

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBM 90 of 2019

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS of the Republic of Fiji,
25, Gladstone Road, Suva for and on behalf of the STATE.

APPLICANT

AND

INOKE BULIVOU of Navosai, Narere, Suva.

FIRST RESPONDENT

AND

ERONI QALILAWA of 33 Kaloa Place, Kiniya, Suva.

SECOND RESPONDENT

Counsel : Mr Shah S. for the Applicant
Mr Romanu I. for the Respondents

Date of hearing : 30th January 2020

Date of Decision : 12th February 2020

DECISION

- [1] The applicant filed this Notice of Motion seeking a restraining order over \$22,000.00 currently held by the Fiji Police Force at Nabua Police Station Exhibit Room Safe.
- [2] This money was forfeited by the Police from the respondents' custody believed to be held for the purpose of purchasing Marijuana.
- [3] This is an application filed pursuant to sections 19A and 34 of the Proceeds of Crime Act 1997 (the Act).
- [4] Section 19A of the Act provides:
 - (1) Where there are reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under section 19E or 19H, the Director of Public Prosecutions may apply to the Court for a restraining order under subsection (2) against that property.
 - (2) An application for a restraining order maybe made ex parte and shall be in writing and be accompanied by an affidavit stating-
 - (a) a description of the property in respect of which the restraining order is sought;
 - (b) the location of the property; and
 - (c) the grounds for the belief that the property is tainted property or terrorist property for which a forfeiture order may be made under section 19E or 19H.
- [5] Section 34(1) & (4) provide:
 - (1) Where there are reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under sections 11 or 19, the

Director of Public Prosecutions may apply to the Court for a restraining order under subsection (3) against that property.

- (4) An application under subsection (1) shall be accompanied by an affidavit stating-
- (a) a description of the property in respect of which the restraining order is sought;
 - (b) the location of the property; and
 - (c) the grounds for the belief that the property is tainted property or terrorist property for which a forfeiture order may be made under sections 11 and 19.

- [6] Tainted property is described in section 3 of the Act as follows:

Tainted property in relation to a serious offence or a foreign serious offence means

-

- (a) property used in, or in connection with, the commission of the offence;
- (b) property intended to be used in, or in connection with, the commission of the offence;
- (c) proceeds of crime.

- [7] Since it appears from the Record of interview that this money was intended to be used for the purchase of marijuana it has to be construed as tainted property under section 3(c) of the Act.

- [8] The other issue raised by the respondents is whether the court has jurisdiction to grant the restraining order sought by the applicant.

- [9] In **State v Vere** [2011] FJHC 831; HBM120.11 (8 December 2011) the court held;

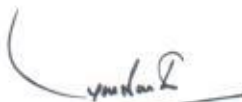
The purpose of a restraining order is to protect the properties that are in possession or effective control of a suspect from disposal before the commencement of any prosecution. If the properties are already in the lawful possession of the State, as is the case here, then there is no jurisdiction to issue a restraining order. In other words, the court lacks jurisdiction to restrain properties that are already in the safe custody of the State and are protected from disposal by the potential accused.

[10] It appears from the affidavit in support that the money recovered from the respondent are in the custody of Nabua Police Station. Therefore, in view of the decision in *State v Vere* (supra) this court has no jurisdiction to make a restraining order as sought by the applicant.

ORDERS

1. The application for a restraining order is refused.
2. There will be no order for costs.




Lyone Seneviratne

JUDGE

12th February 2020