

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC 663
MC 81/2021

In the matter between:

THE GOVERNMENT OF SEYCHELLES
(rep. by Nissa Thompson)

Applicant

and

TREVIS ANTOINE
(rep. by Joel Camille)

Respondent

Neutral Citation: *GOS v Antoine* (MC 81/2021) [2023] SCSC 663 (08 September 2023).
Before: Burhan J
Summary: Application for an Interlocutory Order Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 as amended, and an order for the Appointment of Receiver.
Heard: 29th November 2022, 19 January 2022, 31 May 2023 and 20 June 2023.
Delivered: 08 September 2023

ORDER

I proceed to grant the following reliefs as prayed for and issue:

- (a) 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 persons 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 i. e. SCR 155,147.00 (One hundred and fifty five thousand one hundred and forty seven). set out in the Table to the Notice of Motion.

- (b) 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, to 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.

(c) An Order that a copy of this Order to be served on the Respondent.

ORDER

BURHAN J

[1] This is an application by the aforementioned Applicant seeking an Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended, prohibiting the aforementioned Respondent from disposing of or otherwise dealing with whole or any part of the property also referred to as specified property which is set out in the Table to the Notice of Motion i.e. SCR 155,147.00 (One hundred and fifty five thousand one hundred and forty seven). The application also seeks an Order pursuant to Section 8 of the POCA, appointing Inspector Terence Roseline to be the receiver of the said specified property.

[2] The law as contained in the Section 4 of the POCA requires 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 sub paragraphs (i) and (ii) of paragraph (a) is not less than R 50,000.

[3] It is apparent from the application itself that the amount of cash sought to be forfeited also referred to herein as specified property is SCR 155,147.00 and in accordance with Section 4 (b) of the Act is not less than SCR 50,000.00.

- [4] I have considered the detailed affidavit dated 28th October 2021 of Inspector Terence Roseline attached to the Financial Crime Investigative Unit (FCIU). It is clear on perusal of the said affidavit and annexures attached therein that Inspector Terence Roseline has conducted detailed investigations in respect of the specified property.
- [5] Learned Counsel Mrs Nissa Thompson moving for the aforementioned orders, relies on the contents of the affidavits filed by Inspector Terence Roseline and Johnny Malvina dated 28th of October 2021, in order to establish that the said specified property referred to above taken into custody from Trevis Derrick Antoine holder of NIN 990-0416-1-1-53 (hereinafter referred to as the Respondent), constitutes benefit accrued from criminal conduct namely trafficking in controlled drugs and to establish further that the property in question set out in the Table of the Notice of Motion has a value of more than SCR 50,000.
- [6] When the trial commenced on the 29th of November 2022, Inspector Terence Roseline gave evidence based on his affidavit and confirmed that on the 7th day of September 2021, the Anti-Narcotics Bureau (ANB) received information that the Respondent had left his residence at Pointe Aux Sel driving a Hyundai H1 van bearing registration number S4096 and in possession of controlled drugs. The Respondent was driving the vehicle with three others in it. At the time of stopping and searching the vehicle and the Respondent, the ANB officers had taken a red cross body bag which was round the neck of the Respondent and in it found a sum of SCR 5,930.00, three black digital scales with traces of controlled drug. They had thereafter gone to the residence of the Respondent and conducted a search. One Brenda Antoine was also present. They had continued to find sums of cash (SCR 29,000.00) in the pockets of a camouflage trouser of the accused in his bedroom and in the wardrobe they had found a multi coloured pouch which also contained SCR 22,517.00. During the search, the Respondent had stated that the money found in the multi coloured pouch belonged to one Ronando Esparon. The search continued and more money was found in a safe totalling SCR 77,700.00 and some digital scales, penknives with traces of dark substance were also taken into custody A breakdown of the money taken into custody is set out in paragraph 22 of the affidavit. The said money was kept in safe custody and handed over to the Financial Investigation Unit Officers.

