

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2022] SCCA 66 (16 December 2022)
SCA 40/2020
(Appeal arising from MC 98/2019)

Peter Roselie
(rep. by Mr. Frank Elizabeth)

Appellant

versus

Government of Seychelles
(rep. by Mrs. Nissa Thompson)

Respondent

Neutral Citation: *Roselie v Government of Seychelles* (SCA 40/2020) [2022] (Arising in MC 98/2019) (16 December 2022)

Before: Robinson, Tibatemwa-Ekirikubinza, Andre, JJA

Summary: **Appeal against the interlocutory Rulings and Orders of the Supreme Court arising under the Proceeds of Crime (Civil Confiscation Act (POCCCA)).**

To discharge the evidential burden in a hearing of an application under POCCCA, the evidence adduced by the Respondent in support of his claim of source of funds must be credible.

Heard: 6 December 2022

Delivered: 16 December 2022

ORDER

The appeal is dismissed and the orders of the Supreme Court are upheld.

JUDGMENT

DR. LILLIAN TIBATEMWA-EKIRIKUBINZA, JA.

The Facts

1. This appeal is against the interlocutory orders issued by Twomey, CJ in Supreme Court MC 98/2020 prohibiting the Appellant from dealing with vehicles believed to have been bought using illegitimate funds.

2. The background facts that led to the issuance of the interlocutory orders by Twomey, CJ are as follows:
3. Superintendent Prinsloo on behalf of the Respondent averred that the Appellant - owner of Aquila Cars in Seychelles - instructed a company known as “Your Choice” to prepare documentation for the importation of five new BMW X5e vehicles into Seychelles. The appellant put Your Choice in contact with an individual named Sibtain Sikander with email address houseofcars@yahoo.com.
4. Subsequently, Your Choice informed Sikander via the email provided by the Appellant that they would require the Bill of Lading for the consignee (Aquila Cars), the Commercial Invoice, the Freight Invoice, the Proof of Payment for the vehicles and the Insurance Certificate for the importation of the vehicles into Seychelles. A Bill of Entry with number C7174 was registered at Customs on 25 April 2019 and the consignee declared as Roselie Aquila Cars for two new BMW X5e vehicles with Vehicle Identification Numbers and the country of origin stated as the United Arab Emirates.
5. Thereafter, a Bill of Lading dated 16 March 2019, an Insurance Certificate from AIG with insured amount of USD 113,894, an Import Permit dated 22 March 2019, a letter from the Respondent and a Commercial Invoice dated 21 February 2019 with an order to the amount of USD 103,540 were attached to the Bill of Entry numbered C7174, was provided.
6. On 10 May 2019, another Bill of Entry numbered C8108 was registered at Customs and the consignee declared as Roselie Aquila Cars for the import of three new BMW X5e vehicles with Vehicle Identification Numbers.
7. A Bill of Lading dated 17 March 2019, an Insurance Certificate from AIG with the insured amount of USD 170,841, an Import Permit, dated 22 March 2019, a letter from the Respondent and a Commercial Invoice dated 21 February 2019 with an order to the amount of USD 155,310 were attached to the Bill of Entry numbered C8108.

8. On 3 May 2019, Customs requested a receipt from Your Choice showing the bank transfer for the amount paid, the currency and mode of payment for the vehicles. The Appellant went personally to Customs to explain the origin of the funds and handed over a contract between himself and the "International Centre for Strategic Studies" (ICSS) in Abu Dhabi dated 22 January 2019. He also handed over a "payment voucher" from Al Noor Motors FZD (Al Noor) dated 21 February for the amount of USD 258,850 as proof of payment for the vehicles. The payment voucher is to the effect **that Al Noor paid the Appellant** the money in cash for the purchase of five BMW X5e vehicles inclusive of insurance and freight (CIF).
9. It was Superintendent Prinsloo's contention and averment that if the contract with ICSS as submitted by the Appellant was genuine, he would have been paid the equivalent of USD 408,441.12 under its terms.
10. Furthermore, Superintendent Prinsloo averred that as part of his investigation he obtained information that the Appellant was the owner of Ideal Financial & Management Services Ltd, was a Senior Tax Auditor with experience in assessment, audit and investigation of business tax returns in the Ministry of Finance from January 1988 to December 1994 which put him in the unique position of identifying tax crimes, money laundering and other tax crimes.
11. Superintendent Prinsloo also averred that "to date" the Respondent has not been able to produce proof of payment for the vehicles and the contract which the Respondent alleges to have provided for the funds in cash is highly irregular. That a search on the internet for ICSS proved elusive and it would be highly irregular to have such a company with no internet profile involve itself in contracts of that magnitude. Hence, the inevitable conclusion is that the contract is not genuine.
12. Customs also asked Your Choice to provide documentation of the freight charges. Your Choice replied that the invoice supplied the cost, insurance and freight (CIF). Customs

