

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC 51
(MC No. 74 of 2020)

In the matter of:

Government of Seychelles
(rep by Ms. Thompson)

Applicant

Versus

Selwyn Reginald
(rep by Mr. Clifford Andre)

Respondent

Neutral Citation: *Government of Seychelles v Selwyn Reginald* (MC No. 74 of 2020) [2023] SCSC 51 (30 January 2023)

Before: Andre JA (sitting as a Judge of the Supreme Court)

Summary: Interlocutory order in terms of section 4 of the POCA Act, 2008 (as amended)

Heard: 13 July 2021 (last sitting date for submissions)

Delivered: 30 January 2023

ORDER

The Court makes the following orders:

- (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 as set out in the Table to the Notice of Motion and described in paragraph 5 herein.
- (2) an Order pursuant to Section 8 of the POCA, appointing Inspector Terence Roseline to be a Receiver of all or part of the 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 Court's directions and further order,

(3) that a copy of this Order is to be served on the Respondent.

ORDER

ANDRE JA

Introduction

[1] This Order arises out of an application MA 85 of 2021 arising in MC 74 of 2020 by the Government of the Republic of Seychelles ("the Applicant") seeking an interlocutory order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting Mr Selwyn Steve Reginald ("the Respondent") or such other person as this Court shall order from disposing of or otherwise dealing with or diminishing the whole or any part of the property (set out in the Table in Paragraph 5 below) to the Notice of Motion dated 18th September 2020.

[2] The Applicant also seeks an order pursuant to Section 8 of the POCA appointing Superintendent **Hein Prinsloo or such other person** as this Court shall deem fit to be the Receiver of the said property to manage, keep possession of or otherwise deal with same in respect of which such Receiver may be appointed in accordance with the Court's directions. Further, the Court may make other orders as it shall deem just and proper in all circumstances of the case.

Background

[3] This Court on 20 August 2020 granted an **interim order** in the case MC 74 of 2020 as per the provisions of section 3 of the POCA as amended, subject to the following conditions:

- “1. Prayer 2 of the application namely, prohibiting the Respondent and any other person specified in this order from disposing or otherwise dealing with the whole or any part of the property set out in the Table appended to the Notice of Motion.... And further application to be filed pursuant to section 4 of the Act.*
- 2. I further order that notice be given to the respondent of this ruling which has been made against him as per paragraphs 1 and 2 of the application.*
- 3. That the court hereby further, as per prayer 3 of the application, appoints Superintendent Hein Prinsloo a receiver of all or part of the said property paragraph [2] refers, to keep, manage, 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 direction pursuant to section 8 of the Act.*
- 4. To give effect to this order paragraph [3] refers, the respondent is ordered to hand over to the receiver as appointed the whole or any part of the property as set out in the table appended to this notice of motion Paragraph [2] refers.*
- 5. It follows that this motion is granted for a period of thirty days to the above effect.”*

[4] The Court on a later date granted an order that Inspector Terence Roseline is appointed as a Receiver following an application made in light of the then impending retirement of Superintendent Hein Prinsloo from the police force.

[5] The details of the property set out in the Table to the Motion are given below:

QUANTITY	DESCRIPTION	VALUE
	Batch 1	
114	500 SEYCHELLES RUPEE NOTES	SCR57,000
865	100 SEYCHELLES RUPEE NOTES	SCR86,500
229	50 SEYCHELLES RUPEE NOTES	SCR11,450

162	25 SEYCHELLES RUPEE NOTES	SCR4,050
	Batch 2	
68	500 SEYCHELLES RUPEE NOTES	SCR34,000
20	100 SEYCHELLES RUPEE NOTES	SCR2,000
3	50 SEYCHELLES RUPEE NOTES	SCR150
24	25 SEYCHELLES RUPEE NOTES	SCR600
2	10 SEYCHELLES RUPEE NOTES	SCR20
TOTAL		SCR195,770

[6] Accordingly, notice was served on the Respondent and the return of service was filed in Court on the 16th of September 2020, indicating that notice had been served on Mr. Reginald. The notice of motion was accompanied by an affidavit sworn by Superintendent Hein Prinsloo on 16th September 2020 and a further affidavit was submitted.

