

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC 635
XP 02/2023
(Arising in CO 114/2021)

In the matter of:

ANTI-CORRUPTION COMMISSION OF SEYCHELLES **Applicant**
(Represented by Mr Micheal Skelley and Mr Anthony Juliette standing in for the Commissioner of the Anti-Corruption)

Neutral Citation: *Anti-Corruption Commission of Seychelles* (XP 02/2023) [2023] SCSC 635
(21st August 2023)
Before: Adeline J
Summary: Application for Restraint Order/Section 26 and 27 of the Anti-Money Laundering Act 2006, as amended by the Anti-Money Laundering (Amendment) Act 2008.
Heard: 26th July 2023
Delivered: 21st August 2023

ORDER

Adeline, J

- [1] This matter, concerns an application made ex parte in terms of Section 27 (4) (a) of the Anti-Money Laundering Act 2006, as amended by the Anti-Money Laundering (Amendment) Act 2008 by the Anti-Corruption Commission (“the Commission”) established by virtue of Section 4 of the Anti-Corruption Commission Act 2016 as amended by the Anti-Corruption Commission (Amendment) Act (Act 9 of 2022). The application is made by way of Notice of Motion supported by an affidavit sworn by one Kevin, Stephenson (“Mr. Stephenson”), an officer and an investigator of the Commission, on the 26th July 2023. Exhibited to the affidavit in support of the motion are the necessary supporting documentary evidence.

[2] In pursuance to Section 26(1) and 27(1) of the Anti-Money Laundering Act 2006 (as amended by the Anti-Money Laundering (Amendment) Act 2008) (“the AMLA 2006 as amended”), the commission applies to this court for a restraint order against one SARAH ZARQANI RENE in the following terms;

“1. ... prohibiting SARAH ZARQANI RENE or any person from dealing with, which includes the disposal of, any realisable property belonging to SARAH ZARQANI RENE whether or not the assets are described in this order or are transferred to her after the order is made, or are held on trust for her, and whether or not they are in her own name or are solely or jointly owned.

2. ... allowing for payment of living and legal expenses of the Defendant, as permitted under Section 27 (2) of the AMLA 2006 (as amended), such reasonable amounts to be determined by the court as the court thinks fit on application to vary this order by SARAH ZARQANI RENE.

3. Making a specific exception of the order for restraint under Section 27(1) of the AMLA 2006 (as amended), in relation to the bank accounts as follows;

Business Accounts

(a) The bank may issue transactions (debits) from the business Bank accounts to pay employee, supplies, and contractors, honour loans and letters of credit in line with their business activities. The restraint order should not restrict the ordinary trading of the business, including and credits to the accounts.

(b) Personal Accounts

(a) The bank may allow payment into the personal bank accounts of the individuals

(b) No transactions (debit) from the personal accounts shall be allowed by the bank except as expressly permitted by court.

4. Providing for Notice of such order made under this application to be given to SARAH ZARQANI RENE and any other person, bank or company as directed by the court” for the

purposes of service of such notice, as per the application and the supporting affidavit, the prospective Respondent (“the 2nd Defendant in CR 114/2021”) and her address is the following; SARAH ZARQANIE RENE, Alsarello Lodge, Petit Barbaron, Mahe, Seychelles.

5. Providing for application for the variation or discharge of the order by the Applicant or by any person affected by it, pursuant to Section 27(5) (a) of the AMLA 2006 (as amended) ”.

- [3] *It is also prayed by the Commission for the court to make “further or other order as the court shall deem just and proper for the restraint order being sought for”.*
- [4] *It is pleaded by the commission, that “the particulars of identified property in respect of which the Restraint order is sought (but not limited to) are set out in the Table attached to this Notice of Motion. For the avoidance of doubt, this Restraint order is to apply to all realisable property belonging to SARAH ZARQANI RENE, whether or not such property is particularised in this table”.*
- [5] *It is also pleaded by the commission, that the grounds upon which the Restraint order is sought for and the law relied upon are the following;*

“(i) The application is brought by the anti-corruption commission of Seychelles using powers under Section 64(3) of the Anti-Corruption Act 2016 (as amended).

(ii) The application is made ex parte pursuant to Section 27 (4) of the AMLA 2006 (as amended)

(iii) On the 17th December 2021, criminal proceedings were instituted against SARAH ZARQANI RENE in CR 114 of 2021, and on the 19th May 2022 further charges were laid against SARAH ZARQANI RENE contrary to the AMLA 2006 (as amended), the AMLA 1996 and the Penal Code and that an application is currently before the court to further amend the charges.