asked for other information relating to the classification of the imported goods, the quantity of goods on the invoice and other information on the Bill of Entry.

13. Superintendent Prinsloo averred that the customs officials were querying the fact that the same price was stated for the vehicles when two of them were imported from Melbourne and three of them from the UK as the freight cost could not have been the same and no source of funds or bank documents had been submitted by the Appellant to confirm the value of the vehicles. In any case, the value of such a vehicle based on Freight on Board (FOB) exclusive of freight cost and insurance would have been USD 74,232 and not USD 50,384 as suggested by the Appellant.
14. On 8 July 2019, Customs issued a letter to the Appellant informing him that he would need to submit the Bills of Export and supporting documents from UK Customs and Australian Customs. They also queried the source of the funds for the vehicles.
15. That there were also several anomalies in the documentation provided by Your Choice to Customs. The letter in the documentation for the Bill of entry dated 25 April 2019 from the Appellant stated that he had only managed to open a bank account the week before (that is, in the week of 15 April to 19 April 2019) and that transactions would henceforth be made from the account for "transparency and accountability".
16. Prinsloo also averred that when the Appellant was searched on 15 October 2019 another document entitled "Acknowledgement" was discovered on him. The document stated that the Appellant received 5,000,000 Dirhams for "implementing businesses which have been agreed between the parties in the signed contract on 22/01/2019" while the contract between the Respondent and ICSS provides that the Respondent was "to participate and render the consultancy services for financial and administrative audit programs being executed by the Centre". The contract also provided for the first payment of 1,500,000 Dirhams to be made on 22 January 2019 and not the 5,000,000 as indicated on the Acknowledgement document. On this premise, Prinsloo stated that the said document

was forged so as to deceive whoever it was meant to be presented to, most probably Customs.

17. It was also averred by Prinsloo that the Al Noor payment voucher referred to above appeared on an Al Noor Motors letterhead but the website on the document was www.carsforafricaexport.com. An internet search revealed that the domain carsforafricaexport.com is for sale and therefore not in use by anyone. Further, that the e-mail address of Al Noor Motors according to their official website is info@almoormotrs.com but the email on the payment voucher is sales@carsforafricaexport.com. Similarly, Prinsloo stated that the only conclusion that could be drawn from the payment voucher is that it was a forged document.

18. Superintendent Prinsloo also averred that the Al Noor commercial invoice dated 21 February 2019 sent by the Appellant to Your Choice for clearing the vehicles was remarkably different from the commercial invoice sent by Al Noor itself to Your Choice in that *inter alia*, the date format appears differently, the chassis number and colour of one of the vehicles is different and the second invoice bearing the same date has extra columns added to indicate the shipping method and the currency. Prinsloo stated that these discrepancies indicate that the documents were forged and /or unprofessionally done. That a commercial invoice is an important document used by a buyer to have funds released from its bank account to the seller and also a supporting document for insurance claims on the shipment. The insurance policy produced seems to have been issued a month after the vehicles were shipped and is only a quote and not an issued final policy. The policy could not be traced on the insurers' database and is an indication that it also a forgery.

19. It was further averred that when Your Choice requested Sikander to provide a Bill of Export for the two cars from Australia, Sikander stated that there was no Bill of Export but only a Certificate of Export supplied by the Australian Chamber of Commerce. Sikander also sent a letter dated 10 June 2019 pertaining to be from one Kevin Smith from Queensland Chamber of Commerce and the Australian Chamber of Commerce and Industry stating that "the shipment under waybill number 9104 was dispatched from the

port of Melbourne and was discharged at Port Victoria, Seychelles" and that the Certified Declaration of Origin for the shipment was stated as 6833385 yet the waybill number originally submitted by Sikander for the vehicles coming from Australia was stated as MBE 0313787 and the Certified Declaration of Origin as 678679.

