

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
MC07/2022

In the matter between:

THE REPUBLIC
(Represented by Mrs Nissa Thompson)

Applicant

and

MICA FAURE
(Represented by Mr Joshua Revera)

Respondent

Neutral Citation: *The Republic vs Mica Faure* (MC07/2022) [2022] SCSC (22nd July 2022).

Before: Judge Esparon

Summary: Application for the continued detention of cash

Heard: 14th July 2022

Delivered: 22nd July 2022

ORDER

Application under section 74 (3) of the Anti-Money Laundering and the Countering of Financing of Terrorism Act for the continued detention of cash under section 74 (4) of the same Act- Order granted for the continued detention of cash for a period of 30 days.

RULING

ESPARON J

Introduction

[1] This is Application under Section 74 (3) of the Anti-Money Laundering and Countering of the Financing of Terrorism Act seeking an Order from this Court for continued

detention of cash seized pursuant to section 74 (4) of the AML/CFT Act for a period not exceeding 60 days.

The Pleadings

- [2] The Application is supported by the Affidavit of Jude Bistoquet a Sub-Inspector in the Seychelles Police force currently attached to the financial crime unit.
- [3] The deponent has averred in paragraph 7 of his Affidavit that on the evening of the 27th June 2022, the Respondent was leaving Seychelles bound for Dubai on Emirates airlines EK 708 at 21.45pm and before departing the Respondent approached the customs officer on duty at the Seychelles International Airport to declare cash in her possession which was above the prescribed sum. During the questioning, the customs officer had reasonable grounds to suspect that cash which at the time represented proceeds of crime.
- [4] The deponent averred in paragraph 8 of his Affidavit that that when the Respondent approached the said customs officer, she stated that she was travelling for business purposes to Nigeria via Dubai and that in her possession there were foreign currency in different denomination which is above the prescribed sum of SCR 50,000 as follow;
- a) USD 60 X 100 amounting to USD 6,000
 - b) b) Euro 6x500,3x200,62x100,4x50 amounting to Euro 10,000
- [5] The deponent avers in paragraph 10 of his Affidavit that when the said customs officer questioned the Respondent as to the source of funds, the Respondent provided some money exchange slip, a loan agreement and her business license certificate. She further stated that she was going to sign an agreement with a tobacco company in Nigeria but she could not provide the name of the company.
- [6] The deponent further avers in his Affidavit that another customs officer namely Charles also questioned the Respondent of which the Respondent stated to him that she was travelling to Nigeria to purchase commodities namely cigarettes and clothes and that she has previously imported cigarettes from Nigeria. She also stated that she did not have a bank statement with her and she makes reference to a loan agreement with Marlu

Seychelles (Pty) Limited and she also stated that other related documents are at her house and that they are locked away and no one has access to it.

- [7] The deponent avers in paragraph 12 of his Affidavit that as a result that they were not being satisfied with the explanation given by the Respondent, the decision was taken to seize the cash and the supporting documents for the purpose of further enquiry and investigation.
- [8] The deponent further avers in paragraph 13 of his Affidavit that a verification of the loan agreement revealed that it was signed on the 20th of April 2022 between the Respondent and Marlu Seychelles (PTY) limited for a consideration of a sum of SCR 465,000 payable over a period of 3 years until December 2025 of which the said Marlu Seychelles (Pty) Limited is not a banking institution but is involved in the fishing industry. Since such loan agreement is commonly used to conceal the true origins of funds, the said owner of Marlu Seychelles (Pty) Limited needs to be interviewed to ascertain the terms and conditions that the said loan was given.
- [9] The deponent further avers in his Affidavit that the four currency slips indicated that the money were exchange in the month of June 2022 and that all transactions was carried out in cash of which raises a lot of suspicion about the source of the cash, that whether it was really from the loan or from other sources . Further observation made indicate that three of the transactions were slightly below the threshold amount of which such is a common practice whereby cash transaction are carried out just below threshold to prevent detection.
- [10] The deponent has averred in paragraph 15 of his Affidavit that he requires more time to establish the real source of funds.
- [11] The Respondent on the other hand has filed a preliminary objections to the Application in that the Application is defective in that the Applicant in the Notice of motion made averments as to matters not in his personal knowledge and ought to have been contained in the Affidavit of officers that seized the cash and the averments in the Application are nowhere found in the Affidavit therewith.

- [12] In his reply on the merits the Respondent Mica Faure has filed an Affidavit of which she has averred in her Affidavit that the Application prima- facie has no foundation or substance and thus does not sustain in Law.
- [13] The said deponent has averred in paragraph 5 of her Affidavit that on the 27th June 2022, I knowingly and in good faith declared to the customs desk that I was in possession of more than the prescribed sum of Seychelles fifty Thousand.
- [14] The deponent further averred in her Affidavit that I further explained to the customs officer the purpose of my trip and reason for the foreign exchange.
- [15] She has averred in her Affidavit that I satisfactorily explained the source of origin of the monies I intended to travel with, that the said sum originated from a loan by Marlu Seychelles (Pty) limited which loan was secured by a first line charge over my property parcel number C 6721 (attached herewith as R1 and R2 respectively)
- [16] The deponent avers in paragraph 8 of her Affidavit that on the 22nd April 2022, I used a portion of the said sum for my business Registered as Micah whole sale (certificate of registration herein attached as R3, Nouvobanq statement dated the 1st of April to the 12th July 2022 herewith attached as R4), travelling to Nigeria on the 23rd April returning to Seychelles on the 15th May 2022 purchasing goods to resell on local market such as fete Afrique dated 25th and 26th may 2022(copy of receipts herewith attached as R6) and using the profit for further trip on the 27th June 2022.
- [17] The deponent further avers that the nouvobanq attached therewith as R4 which statement substantiates the loan sum detailed as R1.
- [18] She further avers in paragraph 12 of her Affidavit that I sincerely believe and are advised that the Application for further detention is an abuse, and further to paragraph 11 of my Affidavit, the continued detention of monies seized will seriously prejudice myself and my business in that my property may be seized in default of repayment of my loan agreement as I am unable to undertake commercial activities without access to these funds.

