

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC

MA 269/2021

(Arising in MC 49/2020)

In the matter between:

THE GOVERNMENT OF SEYCHELLES

(rep. by Steven Powles)

Applicant

and

MALEKHOMAMMAD MOHTASHAMINYA

Respondent

Neutral Citation: *The Government of Seychelles v Mohtashaminya* (MA 269/2021) [2022]
SCSC

(16 September 2022)

Before:

Burhan J

Summary:

Notice of Motion for a Disposal Order

Heard:

23rd and 28th March 2022.

Delivered:

16 September 2022

ORDER

A disposal order in terms of Section 5(1) of POCA is issued directing that the whole of the property described in the table to the notice of motion dated 14th October 2021 namely vessel “Payam Al Mansoor”, Registration No 4/3689, 26.4m, Fishing Dhow, valued at five hundred thousand to six hundred thousand rupees be unconditionally transferred to the Republic. I make further order that such transfer shall confer absolute title to the Republic free from any claim of any interest therein or encumbrances.

ORDER

BURHAN J

- [1] On the 21st of July 2020, the Government of Seychelles represented by State Counsel Mr Steven Powles, filed a notice of motion in case MC 49 of 2020 seeking an interlocutory order under section 4 of Proceeds of Crime (Civil Confiscation) Act (POCA) in respect to the fishing dhow 'Payam Al Mansoor' (the dhow/vessel). The said dhow also referred to as Payam Al Mansur is registered to the Respondent, Mr Malekmohammad Mohtashamina. The notice of motion was duly served on the 31st of July 2020 and received by Mr Clifford Andre on behalf of the Respondent. Mr Andre did not object to the mode of service at the time, nor did he appear to defend the section 4 interlocutory application order. The application for the interlocutory order proceeded ex parte and was granted on the 13th of October 2020. A copy of the interlocutory order was also thereafter served on Mr Clifford Andre on the 15th of October 2020. There exist no appeal from the said interlocutory order dated 13th October 2020.
- [2] The Government of Seychelles thereafter filed a MA application, MA 269 of 2021 arising from MC 49 of 2020 on the 14th of October 2021, seeking a disposal order under section 5 of POCA. Once again, a copy of the said application for disposal order was served on Mr Andre on the 27th of October 2021 and he appeared in court in the said case MA 269 of 2021 on the 06th of December 2021. At this appearance, Mr Andre stated that he had no instructions from the Respondent. He further stated that summons had been served on his son in his office while he was campaigning. He stated that his son had just signed without looking at it. He stated the boat was not his and he had no instructions. Mr Powles submitted that Mr Andre had been acting on behalf of the Respondent as he had a Power of Attorney to do so.

[3] Thereafter Mr Andre filed a reply to the notice of motion dated 23 March 2022 and the Applicant filed a reply to same dated 28th March 2022.

[4] It is clear when one peruses the reply of the Applicant dated 28th March 2022 that the Applicant is relying on a valid Power of Attorney dated 25th April 2020 given to Mr Andre by the Respondent Mohtashaminya.

[5] The said Power of Attorney executed on 25 April 2020 reads as follows:

*“I, Malekmohammad Mohtashaminya, the owner of vessel Payam Al Mansur as per certificate of Registry No 19646 from the Ministry of Roads & Transportation, Ports and Shipping Organization of the Islamic Republic of Iran, bearer of identity number 3640403010 of Charbar City, Iran, hereby appoint Clifford Andre, bearer NIN 970-0009-5-1-78, Attorney-at-Law, public notary of Anse Aux Pins, Mahe to be my attorney and **generally in relation to the dealing with sending my vessel Payam Al Mansur from Seychelles to Iran as it has already been released by the Supreme Court of Seychelles, to do anything and that I myself could do and to execute all such instruments such as signatures, sale, transfer and to do such acts, matters and things as may be necessary and expedient for carrying out the power hereby given.**”* [Bold emphasis mine]

[6] The Power of Attorney sets out 4 things Mr Andre is empowered to do, which are as follows:

- i) To deal with sending Payam Al Mansur from Seychelles to Iran.
- ii) To do anything that Mr Mohtashaminya would do with Payam Al Mansur.
- iii) Execute all such instruments e.g. Signatures etc.
- iv) To do all things necessary for carrying out all of the above.