20. It was also averred that the Certificate of Origin supplied by Sikander dated 13 May 2019 stated that the exporter of the vehicles is Serendib Sourcing Pty Ltd and not Al Noor Motors with the country of origin stated as USA making it impossible for the Queensland Chamber of Commerce to issue a Certificate of Country of Origin for the vehicle when it was in fact manufactured in the USA. That further checks on Serendib indicated that it specializes in crops, spices and other products but not vehicles making it likely that the certificate is yet another forged document.
21. The Applicant (Prinsloo) further averred that the Appellant could not provide Customs with any documentation to verify the CIF value and the proof of payment for the vehicles. That the documents presented were false with the intention of deceiving Customs by pretending that the Appellant paid Al Noor Motors USD 258,850 for the purchase of five vehicles, which deceit led Customs to issue an import permit to allow the vehicles to be imported into Seychelles. In the circumstances, the vehicles are considered as proceeds of crime.
22. It was also Prinsloo's belief that the Appellant and Sikander conspired to mislead Customs by supplying false documentation to cover up the origin of the funds used to purchase the vehicles and that the Respondent is not the beneficial owner of the vehicles but conspired with another person who purchased the vehicles but cannot legally import vehicles into Seychelles. In this endeavor, official and unofficial documents were forged to obtain an import permit.

The Appellant's Reply before the Supreme Court

23. In reply to Superintendent Prinsloo's averments, the Appellant explained the anomalies in the documents as follows:

24. For the payment voucher allegedly issued by him for the purchase of the vehicles, the Appellant stated that it was a mistake as the payment to Al Noor Motors was made by him and not vice versa.
25. Regarding proof of payment for the cars the Appellant averred that he provided proof of payment and explained that Al Moor Motors could have sourced the cars from Australia and the UK as they did not have them in stock either prior to, or at the time of purchase. That the price estimated for the vehicles by Prinsloo did not take into account factors such as the price of a vehicle including where it was sourced, the amount of taxes in different jurisdictions, expenses of import and export and relationships between manufacturers and dealers. That to assume the price for a BMW X5e is the same throughout the world is naïve and misconstrued.
26. With regard to the payment of 5,000,000 Dirhams from ICSS the Appellant stated that he received "credit" for the sum on his account and that he had requested proof of payment which was being prepared by ICSS. That it was not irregular for an institution to pay a third party sums owed to a party to a contract as alleged by Prinsloo.
27. The Appellant also stated that it was not unusual for a company with contracts for substantial amounts not to own a website as averred by Prinsloo. The Appellant contended that the contract submitted was genuine. He explained the genesis of the contract as follows: that he is a business consultant and passionate about entrepreneurship. He was doing a project which involved incubating young Seychellois companies in Israel and Dubai. In 2016, the Appellant had an eye operation in Sri Lanka and at that time was in regular contact with a Seychellois chef working in Dubai through Facebook who invited him over. The Appellant visited the Chef in Dubai and returned for a holiday with his family in 2018. During the holiday, the Chef requested the Appellant to send him a CV and after his return to Seychelles out of the blue he got a call from someone named Sultan at the ICSS who told him that he had seen his CV and that he was interested in him joining their Risk Assessment Department. He went over for an

interview and entered into negotiations about moving with his whole family there. Upon his return to Seychelles, he realized that "Seychelles is a niche market without a niche product" and he came up with two possibilities for investments namely an executive car rental business and an escort service. He also proposed a risk assessment test case for a company named ADNOC to sell petrol to Seychelles with Abu Dhabi subsidizing the cost and worked on the project and in doing so went back and forth to Abu Dhabi. In 2019, his son fell ill and he took him to Abu Dhabi for treatment. Whilst there, he tried to open a bank account with a Sudanese bank but was not successful. On the same trip, he signed the contract with ICSS and was given a copy of the contract at the airport.