- [7] Thereafter the Respondent was arrested and cash seized. The Respondent according to the evidence has a history of being arrested for possession of controlled drug from 2011 to 2021 with a conviction in 2012 in respect of Cannabis.
- [8] Witness Terence Roseline stated further that during his investigation it was revealed that the Respondent was employed as a home carer since August 2018 till March 2021. He admitted the Respondent received a salary of 5,590.00 as a home carer which was credited to his bank account on a monthly basis. Witness further stated the Respondent had two businesses TRE's Landscaping and Maintenance and T & B Suppliers wholesale suppliers. These businesses according to witness were only opened in 2020 but cash deposits in his bank some amounting to SCR 10,000 were observed since 2018. There was no explanation as to the source of this income. Further there was no plausible explanation in respect of another deposit in a sum of SCR 61,000 credited in August 2021. In his evidence witness Terence Roseline further stated that the business owned by the Respondent TRE's Landscaping and Maintenance lodged presumptive tax returns for the period July 2020 with an overstated turnover tax return in a sum of SCR 65,000 although the turn over for the period was only SCR 38,000 according to the bank statements. Witness stated this is another way to launder illegal funds and cover the source of illegal funds.
- [9] Under cross examination Inspector Roseline admitted that during the search of the Respondent's vehicle, house and on his person, no illegal drugs were found. He stated that there were traces of controlled drug on the digital scales and utensils found in the possession of the Respondent at the time of his arrest but admitted that they could not be quantified to bring a charge against him. He stated his evidence is supported by the Government Analyst report produced as P29. He further stated the fact that the Respondent even though having a bank account had failed to bank such a large quantity of money, further strengthened his belief that the money was not from a legal source. He admitted he had come across documentation relating to fuel concessions which would be given to local fisherman with registered vessels but could not tell whether the Respondent had a viable

business or not. In regard to the Pet bottle business of the Respondent he stated he had not received receipts but only invoices.

[10] The Respondent in this case gave evidence under oath. He stated that he is 32 years of age and stated his business is cutting trees and maintenance. He further produced his affidavit filed in response as R1. He admitted his vehicle was searched on that date. He produced in his affidavit his business registration documents pertaining to business TRE's Landscaping and Maintenance and his local fishing vessel license valid from 03 September 2020 till 2nd September 2021 as R2. He also produced the Fuel Incentive Scheme R3 which recorded his name as the boat owner and Invoices and Delivery notes in respect of his empty pet bottle business. The Respondent in evidence stated that he had the money from his legitimate business and could not bank it due to the Covid lockdown. He stated that Ronando aged 19 and Leonardo aged 26 years stayed in his house and Leonardo works at hospital in the ambulance and Ronando does casual work with a man. He stated he had three scales with him and the others were not his. He further stated it was not illegal to have scales and that he was going to sell the other scales. He denied the scales or pen knives found were used for drug trafficking. He admitted he was a drug user and denied all the scales belonged to him and stated that he had produced income records in respect of his income to the FCIU and they had returned them to him but had not returned two red files. He undertook to produce the returned records which were with him on the next date.

[11] When one considers the evidence of the Respondent and his documents produced, it is to be observed that although he had a fishing license to fish, it appears he had only once gone out fishing as he has produced only a single fuel invoice dated 9th April 2020. Further though he undertook whilst giving evidence under oath to produce the income records in his possession and time was given for him, he failed to do so. Further, although he undertook to call witnesses from the Royal Redeem Centre to prove his Pet bottle invoices were authentic he failed to do so. It is the contention of the Applicant that the invoices are in the same ink and same writing though issued over a period of time and even though the Respondent submitted invoices for payment, once paid, he should have received receipts for the amount paid for the service but has failed to produce same. It is also clear that the Respondent has lodged presumptive tax returns for the period July 2020 with an overstated

turnover return in a sum of SCR 65,000 although the turn over for the period was only SCR 38,000 according to the bank statements. It is the contention of the Applicant that this is the modus operandi of persons trying to launder illegal funds obtained from criminal activity.

[12] Further it is clear that not only several scales containing traces of controlled drug were found in the possession of the Respondent but penknives as well, all utensils used in the trafficking of controlled drug together with large amounts of unaccountable cash in the residence of the Respondent. Though the Respondent states that the cash found in the multi coloured pouch SCR 22,517.00 belonged to one Ronando Esparon he has not come forward and staked a claim in this case for the said sum. It is also clear that the Respondent has a history of arrest for drug related offences and admits he is a drug user. Giving due consideration to the evidence of Inspector Roseline, I am of the view his evidence is corroborated by the affidavit of Sergeant Johnny Malvina, the Government Analyst report and other documents including bank statements attached to his affidavit and produced in court. I also observe that though subject to cross examination no material contradictions were observed. For the all the aforementioned reasons I am satisfied that the evidence of Inspector Terence Roseline can be accepted and establishes that the specified property constitutes benefit from criminal conduct and is the proceeds of crime, the Respondent has failed to show that it is not.

[13] 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”*

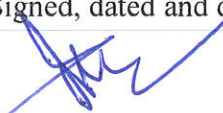
[14] As I am satisfied that the Applicant has established that the specified property SCR 155,147.00 constitutes benefit from criminal conduct and its value is over SCR 50,000.00 I proceed to grant the following reliefs as prayed for and issue:

- a) 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 persons 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 i. e. SCR 155,147.00 (One hundred and fifty five thousand one hundred and forty seven). set out in the Table to the Notice of Motion.

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- c) An Order that a copy of this Order to be served on the Respondent.

Signed, dated and delivered at Ile du Port on 08 September 2023



Burhan J