

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC
MC 23/2021

68

In the matter between:

THE GOVERNMENT OF SEYCHELLES
(rep. by Nissa Thompson)

Applicant

and

DAVE DELPECHE
(rep. by Basil Hoareau)

1st Respondent

SHARON MARIE
(rep. by Basil Hoareau)

2nd Respondent

Neutral Citation: *GOS v Delpeche & Or* (MC 23/2021) [2023] SCSC 68 (31 January 2023).
Before: Burhan J
Summary: Notice of Motion – For an Interlocutory Order and Order for the Appointment of Receiver under Section 4 and 8 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCCCA)
Delivered: 31 January 2023

ORDER

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

- (a) An Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCCCA) as amended, prohibiting the Respondents 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 i.e. SCR 102,000.00 (one hundred and two thousand) set out in the Table to the Notice of Motion.
- (b) An Order pursuant to Section 8 of the POCCCA, appointing Inspector Terrence 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) A copy of this Order to be served on the Respondents.

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 (POCCCA) as amended, prohibiting the aforementioned two Respondents from disposing of or otherwise dealing with whole or any part of the property which is set out in the Table to the Notice of Motion i.e. SCR 102,000.00 (One hundred and two thousand). The application also seeks an Order pursuant to Section 8 of the POCCCA, appointing Inspector Terence Roseline to be the receiver of the said property and that notice be served on the Chief Executive Officer of the Seychelles Licensing Authority not to effect any transfer or change of ownership with respect to the said vehicle, unless authorised by the appointed receiver.
- [2] It is to be noted that the amended Notice of Motion under Section 4 of the POCCCA, dated 23 November 2022, was filed after the initial Section 4 POCCCA application, dated 24 March 2021, and its inquiry concluded. Such inquiry resulted in a compromise agreement, dated 27 October 2022, between parties, signed and filed in the record. In the amended Notice of Motion, in accordance with the compromise agreement, the application under Section 4 of the POCCCA made in respect of S 21356 Red Hyundai i10 vehicle, was withdrawn. In return, the Respondents in the compromise agreement, agreed to the seizure and retention of cash in a sum of SCR 102,000.00, seized by the Financial Crime Investigation Unit (FCIU).
- [3] It is to be noted that an undertaking was given by learned Counsel for Applicant, Mrs Nissa Thompson, that they would release vehicle S 21356 Red Hyundai i10. Therefore in my view, it is not necessary to issue an Order that notice be served on the Chief Executive

Officer of the Seychelles Licensing Authority not to effect any transfer or change of ownership with respect to the said vehicle, unless authorised by the appointed Receiver. Accordingly the application for such an Order is dismissed.

[4] The law as contained in the Section 4 of the POCCCA 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.*

[5] It is apparent from the application that the amount of cash sought to be forfeited also referred to herein as specified property is SCR 102,000.00 and in accordance with Section 4 (b) of the Act is not less than SCR 50,000.00

[6] On consideration of the facts set out in the compromise agreement and in the affidavit filed by FCIU Officer Hein Prinsloo dated 24 March 2021, together with annexures HP1 to HP11, this Court is satisfied that there are reasonable grounds to believe that the specified property referred to constitutes property derived directly or indirectly from the benefit from criminal conduct.

[7] 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*”

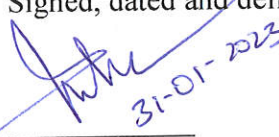
[8] The Respondent in this case has withdrawn the challenge made in respect of the specified property i.e. SCR 102,000.00 as per the compromise agreement.

[9] For the aforementioned reasons, I am satisfied that the belief evidence by way of affidavit of Mr Hein Prinsloo can be accepted, as it is supported by the annexed documentation on which grounds his belief evidence is based. I am further satisfied that the Applicant has established that the property constitutes benefit from criminal conduct and its value is over SCR 50,000.00.

[10] I therefore 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 (POCCCA) as amended, prohibiting the Respondents 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 102,000.00 (one hundred and two thousand) set out in the Table to the Notice of Motion.
- (b) An Order pursuant to Section 8 of the POCCCA, 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) A copy of this Order to be served on the Respondents.

Signed, dated and delivered at Ile du Port on 31 January 2023


31-01-2023

Burhan J