28. Subsequently, he was contacted in Seychelles and told that he was the recipient of a good deal and that each car would cost him USD 51,000 from Al Noor Motors and that his account with ICSS would be debited to pay for the cars.
29. The Appellant stated that he then went to Your Choice who advised him of the documentation he would require for importing the cars. It informed him that he would have difficulties as he had paid for the cars in cash. He returned to Abu Dhabi and opened a bank account with ADIB Bank and while there, Your Choice informed him that he would need to write a letter to explain why he had paid cash for the cars. He wrote the letter in a hurry and forgot to insert the date on it. The import permit was approved.
30. The Appellant averred that he had no intention of deceiving Customs and that the documents found on him when he was searched were meant for Customs. He averred that he was made to sign a document after signing the contract with ICSS to confirm the disbursement of funds to him by instalments for internal purposes only.
31. In respect of the document entitled "Acknowledgement of Disbursement", the Appellant explained that the amount included in the document as 5,000,000 was erroneously printed because the said figure was to be paid at different intervals for the total amount of 5,000,000 Dirhams. That however, the total sum tallied with the contract amount.

32. The Appellant stated that he cannot explain the discrepancies in the commercial invoices as he was not the author of the documents and cannot state whether they are forgeries but that he received them from Al Noor Motors Ltd.
33. That the Appellant was not involved in purchasing insurance for the vehicles as he had minimal knowledge of shipping and clearing which was the reason as to why he contacted Your Choice. He averred that he was not responsible for any other discrepancies in any of the documents submitted and that he did not notice the errors but only spontaneously forwarded them to the clearing agent.
34. In conclusion, the Appellant stated that he had great difficulty obtaining the bill of entry as he had not paid directly to Al Noor Motors but nevertheless had no intentions of deceiving customs. That he did not forge any documents and that he had not conspired with Sikander to mislead customs or to utter false documents to cover up the origin of the funds.
35. In support of his case, the Appellant called two witnesses - Sibtain Sikander and Mohammed Touati – who testified as follows:
36. Sikander – a worker at Al Noor Motors - stated he sold five vehicles to the respondent and was paid USD 258, 850 for the vehicles by Mohamed Touati in cash and that he was thereafter advised to ship the cars to the Appellant in Seychelles.
37. Mohamed Touati – who described himself as the coordinator of ICSS – stated that the Appellant had a credit arrangement with ICSS. Since he was unable to open a bank account in time to receive the money, it was put as a credit in the company’s books in his favour. That he is the one who paid Al Noor Motors on behalf of the Appellant on account of wages due to him under the contract signed on 22 January 2019.

Decision of the Supreme Court

38. Having considered Prinsloo's application and the Appellant's affidavit in reply, Twomey, CJ found that there are reasonable grounds to suspect that the specified property constitutes directly or indirectly, benefit from criminal conduct, or was acquired in whole or in part with or in connection with property that is directly or indirectly benefit from criminal conduct.

39. The Judge also held that the Appellant failed to show on a balance of probabilities that the properties retained were not from illegitimate sources.

40. Consequently, the Judge ordered that:

- (i) The respondent or any other person be prohibited from disposing or dealing with whole or any part of the property specified in the Order
- (ii) The superintendent was appointed receiver over all the property to manage, keep possession or dispose of, or otherwise deal with the property of which he is appointed.
- (iii) Costs of the proceedings to abide in the final outcome.

41. Dissatisfied with the decision of Twomey, CJ, the Respondent filed an appeal in this Court on the following grounds:

- (1) The learned Chief Justice erred in law when she disregarded the appellant's evidence providing proof of source of funds on the basis that the contract was presented as a means to explain the source of funds so as to conceal their true source.**
- (2) The learned Chief Justice erred in law when she made a finding that there is prima facie evidence produced to suspect that the specified property constitutes directly or indirectly, benefit from criminal conduct or was acquired in whole or in part with or in connection with property that is directly or indirectly benefit from criminal conduct.**

