

REASONS FOR EXTEMPORE RULING

Introduction

1. On 14th of January 2024, the police, acting on information, raided a house in Volivoli Settlement, Nadi and seized 797 plastic containers containing white crystals which later tested positive for Methamphetamine, an illicit drug as defined under the Illicit Drugs Control Act 2004. The drugs weighed a total of 4243.3 kg and is the largest seizure of methamphetamine in Fiji.
2. At the end of investigations, criminal charges were laid against several people and the trial has started. The first accused, Justin Steven Mashi Ho is charged with several offences contrary to section 4 (1), and Section 5 (a) & (b) of the Illicit Drugs Control Act for *inter alia*, the unlawful importation, possession, dealing, etc of over 4.2 tons of methamphetamine, an illicit drug¹. These offences on conviction, carry a maximum sentence of a fine of \$1,000,000 or imprisonment for life or both.
3. In their investigations, police discovered at least two properties were involved in the import and storage of the drugs in Fiji for export to Australia. This application is to obtain a restraining order relating to those properties.

The Application

4. This is an application by way of an Ex-parte Motion for a restraining order supported by an affidavit sworn by Detective Corporal 5958 Talemaitoga Dautu seeking the restraining orders over the following properties:
 - a. Vacant Land known as Lot 8 on SO 5486, Crown Lease No. 16829 comprising an area of 1293 square meters; and
 - b. Property and Land situated on Lot 14 SO5486 Crown Lease 16827 comprising 1157 square meters; and
 - c. Such orders as this Honourable Court deems just and expedient in the circumstances of the Application.
5. The motion is made pursuant to sections 19A-C; 34 and 35 of the Proceeds of Crime Act 1997.

Ex-Tempore Ruling

6. On Monday 9th June, I had heard and granted the application and said I would give my reasons later and this I now do.

¹ Affidavit in Support sworn by Detective A/CPI 5958 Talemaitoga Dautu sworn on 02 June 2025, at Annexure TD 10.

THE LEGAL FRAMEWORK

7. Section 19(A) (1) of the Proceeds of Crime Act states:

Application for a restraining order for tainted property or terrorist property

19(A)(1) Where there are reasonable grounds to suspect that any property in respect of which a forfeiture order may be made under section 19E or 19H, the Director of Public Prosecution may apply to the court for a restraining order under subsection (2) for a restraining order against the property.

(2) An application for 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;

(b) the location of the property; and

(c) the grounds for the belief that the property is tainted property or terrorist property.

8. If satisfied, of the above, the court may make the following orders under section 19B: -

Restraining Orders

19B (1) Subject to this section, where the DPP applies to the court for a restraining order against property and the court is satisfied that there are reasonable grounds for suspecting that the property is tainted property.... for which a forfeiture order may be made under section 19E of 19(H), the court may make the order –

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

9. Section 35 of the Act states: -

35. Restraining orders

(1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property and the Court is satisfied that:

(a) the defendant has been convicted of a serious offence or has been charged with a serious offence or will be charged with a serious offence within 48 hours;

(b) where the defendant has not been convicted of the offence - there are reasonable grounds for believing that the defendant committed the offence;

(c) where the application seeks a restraining order against property of the defendant - there are reasonable grounds for believing that the property is tainted property in relation to the offence or that the defendant derived a benefit directly or indirectly from the commission of the offence; and

- (d) where the application seeks a restraining order against property of a person other than the defendant - there are reasonable grounds for believing that the property is tainted property in relation to the offence or that the property is subject to the effective control of the defendant, the Court may make an order:*
 - (e) 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*
 - (f) at the request of the Director of Public Prosecutions, where the Court is satisfied that the circumstances so require - that the Attorney-General to take custody of the property or such part thereof and to manage or otherwise deal with all of any part of the property in accordance with the directions of the Court.*
- (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).*
 - (4) Where the Attorney-General is given a direction under paragraph (1)(f), the Attorney-General may do anything that is reasonably necessary for preserving the property and for this purpose may exercise any power that the owner of the property could exercise and do so to the exclusion of the owner.*
 - (5) Where the Director of Public Prosecutions applies to the Court for an order under subsection (1), a witness shall not be required to answer a question or to produce a document if the Court is satisfied that answering the question or producing the document may prejudice the investigation of, or prosecution of a person for, an offence.*

The Burden and Standard of Proof

10. The proceedings are civil and not criminal: s. 27B. The burden of proof is on the applicant, the office of the DPP: s. 27C; and the standard of proof is on the balance of probabilities: s. 72.

THE MATERIAL FACTS

11. The DPP filed an affidavit in support of the application sworn by Detective A/Corporal 5985 Talemaitoga Dautu on the 2nd of June 2025. He is based at the Criminal Investigation Department Headquarters in the Anti-Money Laundering and Proceeds of Crime Unit. He is the investigating officer involving the financial investigations into the Respondents.
12. The affidavit is 95 paragraphs long and supported by 69 Exhibits containing the statements of witnesses and documentary evidence. Because the criminal trial has not started, the court will not refer to the witnesses or the specific evidence to protect the integrity of the criminal trial and to protect the rights of accused persons against self-incrimination.
13. The affidavit in support is part of the record and any appeals can refer to the contents of the paragraphs which I have referred to in this Ruling but in this ruling, I will make a generalised summary of the contents where necessary.

First Issue— Was State Lease No. 16827, being Lot 14 on SO 5486, known as Denarau Island in the Tikina of Nadi and containing an area of 1157 square meters Tainted Property as Defined in Section 4 of the Act?

