

IN THE SUPREME COURT OF SEYCHELLES

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**Reportable**

[2023] SCSC 160  
MC78/2022

**LAURA VALABJHI**  
(rep. by *Samantha Aglae*)

**APPLICANT**

and

**THE ANTI-CORRUPTION COMMISSION**  
**OF SEYCHELLES**  
(rep. by *Michael Skelly and Anthony Juliette*)

**RESPONDENT**

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**Neutral Citation:** *Laura Valabhji v ACCS* (MC28/2022) [2023] SCSC 160 (03 March 2023).

**Before:** Vidot J

**Summary:** Applications to declare imposition of restrictions on clients' account pursuant to section 60 of the Anti-Corruption Act unlawful and ultra vires and application to reverse such restrictions.

**Heard:** 16 December 2022

**Delivered:** 03<sup>rd</sup> March 2023

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**ORDER**

Application allowed. Restriction declared unlawful and ultra vires that there was no basis for imposition of such restriction. In term with S60(6) of the Anti-Corruption Act 2016, the Notices of Restrictions are reversed

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**RULING**

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**VIDOT J**

## The Application

- [1] Laura Valabjhi is Attorney-at Law and Notary Public and qualified and licenced under the Legal Practitioners Act and the Notaries Act respectively to practice and provide services as such in Seychelles. She was until 21<sup>st</sup> January 2022 licenced to operate such practice. However, these licences have either been revoked or suspended for reasons that will become evident below. She was arrested and detained 18<sup>th</sup> November 2021, on allegations of having committed offences of corruption and money laundering. As a result, on 16<sup>th</sup> December 2021 she was charged with the following offences;
- i. conspiracy to commit money laundering contrary to sections 3(1)(c) and 3(3) of the Money Laundering and Countering the Finance of Terrorism Act 2020 (“AMLCFTA”);
  - ii. money laundering contrary to section 3(1)(c) of the AMLCFTA; and
  - iii. Concealment of property contrary to section 37(c) of the Anti-Corruption Act 2016.
- [2] All charges against her have been dropped. In fact, after several appearances in respect of these charges, the Anti-Corruption Commission of Seychelles, (the ACCS”), on 19<sup>th</sup> May 2022, moved Court to have these charges withdrawn.
- [3] Since the charges were dropped it would logically follow that all remand proceedings in respect of these charges would be withdrawn, and they were. However, Mrs. Valabjhi continues to be detained in respect of other charges brought against her in contravention of other statutory instruments.
- [4] As a licenced practicing attorney-at- law, Mrs. Valabjhi operated client’s accounts. Pursuant to section 4 of the Control and Protection of Clients Account Act, an attorney is classified as a “Schedule Person” to keep and maintain client’s accounts. Mrs. Valabjhi had five such accounts held with Mauritius Commercial Bank (Seychelles) Limited (MCB), Al Salam Bank (Seychelles) Limited (Al Salam) and SIMBC (Nouvobanq). They are;

- i. Account No. 00000103567 (MCB);
- ii. Account No. 00000219328 (MCB);
- iii. Account No. 0000061678 (MCB);
- iv. Account No.500000022678 (Al Salam); and
- v. Account No. 32001017253007.

- [5] The Applicant alleges that immediately following her arrest and detention, The ACCS directed all banks in Seychelles to restrict all dealings with all accounts held in the name of the Applicant or accounts to which she was a signatory, and that included all the clients' accounts listed hereabove. The ACCS in fact, it is alleged, issued Notices of Restriction pursuant to section 60 of the Anti-Corruption Act ("the ACA"). These restrictions were imposed to prevent any dealings with these accounts. It appears that the first such Notice was issued on 21<sup>st</sup> December 2021 and ACCS subsequently issued such Extension Notices six months subsequent to the expiry of the initial or former Notices.
- [6] In her affidavit attached to the Application, the Applicant explains that on 17<sup>th</sup> December 2021 following her arrest in respect of the offences listed in paragraph 1 above, officers of the ACCS attempted to serve on her Notices of Restriction but such service was not effected as the notices were marred with errors and despite undertaking to make corrections and amendments to the notices, she was not served with any amended notices.
- [7] The Applicant avers that on 20<sup>th</sup> September 2022, ten months after ACCS had restricted dealings with the accounts and despite charges having been withdrawn against her, ACCS served on the Applicant, extension of restriction notices on all her accounts including the said client accounts for a further period of six months. She further avers that there was no known further investigation ongoing against her.
- [8] Mrs. Valabjhi further states that since her arrest, on various occasions, in writing or verbally, she asked that ACCS remove restrictions against her clients' accounts. She has approached the ACCS's Seychellois Counsel, Mr. Anthony Juliette to request that ACCS considers removing all restrictions against the said accounts since monies held in these