- (3) **The learned Chief Justice erred in law when she concluded that having read the Appellant’s affidavit and listened to his evidence in Court, she was still unable to explain the provenance of the funds for the cars.**
- (4) **The learned Chief Justice erred in her appreciation of the facts of this case when she concluded that “an experienced businessman as he claims he is would not operate without a bank account and leave Dirhams 5,000,000 into the internal account of an employer he was not familiar with.”**
- (5) **The learned Chief Justice erred in her rationale that the appellant did not own a house in Seychelles, that he lives with his parents in law, he did not own a car or know how to drive- yet he wants the court to believe that he was going to open an executive car rental company.**
- (6) **The learned Chief Justice erred when she concluded that the appellant has failed to show on a balance of probabilities that the specified properties retained were not from illegitimate sources.**
- (7) **The learned Chief Justice erred in law and in fact when she granted the application for an interlocutory order.**

Relief sought

42. The Appellant prayed that the judgment of the Supreme Court be set aside and the Respondent be ordered to release the vehicles forthwith.

Court’s consideration

43. I wish to point out from the onset that the grounds as drafted by the Appellant’s counsel are unnecessarily repetitive.

44. The essence of the appeal can be summarized in two questions. The first question is whether the evidence adduced before the court was adequate for raising suspicion that the

source of funds used to purchase the vehicles was illegitimate. What evidence supports the suspicion? It is that evidence that must be evaluated so as to answer the question: did the evidence establish a prima facie case against the Appellant?

45. The second question is: What evidence did the Appellant adduce to dispel the suspicion? This refers to the explanations given to answer the anomalies in the process of importing the cars on the one hand and the explanation of where the funds to purchase the cars came from i.e. source of funds. It is these explanations that would rebut the prima facie case established by the Respondent. It is this evidence which must be evaluated before coming to a finding of whether not the Appellant proved on a balance of probabilities that the source of funds used to purchase the vehicles was legitimate.

46. In **Hackl v Financial Intelligence Unit**,¹ Court held that proceedings under the POCCCA are civil in nature. And it is a rule of thumb that in civil cases, the standard of proof is on a balance of probabilities.

47. In **Sarah Carolus & Ors. v Scully & Ors.**², this Court noted that the balance of probabilities is the requisite standard of proof by which a trier of fact must determine the existence of contested facts. Saying something is proven on a balance of probabilities means that it is more likely than not to have occurred. It means that the probability that some event happened is more than 50%.

48. The burden of proof is discharged when the party with the burden to prove adduces evidence in support of his assertions. If that party fails to discharge that burden, then the other party has no burden to discharge.

49. Relating the above principles to the matter before court, did the Respondent (Applicant) prove /establish that there are **reasonable** grounds for suspecting the vehicles to have been a proceed of crime?

¹ (2010) SLR 98.

²(SCA 39/2019) [2022] SCCA 1.

50. Was the evidence adduced by the Appellant (Respondent in the court below) to counter the averments of the Applicant sufficient to discharge the evidential burden – of proving on a balance of probability - that the property was NOT the proceeds of crime?
51. It is important to note that the decision of the Trial Judge was based on analysis of the evidence adduced in its entirety rather than on isolated averments made by either Superintendent Prinsloo or the Respondent and the witnesses called to support the latter’s averments.
52. It is also essential to recall the role of an appellate court in an appeal against findings of fact by a trial Judge. Seychelles Jurisprudence is replete with this Court’s pronouncement on the role of this court as an appellate court. The role of an appellate court in an appeal against findings of fact by a trial court is not to “rehear the case. It accepts findings of fact that are supported by the evidence believed by the trial court unless the trial judge’s findings of credibility are perverse³.
53. I am also guided further by the principle in **Beeharry vs R**⁴ wherein it was held that where there is no question of credibility of witnesses and the sole question is the proper inference to be drawn from specific facts, an appellate court is in as good a position to evaluate the evidence as a trial judge. The appellate court should form its own opinion, giving due weight to the opinion of the trial judge.

The first question: Grounds 2, 4 and 5

54. I now turn to the first question: whether the evidence adduced before the court was adequate for raising suspicion that the source of funds used to purchase the vehicles was illegitimate. What evidence supports the suspicion?
55. This question is what answers these three grounds, ground 2 of the Appeal being the principal one to wit: **The learned Chief Justice erred in law when she made a finding**

³ See for example *Alex Monthy v Anissa Payet* [2021] SCCA 55 *Lepere v Lepere* [2022] SCCA 44

⁴ (2012) SLR.

that there is prima facie evidence produced to suspect that the specified property constitutes directly or indirectly, benefit from criminal conduct or was acquired in whole or in part with or in connection with property that is directly or indirectly benefit from criminal conduct.