[7] On 23rd September 2020, the Respondent through Counsel entered a notice of appearance, which was followed by an urgent notice of motion to vacate the ex parte hearing. This was accompanied by an affidavit by the Respondent dated 26 November 2020. The Court, therefore, fixed a hearing date in light of the circumstances.

Applicant's Case

[8] The facts of this case are based on the affidavit filed by Hein Prinsloo, a retired Superintendent in the Seychelles Police Force, who was then attached to the Financial Crime Investigation Unit (FCIU).

- [9] The action ensued following a raid by the Anti-Narcotics Bureau of the Seychelles Police (“ANB”) on the Respondent’s home on 5 August 2020 after a tip-off to the effect that the Respondent, an IT technician, was conducting illegal drug trafficking from his home at Montagne Posee. The raid was preceded by discussions between Superintendent Prinsloo and the ANB, culminating in the officers’ reasonable belief that the Respondent was trafficking illegal drugs.
- [10] When the ANB officers arrived at Respondent’s home, they enquired as to whether he had any illegal substances within his premises, to which he indicated that he had a small “smoking joint” in his fridge and about SCR150, 000.00. The ANB Officers proceeded to search the Respondent’s premises, from which they discovered and seized a total sum of SCR195, 770.00 constituted in amounts as represented in the Table in paragraph 5 above. The cash was found stashed in Respondent’s motor vehicle and one of Respondent’s bags. Other items found were: two penknives; a digital scale; cigarette papers; another knife with traces of a substance suspected to be drugs. The exhibits were sent for forensic analysis, which identified them as cannabis resin with a total net weight of 73.82 grams. The penknives and the digital scale had traces of cannabis resin on them as well.
- [11] Superintendent Prinsloo argued that the large quantity of the drugs found on the Respondent, together with the digital scale, and the other paraphernalia used in drug trafficking were evidence of/or justified the presumption of there being a commercial element of sale of the cannabis resin. That is the present circumstances, in terms of section 19(1)(d) of the Misuse of Drugs Act, 2016 (MODA), a person in possession of 25 grams or more is presumed (until the contrary is proven) to have the drug with intent to traffic same, and is on conviction liable to a maximum prison sentence of 50 years or a fine of SCR500,000.00.
- [12] Further that section 3(3) of the Anti-Money Laundering and Countering Financial Terrorism Act, 2020 (AML/CFT Act) states that any person who participates in such conduct as described in section 3(1)(b) of the AML/CFT Act, but not limited to, aiding, abetting, assisting, attempting, counselling, conspiring, concealing or procuring the

commission of such conduct, commits the offence of money laundering as a principal offender. Therefore, his concealing and later disguising the true nature of the funds constituted the crime of money laundering. A conviction from which attracts a fine of SCR5 Million or 15 years' prison sentence or both. That both these crimes constitute Drug Trafficking and Money Laundering.

Respondent's response

[13] In his response filed on 26 November 2020, the Respondent denied all allegations of participating in any illegal activities. His only admission was that the sum of SCR195,770.00 was indeed found in his house, which he insists he handed over to the officers himself, and that they were not "discovered" as alleged. He argues that the cannabis resin recovered was also for his personal use. He avers that the money recovered was accumulated as he engaged in side business deals such as importing spare parts and reselling them, for which he did not need to issue receipts from these 'side hustle' transactions. In a later affidavit filed on 6 April 2021, and in support of his assertions, the Respondent tendered documents signed by persons from whom he claimed to have sourced the funds, the proceeds of which amounts were now confiscated by the ANB. These documents include:

- (i) A letter dated 7 August 2020 from Mr. Andy Come wherein Mr. Come states that he paid the Respondent the sum of SCR100,000 as partial payments towards the purchase price for a motor vehicle with registration number S22791;
- (ii) A statement from Mr. William Kayeri states that he purchased a Samsung TV and an iPhone XS MAX from the Respondent on 28 August 2020, with both items at a total cost of SCR25,000;
- (iii) A statement by Mr. Vincent Henry dated 3 April 2021 certifying that the Respondent sold a complete set of gym equipment to the former at the cost of SCR10,000 on the 15th of July 2020; and,

- (iv) A statement from Mr. Calerb Souffe dated 5 April 2021 stating that he bought a dashboard for IX35 from the Respondent at the price of SCR20,000 on 25 July 2020.