accounts are clients' monies and not personal monies arising out of her law practice. However, she has been informed that the Commissioner refuses to remove the restrictions. She states that her clients were periodically informed of the use of their monies held in the clients' accounts as per their instruction and that as a result of the unlawful restrictions by the ACCS, uncertainty is being caused to her clients as there has been non-compliance to their expressed instructions as to the use of their funds.

- [9] As a result thereof the Applicant prays for an order from this Court to reverse the directive of the Commissioner of ACCS under section 60 of the ACA. She prays for the following;
- i. An order to declare the actions of ACCS in respect of the verbal directives given to the banks in Seychelles on or around the 19<sup>th</sup> November 2021, to restrict all dealings with all the Applicant's accounts including her clients' accounts to be unlawful and ultra vires;
  - ii. An order to declare that the actions of the ACCS in respect of the written notices issued on the following banks;
    - (a) Mauritius Commercial Bank (Seychelles) Limited;
    - (b) Al Salam Bank Seychelles Limited; and
    - (c) SIMBC (Nouvobanq)on or around 17<sup>th</sup> November 2021 and thereafter, restricting all dealings in respect of all the Applicant's clients' accounts held with the above mentioned banks to be unlawful and ultra vires
  - iii. An Order that pursuant to section 60(6) of the Anti-Corruption Act 2016 ("the Act"), reversing/varying the directives the ACCS gave in the notices dated 14<sup>th</sup> September 2022 to the Applicant and 20<sup>th</sup> September 2022 to the above mentioned banks, releasing all restrictions on the following clients' accounts of the Applicant;
    - (a) MCB

(i) Account No. 00000103567;

(ii) Account No. 00000219328;

(iii) Account No.0000061678

(b) Al Salam Bank Seychelles Limited

Account No. 500000022678;

(c) SIMBC (Nouvobanq)

Account No. 32001017253007

### **The Respondent's Answer**

[10] ACCS objects the Application. Therefore, they filed an affidavit in reply sworn by Mr. Roy Cadence who declares that he is the Director of Financial Forensics within the ACCS. He states that his office involves supporting investigators with financial aspects of their investigations. He avers together with the Commissioner of ACCS, May De Silva, he is responsible with preparing and service of relevant Notices issued pursuant to sections 60 and 61 of the Act. He explains that pursuant to section 60 of the Act, the Commissioner is granted "*broad power*" to restrict dealings with the assets of a person who is under investigation or suspected to have committed an offence under the Act.

[11] He confirms that he had made queries regarding the clients' accounts identified above.

[12] He admits that the Applicant was arrested on 18<sup>th</sup> November 2021 on suspicion of offences of money laundering. On 16<sup>th</sup> December 2021, she was charged with offences listed at paragraph 1 above. However, these charges were withdrawn against her on 19<sup>th</sup> May 2022. Since then, the Applicant had not been charged with any iother related offences.

[13] Mr. Cadence further avers that the Applicant was served with section 60 Notices in respect of her bank accounts including the said clients' accounts on 17<sup>th</sup> December 2021. These Notices contained reference to entitlement under section 60(6) of the 2016 Act for a recipient to apply to the Supreme Court for an Order to reverse or vary the directive and

that no such application was made during the currency of that original Restriction Notices. On 13<sup>th</sup> September 2022, these Notices were lawfully extended in accordance with section 60(4) of the Act. He claims that these Notices were extended as the Applicant remains “*subject to an investigation of an offence or suspected offence to have been committed under this Act*” as required under section 60. He adds that the ongoing investigation is awaiting responses to MLA requests made to foreign jurisdictions, in particular Singapore and the United Kingdom, the outcome of review of digital and documentary material in respect of which the Applicant has claimed Legal Professional Privilege; and ongoing review of evidence sourced from Digital exhibits seized from the Applicant which remain the subject of complex digital forensic review. The affidavit fails to state whether such is being carried out by Mr. Cadence or whether he is part of a team carrying out such examination. That averment could well be considered to be hearsay and there was no independent testimony to confirm whether such is actually the case.

