

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
MA 262/2021
(Arising in MC 5/2020)

In the matter between:

THE GOVERNMENT OF SEYCHELLES
*(rep. by Steven Powles together with
Nissa Thompson)*

Applicant

and

TERRY PORICE
(rep. by Clifford Andre)

1st Respondent

NICO ISAAC
(rep. by Frank Elizabeth)

2nd Respondent

WESTEROS LIMITED
(rep. by Clifford Andre)

3rd Respondent

Neutral Citation: *GOS v Porice & Ors* (MA 262/2021) [2022] SCSC

(09 September 2022).

Before: Burhan J

Summary: Disposal Order. Proceeds of Crime (Civil Confiscation) Rules SI 12 of 2016

Heard: 22 June 2022

Delivered: 09 September 2022

ORDER

I direct that the Applicant files an amended notice of motion by the next date to cure the said defect.

RULING

BURHAN J

- [1] I have considered the objections filed by learned Counsel Mr Clifford Andre to the notice of motion filed by the Applicant in MA 262/2021.
- [2] His first objection is that in terms of SI 12 of 2016 (Proceeds of Crime (Civil Confiscation) (Procedure) Rules 2016 (the Rules), Rule 5 (3) the Application must be served within 21 days, otherwise the Court can grant an extra 21 days on application made by the Applicant. It was only the 1st Respondent who was served in this manner.
- [3] I observe from the proceedings of the 3rd of November 2021, learned Counsel for the Applicant informed the Court that the Respondent was evading service. This Court on coming to a finding that all three Respondents had not been served, granted time till the 1st of December 2021, for service to be effected on the 1st, 2nd and 3rd Defendants. By that date as the 2nd Respondent Mr Nico Isaac had been served and informed the Court through his lawyer Mr Elizabeth that he had no objections to the application and wished his name to be removed from the said application as he was a Government Servant. On the next date, the 19th January 2022, Mr Powles who appeared for the Applicant informed the Court that if Mr. Isaac consents to the application there would be no issue and Mr Elizabeth stated he would not be objecting to the said application.
- [4] Mr Powles on the said date also informed the Court that it was impossible to locate the 1st accused Terry Porice and agreed to take steps for substituted service. After taking the necessary steps on the 23rd of February 2022, the Court granted the application for substituted service on the 1st and 3rd Respondents for the 9th of March 2022. On the said date the 1st Respondent was present and moved for time as his lawyer was overseas. He

stated he was the owner and director of the 3rd Respondent Company, therefore for all purposes service has been affected on all the Respondents.

[5] I am of the view that the necessary authority has been given to the Court by Rule 5(3) of the Rules for the extension of time in the service of notice on the Respondents. The Court has granted the necessary extensions of time as and when applied for by the Applicant. The reason for such extensions being due to the Respondent not being found at the address given by him to the Applicant and it was only after substituted service was affected that the 1st Respondent came to Court.. Under Rule 3 (5) directions as to procedure which depart from the requirements of the Rules, including extension of any time limit may be made only for good cause, which this Court is satisfied exist in the present case as the Respondents could not be traced at the address given by them. Further, as the Applicant has eventually served notice on all the Respondents and therefore complied with the notice requirement, the necessity to dismiss the application under Rule 3 (8) (a) does not arise.

[6] It is clear from the application filed by way of a notice of motion dated 12th October 2021 that the relief claimed in the prayer to the motion does not mention that the Applicant is praying for a disposal order. I firstly observe there is no paragraph in the Application numbered 1, instead a paragraph 2 exists which only mentions “*Such further or other orders as the Court shall deem just and proper.*” By error the application by way of the notice of motion does not set out formerly as paragraph 1 the order sought namely a disposal order.

[7] At the same time it is to be observed that paragraph 9 of the said affidavit filed by Mr. Terence Roseline dated 12th October 2021 clearly states “*I respectfully pray for an order for the final disposal of the said specified property....*”. Even the title of the notice of motion indicates “NOTICE OF MOTION” below which is “For a Disposal Order”. The notice of motion further states “*The grounds on which the disposal order are sought*”. I therefore am satisfied that the intent of the notice of motion filed has been to obtain a disposal order under Section 5 of the Proceeds of Crime (Civil Confiscation) Act.

[8] Considering the aforementioned facts, I am satisfied that in terms of Rule 3(4), 3(5) read with Rule 3(8) of the Proceeds of Crime (Civil Confiscation) Rules that sufficient facts and good cause exist to grant an opportunity to the Applicant to correct the error by filing an amended notice of motion.

[9] I therefore direct that the Applicant files an amended notice of motion by the next date to cure the said defect.

Signed, dated and delivered at Ile du Port on 09 September 2022

Burhan J