possession of both Respondents was far above the prescribed amount and that it was found in their luggage about to be transported and exported by them outside Seychelles without the making of the statutory declaration under Section 75 (1) of the Act .This leads this court to the inevitable conclusion that there are reasonable grounds for the suspicion that the Respondents were exporting, an amount of cash which was not less than the prescribed sum on the 14th of July.

[11] Accordingly, I will order that the cash seized by the Applicant as shown in the annexed to this judgment be detained whilst its origin or derivation is further investigated or consideration is given to the institution (whether in Seychelles or elsewhere) of criminal proceedings against the Respondents for an offence in which the cash is involved. This Order of detention shall expire in the 24th of September 2021.

[12] I order accordingly.

Signed, dated and delivered at Ile du Port on 30th day of August 2021

Govinden CJ