[14] He alleges the Applicant is suspected of conspiracy to forge documents, arising out of case against Fahreen Rajan which is a case involving forged loan agreements created in May 2017, in which the alleged beneficial owner of shares valued at US\$4 million by the Applicant’s husband was disguised. The charge in that case is dated 21<sup>st</sup> February 2022.

[15] Mr. Cadence further states having considered the bank statements of the clients’ accounts, he is of the opinion that the Applicant has at times been operating the accounts for personal use and in breach of the obligation set out in the Control and Protection Of Client’s Accounts Act. Basically, statement of the MCB account No.00000219328 showed transactions of payments of university tuition fees, accommodation and stipend fees for the Applicant’s niece and nephew. The statement of accounts also reflected payments of university tuition and stipend fees for the Applicant’s nephew.

[16] He noted what he considered some dubious transactions on the same account and these include several transfers from that account to unidentified accounts to the value of US\$3,615,000.00 and one transfer of US\$1,000,000.00 inter account to an Al Salam account No.50000012915. The recipient account is a personal account of the Applicant. Three of these transfers, namely a transfer made on 28 December 2020 for the sum of

US\$5000,000.00, another on 02 February 2021 in the sum of US\$500,000.00 and another on 2<sup>nd</sup> March 2021 for the sum of US\$500,000.00 which were all inter account transfers to unidentified accounts believed to be operated by the Applicant, appear to comprise of alleged expenses in the course of just two months.

[17] Mr. Cadence further noted that a substantial receipt into the MCB account on 03<sup>rd</sup> March 2018 which was an inward 'Shareholder Payment' of US\$600,000.00 on behalf of Intelvision Ltd. And states that he believes that it is in respect of funds received on behalf of the Applicant's husband Mukesh, who is a beneficial owner of the company. Mukesh Valabjhi remains charged in the Supreme Court in case CM114 of 2021 with serious allegations of theft, official corruption and money laundering.

[18] It is further averred by Mr. Cadence that, since the ACCS considers the restrictions to be lawful and necessary, the Commissioner will continue to vary the Restriction Notices allow for payments of money to, or on behalf of clients of the Applicant and notes that there has been variation to allow for the same in a manner to allow for payment of salaries and appropriate payment. The Affidavit in Answer list multiples transactions effected in respect of SIMBC (Nouvobanq) Account No. 01201017253007 (non-client account). These include;

- operational expenses for Capital City Office, including staff pensions, taxes and salaries;
- payment for products and services in respect of a property at Palm Residence, La Misere;
- payment of air tickets in favour of Nicole Kevin Lenclume and Michel Walter Bertin;
- Legal fees;
- Applicant's tax liabilities in respect of her legal practice;
- Licence fees for Applicant's vehicle; and

- Various refund of expenses for food items and other goods purchased for the Applicant.

The majority of these payments were approved following clarification provided when requested by the ACCS.

- [19] Mr. Cadence questions two other transactions that appeared in the bank statements. They pertain to an outstanding request for access to US\$300,000.00 from MCB US dollar client account on behalf of L'Escale Resort Marina & Spa, to which the respondent awaits a reply to an email request clarification sent on 25<sup>th</sup> November 2022. The other one pertains to a request for payment of BGP13,500 in tuition fees in favour of Leeroy Charlette from MCB Account 0000061670 which the ACCS declined based on fact that Leeroy Charlette has been charged with corruption in CR101/21 being prosecuted by the ACCS.

#### **The Prayers of the Application.**

- [20] In the Application prayer b. which has been reproduced at paragraph 9. i. above pertains to demand of an Order declaring the actions of ACCS in respect of verbal directives given to the banks in Seychelles on or around the 19<sup>th</sup> November 2021, to restrict all dealing on all of her bank accounts including personal accounts to be unlawful and ultra vires.
- [21] The evidence of the Applicant focussed on the clients' account only. ACCS, through Mr. Cadence claims that it has been agreed with the Applicant that this application will only deal with the client,' accounts. Therefore, this Ruling will be in respect of the clients' accounts only. This Court will consider prayer b as far as the Applicant's other accounts to have been abandoned and therefore, the Court will not a Ruling in that respect, in regards that prayers.

