

SUPREME COURT OF SEYCHELLES

Reportable
MC 07/2023

In the matter between:

THE REPUBLIC
(*rep. by Mrs Nissa Thompson*)

Applicant

and

FRANK AGATHINE
(*Absent/Unrepresented*)

Respondent

Neutral Citation: *Rep vs Agathine* (MC 07/2023) (26 January 2024).

Before: Adeline J

Summary: Detention of cash seized beyond the 14 days prescriptive period/Section 74 (3) (a) and (b) and Section 74(4) of the AMLCFT Act.

Heard: 18 January 2024

Delivered: 26 January 2024

FINAL ORDER

Continued detention of cash in the total sum of USD 20,000.000 converted into SCR 288,122.00 seized on the 19th December 2023 from the Respondent, Frank Agathine at the Seychelles International Airport is hereby authorised for a period of 30 days from the 3rd January 2024 retrospectively.

ORDER ON MOTION

Adeline J,

- [1] By way of a notice of motion supported by an affidavit sworn by one Sergeant Terence Dixie (“Sgt Dixie”) of the Financial Crime Investigation Unit (“FCIU”) of the Seychelles Police Force, the Republic applies to this court for an order authorising the continued detention of cash seized pursuant to Section 74 (2) of the Anti-Money Laundering and Countering the Financing of Terrorism Act (“the AMLCFT”) from the Respondent, Frank

Agathine, on the 19th December 2023 at the Seychelles International Airport. The Republic makes this application for continued detention of the cash seized for a period not exceeding 60 days pursuant to Section 74 (3) of the AMLCFT Act.

[2] In addition, the Republic applies for the following orders;

(i) *An order providing for Notice of any such order to be given to the Respondent, or any other person directed by the court, and*

(ii) *Such further order as the court shall deem just and proper.*

[3] The Respondent, Frank Agathine, who was served with the Notice of Motion pertaining to this application, failed to put appearance in court to exercise his right of reply to the application.

[4] In his affidavit in support of the application for further detention of the cash seized, Sgt Dixie depones, *inter alia*, that he has reasonable grounds for suspecting that the cash seized in USD 20,000.00 equivalent to SCR 288,122.00 from the Respondent, Frank Agathine on the 19th December 2023, represents proceeds of crime or is intended to be used in connection with criminal conduct, namely, money laundering.

[5] Sgt Dixie also depones, that further detention of the cash seized beyond 14 days that the cash has been under seizure is justified while its origin and derivation is being further investigated, or consideration being given for the institution of criminal proceedings against the Respondent for an offence with which the cash is connected.

[6] Sgt Dixie further depones, that the 14 days prescribed by law for the initial detention of the cash seized shall expire on the 2nd January 2024.

[7] Sgt Dixie's reasonable grounds for suspecting that the cash seized represents proceeds of crime or is intended to be used in connection with criminal conduct, namely money-laundering, stem from the facts he avers in his affidavit in support of the application from paragraph 7 – 14 which is replicated here under;

“7. That the FCIU received credible information that the Respondent residing at ST Louis who is employed at Air Seychelles as a Load Controller regularly travels to Dubai. Following the receipts of this intelligence, it was established that the Respondent travels for only one or 2 days and comes back with no luggage upon arrival. I received further information from a reliable source that the Respondent was carrying a significantly large amount of underage cash abroad during his short travel. Based on the information I received, the Respondent was to travel to Dubai on flight EK708 on the 18th December 2023.

8. On the 18th December 2023, WPC William, WPC Jean-Baptiste and myself, all from FCIU, proceeded to the Seychelles International Airport at around 1940hrs for further observation. At 1954hrs, it was confirmed by customs officer Dario Marie that the Respondent had not yet completed any forms on the Travizory. We proceeded to the check-in counter where we met with the representative of Emirates Mr Shawn Camille who confirmed to us that the Respondent was not on the Emirates Flight and was currently working on this shift. He further stated that there will be a flight tomorrow morning at 0835hrs and check-in would start at 0530hrs. Mr Camille advised us that tickets can be bought online at night and tomorrow morning, and that we can check again as their officer opens at 0400hrs. The FCIU team left the Airport at 2100hrs.