56. The Appellant was importing five vehicles into Seychelles through Your Choice. In order to facilitate the importation of the vehicles, it was important that Your Choice had the Bill of Lading, Commercial Invoice, Freight Invoice, Proof of Payment for vehicles purchased, including freight; and an Insurance Certificate, in order to obtain clearance and an import permit from Custom. These documents were obtained from Sibtain Sikandei, who was acquainted with Your Choice through the Appellant. However, each of these documents had discrepancies and inconsistencies which on occasion saw Custom Authorities requesting additional information from Your Choice. It was the belief of the investigating officer that the Commercial Invoices; AIG Insurance “Certificates”; payment voucher of Al Noor Motors; and the Certificate of Origin presented to Customs Authorities were forged documents. The handing over of false documents constituted several offences – Forgery and Uttering False Documents and contravened several sections of the Penal Code.

57. The circumstances surrounding the importation of the vehicles on forged documents raised suspicion that the vehicles were not in fact paid for by the Appellant. Rather, that the vehicles may have been imported as part of a scam and the Appellant was just a front. The concealing and disguising the source of funds is an offence of Money Laundering. To aid and assist someone to conceal the origin of money to purchase the property is also an offence of Money Laundering, contrary to the Anti-Money Laundering Act. When cross-examined, the appellant accepted that he did not have the Bill of Export for the cars. The Bill of Export among other things shows the name of the buyer of goods being exported from the country of origin. The fact that the Appellant said that he did not have the document raised suspicion that he was hiding the true owner of the vehicles. The Appellant also failed/could not provide the insurance documents when called upon to do

so. Again this raised the same suspicion that the documents would have shown that the cars were not insured in his name. It would be evidence that the cars were not his.

Grounds 1, 3 and 6 are in essence based on the second question.

58. What evidence did the Appellant (Respondent in the Court below) adduce to dispel the suspicion/ to rebut the allegations raised by the Applicant? This refers to the explanations given to answer the anomalies in the process of importing the cars on the one hand and the explanation of where the funds to purchase the cars came from i.e. source of funds. It is these explanations that would rebut the prima facie case established by the Respondent. It is this evidence which must be evaluated before coming to a finding of whether or not the Appellant proved on a balance of probabilities that the source of funds used to purchase the vehicles was a legitimate one. This is what deals with the evidential burden of proof.

59. The burden compels a party to produce evidence to disprove the allegations made by the applicant on the one hand and on the other to support their own assertions. The evidence must satisfy court that what the Respondent said is probably true. In the matter before Court, the Appellant had a duty to satisfy Court that it is probably true that the property was purchased from funds arising from work he was contracted to do. If the court is satisfied that the Respondent has satisfied his onus of proof, then the application should be dismissed. But if the evidential burden fails, then the claimant wins.

60. The Seychelles courts of law have summarized the above approach in various cases⁵ as follows:

"... once the applicant provides the Court with prima facie evidence that is, reasonable grounds for his belief in compliance with section 9(1) in terms of his application under section 4(1) of POCCCA, the evidential burden shifts to the respondent to show on a balance of probability that the property is not the proceeds of crime..."

⁵ Financial Intelligence Unit v Contact Lenses Ltd & Ors (MC 95/2016) [2018] SCSC 564 (19 June 2018); FIU v Mares (2011) SLR 405, Financial Intelligence Unit v Sentry Global Securities Ltd & Ors (2012) SLR 331, and Financial Intelligence Unit v Cyber Space Ltd (2013) SLR 97.