[7] The said Power of Attorney is not limited to a specific case, instead, it puts together a wide array of things Mr Andre may do by virtue of the words *“to do anything and that I myself could do”*. On consideration of the contents of the Power of Attorney, I am of the view and it is clear that Mr Andre was empowered through the Power of Attorney dated

25th April 2020 to be the representative of Mr Mohtashaminy in respect of the vessel. The numerous applications under section 4 and 5 of the POCA being filed by the Applicant was certainly relevant and affecting the taking of the vessel from Seychelles to Iran. Therefore it is the view of this court that it was the duty of Mr Andre based on the Power of Attorney to take the necessary steps on behalf of the owner, to challenge such steps based on the Power of Attorney.

[8] There is also no evidence or submission that the Power of Attorney has been revoked. As such, one can reasonably deduce that the Power of Attorney is still in effect and this means that service could be effected in terms of section 35 of the Seychelles Civil Procedure code as Mr Andre by the said Power of Attorney, is the agent for the owner of the vessel Payam Al Mansoor.

[9] Therefore, the service of process in respect of the numerous applications under the POCA in respect of the vessel Payam Al Mansoor on Mr Andre as the agent of the owner of the vessel Mr Mohtashaminy based on the said Power of Attorney is well grounded and cannot be faulted.

[10] Mr Andre further proceeds to challenge the service of notice in MC 49 of 2020 on the basis that it was served on his son who signed without looking accepting the notice whilst he was out campaigning. On perusal of the return in respect of the service of the notice of motion of the application in file MC 49/2020, I observe that not only has Mr Andre's son accepted receipt of the notice by signing, he has also placed the office seal of Mr Andre on the return to notice, indicating that he was representing the office of Mr Andre in accepting the said notice. Therefore, service by way of section 34 and 35 of the Seychelles Civil Procedure Code in the view of this court had been effected.

[11] It is pertinent to mention that though being made aware of the section 4 interlocutory order application by way of service, no appearance was made in court by Mr Andre to inform court he was not the agent or had nothing to do with the vessel in case MC 49/2020. Furthermore, even though the final section 4 interlocutory order in MC 49/2020 was served on him, he had not sought to appeal against the said order. It is only after the disposal order has been filed almost a year later and notice served on him, does Mr Andre

come and protest that he has no instructions and about the service being served on his son while he was campaigning. The interim interlocutory order was served on him in case MC 49/2020 and that affected the taking of the vessel to Iran. At that juncture and in my considered view, Mr Andre should have taken steps as agent by way of the Power of Attorney to at least appeal from the said order.

[12] In his reply to the notice of motion for a disposal order Mr Andre further states that after the accused were acquitted in SCA case 06,07/2018 by the Seychelles Court of Appeal and the Supreme Court too had released the said vessel, the vessel remains still in custody. As far as this Court is concerned the necessary orders have been given under the Proceeds of Crime (Civil Confiscation) Act as amended which up to now have not being appealed from or set aside. For all the aforementioned reasons, I proceed to dismiss the objections of Mr Andre.

[13] Having thus dismissed the objections taken up by Mr Andre this court will now proceed to consider the possibility of granting the disposal order.

[14] I have considered the facts set out in the Application and affidavit of Inspector Terence Roseline dated 14th October 2021 attached to the notice of motion. It is stated in the said application and affidavit filed that an interlocutory order under Section 4 of POCA given by this Court on the 13th of October 2020, has been in force for not less than 12 months in relation to the said property in the notice of motion and further, there has been no appeal from the said interlocutory order.

[15] It is further stated that there is no pending application under section 4 (3) of the POCA before any court on behalf of the Respondent or any other person in respect of the said property. I will proceed to accept the affidavit evidence placed before this court which is supported by the annexed document being the interlocutory order dated 13th October 2020.

[16] I am satisfied on perusal of the said affidavit evidence and documents annexed to the Application, that an interlocutory order has been given in respect of the said property on the 13th of October 2020 and that in terms of Section 5 (1) of the POCA, the said order

has been in force since then for over a period of 12 months. I am also satisfied in terms of Section 5 (1) of the POCA that no appeal has been filed by the Respondent or any person on his behalf from the said interlocutory order or any other order. This Court, having considered all the salient facts before it, is satisfied that no injustice will be caused to any person in terms of Section 5 (10) of the said Act, if the disposal order be given.

[17] I therefore proceed to issue a disposal order in terms of Section 5(1) of POCA, directing that the whole of the property described in the table to the notice of motion dated 14th October 2021 namely Payam Al Mansoor Registration No 4/3689 26.4m Fishing Dhow, valued at Seychelles Rupees five hundred thousand to six hundred thousand (SCR 500,000-SCR 600,000) be unconditionally transferred to the Republic. I make further order that such transfer shall confer absolute title to the Republic free from any claim of any interest therein or encumbrances.

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

Burhan J