Legal analysis and Discussion of evidence

Interlocutory order

[14] The law as contained in Section 4(1) of the POCA states that a court may grant an interlocutory order where the applicant tenders 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 subparagraphs (i) and (ii) of paragraph (a) is not less than R 50,000.”

[15] It is apparent from the application that the value of the specified property for which the interlocutory order is being sought amounts to SCR195, 770.00. Therefore, the requirement as set out in Section 4(1)(b) of the POCA that the property is valued over SCR50,000.00, is fulfilled.

[16] It is the contention of learned Counsel for the Applicant that the said property proceeds from criminal conduct and to establish this fact, learned Counsel relies on the evidence in the affidavit filed by Superintendent Hein Prinsloo dated 16 September 2020. The court will consider the facts arising from the affidavit filed by Superintendent Hein Prinsloo.

[17] Pursuant to section 9(1) of POCA, provision is made that evidence must be led that:

“(a) the respondent is in possession or control of specified property and that the property constitutes, directly or indirectly, benefit from criminal conduct; or

(b) the respondent is in possession or control of specified property and that the property was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct; and

(c) the value of the property or as the case may be the total value of the property referred to in both paragraphs (a) and (b) is not less than R50,000] When the Respondent was first asked about any illegal property that might be found on his property. He first misled the officers about only having SCR150, 000.00. Later, a total amount of SCR195, 770.00 was discovered within his premises. When interviewed about the SCR195, 770.00 found in his possession, he stated that he had received SCR150, 000.00 from the sale of a motor vehicle to Mr. Andy Come. However, evidence led in court established that he had only been paid SCR100, 000.00, not the full SCR150, 000.00 for the motor vehicle, with the balance to be paid in instalments later on. If his statements were true, he still could not account for the extra SCR50, 000.00 of the alleged SCR150, 000.00 found in his possession.

[18] The Respondent further claimed this vehicle belonged to his “father-in-law,” one Lovette Legalie. However, evidence was led to show that the said vehicle was always in Respondent’s possession, was at all times driven by him, and that it was the Respondent himself who brought it for Mr Come’s inspection before the latter purchased same. It was also the Respondent who negotiated the price with Mr. Come. Meanwhile, when the FCIU interviewed Mr Legalie about the same vehicle, he referred to the Respondent as his “stepson” and that he bought the vehicle as an investment from a lady whose name he could not recall, but who he claimed worked for the PUC. Mr Legalie, said he used savings to purchase the vehicle but the same remained at Respondent’s house even after the sale. He was unaware that the Respondent had already received the SCR100, 000.00 from Mr. Come, to whom he had never spoken.

[19] This court is not gullible to believe the smokescreen created by the Respondent, as it is privy to the many techniques used by criminals to obscure beneficial ownership in attempts to evade the law by creating a false or misleading picture of the true ownership and control of the property. In the present case, it is obvious that Mr. Legalie (be he a father-in-law or stepfather to the Respondent) was recruited or coerced by using whatever inducement to pretend to own the motor vehicle, the details of such sale, he, obviously a man of straw, was unaware.

[20] There was never paperwork to back up the sale to Mr. Come, or all the other transactions of sale from which he claims he amassed the large sum of money seized from him. Except of course for the statements from the various actors produced after the fact, and no doubt to convince this Court to believe him. The dates of when the sales were effected and when the money exchanged hands were not clear either.