9. On the 19th December 2023 at 0530hrs, WPC William, WPC Jean-Baptiste and myself returned to the Seychelles International Airport and proceeded to the Emirate Office. There we were informed by Emirates Staff Samantha Pool that the Respondent had booked the flight that was to depart at 0835hrs on that day. We waited for the Respondent and he arrived rushing almost before check-in counter closes at 0730hrs. I approached him and identified himself as an officer of the FCIU and asked him to follows us. He persisted that he wanted to check-in his luggage first at the counter but we insisted that the luggage stays with him.

10. We proceeded to the Airport Guardroom along with the Respondent where we informed him that a search would be conducted in his luggage. The search and questioning started at 0737hrs and was conducted by myself. The Respondent had only one small blue luggage

with him and one black cross body bag. He was asked to produce his passport which he took out from the cross-body bag. He was asked if he was travelling alone and he said he was travelling to Dubai. He was asked if he had any money to declare and he said he had Seychelles rupees 50,000. I asked the number of days he would be travelling, and the purpose of the travel and he said he would be on holiday for 3 days and he would be staying at Diera Hotel which is already paid for. The Respondent was asked if he had declared the money with him and he said he was going to declare it at the Customs area after check-in. We asked for any documentation he may have to prove the source of funds, he said that he did not have any documents and that the money was some money that has been there from his previous Dubai trips which he went on a monthly basis and some was money given to him by family for the purpose of his trip. We asked him if he packed his luggage himself and he said "yes everything". He was questioned on his expenses in Dubai and he said his expenses would mainly be for his holiday and the rest would be banked in his account in "Emirate NBD" account in Dubai that he opened 3 years ago.

11. During questioning, I started to search his luggage in the presence of WPC William and WPC Jean-Baptiste at 0744hrs. Among his belongings, I found 2 bundles of cash concealed in the pocket of a black short. The first bundle was brand new 100 notes of 100 dollars neatly arranged amounting to 10,000.00 dollars. The second bundle of cash was another brand new 100 noted of 100 dollars neatly arranged amounting to 10,000.00 dollars. The cash from both bundles amounts to USD\$20,000 which is equivalent to Seychelles rupees 288,122.00 when converted using the Central Bank of Seychelles rate as at 15th December 2023.

12. All FCIU officers agreed that he did not provide any documentation to prove the source of cash found and that same should be seized. I pointed out the offence of money laundering to him and informed him of his constitutional rights and that all the cash would be seized under section 74 of the Anti-Money Laundering Act. Mr Frank Agathine understood his rights and stated he knows it is the law and that he must let us do our jobs. He agreed for the cash to be seized and stated that he will sort it out upon his arrival back in the country. I asked the Respondent why he kept that large amount of cash in his cargo luggage, and he stated that he usually keeps his cash sealed in his cargo luggage and nothing has

happened before. The cash was photographed, placed in evidence envelop and sealed in the presence of the offices WPC William, WPC Jean-Baptiste and the Respondent. A case of money laundering was registered at the Anse Aux Pins Police station, bearing CB Number: 101/12/2023. The cash was brought and kept at the FCIU for the purposes of safe keeping.

13. On the 27th day of December 2023, a statement was recorded from the Respondent after he was informed of the offence of Money Laundering, cautioned and informed of his constitutional rights. In his statement, the Respondent avers that he is an employee of the AIR SEYCHLLES for over the past 6 years. That he travels unlimited on any AIR SEYCHELLES planes. He stated that he travels every month and that he has two Seychellois friends that he visits in Dubai as they work on EMIRATES, one ONEIL TAMBO and JULIUS NANCY. He also referred to two other friends in DUBAI namely one HUSSEIN and ZATHIA who has business in DUBAI, when he travels to Dubai, he stays at ALSARAB HOTEL and usually travel for leisure to meet with friends. He mentions that if he goes on holidays, he stays for one full week or 6 days. He stated that whenever his annual leave finished, he looks out for offs that he gets or exchange with friends so he can get like 2 days. He stated that whenever he goes on holiday, the majority of foreign exchange he gets is not less than 800 dollars and the highest is 1500 dollars. The Respondent further stated that on the 19th December 2023, it was the first time that he travelled with such a large sum of cash. He added that he always put the money in his check-in luggage. He stated that he has 3 bank cards. He stated that he only declared that he has only Seychelles rupees 50thousand on him when he was asked to declare before the search as he was a bit scared when the officers approached him. At the airport, the Respondent stated that on that day he stated to the officers that he got the money from family members. However, during the interview, he claimed that he got the cash from his two Arabic friends who owns business in Dubai, ZATHIA and HUSSEIN. He mentioned that he will provide the FCIU with their last names later because he does not remember. He said that whenever he goes to Dubai, he can get around 1,000 to 1,500 from them. But they never give him higher than 1,500 dollars. He states that he does not declare the cash because it does not exceed the limit of 3,500 U.S dollars and that cash is what he has saved from the past 3 years of knowing them. He stated that on the 19th December 2023, when he

