

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC

MC 30/2021

In the matter between:

THE GOVERNMENT OF SEYCHELLES

(rep. by Steven Powles)

Applicant

and

GE-GEOLOGY LIMITED

(rep. by Frank Elizabeth)

Respondent

Neutral Citation: *Government of Seychelles v Ge-Geology Limited* (MC 30/2021) [2023] SCSC
(22 September 2023)

Before: Burhan J

Summary: Section 4 Application under the Proceeds of Crime (Civil confiscation) Act (POCA) as amended.

Heard: 21st April 2023

Delivered: 22nd September 2023

ORDER

I proceed to issue:

1. An interlocutory order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act, 2008 (the POCA), prohibiting the Respondent Ge-Geology Limited or any other person having notice of the making of this order from disposing of or otherwise dealing with whole or any part of the property set out in the table appended to this Notice of Motion and described in paragraph [1] herein or diminishing its value and;

2. An order pursuant to Section 8 of the POCA, appointing Superintendent Hein Prinsloo, 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 and;
3. An order that a copy of this Order be served on the Respondent or his Counsel Mr Frank Elizabeth and Al Salam Bank.

ORDER

BURHAN J

- [1] The Government of Seychelles filed an Application MC 30 of 2021 dated 9 April 2021 seeking an Interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act (POCA) prohibiting the Respondent Ge-Geology Limited or such other person or any other person having notice of the making of this Order from disposing of or otherwise dealing with the whole or any part of the property set out in the Table to the Notice of Motion, being the sum of USD7,244,968.97 (SCR value 153,568,433.96) standing to credit in the account of Ge-Geology Limited, account bearing number 500000001638 at the Al Salam Bank of Maison Esplanade, Victoria, Mahe. An application was also made to appoint Mr Hein Prinsloo as a receiver of the said specified property.
- [2] Learned Counsel Mr Elizabeth who appeared for the Respondent Ge-Geology Limited thereafter filed a *plea in limine litis* taking up four preliminary objections to the hearing of the Application for an Interlocutory Order. The preliminary objections taken were:
- 1) The action is bad in law as it fails to comply with the Rules;
 - 2) The action amounts to an abuse of process in law;

- 3) The application is defective as there is no affidavit in support of the motion before the court in law;
- 4) There is no evidence to support the application and it should be dismissed forthwith.
- [3] On the 15th October 2021 this Court proceeded to dismiss the preliminary objections. The Court made further order that the Respondent files his response to the Notice of Motion filed by the Government of Seychelles seeking an Interlocutory Order pursuant to Section 4 of the POCA.
- [4] The Respondent thereafter filed Application MA 303 of 2021 for leave to appeal against the Court's Ruling dismissing the preliminary objections dated 15th October 2021. On the 27th June 2022, this Court dismissed the Application for leave to appeal. Learned Counsel for the Respondent thereafter proceeded to apply for special leave to appeal, which was refused by a majority judgment of the Seychelles Court of Appeal in [2023] SCA MA 303/2021 dated 28th February 2023.
- [5] Thereafter, at the request of both learned Counsel the matter was re-fixed for hearing and submissions by both parties for the 21st April 2023.
- [6] On the said date, the evidence of Mr Hein Prinsloo was led by the Applicant. In his evidence under oath, he produced his affidavit dated 9th April 2021 as P1 together with annexures HP1 to HP18. In his evidence under oath, he made a correction to his Affidavit stating that the criminal conduct was money laundering and not drug trafficking. There were no objections or cross-examination on the facts mentioned by him in his Affidavit, which was produced as document P1 during his sworn evidence. No further evidence was led by either party. Thereafter both parties made submissions.
- [7] Mr Elizabeth in his submissions reiterated that the Application should be dismissed as the Affidavit in Support of the Motion is defective for the reasons stated in his submissions when addressing the preliminary objections and relied on the minority judgment given by the Seychelles Court of Appeal by Robinson JA that granted special leave to appeal. He submitted that the finding by the Seychelles Court of Appeal in terms of Article 7 (1) of

the Civil Code of Seychelles Act 2020 (Seychelles Civil Code) in respect of the Affidavit is binding on this Court.