[21] Another witness was Mr Vincent Henry, who purportedly bought gym equipment from the Respondent and paid him SCR10, 000.00. In direct evidence Mr. Henry stated the transaction was effected and paid for on 15 July 2020 (the affidavit is dated September 2020), for which he issued the Respondent a receipt for the SCR10, 000.00 paid. On cross-examination, however, Mr. Henry first stated that the document of sale (the receipt) was issued way after the sale of the equipment. At first, he said he could not remember the exact date but when confronted with the date of the receipt, he admitted that it is dated 3 April 2021, to which he added that he also received the gym equipment around that time. When pressed on the exact month in which he received the equipment he said it was July 2021. In his response to the Court's query on why he made out a receipt to the Respondent, Mr. Henry stated:

“He could have given me a receipt. Lie [sic] the procedure is done, he could have made a receipt for me, I can also give him a receipt so that he can justify and I did give him a receipt. Because it is my money, to show that it is my money; that I purchased that item.”

[22] The court cannot establish much substance from the contradictory evidence of Mr. Henry. The court can only reach one conclusion: Mr Henry's testimony cannot be

trusted or relied upon. It is obvious that Mr. Henry gave the evidence to justify the Respondent having the funds at the relevant time but unfortunately bungled up the timelines.

- [23] The Respondent traffics in bare denials without proving the proceeds of the amounts found in his possession. He has not satisfied the burden to prove validity or legality in the manner in which the sums of money were obtained. In his response to cross-examination, Ms. Thompson for the State concludes “*And you have proven nothing otherwise.*” to which the Respondent retorts “*And you have proven nothing too.*” As if this exculpates him from liability. The case of ***Financial Intelligence Unit v Contact Lenses Ltd & Ors* [2018] SCSC 564** is illustrative of this very point of the burdens and standards of proof required in such cases. Quoting the cases of *FIU v Mares* (2011) SLR 405, *Financial Intelligence Unit v Sentry Global Securities Ltd & Ors* (2012) SLR 331, and *Financial Intelligence Unit v Cyber Space Ltd* (2013) SLR 97 the court stated:

“*All that is necessary is “a reasonable belief” that the property has been obtained or derived from criminal conduct by the designated officer of the FIU. That belief pertains to the designated officer and hence involves a subjective element. It is therefore only prima facie evidence or belief evidence. No criminal offence need be proved, nor mens rea be shown...*”

- [24] Respondent’s Counsel alludes to the case of ***Government of Seychelles v Vladimir Borisenko* [2019] SCSC 1056** as authority that the Applicant’s case should be dismissed. The ***Borisenko*** case is distinguishable from the present case for the following reasons:

- i) Mr. Borisenko had a registered micro-brewery business in Seychelles which was bringing in some revenue.
- ii) The money that was found in his possession was from a loan extended to him by a businessman resident in Hong Kong.
- iii) He produced the loan agreement that evidenced the rationale for a large sum extended to him.

- iv) He provided receipts for the moneys that made up the amount that was found in his possession.
- v) The failure of the applicant (the State) to discredit the evidence given by the respondent's ex-wife, Mr. Wu, and Mrs LuiWai Crystal further bolstered the respondent's case.

[25] For the above reasons, the court in the **Borisenko** case gave the respondent the benefit of doubt, and, on a balance of probabilities, found that he met the threshold of showing that the money was from legitimate sources.

[26] Contrast the **Borisenko** case and the facts that have been established in the present case, it is obvious that these two cases or the characters involved are of a different calibre. For instance, evidence was produced that delved into the Respondent's criminal past, demonstrating previous infractions of the law *to wit*:

- b. On the 21st of November 2011, the Respondent was arrested for possession of Cannabis;
- c. On the 7th May 2012, he was arrested for obstruction and being idle and disorderly;
- d. On the 21st of April 2015 he was arrested for possession of cannabis resin; and,
- e. On 5 April 2017, he was arrested for possession of Cannabis.
- f. It does not end there. On the same 5th April 2017, he was involved in the bribery of a postal services employee to clear an express mail service parcel addressed to himself. In effecting this crime, he paid a total of SCR1, 950.00 to two officials to smuggle the parcel out of the post office to hand it over to himself. The exploits he took to evade detection of the parcel and have it smuggled to him indicated that it contained controlled substances.