#### **Oral Testimonies**

- [22] The Applicant gave evidence on oath and was cross-examined vigorously by Mr. Skelly, Counsel for ACCS. Nonetheless, I found that much of the cross-examination addressed issues not necessarily relevant to matters in issue of this Application but issues which could be of pertinent considerations for other possible infractions of lawful obligations in



handling business and clients' accounts. The evidence of the Applicant will be considered below. She also called Ms. Barbe Senior Assistant Registrar of the Supreme Court to produce case file ACCS v Fahreen Rajan CR8 of 2022. In that case, Fahreen was charged with the offences of money laundering contrary to section 3(1)(c) and punishable section 3(4) of AMLCFT Act and Concealing of Property contrary to section 37(c) of the Anti-Corruption Act 2016. On 28<sup>th</sup> July 2022, the case was withdrawn because the ACCS alleged that Ms. Rajan was co-operating with the ACCS whereby she had made statements and agreed to give evidence on behalf of the ACCS in any other case involving others named in the conspiracy. However, in that case, Counsel for ACCS, Mr. Vickers informed Court when withdrawing the case, that the matter was still under investigation in respect of the Applicant and her husband, Mr. Mukesh Valabjhi.

- [23] At the hearing, the ACCS had Mr. Cadence waiting outside Court to give evidence on its behalf. However, at the last hour the ACCS decided not to call him stating that Mr. Cadence had a personal matter that he needed to attend to and that he was unavailable to give evidence and whether his affidavit could be accepted as evidence in this case. Counsel for the Applicant had no objection to that application. Therefore, the Court acceded to that request.

### **Clients' Account**

- [24] It is trite that a client account is a bank account that is kept by a Schedule Person as an account in which moneys belonging to that latter's client are kept. Therefore, moneys found in such account belongs to the clients and not the Scheduled Person. Unless, it can be established that this is not the case, then such moneys are deemed to belong to the clients. This is guided by Control and Protection of Clients' Account Act 1982 ("the Act"). Scheduled Persons should always keep clients' account and moneys separate from his/her personal accounts or moneys.

- [25] Section 4 of the Act provides;

- “(1) Every Scheduled person shall keep such books and accounts as may be necessary to show and distinguish in connexion with his business or profession –*
- (a) the moneys received from or on account of and the moneys paid to or on account of each of his clients; and*
- (b) the moneys received and the moneys paid on his account*
- (2) All such books and accounts shall be audited once a year by the Auditor General or some public officer appointed by the Auditor General, who shall report the results of his audit to him.*
- (3) The Auditor General shall issue a Certificate of Auditor in such form as may be prescribed.”*

It is therefore a legal requirement that such account is audited yearly. In fact, it is mandatory that a Legal Practitioner produces a copy audited of his or her clients' account when applying for renewal of his/her licence. It is not traversed in any way that the Applicant's Attorney-at-Law's licence had over the years always been renewed. That means that the account were always in order. In the event that the Registrar of the Supreme Court finds anything irregular or questionable with an Attorney's audited accounts, then the licence is not renewed unless a good explanation is given as to the irregularity with the account. The Applicant testified that none of her auditors have ever found any issues with her ledgers and accounts. She further testified that her accounts including her clients' accounts were audited by the Seychelles Revenue Commission (SRC) for the past seven years and never been subject to any complaints from SRC. That is evidence that has not been challenged and therefore admitted as being truthful.

### **Powers of the ACCS under the Anti-Corruption Act 2006 (ACA)**

[26] By virtue of section 60 of the ACA 2016 (as amended), the ACCS is given broad powers to restrict the assets of a person under investigation. Section 60 (1) reads;

*“The Commissioner or an officer of the commission may, by written notice made to the person who is subject to an investigation in respect of an offence alleged or suspected to have been committed to have committed under the Act, or against whom a prosecution for an offence has been instituted, direct that person not to dispose of, or otherwise deal with any property specified in such notice without the consent of the Commissioner or officer of the Commission, as the case may be.”*

Section 2 of the ACA 2016, which is the definition section describes property as follows;

*“ property includes any property moveable or immoveable, money, funds, interests, interests in property, documents or instruments in any form , banks credits, cheques, shares, securities incorporeal property, whether located in the Republic or elsewhere.”*

It is clear from that the definition that the list is non-exhaustive. My reading of that definition is that property can include other property not included in the list. However, we shall now consider whether clients’ account fall within that definition.

