

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBM 214 of 2023

BETWEEN: **THE DIRECTOR OF PUBLIC PROSECUTIONS** of the Republic
of Fiji, 25 Galdstone Road, Suva, for and on behalf of the STATE.

APPLICANT

AND: **SOFIA ZARIAH KHAN** of Cuvu Way, Leqaleqa, Nadi.

1st RESPONDENT

AND: **JEAN JOSHUA NONU BALENABULI** of Shriandhi Feeder Road,
Vuci South, Nausori.

2nd RESPONDENT

AND: **ANZ BANKING GROUP LIMITED** of 25 Victoria Parade, Suva

INTERESTED PARTY

Representation : Ms. N. Shankar for the State (Applicant).

Date of Hearing : 20th December 2023.

Decision (Interim Orders)

1. The Applicant filed an Ex-Parte Notice of Motion pursuant to **Section 19A, 34 and 35** of the **Proceeds of Crimes Act 1997** for a **Restraining Order** over the following property:

“iTaukei Lease No. 35478 located at Seseani (Part of) Lot 1 on Plan SO 8728, Nausori, Tailevu which also currently has 2 dwelling house of different fixtures. One is a 2 bedroom concrete house whilst the other one is a 3 bedroom wooden house. (Hereafter “subject property”).”

The motion is supported by an affidavit of PC 5985 Talemaitoga Dautu of the Fiji Police Force based at the Criminal Investigations Department Headquarters.

2. **Section 19A** of the Proceeds of Crimes Act 1997 provides for application for a restraining order for tainted property or terrorist property as follows:

“(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 may be 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.”

3. **Sections 34 and 35** of the Proceeds of Crimes Act 1997, respectively provides for an application for restraining order and restraining orders. The relevant provisions are as follows:

“34. (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.

(2)

(3) An application for a restraining order may be made ex parte and shall be in writing.

(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.

(5)". and

"35 (1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property under section 34(1) and the Court is satisfied that there are reasonable grounds for suspecting that the property is tainted property or terrorist property, the Court may make an order under subsection (1B)....

(1B) Where satisfied under subsection (1) or (1A), the Court may make an order:

(a) prohibiting the defendant or any person from disposing of, or dealing with, the property or such part thereof or interest except in the manner specified in the order; and

(b) at the request of the Director of Public Prosecutions, where the Court is satisfied that the circumstances so require - that the Attorney-General take custody of the property or such part thereof and manage or otherwise deal with all of any part of the property in accordance with the directions of the Court.

(1C) For the avoidance of doubt, the Court may make an order under subsection (1B) in respect of money or other property located in Fiji or elsewhere."

(2) An order under subsection (1) may be made subject to conditions as the Court thinks fit and, without limiting the generality of this section, may make provision for meeting, out of the property or a specified part of the property-

(a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants (if any)) and reasonable business expenses;

(b) the person's reasonable expenses in defending a criminal charge and any proceedings under this Act; or

(c) other specified debt incurred by the person in good faith;

but the Court shall not make such provision unless it is satisfied that the person cannot meet the expenses or debt concerned out of property that is not subject to a restraining order.

(3) In determining whether there are reasonable grounds for believing that property is subject to the effective control of the defendant the Court may have regard to the matters referred to in subsection 25(2). ...

(6) The Court may make a restraining order whether or not there are reasonable grounds for believing that there is an immediate risk of the property being disposed of or otherwise dealt with.

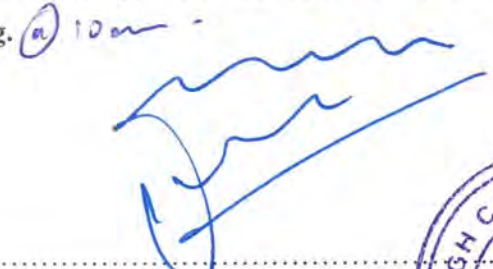
(7) The Court hearing an application for an order under subsection (1) may, before final determination of the application, and on the application of the Director of Public Prosecutions, amend the application to include any other property upon being satisfied that the property was acquired after the application was originally made.”

4. Proceeding for a restraining order are civil in nature: **Section 27 B (1)** of the Proceeds of Crimes Act 1997. The Applicant in the proceedings that is the DPP in this matter bears the onus of proving the matters necessary to establish the grounds for making the order applied for: **Section 27C** Proceeds of Crimes Act 1997.
5. The State’s application is ex-parte. It is urgent application. I have before me a comprehensive affidavit of PC 5985 Talemaitoga Dautu of the Fiji Police Force based at the Criminal Investigations Department Headquarters. The affidavit outlines the role of the deponent, comprehensive background of the matter (while it is stated to be brief it contains over 40 paragraphs) and the application that is being sought.

6. The State is seeking a restraining order as they suspect that the land and the dwelling houses located on the subject property was developed and constructed using proceeds that was laundered by both the Respondents. I am satisfied on the material before me on a need for an interim order pending final determination of this matter. This would protect the property from being dealt with or disposed of pending the determination of this matter. The Respondents are at liberty to file an affidavit in opposition before the hearing of this matter.

Court Orders:

- (a) In the Interim, Sofia Zariah Khan (1st Respondent) and Jean Joshua Nonu Baleinabuli (2nd Respondent) and/or any other person are restrained from disposing of, or dealing with, the property described in *iTaukei Lease No. 35478, Being Seseani (Part of) Lot 1 on Plan SO 8728, located in the Tikina of Nausori, and in the Province of Tailevu (Having an area of 920 m²).*
- (b) The Respondents are to be served the ex-parte notice of motion, the accompanying affidavit, this decision and the court orders. Upon service of all of these an affidavit of service is to be filed in the civil registry.
- (c) The Respondents are at liberty to file an affidavit in opposition within 14 days of service of the ex-parte motion and these orders.
- (d) The Parties are to appear in Court on 22nd January 2024 to fix the matter for hearing. (a) 10 am -


Chaitanya Lakshman
Acting Puisne Judge
21st December 2023