- g. It was further discovered that in March 2020 the Respondent sold a boat to Rim World Trading and a vehicle to Beryl Tracy Esparon. His bank account did not register receipt of these funds.
- h. On the 14th and 15th of January 2020, he exchanged money for a total of US\$2,300.00 justifying the same for “Local Expenses”, raising the sapience for such conduct, with the local currency being the Seychelles Rupee.
- i. On the 15th of January 2020, he travelled to Kenya. On the 18th of January 2020, Respondent’s girlfriend sent him SCR33, 600.00 as “Family Maintenance.”
- j. On 25 May 2020, he was implicated in the case of Mr. Terry Porice to whom he had paid a sum of SCR2, 000.00. An interlocutory order was obtained against Mr. Porice by the FCIU against property that was under his control. In the judgment, it was accepted that money seized from Mr. Porice was derived from drug trafficking. This connection to a known drug trafficker further inculcates the Respondent.

[27] These “priors” do not bode well for the Respondent and bear resemblance to a recidivist who keeps relapsing into criminal conduct. In all of these “business” ventures in which he was seemingly very adept at running, to such an extent that he managed to amass large sums of money, the Respondent never registered a company with the Registrar General’s Office nor paid the requisite tax liabilities with the Seychelles Revenue Commission. That in itself is a crime including that of tax evasion as all lawful business operators have to pay dues to the State’s revenue office. His failure to furnish proper receipts for the sales he effected as well is unhelpful for his case. For these would lend some modicum of legitimacy to the purported transactions he entered into.

[28] During the period in question, the Respondent was employed with a salary between SCR 4,500.00 and SCR5, 000.00 per month. His averments on affording to buy and sell the items he itemised are not sound. The Court is minded to believe the more credible state assertions that the Respondent weaved stories to explain how he could have attained the

amounts of money found in his possession. A person with ill-gotten gains is not likely to deposit these in a bank account, which the Respondent admitted to having.

[29] This Court is 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 as set out in paragraph 5 herein constitutes, directly or indirectly, benefit from criminal conduct. This Court is also satisfied that the value of the impugned property is not less than SCR 50, 000.00.

[30] 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.*”

[31] The Respondent, in this case, has failed during his giving evidence to the Court to challenge the contents of the affidavit of Superintendent Hein Prinsloo. So too was the evidence of his other witnesses, which was very contradictory at best, and at worst, an outright lie. The Respondent’s conduct was a classic case of money laundering. Indicators of which include not having any real business activities undertaken, making large cash transactions, having connections with convicted criminals, making transactions with two or more parties that are connected without an apparent business or trade rationale, having a business transaction that involves family members of one or more of the parties without a legitimate business rationale and others.

[32] The Court is satisfied that the belief evidence by way of the affidavit of Superintendent Hein Prinsloo can be accepted as it is supported by his sworn statement and other attached documentation on which grounds his belief evidence is based. The court is also satisfied that the Applicant has established that the property constitutes benefit from criminal conduct and its value is over SCR 50,000.00.

[33] This court proceeds to accept the belief evidence of Superintendent Hein Prinsloo and grant the reliefs as prayed for by the Applicant as follows.

Conclusion and final determination

[34] It follows from the analysis and findings that this court orders as follows.

- (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 as set out in the Table to the Notice of Motion and described in paragraph 5 herein.
- (2) an Order pursuant to Section 8 of the POCA, appointing Inspector Terence Roseline to be a Receiver of all or part of the 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 Court's directions and further order,
- (3) that a copy of this Order is to be served on the Respondent.

Signed, dated, and delivered at Ile du Port on the **30 day of January 2023**.

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ANDRE JA

(Sitting as a Judge of the Supreme Court)