#### **Did the ACCS have Power to Place Restriction on the Clients’ Account?**

[27] It is my opinion that by definition section 60 does not extend to clients’ account. By implication the section extends the jurisdiction of the ACCS to restrict property belonging to the person under investigation only. It does not extend to properties of third parties who is not under investigation and had not received such notice. The ACCS has not in their affidavit or otherwise establish that any of the clients of the Applicant was under investigation. Moneys held in clients account belong to clients and not the Scheduled Person, in that case the Attorney. I will by way of analogy give a simple example. B works for company A and as part of his employment is assigned a vehicle that is kept in his possession full time and is maintained at his own expense. B is arrested on suspicion of having committed corruption and money laundering. At the time of arrest the vehicle is in his custody. While he is arrested the ACCS served on B a Notice of Restriction. That notice cannot cover the vehicle that is assigned to B by company A as the vehicle does not belong to B despite it being in his possession of B. The latter is merely a custodian of the vehicle. The same position applies to client’s account. The moneys are not that of the Scheduled

Person. Therefore, the moneys are property of the clients. To restrict properties of such third parties without following statutory procedures could amount a contravention of Article 26 of the Constitution.

[28] In given scenario it would have been easy to verify ownership of the vehicle. Similarly, in the present case, the ACCS could easily verify whether the source of the moneys and confirm that they are that of clients. It sufficed that the clients are contacted and show proof of that the funds are theirs and if satisfied, then the moneys returned to them. The ACCS claims that the Applicant is under investigation (which shall be dealt with below), yet in more than a year they have not able to undertake such an exercise, to verify to whom the moneys in the clients' account belong to. This shows lack of seriousness on the part of the ACCS. I most certainly agree with submission of Counsel for the ACCS that the "*law would be rendered potentially toothless if attorney client accounts were to be exempted from restriction.*" I do agree that laws have to bite but they cannot bite indiscriminately as in the present case. It has to bite at the party whose property is tainted with suspicion. The moneys in the accounts are clients' money unless it can be established otherwise which ACCS has failed to do. If there is suspicion on any clients of the Applicant, then impose restriction on those clients and allow the attorney to release moneys of other clients who are not under investigation. It is totally unfair and unjust to the clients whose moneys are being held up through no fault of their own. The Court should correct such injustice.

[29] I find that ACCS acted ultra vires in placing restriction on the clients' account of the Applicant. Section 60 of the ACA does not extend that jurisdiction to cover properties belonging to a person not under investigation. The ACCS has failed miserably in showing that any of the clients of the Applicant despite expressing concerns of some clients, particularly those having a connection with the Applicant's husband is under investigation.

### **The Notices**

[30] The ACCS claims that the initial notice was issued on 13<sup>th</sup> December 2021. The Applicant avers that the ACCS had by verbal notice given instructions to bank to restrict dealings on the accounts. That notice was allegedly given immediately following his arrest on 18<sup>th</sup> November 2021. The Applicant alleges that she became aware of that because payments

being made immediately following her were not honoured. The ACCS does not necessarily deny that but states rather that the Applicant did not provide first hand evidence that this was so. I agree with ACCS that there was no such evidence. However, this Court is not concerned as to whether there were such verbal notices. I will be happy to agree with the ACCS and in fact, I have already pronounced myself on that.

- [30] The Applicant testified that when the first Notice was delivered to her by Maureen Young of the ACCS she pointed out mistakes in the Notice and Maureen agreed to take it back and have it corrected. However, the supposedly corrected version was not served on her. I find the testimony of the Applicant in that regard credible. In his affidavit at paragraph 2, Mr. Cadence states that he could assist Court on events surrounding the Notices in December 2021 and September 2022. In paragraph 8 of the Affidavit, he states that on 17<sup>th</sup> December 2017, the Applicant was served with such Notice. If an affidavit refers to a document, such document has to be produced with the affidavit. The ACCS failed to furnish any copy of such amended Notice, thus the reason I will tend to believe the Applicant. I do not though doubt that ACCS served Notices on the banks but whether it was the corrected version, I cannot be sure. In the circumstances that the ACCS did not produce such a document, I can safely assume that there was none. Since there was no amended Notice in lieu of the Notice of 17<sup>th</sup> December 2021, the ACCS could not have extended such Notice by the Notice of 13<sup>th</sup> September 2022. This would be tantamount to flaunting established procedure. Mr. Cadence was wrong to have averred at paragraph 12 of his affidavit that the *“section 60 Restriction notices were lawfully extended.”*

### **The Disputed Bank Transactions on the Clients Account**

- [31] Firstly the ACCS questioned some transaction done on MCB US\$ Account No. 0000219328 which they considered to be suspicious. These transactions found at paragraph 15 of Mr. Cadence's affidavit, concern mainly payments of tuition fees, accommodation and stipend made to the Applicant's nephew and niece. Since the transactions were personal, ACCS legitimately questioned these transactions.