[8] It is pertinent at this stage to set out that when this matter was taken up in the Seychelles Court of Appeal, the majority judgment did not agree with learned Counsel's contention that the Affidavit was defective and proceeded to dismiss his Application for special leave to appeal. It is clear from the Seychelles Court of Appeal order dated 28th February 2023 that it was after giving careful and due consideration to the Order of this Court dated 27th June 2022 did the majority judgment of the Seychelles Court of Appeal proceed to dismiss the Application of learned Counsel seeking special leave to appeal from the said Order. It is my view that this Court is bound by the majority judgment given and their findings under Article 7 of the Seychelles Civil Code.

[9] At the hearing of this Section 4 Application learned Counsel for the Applicant called the maker of the Affidavit Mr Hein Prinsloo on the 21st April 2023 as a witness and he gave sworn evidence and marked the said Affidavit in evidence as P1 and identified same. There was no objection to the production of the Affidavit as an exhibit. It is to be observed that he was not cross-examined on the contents of his affidavit nor its authenticity by learned Counsel for the Respondent. Therefore, this Court is satisfied that the Applicant has presented material evidence under oath by way of an Affidavit sworn by him, which led to his belief that the said specified property was the proceeds of crime. It is my view that calling the maker of the affidavit to give sworn evidence based on the contents of the said affidavit cures any defect that may exist in the jurat as what is now material – is the sworn evidence before the Court, which has not been challenged by cross-examination. Any defect in the jurat has been cured by the evidence given under oath. In any event as stated in my ruling dated 15th October 2021 the deponent makes reference to “*all the averments mentioned in paragraph 1 to 94*” in the jurat, which appears on next page. The last paragraph in the preceding page is paragraph 94 and it contains three paragraphs which are in Roman numerals (i), (ii) and (iii), which go down to very bottom of the page. Once again, I am of the view that the objection is a mere technicality that has not caused any substantial prejudice or injustice to the Respondent nor created any doubt in respect of the authenticity of the Affidavit, especially

considering the fact that now it exists as sworn evidence, which has not been contested. In **Hawkins (1997) Cr App. R P 234** the Court of Appeal held: “*the practice of the Court has in the past, in this and comparable situations, been to eschew undue technicality and ask whether any substantial injustice has been done.*”

[10] Learned Counsel Mr Elizabeth submitted that he would not be filing a reply to the Application under Section 4 of the POCA made by the Applicant but would be relying only on points of law. His objections that the Application fails to comply with the Rules and the Application amounts to an abuse of process have already been dealt with in detail in the Order of this Court dated 15th October 2021 and have been dismissed. There is no necessity for this Court to revisit these issues again.

[11] Learned Counsel Mr Elizabeth next submits that there is no evidence to support the Application and therefore it should be dismissed. He further submits that the facts set out in the Affidavit of Mr Hein Prinsloo do not indicate his personal knowledge of such facts but are based more on his opinion and should be disregarded as most of the documents attached are not admissible.

[12] It would be pertinent to refer to Section 9 (2) of POCA that provides, *inter alia*:

“The applicant shall not make an application under section 3 and 4 or submit evidence of his belief described in this section, except after reasonable enquiries and investigations and on the basis of credible and reliable information...”

[13] Learned Counsel for the Applicant Mr Powles relied on **Govt. of Seychelles v Sifflore et al [2019] SCSC 612** where the Court expressly considered the argument put forward by learned Counsel for the Respondent and rejected the argument that Superintendent Prinsloo was unable to give evidence based on “*facts that are not within his personal knowledge*”. It was held that Superintendent Prinsloo was allowed to rely upon information told to him by others. Section 9 (2) refers to the fact that the information should be credible. It is clear that, though, an opportunity was given for learned Counsel to test the credibility and reliability of the information by cross-examining Mr Prinsloo he

declined to do so. As Mr Prinsloo's evidence has been unchallenged by way of cross-examination and supported by annexures, I am inclined to and will accept his evidence.