61. Although the Appellant concedes to the anomalies in the paperwork presented for importing his vehicles, it is his position that he did not prepare the documents and therefore cannot be faulted on any discrepancies. It is however highly improbable that it is a mere coincidence that so many documents related to the transaction had anomalies. It is also noted that there was no bill of export produced and no insurance. Other anomalies connected to the transaction were: the chassis numbers of the vehicles did not match the documents, the freight costs appeared to be the same from different countries yet the country of origin of the goods entered is UAE. Even what should be a simple document, from AL NOOR MOTORS, the seller of the cars, was a questionable document. It is not a receipt that was produced but a payment voucher and even then, it indicated that Peter James (presumably Peter James Roselie, the Appellant) was paid 258,050 Dirhams by the motor seller, rather showing the Appellant as the one paying.
62. It should be no surprise that the importation/the transactions in their entirety raised suspicion to the authorities.
63. It was the averment of the Appellant that the funds used to purchase the vehicles was from a consultancy contract he entered into with a company in Abu Dhabi called ICSS. The contract was to the tune of 5,000,000 Dirhams. The preamble to the contract was to the effect that the Appellant would offer consultancy services of “Financial Administrative Audit.” However, when cross examined, the Appellant stated that he had been paid for two lectures to a group of young start-ups at the Chamber of Commerce in Abu Dhabi. Then in one instance he refers to a contract of Risk Assessment. One may even be correct to state that the Appellant did not know what the contract was about.
64. The money he earned stayed with the company because he did not have a Bank Account. He then instructed the company to make payments to a company from which he bought the cars – the company debited the cost of the vehicles from his internal account with them. It was his averment that the cars were paid for in cash. And even when he later on opened a bank account in Abu Dhabi, he continued to leave the rest of the funds with the company and would only request the company to send him money as and when he needed it. When asked why he did not instruct the company to deposit what remained

with them after the purchase of the vehicles, his answer was that he did not need the money yet and that he trusted the company.

65. The Appellant had to prove that the source of funds was not illegitimate. And to prove this, he necessarily had to prove **what** the source of funds was. The appellant adduced an affidavit deposed by Mohamed Touati. Touati said that he was the coordinator of the International Centre for Strategic Study (ICSS). He was cross-examined on his affidavit and he stated that he had worked with the company for at least 4.5 years. During cross-examination however, he said he did not know the sir names of his superior/bosses. He also stated that his annual earnings were 230,000 Dirhams. The witness also testified that the company is registered with the Ministry of Labour in Abu Dhabi. But he could not explain why the document presented as the contract between the company and the appellant did not indicate the Registration Number. He was one of the signatories to the contract.
66. It is also important to note that the Appellant signed a document to the effect that he had received 5,000,000 Dirhams, (the total amount of the contract) although he at the time of signing the document had only “received” that which was used to purchase the vehicles. In cross-examination, it was revealed that the Appellant, just like the coordinator of the company, did not know the surname of the head of the company. All these issues raise questions as to whether the company indeed existed. It is all these issues that led the Respondent to submit that that the contract was fake.
67. Cross examination of the Appellant also revealed that his annual income was not much, he owned no property and was living with his in-law in Seychelles. There was no doubt that he was a man of limited means. He nevertheless testified that he chose to leave huge amounts of money with a company, a company he seemed to know rather little about, instead of preferring to be in control of what he said belonged to him. This would explain why the Trial Judge addressed her mind to the fact of living with his father in law etc. The fact that the cars were paid for in cash, by the coordinator of ICSS, “on behalf of the Appellant”, raises suspicion that it was intended to ensure that there was no paper trail in regard to the transaction and the actual source of money.

68. In evaluating Superintendent Prinsloo's evidence as well as the Appellant's rebuttal, the trial Judge made the following findings:

The Respondent has sought to explain where he received the funds to buy the five BMWs.

However, having read his affidavit and listened to his evidence in court, I am still unable to ascertain the provenance of the funds for the cars. I simply do not find the evidence produced, even on a balance of probabilities, credible.

I cannot understand what the alleged contract between the ICSS and the Respondent was about. If it was about the supply of "consultancy services for financial and audit program (sic)" as is stated in the contract, there is scant evidence of any such services having ever been provided by the Respondent.

The Respondent has deponed in his affidavit and testified in court that he gave a few lectures but he had not done any formal audits. He was at pains to explain that the ideas he had about the executive car rental was his own endeavour and separate to the contract with ICSS. This begs the question why then would the ICSS pay him Dirhams 5, 000, 00? That is a substantial amount of money for a few lectures.

