

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 25
MC 03/2022

In the matter between:

THE GOVERNMENT OF SEYCHELLES
(rep. by Nissa Thompson)

Applicant

and

ANTONY BOUE
(Unpresented)

Respondent

Neutral Citation: *Gov of Sey v Boue* (MC 03/2022) [2022] SCSC 25 (18th January 2022)
Before: Burhan J
Heard: 14th January 2022
Delivered: 18th January 2022

ORDER

BURHAN J

[1] This is an ex-parte application under section 3 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended. The Applicant seeks the following reliefs.

(1) That this Ex-Parte application is listed and heard as a matter of extreme urgency as per rule 7 (1) of the Proceeds of Crime (Civil Confiscation) Act.

(2) For an Interim Order pursuant to section 3 of the Proceeds of Crime (Civil Confiscation) Act 2008 as amended prohibiting the Respondent or any other

person specified in the order from disposing of or otherwise dealing with whole or any part of the property set out in table to the Notice of Motion;

(3) That on the making of an order under (1) above, Inspector Terence Roseline or such other person as this court shall direct be appointed as Receiver over all or part of the said property to manage, keep possession or dispose of, or otherwise deal with any other property in respect of which he is appointed in accordance with the courts directions, pursuant to section 8 of the Proceeds of Crime (Civil Confiscation) Act 2008 as amended.

(4) For an order providing for Notice of any such order to be given to the Respondent or any other person directed by the court;

(5) Such further or other order as the court shall deem just and proper in all circumstances in this case.

[2] I have considered the details contained in the affidavit dated 14th January 2022 of Inspector Terence Roseline attached to the Financial Crime Investigative Unit (FCIU) and the affidavit of Mr. Johnny Malvina attached to the Anti-Narcotics Bureau (ANB) also dated 14th January 2022. It is clear on perusal of the said affidavits and annexures attached therein that Inspector Terence Roseline and ANB Officer Malvina have conducted detailed investigations in respect of the specified properties namely the 22 pieces of 23 carat gold weighing 23.5 Kg valued at SCR 17, 266,992.32 and 10,370.Euros valued at SCR 154,487.36 as tabulated in the Table to the Notice of Motion together totalling a sum of SCR 17,421,479.70 (Seventeen million, four hundred and twenty one thousand, four hundred and seventy nine and seventy cents).

[3] Learned Counsel Ms Nissa Thompson moving for the aforementioned orders, relies on the contents of the affidavit filed by Inspector Terence Roseline and Johnny Malvina in order to establish that there are clearly reasonable grounds for suspecting that the said

specified properties referred to above taken into custody from Antony Boue hereinafter referred to as the Respondent, constitutes benefit accrued from criminal conduct namely money laundering and to establish further that the property in question set out in the Table of the Notice of Motion has a value of more than SCR 50, 000.

[4] Learned Counsel Ms Thompson also referred to the facts stated in paragraph 6 of the affidavit of Inspector Terence Roseline that on the 13th of October 2021, the ANB received credible information from their counterparts in Madagascar that a Catamaran namely Mitsio II had left Nosy-Be Port in Madagascar on the 12th of October 2021 and they suspected that the crew members were trafficking in controlled drugs and gold. On the 19th of October 2021 at 09.30 hrs Officers of the ANB, Immigration and Custom Officers Seychelles together with the Marine Police intercepted the said vessel and boarded same. On board were six crew members namely Richard Rasolondraibe, Andrew Ernesta, Thierry Jao, Antony Boue, Sohail Abbas and Fety Razah, although the initial information received from the Madagascar authorities was that there were only two crew members aboard the vessel at the time it was checked by them. A search of the vessel revealed 22 pieces of 23 carat gold weighing 23.5 Kg. The Respondent Antony Boue in this application had admitted to the Officers of the ANB that the gold was his and that he had the authorisation to export gold from Madagascar. After perusal of the documents produced by the Respondent the boat was released but the gold and a large sum of cash Euros 10,370 were seized.

[5] Information emanating subsequently from Madagascar authorities revealed that there is an active prohibition on the exportation of gold and further information received indicated that at the time the Catamaran was searched prior to leaving Madagascar, there was no gold on it. Thereafter the Respondent was arrested on this information and further Mutual Legal Assistance request has been sought by the Office of the Attorney General Seychelles to the Ministry of Justice Madagascar to verify the authenticity of the documents which were presented by the Respondent and to confirm whether the exportation of gold out of Madagascar by the Respondent constitutes an offence. Meanwhile the other crew members mentioned in paragraph [4] herein have also been

arrested and produced before the Supreme Court in case CR 110/2021 on charges under section 90, 309(1), 339 and 335, 337 of the Penal Code and section 3 (4) of the Anti-Money Laundering and Countering of Terrorism Act.

[6] The details of the cash taken into custody are given in paragraph 15 of the affidavit of Terence Roseline.

[7] On perusal and analysis of the facts contained in the affidavits, this Court is satisfied that the authenticity of the documentation tendered by the Respondent Boue has to be verified as the Madagascar authorities have verified the fact that there is a ban on the exportation of gold and the Catamaran had no gold on it when it was searched prior to leaving Madagascar. It is clear further investigations are necessary and are currently going on and further time is needed.

[8] I am therefore satisfied on the information contained in the affidavit that there are reasonable grounds to believe that the properties set out in the Table to the Notice of Motion namely 22 pieces of 23 carat gold weighing 23.5 Kg valued at SCR 17, 266,992.32 and 10,370 Euros valued at SCR 154,487.36 as tabulated in the Table to the Notice of Motion totalling a sum of SCR 17,421,479.70 (Seventeen million, four hundred and twenty one thousand, four hundred and seventy nine and seventy cents) are benefit from criminal conduct.

[9] I am also satisfied that the value of the impugned property is not less than SCR 50, 000.

[10] I therefore make the following orders:

a I allow this application and issue an interim order under section 3 of POCA prohibiting the disposal of, dealing with or diminishing in value of the specified properties set out Table to the Notice of Motion that is 22 pieces of 23 carat gold weighing 23.5 Kg valued at SCR 17, 266,992.32 and 10, 370 Euros valued at SCR 154,487.36 as tabulated in the Table to the Notice of Motion totalling a sum of SCR

17,421,479.70 (Seventeen million, four hundred and twenty one thousand, four hundred and seventy nine and seventy cents).

b I further appoint Inspector Terence Roseline to be the Receiver of the said specified properties and to hold the same as set out in paragraph [1] (3) herein until further orders from this Court.

c I further make order that a copy of this order be served on the Respondent Antony Boue.

Signed, dated and delivered at Ile du Port on 18th January 2022.

M Burhan J