(iv) That the court is satisfied, on the basis of the affidavit evidence of Kevin STEPHENSON, that proceedings have been instituted against SARAH ZARQANI RENE for criminal conduct, contrary to the AMLA 2006 (as amended), in respect of which the court may make a pecuniary penalty order under Part 5 of the AMLA 2006 (as amended)

(v) There are reasonable grounds for suspecting that SARAH ZARQANI RENE has benefitted from her criminal conduct and is in receipt or control of such proceeds, or, in the alternative, that she holds realisable property of sufficient value to meet a pecuniary penalty order made under Part 5 of AMLA 2006 (as amended), if so made”.

[6] At the end of its application, the commission has this to say;

“Which application shall be grounded on the affidavit of KEVIN STEPHENSON OF THE ANTI-CORRUPTION COMMISSION OF SEYCHELLES, sworn herein on the 26 July 2023, such further affidavit or other evidence as shall be submitted in respect of the nature of the case, and the reasons to be offered”.

[7] The Applicant, the Anti-Corruption Commission of Seychelles, has brought this application in exercise of its statutory powers conferred upon it by virtue of Section 64 (3) of the Anti-Corruption Act, 2016 (as amended). The application is made *ex parte* pursuant to Section 27 (4) of the Anti-Money Laundering Act 2006 (as amended by the Anti-Money laundering (Amendment) Act 2008), and the reliefs being sought for, *inter alia*, include a Restraint order under Section 26 (1) and 27 (1) of Part 5 of the AMLA 2006 as amended.

[8] To determine whether this application should succeed or fail, first and foremost, the court has to be satisfied, as is claimed by the Commission in these proceedings, that proceedings have been instituted in the Republic against the Defendant, SARAH ZARQANI RENE for **criminal conduct**, and that such proceedings have not been concluded, and also, that a pecuniary penalty order under Part 5 of the AMLA 2006 as amended may be made, on application, for such criminal conduct.

[9] As borne out of the evidence of Mr. Stephenson, on the 17th December 2021, criminal proceedings were instituted against SARAH ZARQANI RENE in CR 114 of 2021 before the Supreme court of Seychelles, and on the 19th of May 2022, further charges were laid against her for alleged contravention of the provisions of the AMLA 2006 (as amended), the AMLA 1996 and the Penal Code, and that an application is currently before the court to cause further amendment to the charges. Thus, at present, SARAH ZARQANI RENE is charged in the indictment before the Supreme court with 8 counts of Money Laundering in CR114 of 2021 as follows;

Count 12

- (i) Money Laundering, contrary to Section 3 (1) (b) of the Anti-Money Laundering Act 1996 and punishable under Section 3 (3) of the same Act

Count 13

- (2) Money Laundering contrary to Section 3 (1) (b) of the anti-Money Laundering Act 1996 and punishable under Section 3 (3) of the same Act

Count 15

- (3) Money Laundering, contrary to Section 3 (1) (c) of the Anti-Money Laundering Act 2006 and punishable under Section 57 (1) of the same Act

Count 17

- (4) Money Laundering contrary to Section 3 (1) (c) of the Anti-Money Laundering Act 2006 and punishable under 57 (1) of the same Act

Count 19

- (5) Money Laundering, contrary to Section 3 (1) (c) of the Anti-Money Laundering Act 2006 and punishable under Section 57 (1) of the same Act

Count 20

- (6) Money Laundering, contrary to Section 3 (1) (c) of the Anti-Money Laundering Act 2006 as amended by the Anti-Money Laundering (Amendment) Act 2008, and punishable under Section 3 (4) of the same Act

Count 21

- (7) Money Laundering, contrary to Section 3 (1) (c) of the Anti-Money Laundering Act 2006 as amended by the Anti-Money Laundering (Amendment) Act 2008, and punishable under Section 3 (4) of the same Act, and

Count 23

- (8) Money Laundering, contrary to Section 3 (1) (c) of the anti-Money Laundering Act 2006 as amended by the Anti-Money Laundering (Amendment) Act 2008, and punishable under Section 3 (4) of the same Act

- [10] The term criminal conduct at paragraph [8] above is defined under Section 2 of the AMLA 2006 as amended, in that, it means the following;

“criminal conduct shall have the meaning set out in Section 3 and includes the financing of terrorism

- [11] Under Section 3 of the AMLA 2006 as amended, the offence of Money Laundering is created and the penalty for such offence prescribed. Under Section 3 (9) (a) of the AMLA 2006 as amended, inter alia, “Criminal Conduct” is defined as follows;

“(9) In this Act, Criminal conduct means conduct which –

(a) constitutes any act or omission against any law of the Republic punishable by imprisonment for life or for a term of imprisonment exceeding 3 years, and/or by a fine exceeding R50,000 and, without prejudice to the generality of the above, including the financing of terrorism as referred to in the Prevention of Terrorism Act 2004, and for the avoidance of doubt includes the offence of money Laundering established by Section 3 (1)

and 3 (3) of this Act and whether committed in the Republic or elsewhere and whether before or after the commencement of the relevant provisions of this Act.”

