

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
MC 82/2021

In the matter between:

THE GOVERNMENT OF SEYCHELLES
(rep. by Nissa Thompson)

Applicant

and

JOSHUA ONEZIME
(unrepresented)

Respondent

Neutral Citation: *Government of Seychelles v Onezime* (MC 82/2021) [2022] SCSC (11th March 2022).

Before: Burhan J

Summary: Interlocutory Order pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA); Order pursuant to section 8 of the POCA

Delivered: 11th March 2022

ORDER

The following Orders are made:

- (1) An Interlocutory Order pursuant to section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the Respondent 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 namely cash to the value of SCR 312,736.00 as described in the Table to the Notice of Motion.

- (2) An Order pursuant to section 8 of the POCA, appointing Inspector Terrence Roseline to be a Receiver and manage all or part of the said property mentioned herein, 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 the Respondent.

ORDER

BURHAN J

[1] This is an application by the aforementioned Applicant seeking an interlocutory order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the Respondent Joshua Onezime from disposing of or otherwise dealing with whole or any part of the property namely cash amounting to SCR 312,736.000 as described in the annexure to the Table to the Motion. The application also seeks an order pursuant to section 8 of the POCA appointing Inspector Terence Roseline to be the receiver of the said property. It also seeks that notice be served on the Respondent.

[2] Accordingly notice was served on the Respondent on the 6th January 2022 and the return of service was filed in Court on the same date indicating that notice of this application had been served on the Respondent to be present in Court on the 12th of January 2022. However the Respondent failed to appear and no notice of appearance was filed by a Counsel on behalf of the Respondent. Learned Counsel moved that the case be fixed for Order and that the evidence of the Applicant is based on the affidavits filed.

[3] The law as contained in the Section 4 of the POCA 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.

- [4] It is apparent from the application that the item sought to be forfeited is cash comprising of Seychelles Rupees, US Dollars and Euros totalling value SCR 312,736.00. The value as required under Section 4 (b) of the POCA as set out above is established.
- [5] It is the contention of learned Counsel for the Applicant that the said cash totalling SCR 312,736.00 is proceeds from criminal conduct and in order to establish this fact, she relies on the evidence in the affidavit filed by Inspector Terence Roseline and the affidavit of Officer Malvina dated 4th November 2021. I have considered the facts arising from the affidavit filed by Inspector Terence Roseline dated 4th November 2021.
- [6] Mr. Roseline from paragraph 7 onwards in the said affidavit states that on the 17th of September 2021, on receipt of credible information that Joshua Errol Onezime was involved in drug transactions, the ANB Officers had intercepted a red Kia bearing registration number S3265 at Plaisance which was being driven by him. They had informed him that they would be conducting a search at his residence. Joshua had confirmed he was staying in his house at Roche Caimon with his parents. He had further stated his parents were not present and that it was he who was in charge of the house. When the Officers had searched the house they had found 4 bags all containing cash of different denominations. All the cash was seized by the ANB Officers. Two digital scales were also found during the search of the premises which ANB Officers believe were used in the drug trade as they tested positive for traces of Cocaine and Cannabis. The said analyst report has also been produced to court. An exercise book found by the Officers, contained details of quantities of drugs in grams and names of persons with alias names as well. In Kreole was written the words “ler ou azout tou-385,000.00”. Thereafter, the ANB Officers had searched a spare bedroom and found a biodegradable bag containing USD and Euros in different denominations. FCIU Officers too had thereafter come to the scene and conducted investigations. Further details of the cash recovered are given in paragraphs 16 and verification of his bank account 90210100009661 at Baroda Bank indicated the Respondent was not banking funds into his account.

[7] Further investigations revealed the Respondent had stated to the bank he was unemployed. He had stated his monthly income was SCR 5,000. It is the contention of Inspector Roseline that a person without an income could not have a “grand total of SCR 312,736.00” stashed in his house and therefore the said source of cash was from illegal activities, namely drug Trafficking and Money Laundering. Further the contents in the affidavit of Inspector Terence are corroborated by the affidavit of Officer Malvina and the attached documents TR1 to TR 4. The Respondent in this case has failed to attend Court and challenge the contents of the affidavit of Mr. Terence Roseline. As the facts set out in the affidavit of Inspector Roseline remain unchallenged by the Respondent and the said facts are corroborated by the affidavit of Officer Malvina and the attached documents, I proceed to accept the contents of the affidavit of Inspector Roseline.

[8] I am satisfied on the information contained in the affidavit that there are reasonable grounds to believe that the property set out in the Table to the Notice of Motion namely cash and currency to the value of SCR 312,736.00 as described in the Table to the Notice of Motion is directly or indirectly benefit from criminal conduct. I am also satisfied that the value of the impugned property is not less than SCR 50,000.00.

[9] In the case of ***Financial Intelligence Unit v Contact Lenses Ltd & Ors*** [2018] SCSC 564 at [15] 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*”.

[10] By his absence the Respondent has failed to give any credible explanation as to the origin of his money and how he came by such a large amount of cash in his possession. He has failed to establish that the specified property is not from proceeds of crime.

[11] 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 Respondent 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

namely cash to the value of SCR 312,736.00 as described in the Table to the Notice of Motion.

(2) An Order pursuant to section 8 of the POCA, appointing Inspector Terence Roseline to be a Receiver and manage all or part of the said property mentioned herein, 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 the Respondent.

Signed, dated and delivered at Ile du Port 11th March 2022

M Burhan J