

## SUPREME COURT OF SEYCHELLES

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### Reportable

XP 74/2023

In the ex parte matter of:

### **THE GOVERNMENT OF SEYCHELLES**

(rep. by Shireen Denys)

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**Neutral Citation:** *The Government of Seychelles* (XP 74/2023) (27 November 2023)

**Before:** Burhan J

**Heard:** 15 November 2023

**Delivered:** 27 November 2023

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### **ORDER**

I proceed to make the following orders:

- i. I issue an Interim Order pursuant to Section 3 of the Proceeds of (Crime Civil Confiscation) Act 2008 as amended prohibiting the Respondent or any other person specified in the 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
- ii. I make order under (1) above, that Sub-Inspector Cinderella Jacques be appointed as Receiver over all or part of the said property and be allowed to take possession of any property to which the order relates and in accordance with the Court's directions manage, keep possession or dispose of, or otherwise deal with any other property in respect of which she is appointed in accordance with the Court's directions, pursuant to Section 8 of the Proceeds of Crime (Civil Confiscation) Act 2008 as amended; and
- iii. Notice of any such order to be given to the Respondent.

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## ORDER

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**BURHAN J**

[1] This is an ex-parte application under Section 3 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended. The Applicant the Government of Seychelles seeks the following reliefs.

- (1) For an interim order pursuant to section 3 of the Proceeds of (Crime Civil Confiscation) Act 2008 as amended prohibiting the Respondent or any other person specified on the 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*
- (2) That on the making of an order under (1) above, Sub-Inspector Cinderella Jacques or such other person as this Court shall direct be appointed as Receiver over all or part of the said property and be allowed to take possession of any property to which the order relate and in accordance with the Court's directions manage, keep possession or dispose of, or otherwise deal with any other property in respect of which she is appointed in accordance with the Court's directions, pursuant to Section 8 of the Proceeds of Crime (Civil Confiscation) Act 2008 as amended; and*
- (3) For an order providing for Notice of any such order to be given to the Respondent or any other person directed by the Court.*
- (4) Such further or other order as the Court shall deem just and proper in all circumstances in this case.*

[2] The said specified property as described in the Table to the Notice of Motion is set down below:

<b>Denominations</b>	<b>Total</b>
115x SCR 500/- notes	SCR 57,500
1085 x SCR 100/- notes	SCR 108,500
229 x SCR 50/- notes	SCR 11,450
102 x SCR 25/- notes	SCR 2,550
	<b>Grand Total</b> <b>SCR 180,000</b>

[3] The grounds on which the order 1 to 4 are sought are that:-

- (i). the Respondent is in possession or control of specified property set out in the Table appended to this Notice of Motion and that the property constitutes, directly or indirectly benefit from criminal conduct; or
- (ii). the Respondent is in possession or control of specified property set out in the table appended to this notice of motion and that the property was acquired, in whole or in part, with or in connection with property that directly or indirectly constitute criminal conduct.

[4] I have considered the details contained in the affidavit dated 30 October 2023 of Sub Inspector (SI) Cinderella Jacques, a Sub-Inspector attached to the Financial Crime Investigation Unit ("FCIU"). It is clear on perusal of the said affidavit and annexures attached therein that Sub Inspector Cinderella Jacques has conducted investigations in collaboration with other Officers in respect of the specified property and under Section 9 of POCA submits her evidence by way of affidavit under Section 9 (2) of the said Act.

[5] It is clear from her affidavit that the application is being brought against one Dylan Dominic Padayachy, holder of NIN 996-0361-1-1-1-50 of L'Union Estate, La Digue, Seychelles ( hereinafter Respondent).

- [6] The said specified property a sum of SCR 180,000.00 (One Hundred and Eighty Thousand) was seized from the Respondent's residence situated at L'Union Estate, la Digue on the 18<sup>th</sup> February 2023, following a search which was conducted at the Respondent's residence. The search was the result of a joint operation mounted between several counterparts of the Seychelles Police led by Inspector Terence Roseline. His statement dated 19 February 2023 has been annexed as CJ1.
- [7] According to his statement during the search one Agnette Denousse holder of NIN 971-0030-4-0-60 (hereinafter referred to as Agnette) was present. She had stated that she was the mother of the Respondent and she confirmed that the Respondent also resides at the same premises. She was informed that a search was to be conducted and she was questioned as to whether there were any controlled drugs or anything illegal at the premises or in her possession. She mentioned that there was nothing illegal.
- [8] However during the search of the bedroom which was being occupied by the Respondent, two folded knives bearing make Albacete and Opinel were found under some clothes on the couch. When asked about the knives as found, Agnette stated that her son keeps a collection of these knives, traces of dark substances suspected to be controlled drugs were found on the knives. The knives were seized for further detailed examination. The examination revealed traces of hashish (cannabis resin) on one of the orange penknives. Copy of the forensic analyst report produced as CJ2.
- [9] The Respondent on being questioned admitted he had cash amounting to about SCR180,000.00 in his bedroom. The Respondent stated that he stated the cash was from sales of juices at the beach and from clients who he took on tours. Investigations revealed that the Respondent is not registered with Seychelles Revenue Commission (SRC) and he has not registered any business with the Registrar Generals Office. Report attached as CJ4.
- [10] On analysing the Respondents bank account, account number 4240348 his bank statement, annexed as CJ8 revealed that the account was opened on the 02<sup>nd</sup> of November 2017. The period 06<sup>th</sup> November 2017 to March 2023 was subject to analysis. It was found that majority of the withdrawals conducted on the account were done through ATM on La Digue and Praslin. Several inward deposits of cash were identified in his accounts as salary

from Lone Wolf Charter the amount varied from SCR 6500 to SCR10,000/-. It was observed that there were several transfers from one Gerard Payet and upon being questioned the Respondent said that Gerard Payet is the owner of Lone Wolf Charter. The last payment from Lone Wolf was on the 08<sup>th</sup> June of 2020 and the last payment from Gerard Payet was 27<sup>th</sup> February 2020.