- [32] The Applicant had explained that she had fees for legal services that had accumulated in the clients' account. It is practice, that Counsels would leave their fees in the clients'

account until that the Counsel's service to his / her client is completed. However, the Applicant was wrong to have debited the account directly for the payments of such personal obligations. She should have transferred the moneys to her business account on which she should have paid income tax. Therefore, she was in breach of income tax laws of Seychelles. However, despite that, it would not have been reasons enough to impose restrictions on the accounts in terms of section 60 of the ACA.

[33] The ACCS also questioned a transaction of US\$600,000.00 payment on 03 May 2018 to Intelvision, a company which the Applicant's husband is a beneficiary of. It is appreciated why the ACCS would show concerns in respect of that transaction since the Applicant's husband is facing charges under the Anti-Money Laundering and Countering the Financing of Terrorism Act 2020 and the Anti-Corruption Act. Though the money was received on the 03<sup>rd</sup> May 2018, the Applicant however made a transfer of a similar sum on 25<sup>th</sup> April 2018. She testified that what she did was to advance a loan which she said was her own money from the client's account as a loan to Mr. Payet who was selling his share in Intelvision. Again, that was unwise of the Applicant. If she needed to make a loan, she should have taken the money out of the account, credit to her business account before advancing that loan. She acted contrary to the Act. The money is already disbursed, so since money for Intelvision is no longer on her account it makes little sense for ACCS to restrict her clients' account based on that transaction. She had testified that at the time of her arrest she was not holding any sums for any of her husband's company or company in which her husband's had interest and further stated that she was never Attorney for any of the companies in which her husband had interest.

[34] The Applicant testified that she was not acting for Zil Pasyon Holdings, a company which the ACCS suspected that her husband had interest therein. She explained that she acted for Felicite Island Investment in which her husband had no shares. The moneys held in escrow in her client's account was to purchase shares in Zil Investment Company. The transaction was for US\$180,000.00 but since there was only US\$160,000.00 in her client account she advanced the company US\$20,000.00 of her own money for the acquisition of the shares. I do hold concern in respect of that transaction. I feel somewhat suspicious about that transaction. However, that transaction according to the bank statement was made in

January 2015. The moneys went out of the client account. Under other circumstances, I would have ordered that restriction is placed on moneys destined for Zil Investment Company, but in conformity with section 60 of the ACA Notices would have had to be served on that company.

- [35] The ACCS refers to substantial sums being transferred from MCB account 00000219383 to another non-client account belonging to the Applicant. They also claim that sums were transferred non identified account. The ACCS having control over the Applicant's account, be it clients or personal, could easily have verified such accounts and find out to which account the transfers were being made to.

### **Continuing Investigation**

- [36] The ACCS claims that the Applicant is still under investigation, yet produced nothing tangible to confirm that allegation. When Charges in respect of conspiracy to commit money laundering, money laundering and concealment of property were withdrawn against Mrs. Valabhji on 19 May 2022, Mr. Vickers, Counsel for the ACCS had stated thus, “[I]n respect of Laura Valabhji we are in position to withdraw the counts currently existing against her, but may I make it plain, that is pending further investigation of materials and awaited set of LLP material.....” The fact that such statement was made by Mr. Vickers does not oblige the Court to accept it as gospel. ACCS must show that there has been a real effort to undertake such further investigation. It is now nine and a half months (9½) since the statement was made. It is important that ACCS is now allowed to abuse that process. In **Intershore Banking Corporation v Central bank of Seychelles SCA 13 /2016**, the then Chief Justice commented of on the delay of 3 years of investigation without any charge and stated; “[I]t is not in the interest of justice that investigation carry on unimpeded with no closure and suspects kept in limbo.” This is exactly what the Applicant is being put through. In paragraph 12 of Mr. Cadence's affidavit, it is stated “*there is an investigation being carried out by the Respondent into the offences of money laundering. The investigation is awaiting the responses to MLA requests made to external jurisdictions.....*” Though I appreciate the sensitivity of such investigation, however, to raise it in an affidavit and not support it with documents is not enough. Such documents



would have assisted Court in appreciating that the investigation is indeed being carried out. The Court would have sealed the documents once produced as supporting exhibits. Once sealed that documents would have remained secured.

