

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action HBM No. 68 of 2020

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

APPLICANT

AND: NIMILOTE KEREVI of Vuda Back Road, Viseisei.

FIRST RESPONDENT

AND: MICHAEL FRANCIS HO of 1 Kaihua Terrace, Mangere, Auckland, New Zealand.

SECOND RESPONDENT

AND: HOINVEST ENTERPRISE having its registered office at Shop 14, Commercial Street, Namaka, Nadi.

THIRD RESPONDENT

AND: SURESH PRATAP of Pratap Industrial Estate Waqadra Nadi.

INTERESTED PARTY

BEFORE: Hon. Mr Justice Vishwa Datt Sharma

COUNSELS: Ms. Konrote M. - for the Applicant
Mr. Rabuku J. - for Respondent(s)

DATE OF DECISION: 13th February, 2024

DECISION

[Civil Forfeiture Order]

INTRODUCTION

- [1] The **Applicant** filed the **Amended Substantive Originating Summons** on 30th June 2020 and sought for the **Civil Forfeiture Order** over the properties listed hereunder.
- (a) **Vehicle Registration Number JK 240, Hyundai Tucson, white in colour;**
 - (b) **Vehicle Registration Number HQ 811, Toyota Prado, black in colour;**
 - (c) **The sum of \$11,287.83 currently held in Bred Bank Account No. 00360044019 in the name of Ho Trading and Investment Pte Ltd.**
- [2] The Applicant is made pursuant to Section 19C to 19E of the proceeds of Crimes Act and supported by the affidavit of Suliasi Dulaki, Miliana Wereaunona and Venti Chandra.
- [3] On 30th June 2020, the Applicant filed an Ex-Parte Notice of Motion and sought for a Restraining Order over the vehicle registration nos. JK 240, and HQ 811 respectively together for the sum of money of \$11,287.83 currently held in Bred Bank Account No. 00360044019 in the name of Ho Trading and Investment Pte Ltd.
- [4] Respondents are operating drug syndicate.
- [5] On 8th September, 2020, this Court after the hearing the Inter-Parte Notice of Motion seeking the Restraining Orders, delivered a Ruling granting the Restraining Orders in terms of the properties:
- (i) **Vehicle Registration Number JK 240, Hyundai Tucson, white in colour;**
 - (ii) **Vehicle Registration Number HQ 811, Toyota Prado, black in colour;**
 - (iii) **The sum of \$11,287.83 currently held in Bred Bank Account No. 00360044019 in the name of Ho Trading and Investment Pte Ltd (or any amount standing in this account after withdrawal to the time of the interim consent order as mentioned at paragraph 6 hereinabove).**
 - (iv) **The Substantive Originating Summons seeking for the forfeiture order to be assigned a Hearing date.**
 - (v) **Each party to bear their own costs.**
- [6] The substantive Amended, Originating Summons, was filed on 30th June 2020 seeking for the '**Civil Forfeiture Order**' in respect of the properties:

- (i) **Vehicle Registration Number JK 240, Hyundai Tucson, white in colour;**
- (ii) **Vehicle Registration Number HQ 811, Toyota Prado, black in colour; AND**
- (iii) **The sum of \$11,287.83 currently held in Bred Bank Account No. 00360044019 in the name of Ho Trading and Investment Pte Ltd**

[7] The Application is made pursuant to Section 19C to 19E of the proceeds of Crime Act in support of the affidavit of Suliasi Dulaki, Miliana Werauinona and Venti Chandra.

DPP's Contention

- [8] **Seek forfeiture of two vehicle registration nos. JK 240 and HQ 811 and part (Balance) of money of \$11,287.83 held at Bred Bank Account No. 00360044019 in the name of Ho Trading and Investment Pte Ltd**
- [9] Properties are tainted.
- [10] 1st Respondent owner of vehicle JK 240 and 2nd Respondent owner of vehicle HQ 811 whilst money at the Bred Bank belongs to the 2nd Respondent.
- [11] Respondents are operating a drug syndicate and involved in Fiji and properties are tainted.
- [12] Above vehicles used in Transportation of drugs, therefore it is tainted property.

2nd and 3rd Respondents Contention

- [13] Case hinges on test.
- [14] Whether properties are tainted
- [15] On balance of probability, the Court has to be satisfied that it is tainted property.
- [16] Presumption test conducted by prosecution and instrumental analysis should conclude to Cocaine found in the two properties (vehicles).
- [17] Prosecution relies on presumptive test and is therefore not conclusive.
- [18] Drug analysis of Miliana says that it is a presumptive test and not conclusive.
- [19] Court cannot find these are tainted properties.

THE LAW

- [20] The proceeds of Crimes Act in division 2A dictates the law and procedure for a civil forfeiture application. By virtue of section 19A of the Proceeds of Crime Act, a civil forfeiture order must likely to be made under Section 19E or 19H.
- [21] Section 19E deals with a Non-Conviction based forfeiture order for tainted property.
- [22] Section 19H is in relation to terrorist property, so is irrelevant to the current proceedings.
- [23] It is clear that the DPP is seeking for a non-conviction based forfeiture order for tainted property under section 19E.

