

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBM No. 55 of 2019

BETWEEN : **THE DIRECTOR OF PUBLIC PROSECUTIONS OF THE
REPUBLIC OF FIJI**

APPLICANT

AND : **SAMUEL AMINISITAI VAISEVURAKI**

RESPONDENT

BEFORE : **M. Javed Mansoor, J**

COUNSEL : **Ms. M. Konrote for the Applicant**
No representation for the Respondent

Date of Hearing : **8 March 2022**

Date of Decision : **9 November 2023**

DECISION

PROCEEDS OF CRIME Notice of motion – Restraining order over funds in police custody – Control and management of restrained property – Section 19 & 34, Proceeds of Crime Act 1997 – Regulation 4, Proceeds of Crime (Management and Disposal of Property) Regulations 2012

1. The applicant filed an *ex parte* notice of motion on 20 February 2019, which was supported by an affidavit of a police officer, and sought a restraining order over FJD 30,000.00 and NZD 9,000.00 held by the Fiji Police at the Totogo police station. The moneys were seized by police from the respondent. The applicant also asked that the monies be deposited into the forfeited assets fund account. On 1 March 2019, Alfred, J made an interim order restraining the sum of FJD 30,000.00 and NZD 9,000.00 in the custody of the police until further orders are made by court.
2. On 8 March 2019, the applicant filed a notice of motion seeking a restraining order over the sums of FJD 30,000.00 and NZD 9,000.00, but did not seek a direction to deposit funds into the forfeited assets fund account. The application was made under sections 19A and 34 of the Proceeds of Crime Act 1997. Leave was granted to serve documents to the respondent outside of the court's jurisdiction.
3. A notice of motion with the same contents as the one filed on 8 March 2019 was filed on 13 June 2019. An affidavit of service sworn by detective sergeant Alex Holden Macdonald of the New Zealand Police based at the asset recovery unit of the central police station in Wellington, deposed an affidavit that was filed on 7 August 2019. At the request of the Fiji Police Force, on 8 July 2019, he personally served the respondent a copy of the affidavit in support given by detective Sergeant Iosefo Tawake, a copy of the notice of motion filed on 13 June 2019, a copy of the order to effect service outside jurisdiction and a copy of the restraining order granted on 13 March 2019. The respondent was served with the documents at the Rimutaka Prison, Upper Hutt in New Zealand. The officer

stated that the respondent refused to sign and acknowledge service of the documents.

4. Detective sergeant Macdonald gave another affidavit of service and deposed that he personally served the respondent a copy of the notice of appointment to hear the restraining order application. However, the respondent refused to sign and acknowledge receipt of the notice.
5. A further service of documents was made on the respondent on 25 November 2021 by Sajal Shah Stark, described as a specialist investigator of the New Zealand Police. He tendered an affidavit of service that was filed on 13 December 2021 in which he deposes that the documents were personally served on the respondent at the Rimutaka Prison, Upper Hutt. The documents included the applicant's submissions.
6. Although the matter was called on several occasions to fix a hearing date, there was no appearance on behalf of the respondent. When the hearing was taken up on 8 March 2022, there was no representation for the respondent.
7. The applicant states that the respondent arrived in Fiji on 8 February 2019 from Auckland, New Zealand and declared \$10,000.00 through the border control reporting form at the Nadi International Airport. On 11 February 2019, police arrested the respondent, a New Zealand citizen, with two foreign nationals at a cafe in Suva. The arrest followed information that the meeting concerned the possible sale of an illicit drug.
8. After a search, police officers found cash amounting to NZD 9,000.00 and FJD 30,000.00 in the respondent's travelling bag. The applicant said that investigations revealed that the respondent converted NZD 30,000.00 at a foreign currency firm on the day he was arrested, and received the equivalent of FJD 42,900.00
9. At the caution interview, the respondent told police that the money was given to him by a friend in Fiji. The applicant says that the person said to have given him

the money left the country and went to Sydney, Australia on 15 February 2019, four days after the respondent's arrest.

10. The applicant states that according to information received from New Zealand Police, the respondent is subject to illicit drug investigations in that country, and is suspected to be part of a drug syndicate operation. The respondent is in remand custody in New Zealand.
11. The applicant says that the monies recovered by the Fiji police is suspected to be the result of selling illicit drugs.
12. The applicant submitted that the application was filed on 20 February 2019, which is 9 days after the money was seized by police, within the time frame of 14 days to file an application for a restraining order. The application is accompanied by an affidavit stating the description of the property in respect of which the restraining order is sought, its location and the grounds for the belief that it is tainted or terrorist property.
13. According to regulation 4 of the Proceeds of Crime (Management and Disposal of Property) Regulations 2012, any property that has been restrained or forfeited to the state immediately becomes the responsibility of the Attorney General.
14. The police detective's affidavit in support provides documentary details of the monies that were in his possession. These were in excess of the amounts declared by him with border control. He also had in his possession a document confirming that New Zealand currency of 30,000.00 was converted to local currency. The respondent has not reasonably explained how he came to possess these amounts. He was apprehended on information received by the police. The applicant says the respondent is suspected of criminal activity, and that he is in remand custody in New Zealand. The monies are in the custody of the police. Section 4 of the Proceeds of Crime (Management and Disposal of Property) Regulations 2012 provides that restrained funds should be in the management and control of the Attorney General.

15. The applicant has satisfied court that there is a reasonable suspicion that the monies seized from the respondent are tainted property within the meaning of section 3 of the Act. The court is inclined to issue a restraining order over the sums held by the Fiji Police.

ORDER

- A. A restraining order is granted in terms of paragraph (a) of the notice of motion filed on 20 February 2019.
- B. The parties will bear their costs.

Delivered at Suva this 9th day of November, 2023.



M. Javed Mansoor
Judge