

THE REPUBLIC OF SEYCHELLES
IN THE SUPREME COURT OF VICTORIA HELD AT VICTORIA

Miscellaneous Application No. 143 of 2012

[Arising from Miscellaneous Cause No. 02 of 2012]

Financial Intelligence Unit=====Applicant

Versus

Cyber Space Limited=====Respondent

David Esparon and Kalyan Karunakaran for the Applicant

Frank Elizabeth for the Respondent

RULING

Egonda-Ntende, CJ

- 1 This is an application for stay of execution of the order of this court dated 28th September 2012 ordering the applicants to ‘defreeze’ the respondent’s account with an offshore bank in Seychelles. The application is by notice of motion supported by an affidavit sworn by an officer of the applicant, Mr Hogan. The motion was opposed by the respondents at the hearing of the same.
- 2 The background to this application is that in June 2010 the applicant, after receiving a suspicious transactions report from an offshore bank in Seychelles ordered the bank to freeze the account of the respondent and not to allow any instructions to operate the account in so far as withdrawals were concerned. On 16 April 2011 the respondent filed a suit in the Supreme Court challenging the actions of FIU against FIU vide Civil side No.118 of 2011. That suit was heard over a period of time and hearing was concluded on 20th July 2012 and judgment was reserved on notice.
- 3 Prior to the conclusion of hearing the present applicant filed a section 4 application under Proceeds of Crime (Civil Confiscation) Act for an interlocutory order to restrain

the respondent from dealing with the funds in the said account and a further order to appoint Mr Hogan as receiver of the same on 15th February 2012. That application Misc App No. 2 of 2012 was also concluded on the same day as the main suit and was reversed for ruling. Learned counsel on either side proposed to court that let the court rule first on Misc App No.2 of 2012 as this ruling may well render a judgment in the civil suit unnecessary.

- 4 This court delivered its ruling on 28th September 2012 and as it turns out this did not bring the matters in issue to an end. An appeal has been filed. And a stay of execution applied for on the main ground that if a stay is not granted the appeal would be rendered nugatory.
- 5 I was, initially, inclined to agree with the applicants that if the sum of money in question is moved and or otherwise removed from the account, and this appeal succeeds, with the Court of Appeal, granting a section 4 interlocutory order, the appeal would be rendered nugatory by the absence of the said funds.
- 6 However when I considered the history of this case and long period of freezing prior to the commencement of this action by applicant, June 2010 to February 2012, 20 months, a period far in excess of six months now allowed by The Anti Money Laundering Act as amended by Act 24 of 2011, together with the fact that the respondent is an international company registered in Seychelles, and therefore amenable to the jurisdiction of this court, the balance of convenience tips in favour of not granting the stay of execution, as in effect it would be a perpetration of the continuation of freezing the respondent's assets for a period much longer than anticipated in law without an order of court.
- 7 The respondent, a business entity has for far too long been denied access to its funds. Should the applicant be successful on appeal it can seek to enforce its order in the ordinary way, against the respondent who is domiciled in this jurisdiction. I dismiss this application with costs.

Signed, dated and delivered at Victoria this 22nd day of October 2012

FMS Egonda-Ntende
Chief Justice