It is simply not credible especially compared to the salary the coordinator of the ICSS was receiving (Dirhams 216,000 a year). And why would the ICSS find him a good deal with cars? The Court is simply not convinced that the relationship he allegedly had under a contract for services would somehow result in the ICSS enabling him to buy cheap luxury cars.

Many other matters to which the Respondent has testified to do not add up. An experienced businessman as he claims he is would not operate without a bank account and leave Dirhams 5,000,000 into the internal account of an employer

he was not familiar with. I say he was not familiar with his employer simply for the fact that he did not even know their surnames not did the administrator of the centre, his witness Mr. Touati.

Further, the Respondent admitted that he did not own a house in Seychelles that he lived with his parents-in law, he did not own a car or know how to drive - yet he wants the court to believe that he was going to open an executive car rental company. Again this does not add up.

Further, his means as analyzed by the Applicant show that the he could not have afforded to purchase five BMWs. His assertion that he is a reputable business person and well respected is neither here nor there. It does not make his narrative more credible. If anything his experience as a businessman and as a former employee of the Revenue Commission is more damning to his case than is helpful. (Emphasis of Court).

“I am satisfied on the Applicant’s information, together with the belief evidence of Superintendent Prinsloo that there are reasonable grounds at this stage to suspect that the specified property constitutes directly or indirectly, benefit from criminal conduct, or was acquired in whole or in part with or in connection with property that is directly or indirectly benefit from criminal conduct. The prima facie evidence against the Respondent (now Appellant) has not been rebutted anyway.

The Respondent has failed to show on a balance of probabilities that the specified properties retained were not from illegitimate sources.

69. The Trial Judge in essence found that the Respondent discharged its burden of establishing a prima facie case that the property was obtained through illicit means. On the other hand, the Judge found that the Appellants failed to discharge the evidential burden by showing the legitimate source of wealth used for the purchase of the property.

70. The evidential burden of proof obliged the Appellant to prove that the goods were not purchased with money from illegitimate sources. This necessarily means that the Appellant had to prove what the source of funds was. For this, the evidence adduced must be credible – must prove, on a balance of probabilities, that his “story”, his account of where he got the funds from is more likely to be true than false. I reject the submission of Counsel for the Appellant that his evidence of source of funds was uncontroverted. The evidence was simply not credible enough to pass the requisite standard of proof.
71. It is also not correct to say that the court erred in giving attention (what Counsel calls concentrating) to the process by which the cars were imported. The requirement to prove that the source of funds cannot kick in unless and until a prima facie case has been established by the applicant under the relevant law. And it is the discredited process that established the prima facie case.
72. It is a well-known principle that appeals to this Court shall be by way of re-hearing and this Court has all the powers of the Supreme Court when hearing an appeal. And in that respect this Court may draw inferences of fact and give any judgment which the Supreme Court ought to have given.
73. Having re-evaluated the evidence, I come to the conclusion that the findings of the Trial Judge cannot be faulted. A critical evaluation of the evidence adduced by the Respondent leads to the conclusion that a prima facie case was established. The evidence proved that there are **reasonable** grounds for suspecting the source of funds which purchased the vehicles to have been illegitimate.
74. Furthermore, the Judge was correct when she concluded that the Appellant failed to show on a balance of probabilities that the specified properties retained were not from illegitimate sources.

Therefore, ground 7 fails in that the Trial Judge was right in law and in fact when she granted the application for an interlocutory order.

Conclusion and Orders

75. 1. Having found that all the grounds of the appeal fail, the appeal is hereby dismissed.

2. Consequently, the orders of the Supreme Court are upheld. These are:

1. Pursuant to Section 4 of POCCCA, the Appellants or any other persons are prohibited from disposing or otherwise dealing with the whole or any part of the property specified in the annex to the order.

2. Superintendent Hein Prinsloo is appointed as Receiver over all of the said property to manage, keep possession or dispose of, or otherwise deal with the property in respect of which he is appointed.

Dr. Lillian Tibatemwa-Ekirikubinza, JA

I concur

F. Robinson, JA

I concur

S. Andre, JA

Signed, dated and delivered at Ile du Port on 16 December 2022