was going over to Dubai, HUSSEIN was going to help him open an account with the Emirates because he has the intention to move over there permanently and he was going to help him with his visa application so he can do the necessary procedures to live there permanently. He pointed out that his only income is his personal salary. He stated that since he is getting the U.S dollars, he has never opened a foreign exchange account in Seychelles because he knows he was going to get rupees in exchange and two years ago HUSSEIN tried to send money on his account MCB but the money bounced back. The Respondent also mentioned that he shall provide to the FCIU full details of the foreigners that he claimed gave him the money and documents as proof of the source of the cash. FCIU still awaits to receive the documents from him. ***That I beg to refer to the Respondent's statement under caution marked as TD1 upon which I have signed my name prior to the swearing hereof.***

14. That I require more time to establish the source of the cash seized. That I have sent out numerous requests to several entities, authorities for information on the Respondent including the Seychelles Revenue Commission, Immigration Department, Seychelles Pension Fund, Seychelles Licensing Authority, Emirates Office, Scientific Support & Crime Records Bureau, Registration Division, Drug Enforcement Unit, and responses are pending. That following receipt of the responses, further interviews would have to be conducted. ***That I beg to refer to the letters of request marked as TD2 upon which I have signed my name prior to the swearing hereof.***

[8] Based on the facts as averred by Sgt Dixie, he then states the grounds for the order being sought for to be the following;

“(i) That in the morning of Tuesday 19th December 2023, the Respondent was searched in the guardroom at the airport. That at the time he was bound to Dubai on flight EK 708.

(ii) Prior to the search, the Respondent was asked if he was travelling alone and he said he was travelling to Dubai. He was asked if he had any money to declare and he said he had Seychelles rupees 50,000.

- (iii) *That during the search, cash amounting to the equivalent of Seychelles Rupees 288,122.00 was found in two separate bundles concealed in the pocket of a black short in the Respondent's luggage. Upon questioning, the Respondent stated, that the source of the cash was from savings from his previous Dubai trips which he went on a monthly basis and some was money given by family for the purpose of his trip. However, he did not have any documents to substantiate his statement.*
- (iv) *That the cash was seized pursuant to S74(2) of the AMLCFT Act on the 19th December 2023 and the maximum 14 days for detention of the cash seized lapsed on the 2nd January 2024.*
- (v) *That the investigation by the FCIU is on-going and as per Section 74(3) of the same Act, the FCIU requires a court order to continue detaining the cash seized”.*

- [9] I have carefully read the supporting affidavit to the motion sworn by Sgt Terrence Dixie enlightening me on the factual background for pursuing this application. I am persuaded, that on account of the uncontroverted affidavit evidence put before this court, Sgt Dixie has tendered sufficient evidence as the basis for averring that he has reasonable grounds for suspecting that the cash seized from the Respondent, Frank Agathine, at the Seychelles International Airport on the 19th December 2023 represents proceeds of crime or is intended to be used in connection with criminal conduct, namely, money-laundering.
- [10] I am equally persuaded, that further detention of the cash seized beyond the 14 days prescriptive period while its origin or derivation is further investigated, or consideration is given to the institution of criminal proceedings against the Respondent for an offence with which the cash is connected is necessary.
- [11] Therefore, for the reasons stated in the preceding paragraphs of this order, and in accordance with the provisions of Section 74(3) (a) and (b) as well as Section 74 (4) of the AMLCFT Act, I hereby authorise the continued detention of the cash in the total sum of USD 20,000.00 converted into SCR 288,122.00 seized from the Respondent on the 19th December 2023 at the Seychelles International Airport for a period of 30 days as of the 3rd January 2024 retrospectively.

[12] A copy of this order shall be served on Frank Agathine at St Louis, Mahe, Seychelles for the purpose of putting him on notice of this order.

Signed, dated and delivered at Ile du Port on 26 January 2024.