[37] I note that when the Applicant was charged in December 2021, she claimed that the ACCS had made application to Court thereafter to review her LLP documents and materials. A court Order was granted in consultation with the possibility of appointing a legal practitioner to review her LLP documents and materials. She provided ACCS with a list of six legal practitioners to review the LLP. None has been appointed. Time has lapsed and she has not yet been charged and there has been no further application to review her LLP materials. The Applicant was not contradicted in cross-examination on that allegation. So, the averments of the Applicant are maintained. With such a lethargic approach in the work of the ACCS one cannot have confidence that they are sincere. On the face of it, it appears that the ACCS is abusing its power and this Court will not condone that. The fundamental right to property as provided for under Article 26 of the Constitution is paramount.

[38] Similarly, the case of Fahreen Rajan has been withdrawn on 28<sup>th</sup> July 2022. The Applicant has not been charged with any offence associated with that case. Again, I don't consider that there is no real effort to do anything towards that end. I feel that the Applicant cannot be left in limbo.

### **Determination**

[39] This Court has already ruled that the imposition of Notices of Restriction on a Scheduled Person's clients' account. Section 60 (1) of the ACA grants ACCS power to impose restriction on personal property of an individual and entity. That jurisdiction does not extend to imposition of restriction on property belonging to third party albeit that the Scheduled Person is the custodian of such property, unless that third party is served with a Notice of Restriction.

[40] Nonetheless, after evaluating what the ACCS could have considered suspicious transactions, I find no legitimacy in upholding those restrictions though I will confess that in managing her accounts the Applicant could have been in breach of tax laws.



Nonetheless, I am comforted in the knowledge that that the accounts were audited by qualified accountants and they found accounts in order.

[41]. Therefore, I proceed to make the following Orders;

(i) I declare that the actions of the ACCS in respect of the written Notices issued to the following bank accounts;

i. Mauritius Commercial Bank (Seychelles) Limited ;

ii. Al Salam Bank Seychelles Limited. And

iii. SIMBCL (Nouvobanq)

on or around 17<sup>th</sup> December 2021 and thereafter, restricting all dealings in respect in respect of the Applicant's clients' accounts held with the above mentioned banks, to be unlawful and ultra vires.

(ii) In pursuance of section 60(6) of the Anti-Corruption Act 2016, I reverse the directive of ACCS, given in Notices dated 14<sup>th</sup> September 2022 to the Applicant and 20<sup>th</sup> September 2002 to the above mentioned banks, releasing all restrictions on the following clients' account of the Applicant;

Mauritius Commercial Bank (Seychelles) Limited;

i. Laura Alcindor Valabhji (Client Account) No.00000103567;

ii. Laura Alcindor Valabhji (Client Account) No.00000219328;

iii. Laura Alcindor Valabhji (Client Account) No. 0000061678

Al Salam Bank Seychelles Limited


iv. Laura A Valabhji Client Account No.500000022678

SIMBC (Nouvobanq)

v. Laura Agnes Valabhji Account No. 320010172253007

- (iii) The Applicant shall ensure that she pays out or reimburses clients whose moneys are held in the clients' accounts abovementioned within the next six (6) months. Cheques shall be made to the concerned clients and once a payment is made, copies of such cheques with copies of proof that the moneys were credited to such accounts by such clients shall be filed with the Registrar who shall file such documents in the Court file. The ACCS shall be allowed to inspect to such documents.
- (iv) Since the Applicant is incarcerated the Prison Authorities shall provide her with all assistance and facilities necessary to ensure that she completes the Oder at (iii) above.
- (v) Within the next two (2) of this Ruling, the ACCS shall furnish to the Applicant copies of account documents that identifies client and sums due to them, that are presently in the custody of the ACCS.
- (vi) A copy of this Ruling shall be served on all the aforementioned banks.

Signed, dated and delivered at Ile du Port on 03 March 2023

  
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Vidot J