

**IN THE CONSTITUTIONAL COURT OF SEYCHELLES**

**[Corum: Dodin J; McKee J.]**

**CP 2/2015**

**[2016] SCCC 7**

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**BRADWELL INVESTMENTS CORP**

versus

**THE FINANCIAL INTELLIGENCE UNIT**

**ATTORNEY GENERAL**

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Heard: 17 November 2015  
Counsel: Mr. Ally for petitioner  
Mr. Esparon for respondents  
Delivered: 9 February 2016

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**RULING**

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- [1] The Petitioner, Bradwell Investment Corp, petitioned the Constitutional Court claiming;
- i. *Contravention of Article 26 (1) of the Constitution by reason of the extension of the freezing Order for another 180 days pursuant to Section 10 (7) of the AML Act.*
  - ii. *Contravention of Article 26 (1) and/or Article 19(7) of the Constitution by reason of the extension having been granted ex parte, without any service or*

*notice to the Petitioner hence infringing the notion of impartiality of the Court.*

- iii. Contravention of Article 26 (1) and/or 19 (7) of the Constitution also for reason that the freezing Order was extended ex parte.*

The Petitioner prayed for the following relief from this Court:

- i. Declare that Article 26 (1) has been contravened by the 1<sup>st</sup> Respondent or the Attorney General or Acting Chief Justice.*
- ii. Declare that Article 19 (7) has been contravened by 1<sup>st</sup> Respondent or Attorney General or the Acting Chief Justice.*
- iii. Declare the 2<sup>nd</sup> Application (for the extension of the freezing Order) and the 2<sup>nd</sup> Court Order (extending the freezing Order) unconstitutional.*
- iv. Declare Section 10(7) of AML Act or part of it unconstitutional and void.*
- v. Make any other Orders, Declarations, issue such writs, or directions as necessary to dispose of this case.*
- vi. To be awarded costs.*

[2] Learned counsel for the Respondents moved the Court for an Order pursuant to section 169 of the Seychelles Code of Civil Procedure directing the representative of the Petitioner, Malcolm Moller to appear before this Court for cross-examination by the Respondents. The Court initially ruled that no sufficient or compelling reasons had been established to properly ground the application and declined the application.

[3] Subsequently, the Respondents filed fresh Motions supported by affidavit requesting the Court to direct the said Malcolm Moller to attend Court for cross-examination by the Respondents. The affidavits sets out a series of perceived defects, inconsistencies or suspicions that the Respondents would want to question the said Mr Moller about by cross-examining him.

- [4] Having carefully studied the Motion and Affidavit in support, we can safely say that non of the reasons laid out requiring the cross-examination of the said Malcolm Moller would assist this Court in determining whether there has been constitutional violations by the Respondents or the Acting Chief Justice.
- [5] Further, the Constitutional Court is not being moved to declare that the funds in question are or are not proceeds of crime or related to some criminal conduct. This is a matter for the Supreme Court to determine if relevant application is made before it.
- [6] Consequently, the truthfulness of the Affidavit of Mr. Moller has no bearing on the Constitutionality of the procedures adapted by the Supreme Court in determining whether or not to grant further freezing Orders or the Constitutionality of *Section 10 (7)* of the *AML Act*.
- [7] We also find that since this Petition is under *Article 46* of the *Constitution*, the Petitioner is only required to establish a prima facie case and the burden of proving that a contravention has not taken place or is not likely to occur lies on the Respondents. Consequently, the Petitioner cannot be compelled to testify or be cross-examined for the benefit of the Respondents.
- [8] Consequently, not only do we find the Respondents to have been misguided in this Motion, but also the reasons disclosed in the Affidavit do not amount to sufficient or compelling reasons to require the Petitioner to testify or be cross examined in order for the Constitutional Court to determine the real issues before it.
- [9] This motion is therefore declined accordingly.

Signed, dated and delivered at Ile du Port on 9 February 2016.



G Dodin  
Judge of the Supreme Court



C McKee  
Judge of the Supreme Court