Plea In Limine Litis

- [19] As regards to the Plea In Limine Litis Counsel for the Respondent submitted to the Court to the fact that certain averments contained in the Notice of Motion namely ground VII paragraph 3 of the said Notice of Motion where the Applicant avers that the Respondent is importing in the country and could not provide documentation for the same which is not reflected in the Affidavit of the deponent Jude Bistoquet.
- [20] Counsel for the Applicant submitted that the ground of which counsel for the Respondent is referring is contained in paragraph 11 of the Affidavit.
- [21] This Court after a cursory look at the averments in the Affidavit finds that ground VII in the Notice of Motion is adequately substantiated by paragraph 11 of the Affidavit in its averments.
- [22] Counsel for the Respondent also submitted to the Court that the Prosecution has exhibited several statements from different officers of which he submits that these statements have been submitted as exhibit prematurely being done to solely prejudice the mind of the Court.
- [23] With all due respect to counsel for the Respondent, I find no fault with the Respondent producing the said statements of the officers as exhibit since S.I Jude Bistoquet being the investigating officer in the matter has to distinguish which part of the Affidavit is within his personal Knowledge and which part is from information he received of which the said SI Bistoquet has shown through his averments in his Affidavit and exhibit where he received such information.
- [24] In the case of Union Estate Management (Propriety) Limited v Herbert Mittermayer (1979) SLR where the Court held that ‘an Affidavit based on information and belief must disclose the source of the information and the grounds of the belief. It is therefore necessary for the validity of an Affidavit that an Affidavit should distinguish what part of the Statement is based on knowledge and what part is based on information and belief

and that the source of the information and grounds of a belief should be disclosed. Hence this Court finds that producing such documents as exhibit is perfectly valid and permissible in order for the Deponent to show the source of his information.

On the Merits

The Law

[25] Section 74 (2) of the Anti-Money Laundering and Countering the Financing of terrorism Act provides that ‘ the officers referred to in subsection (1) may seize, any cash found during the search under subsection (1) if-

- a) It is not less than the prescribed sum, and
- b) He has reasonable grounds for suspecting that it represents proceeds of crime, or intended by any person to be used in connection with any criminal conduct and shall have the authority to seek further information from the carrier regarding the origin of the cash and their intended use and also notify the FIU regarding such cash seizure in such form and manner as may be prescribed.

[26] Section 74(3) of the same Act provides that cash seized under section (2) shall not be detained For more than 14 days unless the detention beyond 14 days is authorized by an order made by a Judge and such order shall be made where 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.

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.

Determination

- [27] This Court has meticulously considered the submission of Counsel for the Applicant and Counsel for the Respondent as well at the pleadings and the Affidavit in Support of the pleadings, the documents attached as exhibit by both Parties therein.
- [28] It is to be noted when one examines the Affidavit filed by the Respondent and the documents in support attached therein namely paragraph 7 of the Affidavit of the Respondent, the deponent avers that I satisfactorily explained the Source and origin of the monies I intend to travel with, that the said sum originated from a loan by Marlu Seychelles (Pty) limited which loan is secured by a first line charge over my property parcel number C6271 (attached As the above material discrepancy has not been explained in evidence by the Respondent although Counsel for the Respondent attempted to give evidence from the bar which is highly improper, this goes to the credibility of the Respondent of which cast doubt on her truthfulness at this stage and hence the Applicant needs more time to investigate the source of the cash. Herewith as R1 and R2) respectively.
- [29] After examining R1, we find that there is a loan agreement signed between Marlu Seychelles (Pty) Limited and Mica Solange Faure the Applicant dated the 20th day Of April 2022 as consideration for the amount of SCR 465,000. However when one examines R4 which is a bank statement produced by the Respondent as exhibit This Court observes that the SCR 465,000 was transferred in the account of the Respondent by Double click exchange (Pty) limited and not by Marlu Seychelles (Pty) Limited which this Court finds that there is a material discrepancy between the averments in paragraph 7 of the Respondent's Affidavit, the loan agreement as opposed to what the bank statement shows.

[30] As the above material discrepancy has not been explained in evidence by the Respondent although Counsel for the Respondent attempted to give evidence from the bar which is highly improper, this goes to the credibility of the Respondent of which cast doubt on her truthfulness at this stage and hence the Applicant needs more time to investigate the source of the cash.

[31] Secondly when one looks at the document referred to as R2 and produced as exhibit by the Respondent dated the 20th April 2022, the Court notes that the said document produced has not been registered at the office of the Registrar General. The Court also notes that the bank statement produced as exhibit by the Respondent showed the said sum of SCR 465,000 was transferred on the 22nd April 2022 just 2 days after the signature of the loan agreement and the mortgage document of which the latter had not yet been registered at the Registrar General. This Court finds that the manner in which such transaction was carried out cast doubt on the commercial reality of the loan transaction.

[32] That as a result of the above this Court is satisfied that there are reasonable grounds for suspicion;

- a) That the person exporting or intends or about to export, or has in his possession or control an amount of cash which is not less than the prescribed sum; or
- b) The cash found on the person represents the proceeds of crime or is intended by any person for use in connection with any criminal conduct
- c) 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.

[33] As a result of the above, this Court makes the following order;

- i) I accordingly grant an order authorising the continued detention of the cash as referred to in paragraph 4 of this order for a period of 30 days

Signed, dated and delivered at Ile du Port this 22nd of July 2022.

Esparon J