- [14] On considering the facts set out by the Affidavit P1 at paragraphs 3 to 5, it is clear that the Applicant's evidence is that the Respondent Ge-Geology Limited, a Seychelles International Business Company (IBC), was incorporated on the 15th April 2011, bearing registration number 089621. Its registered address is that of the Corporate Service Provider: Sterling Trust & Fiduciary Ltd. The Applicant further contends that the Respondent is in possession and control of specified property, which constitutes benefit from criminal conduct and which value is cash USD7,244,968.97 – well over the SCR50,000.00. The said specified property is banked in its account at Al Salam Bank at Maison Esplanade, Victoria, Mahe.
- [15] The evidence and the submissions of the Applicant is that two French nationals Lipsky and Benichou opened the Ge-Geology Limited an account at BMI bank (presently Al Salam Bank) on the 10th May 2011. The account number was initially 300000009133. The account now carries the new number: 500000001638. The sworn evidence indicates that on the 26th October 2022, the French nationals Lipsky and Benichou resigned as Directors/shareholders and appointed Crispen Edu Tomo Maye ("Tomo Maye") as the sole shareholder and signatory of the BMI account.
- [16] It is clear from the evidence of Mr Prinsloo that substantial sums of money were paid into the said BMI account including money from Geoex International Limited (another IBC represented by Lipsky and Benichou). It is the belief evidence of Mr Prinsloo that these companies were "shell companies" and linked to the corruption in oil and mining sectors in Equatorial Guinea. Further, substantial money transfers from Geoex, Geopetrol and Northwest Resources Ltd to the said BMI account have been made. In addition, substantial sums were also paid out. It is the contention of the Applicant based on the sworn evidence of Mr Prinsloo that such low activity accounts with high balance and being used to pay for luxury goods, is described as a 'typical example of the integration stage of money laundering'. It is the contention of the Applicant that the sworn evidence of Mr Prinsloo includes evidence of large sums of unaccounted money being paid into the

account, unusual patterns of activity consistent with the layering phase of money laundering and transfer of large sums of money to Spain for construction of building purposes with no supporting documentation is indicative of money being laundered. As all this evidence remains unchallenged and supported by the Annexures to the Affidavit, I am inclined to and will proceed to accept same.

- [17] It is also in evidence that the Financial Intelligence Unit (FIU) have requested information (Statutory requests) from Mr Tomo Maye. They have received copies of contracts from Mr Tomo Maye's Attorney Mr Rubio, which Mr Prinsloo states are business contracts between Ge-Geology and Geoex, Northwest Resources Ltd, Geopetrol and Charon FZE, which his investigations reveal are false. He also refers to a letter sent by Mr Rubio dated 30th May 2018 confirming concerns of illegal activity by Tomo Maye and Ge-Geology. The letter was produced as HP18. The Articles appearing titled "Villarejo case", which highlight concerns regarding money being laundered through Seychelles into Europe were produced as HP16. I am satisfied that the letter sent by Mr Rubio does not amount to a breach of Legal Professional Privilege as it is the duty of lawyers to report such illegal or suspicious transactions to authorities.
- [18] It is the Applicant's contention that the case against the Respondent is clear and compelling. The money seized is plainly the benefit of criminal conduct or acquired by criminal conduct: corruption and money laundering. The Respondent did not provide any Affidavit evidence in reply nor was any evidence called by the Respondent nor did the Respondent seek to challenge or cross-examine Mr Prinsloo on his evidence.
- [19] Another ground raised by learned Counsel for the Respondent was that his client, the Respondent, had not been convicted of any antecedent or predicate offence and therefore the application should be dismissed. It is clear that when one peruses the new definition of criminal conduct in Section 2 of the POCA as amended by Act 10 of 2017 and the interpretation given in paragraphs [54] and [56] in *Government of Seychelles v Radimer Prus & Ors* [2020] SCSC 660 and also in the cases of *Hackl v Financial Intelligence Unit* (2010) SLR 98 (Constitutional Court) and (2012) SLR 225 and *FIU v Mares* (2011) SLR 405, it is repeatedly stated the proceedings under the POCA are civil in

nature although the Act deals with the forfeiture of property from the benefit of crime. The object of the POCA is not to indict, prosecute and convict criminals but rather to forfeit the proceeds derived from such conduct. In the case of ***Financial Intelligence Unit v Contact Lenses Ltd & Ors*** [2018] SCSC 564 at [15], it was held that under the POCA “*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*”. Therefore, the failure of the Respondent to show that the specified property did not originate from criminal conduct, the specified property is liable to be forfeited and disposed of by the State irrespective whether there was a criminal conviction. In this instant case the Respondent has failed to do so but relied on technical defects in the case of the Applicant as a defence. It also would be pertinent at this stage to refer to Section 5 of the POCA:

“unless it is shown to its satisfaction by the respondent or any person claiming any interest in the property, that the property does not constitute, directly or indirectly, proceeds of criminal conduct and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of criminal conduct”

[20] In his submissions learned Counsel for the Respondent complained that, although, Act 10 of 2017 amended the definition of the word property by excluding currency notes and coins in bank accounts, the Al Salam Bank refused to release the money to his clients giving frivolous reasons. I am inclined to agree with learned Counsel for the Applicant that as the Applicant has nothing to do with this issue, which learned Counsel for the Respondent claims, there is no finding this Court can make against the said bank in these proceedings.

[21] Learned Counsel for the Applicant denies that there was an abuse of process as there were eight processes filed against the Respondent. He states in reality only two processes have been filed and explains that certain orders, namely, production orders, restraint orders and receivership orders were incidental applications which were part and parcel of the same process. It is his contention that it is wrong for the Respondent to seek to characterize these applications as somehow amounting to excessive litigation and judicial harassment. Following receipt of some of the material pursuant to the Production Order, and further consideration of all available material, he submits it was decided not to

charge Ge-Geology Limited or to bring criminal proceedings against them. Instead, proceedings under POCA were commenced, which learned Counsel contends is entirely contemplated by the legal regime. I have already dealt with the issue of abuse of process in my order dated 27th June 2022 and held for reasons given there has been no abuse of process.

[22] It is clear when one considers the submissions and cases filed by the Applicant that an investigation and proceedings commenced against the said specified property in this case had to be aborted with the coming into force of amendment Act 10 of 2017 of the POCA as currency in bank accounts were exempted from the definition of the word property. Thereafter, by the amendment Act 27 of 2020 the definition of property was again amended and money or currency in bank accounts was included once again in the definition of property. The FIU then recommenced investigations again in respect of the Respondent as suspicious transaction report on the specified property in the bank account in this case was made. The investigations continued with the assistance of Production Orders from court and investigations revealed that the said specified property came under the provisions of the POCA and accordingly this action was filed. I find no merit in the argument of learned Counsel for the Respondent that the Applicant is attempting to retrospectively implement the law as the specified property in this case was already banked and under investigations at the time the 2017 amendment excluding bank accounts came into effect. Therefore, when bank accounts were once again included in amendment Act 27 of 2020 and a suspicious transaction report received, the investigations recommenced into the same specified property resulted in the filing of the present action. It cannot be said that the amendment Act 10 of 2017 that excluded bank accounts from the definition of property cleansed the illegal money in the bank, which was banked since 2012 prior to Act 10 of 2017 amendment came into effect. The specified property was banked at the time when the bank accounts were included in the definition of property and, therefore, the entire sum could be investigated by the FIU. As the money was banked when currency in bank accounts were included as property subject to POCA as long as the money remained in the bank it would be subject to further investigation and forfeiture the moment the amendment of 2020 came into force. I cannot accept the contention of learned Counsel for the Respondent that the Applicant cannot

move under Section 4 of the POCA on the basis that the law does not apply to the specified property. I see no merit and proceed to dismiss this ground.

The Law

[23] Section 4 of 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 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 R50,000.*

[24] For all the aforementioned reasons, I am satisfied that the Applicant has satisfied the Court on a balance of probabilities that the specified property in this case referred to in the table of the Motion and in paragraph [1] herein constitutes benefit from criminal conduct and proceeds of crime and its value is over SCR 50,000. In *Financial Intelligence Unit v Contact Lenses Ltd & Others* supra 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.” The Respondent has failed to show that it is not.

[25] I therefore proceed to make the following orders:

1. An interlocutory order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act, 2008 (the POCA), prohibiting the Respondent Ge-Geology Limited or any other person having notice of the making of this order from disposing of or otherwise dealing with whole or any part of the property set out in the table appended to this Notice of Motion and described in paragraph [1] herein or diminishing its value and;

2. An order pursuant to Section 8 of the POCA, appointing Superintendent Hein Prinsloo, 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 and;
3. An order that a copy of this Order be served on the Respondent or his Counsel Mr Frank Elizabeth and Al Salam Bank.

Signed, dated and delivered at Ile du Port on 22 September 2023

M Burhan J