[11] Further in the month of June 2020, several cash deposits were identified on his account as listed below;

- On 26/06/2020 a sum of SCR 20,000.00/- deposited by Agnette
- On 26/07/2020 a sum of SCR 20,000.00/- deposited by Agnette
- On 16/07/2020 a sum of SCR 30,000.00/- deposited by Agnette.

[12] It is the belief of Sub Inspector Jacques that given the fact that traces of drugs detected on the penknives and notes found in his possession she believes that the funds were derived from criminal conduct namely drug trafficking and money laundering.

[13] The Respondent had further stated that the cash was generated from tours around the trail where he gets paid in foreign exchange sometimes and he exchanged the same at Anse Reunion supermarket (alias Mutu Shop) and Pierre Barbe shop namely le pti shop (alias Barbe Shop) on La Digue. Sub Inspector Jacques states that the Respondent was not being truthful as he knew if he said the foreign exchange was changed at the Bureau de Change, he would have to have receipts from the Bureau de Change but as he did not, he chose to say that the foreign exchange was exchanged by shop keepers. Further there is no proof as to whether the Respondent really sold juices to generate the cash seized.

[14] Based on the response from the Prison Authorities, SI Jacques was made aware that the Respondent was arrested and charged in 2021, in relation to a case where it was alleged that he was directly or indirectly concerned/involved in or privy, to the commission of the offence of Importation of a controlled drug into Seychelles, Trafficking in a controlled drug and Trafficking in person or abducting a person which happened on or around the 30<sup>th</sup> of October, 2021 and the 01<sup>st</sup> November 2021. The Respondent was however given a

conditional offer and the case did not proceed further against him, the other accused person pleaded guilty and was convicted. The reference number of the case is CR113 & 115 of 2021.

[15] Based on the aforementioned investigations and findings, it is the belief of SI Jacques that the cash taken into custody from the house of the Respondent, the specified property, in this case SCR 180,000.00, is from or is intended to be used for criminal conduct.

[16] Further one Mr. Barney Denousse, the uncle of the Respondent has confirmed that the Respondent is his nephew and that he has been working with him for about one year at the Coco Shak situated at Anse Coco and he would pay the Respondent a sum of SCR600 to SCR1000 per day, which is less than the range referred to by the Respondent.

[17] Based on the aforementioned investigations, statements and documents, it is the belief of SI Jacques under Section 9 of the Proceeds of Crime (Civil Confiscation) Act that;

- i. the Respondent is in possession or control of the specified property set out in the Table appended to this Notice of Motion and that the property constitutes, directly or indirectly benefit from criminal conduct; or
- ii. the Respondent is in possession or control of specified property set out in the Table appended to this Notice of Motion and that the property was acquired, in whole or in part, with or in connection with property that directly or indirectly constitute criminal conduct.
- iii. The total value of property mentioned in (i) and (ii) above is not less than SCR 50,000.

[18] Learned Counsel Ms Shireen Denys moving for the aforementioned orders, relies on the contents of the affidavit filed by SI Jacques dated 30 October 2023 and other annexed documents referred to herein in the said affidavit, to establish that there are clearly reasonable grounds for suspecting that the said specified property referred to above at paragraph [2] herein and in the said Table to the Notice of Motion, constitutes benefit

accrued from criminal conduct namely Drug trafficking and Money laundering and also to establish that the specified property in the Table of the Notice of Motion has a total value of more than SCR50,000.

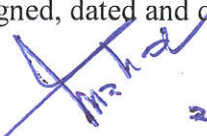
[19] Giving due consideration to all the aforementioned facts set out in the said affidavit and annexures, this Court is satisfied that there are reasonable grounds to believe the Respondent is in possession of property that is the property set out in paragraph [2] herein and in the Table to the Notice of Motion and that the said property constitutes direct or indirect benefit from criminal conduct referred to above. This Court is further satisfied that that the total value of the property mentioned in the said Table is over SCR 50,000.00.

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

- i. I issue an Interim Order pursuant to Section 3 of the Proceeds of (Crime Civil Confiscation) Act 2008 as amended prohibiting the Respondent or any other person specified in the 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
- ii. I make order under (1) above, that Sub-Inspector Cinderella Jacques be appointed as Receiver over all or part of the said property and be allowed to take possession of any property to which the order relates and in accordance with the Court's directions manage, keep possession or dispose of, or otherwise deal with any other property in respect of which she is appointed in accordance with the Court's directions, pursuant to Section 8 of the Proceeds of Crime (Civil Confiscation) Act 2008 as amended; and

iii. Notice of any such order to be given to the Respondent.

Signed, dated and delivered at Ile du Port on 27 November 2023.

  
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M Burhan J

27-11-2023