- [12] It is worth noted, that the court may make a pecuniary order under Part 5 of the AMLA 2006 as amended, on application, after conviction and sentenced of a person for criminal conduct to recover the benefits of such criminal conduct. To that end, therefore, the effect of the restraint order being sought for is to ensure that property which is the subject of benefit of criminal conduct is not dissipated to frustrate a pecuniary penalty order made after convictions.
- [13] Section 2 of the AMLA 2006 as amended, defines the term **benefit from criminal conduct** as “*any money or property that is derived, obtained, or realised, directly or indirectly, by any person from criminal conduct*”. At Section 3 (10) (b), it is provided that, “*references to any property representing the benefit from criminal conduct include references to the property representing that benefit in whole or in part directly or indirectly, and cognate references shall be construed accordingly*”.
- [14] Under Section 2 of the AMLA 2006 as amended, property,
“*includes money and all property, real or personal, heritable or moveable, including tangible or intangible or incorporeal property or a virtual asset and any reference to the property shall be construed as including reference to any interest in property, and includes property outside the Republic where by virtue of an arrangement with any other country or territory, the court might be in a position to enforce or secure compliance with any order it might make or where it might otherwise exercise jurisdiction in relation to that property to comply with an arrangement or request from another country or territory*”.
- [15] At the hearing of the application, the court was alerted of the urgency to have this application determined, given that a restriction that had been imposed against the property that would be subject to the restraint order being sought for is about to lapse, and that such order is urgently needed to avoid dissipation of the property that would render the order if

granted, ineffective and be of no use. Within this background, this order will be followed by a more detailed and comprehensive one in due course to supersede this order.

[16] I have given the utmost consideration to the application and its supporting affidavit evidence to which are exhibited the necessary documentary evidence required to determine the same, all of which have been thoroughly examined. I am satisfied, that proceedings have been instituted against SARAH ZARQANI RENE for criminal conduct. I am equally satisfied, that a pecuniary penalty order may be made, on application, for such criminal conduct in the event of a conviction for her criminal conduct.

[17] Therefore, in exercise of the powers conferred upon this court by virtue of the provisions of AMLA 2006, as amended, this court makes the following orders;

- (i) A Restraint order pursuant to Sections 26 (1) and 27 (1) of the AMLA 2006, as amended, prohibiting SARAH ZARQANI RENE or any other person from dealing with, which includes, the disposal of, any realisable property belonging to SARAH ZARQANI RENE, whether or not the assets are described in this order or are transferred to her after the order is made, or are held on trust for her, and whether or not they are in her own name or are solely or jointly owned:
- (ii) While this order subsists, this court shall make further order allowing for the payment of living and legal expenses of SARAH ZARQANI RENE, as permitted under Section 27 (2) of the AMLA 2006, as amended.
- (iii) Specific exception to the order for restraint made under Section 27 (1) of the AMLA 2006, as amended, at paragraph [17] (i) above is made in respect of the following accounts specified hereunder, and on the following terms;

(a) Business account

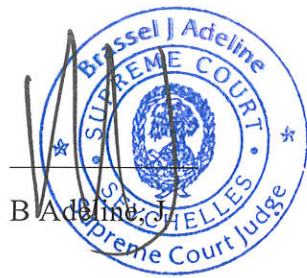
- (i) The bank may issue transactions (debits) from the business bank accounts to pay employees, suppliers and contractors, honour loans and letters of credit in line with their business activities.
- (ii) The restraint order should not restrict the ordinary trading of the business, including any credits to the accounts.

(b) Personal Bank Accounts

- (i) The bank may allow payment into the personal bank accounts of the individuals.
- (ii) No transactions (debit) from the personal bank accounts shall be allowed by the bank except as expressly permitted by the court.
- (iii) A notice of this order by way of copy of the same is to be served on the following;

- (a) SARAH ZARQANI RENE of Alsarello Lodge, Petit Barbarons, Mahe Seychelles
- (b) The Registrar General, or any other public officer who is required to maintain a public record relating to properties in Seychelles
- (c) All banks in Seychelles holding bank accounts which are subject to this order.
- (d) By this order, an application for the discharge or variation of this order may be made by any person affected by it, or by the Commission.
- (e) The particulars of identified property in respect of which the Restraint order is sought (but not limited to) are set out in the table and/or annexed to this order. For the avoidance of doubt, this Restraint Order is to apply to all realisable property belonging to SARAH ZARQANI RENE, whether or not such property is particularised in the said table and/or annexed to this order, and whether or not such property is held in her name or by third parties in her behalf.
- (f) This order is intended to be used to meet the urgent request and need for a Restraint order based on the facts and circumstances laid before this court. A much detailed and comprehensive order containing similar terms shall be made available in due course.

Signed, dated and delivered at Ile du Port 21st August 2023.



Blaad 1