DETERMINATION

- [24] The Applicant, DPP is seeking for a non-conviction Civil Forfeiture Order over the properties describes and enumerated in the Amended Originating Summons pursuant to sections 19C to 19E of the proceeds of Crimes Act.
- [25] The grounds upon which the Court will apply the test would be as follows:
- (i) That there are reasonable grounds to suspect.
 - (ii) That the property in respect of which a Civil Forfeiture Order may be made under section 19E or 19H of the Crimes Proceeds Act.
- [26] The grounds of suspicion by the DPP must be reasonable and the property(s) for which the forfeiture is sought pursuant to sections 19E or 19H of the Crimes Proceeds Act, must be tainted property(s).
- [27] The objective of the Legislation is very clear. That is to **deprive persons of the proceeds, benefits and properties derived from the Commission of Serious offences and to assist law enforcement authorities in tracing those proceeds, benefits and properties. The DPP in order to assist law enforcement authorities, may apply to the High Court for forfeiture orders and restraining orders in connection with the tainted properties. The case that is now in the current proceedings seeking for forfeiture Orders.**
- [28] This Court has already made the initial Restraining Orders of the properties on 08th September 2020. Bearing in mind that there was an immense risk of disposition of the mentioned properties the two (2) vehicles were still under the control of the owners whilst part of a sum of money from the Bred Account was being withdrawn. However, the

DPP now seeking for 'Civil Forfeiture Orders in respect of the two vehicles, JK 240, HQ 811 and money in the sum of \$11,287.83 at Bred Bank pending in the Account No. 00360044019 respectively.

- [29] The DPP has confirmed that the two (2) vehicles are now in the Police Custody whilst the sum of money remains in the Bank Account at the Bred Bank.
- [30] I have perused the affidavit deposed by Suliasi Dulaki, Acting Inspector No. 3689 in the Fiji Police Force. "It reflects the grounds for his belief that the properties are tainted property and are contained and enumerated in his affidavit in Support of the Originating Summons and the application for Restraining Order filed on 04th June 2020 at paragraph 1-59 and paragraph 1 to 11 of the supplementary affidavits deposed on 25th June 2020 and paragraphs 1 to 14 of the supplementary affidavits sworn on 01st April 2022."

JK 240

- [31] Further, DC5663 Anasa Kovea took swabs from the vehicle JK240. The swabs were sent for testing and the report returned positive for presence of Cocaine.

HQ 811

- [32] On 27th April 2020, "search was conducted at the residence of Meli Waqabaca and HQ 811 was located. Swabs uplifted by detective sergeant 3352 Leone Davila. The results of the Test showed presence of Cocaine." This indicated and confirmed that the vehicle was used to transport Cocaine. Search with Land Transport Authority showed that HQ 811 was registered under HO Investment Enterprises (3rd Respondent).
- [33] Search with Registrar of Companies Office revealed that the Director of HO Investment Enterprise is the 2nd Respondent, Michael Francis Ho.
- [34] Annexure 33 of the diagram at Suliasi Dulaki's affidavit shows the link that existed between the vehicles and drug syndicate (including 1st and 2nd Respondent).

Money at Bred Bank

- [35] Cheque no. 00168 was deposited into Meiva Qaranivalu's BSP Account no. 82355334 on 04th May 2020. On 05th May 2020, Meiva Qaranivalu's telegraphically transferred \$30,000 to the 3rd Respondent's [HOINVEST ENETERPRISE] banks Account No. 00360044019 held at Bred Bank.
- [36] The sum of \$20,000 was withdrawn on the 18th of May 2020 from the 3rd Respondent's Bred Bank Account no. 00360044019 through a cheque withdrawn by Elma Tinani Salala Nava. On 12th June 2020, a sum of \$11,287.83 remains in the 3rd Respondent's Bred Bank Account no. 00360044019.

[37] The 2nd Respondent [Michael Francis Ho] was considered at the Manukau District Court for drug related offences. On 14th December 2021 the 2nd Defendant was sentenced to 10 year and 34 months Imprisonment to all 34 charges. After serving his sentence, he returned to Fiji, and the Police uplifted his statement in which he 'confirmed that the bag that contained the methamphetamine seized in New Zealand was given to him by Jone Calavu in Fiji. The Vehicle JK 240 was used to transport the methamphetamine to the Lautoka Wharf whilst he was in Fiji.

[38] After taking all above in consideration together with the affidavits, oppositions and replies filed herein this court is satisfied on the balance of probabilities that the vehicles registration no. JK 204 and HQ 811 were used in the transportation of illicit drugs and any money from the sale of these vehicles is Tainted property.

[39] Accordingly, this Court orders the Forfeiture of the following properties:

- (i) **Vehicle Registration Number JK 240;**
- (ii) **Vehicle Registration Number HQ 811; and**
- (iii) **Balance of Money of \$11,287.83 standing in Bred Bank Account No. 00360044019 of 3rd Respondent HOINVEST ENTERPRISE, accordingly.**

[40] Following are the final orders of the Courts for forfeiture of the properties after this Court made the restraining orders on 08th September 2020.

COSTS

[41] Each party to bear their own costs of the proceedings at the discretion of this Court.

ORDERS

1. All the properties, vehicle registration no. JK 240, Vehicle Registration No. HQ 811 and a balance sum of \$11,287.83 standing in the 3rd Respondents [HOINVEST ENTERPRISE] Bred Account No. 00360044019 are tainted properties.
2. The vehicle Registration no. JK 240 and Balance sum of money of \$11,287.83 at the Bred Bank Account No. 00360044019 are to be immediately forfeited.
3. A Civil Forfeiture order is hereby granted over the above mentioned properties:

- (i) **Vehicle Registration Number JK 240;**

- (i) **Vehicle Registration Number HQ 811; and**
 - (ii) **Balance sum of Money of \$11,287.83 standing in Bred Bank Account No. 00360044019 accordingly.**
4. Each parties to bear their own cost of the proceedings at the discretion of this Honourable Court.

Dated at Suva this 13th day of February, 2024



VISHWA DATT SHARMA
JUDGE
SUVA

cc: Director of Public Prosecutions, Suva
Law Solutions, Suva