14. Tainted property is defined in section 4 of the Act as: *“tainted property in relation to a serious offence of 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.*
15. The starting point is to determine if the offence in question is a serious one. A serious offence means *“an offence of which the maximum penalty prescribed by law is death or imprisonment for not less than 6 months or a fine of not less than \$500”*
16. The first accused, Justin Steven Mashu Ho is charged with several offences contrary to section 4 (1), and Section 5 (a) & (b) of the Illicit Drugs Control Act for *inter alia*, the unlawful import, possession, dealing, etc of over 4.2 tons of methamphetamine, an illicit drug. These offences on conviction, carry a maximum sentence of a fine of \$1,000,000 or imprisonment for life or both.
17. I find the offences to be serious as defined in section 4 of the Proceeds of Crime Act.

What is the link between SL 16827, Being Lot 14 on SO 5486 and the offences?

18. The application by the DPP relates to Crown Lease, CL 16827. The title shows it is State Lease 16827. They refer to the same piece of land as what is now a State Lease used to be referred to as a Crown Lease and the names are still used interchangeably.
19. A copy of the title of said lease is attached as TD 12 and shows that the lease was initially issued to Tokomaru Ltd and transferred to Challenge Engineering Ltd on 02nd April 2012 then transferred to the 1st Respondent, Denarau Fitness Pte Ltd on 22nd December 2027.
20. The evidence in paragraphs 19, 21, 22 of the Affidavit in Support showed that more than 4.2 tonnes of methamphetamine were moved from David's Marine Repairs to the warehouse of the first accused, Justin Ho which is in the building owned by the First Respondent at SL 16827. The said warehouse is on State Lease No. 16827, being Lot 14 on SO 5486 and the title shows that it is called Denarau in the Tikina of Nadi, Province of Ba, containing an area of 1157 square meters.

Analysis

21. Section 4 of the Proceeds of Crime Act defines "tainted property" as property used in or in connection with the commission of the offence. Storing the illicit drugs at the warehouse of the First Respondent on land registered to the First Respondent at the time of the offence is clear proof that it was used in the commission of the offence of Possession of illicit Drugs contrary to section 5(a) of the Illicit Drugs Control Act, an offence with which Mr. Justin Ho is charged.

Result

22. I find on the balance of probabilities that SL 16827 being Lot 14 on SO 5486, Denarau Island in the Tikina of Nadi, Province of Ba containing an area of 1157 square meters is tainted property.

Is SL 16829 being Lot 8 on SO 5486 known as Denarau Island, in the Tikina of Nadi, Province of Ba containing an area of 1293 square meters tainted?

23. To answer this question, we need to look at how this property was acquired. Lot 8 and Lot 14 are adjacent properties on SO 5486. The northern boundary of Lot 14 is the southern boundary of Lot 8. Both properties were purchased by Denarau Fitness Ltd from Challenge Engineering Ltd and the transfers were registered on 22nd December 2017.

Denarau Fitness Limited

24. Denarau Fitness Pte Limited, the First Respondent, is a registered company with 99% of its shares owned by the 3rd Respondent, RASHA KURDI. She is an Australian Citizen and the wife of the Second Respondent, Sam Amine, currently in the custody of the NSW Corrections Service on drug related charges.
25. The 4th Respondent, MHERINA AMAHAIZABEEN ALI AHMED is the accountant and she owns the remaining 1% of the shares in Denarau Fitness Ltd.² The company trades under the name Pacific Fitness Fiji. The website of Pacif Fitness Fiji shows the owners of the company as the 2nd and 3rd Respondents.
26. In paragraphs 47-51 of his affidavit, DA/Cpl Talemaitoga Dautu describes the second Respondent, SAM AMINE as a person active in drugs related criminal charges in New South Wales, Australia with over \$10million in properties subject to restraining orders from the Supreme Court of New South Wales. DCpl Daututu says that he has every reason to believe that the Second Respondent has the effective control of the 1st Respondent Company, and provides instructions to the 3rd and 4th Respondents on the daily operations and functions of the First Respondent. The basis for the belief is in the affidavit and attachments and having perused them, I a satisfied on the balance of probabilities that he has reasonable grounds for his belief.

The Source of the Funds for Purchase of SL 16829 and SL 16827

27. The subject properties were purchased on 22nd December 2017 for F \$1.9m. With VAT added, the total purchase price was \$2,071,000. A total of 17 cash payments and 12 bank cheques were paid to the Vendors between 12 July 2016 and 7th December 2017 to the total value of **\$830,955.00**. The balance of the purchase price was secured by a mortgage of F\$349, 470. 58 from Westpac Bank and which was later transferred to Bank of the South Pacific in a refinancing deal.³
28. Denarau Fitness Pte Ltd does not have an identifiable source of income. Its tax return for 2017 shows that it had obtained 7 loans totalling \$1,136,559.00 from companies and individuals. When questioned, directors of each of those companies and individuals denied lending any monies at all to Denarau Fitness.⁴
29. The tax return of the company for 2018 shows that it had taken loans from 7 individuals and companies totalling \$1,613,559.00. Police asked the lenders about the loans and each of the individuals and the directors of the companies denied ever lending the sums alleged or any monies at all to the Denarau Fitness Ltd in 2018 or any other time.
30. The tax returns for the First Respondent in 2019 shows it had borrowed \$1,120,562.00. Again, the lenders denied lending any monies to the First Respondent.
31. The tax return for 2020 showed in loaned \$1,110,559.00 from 7 lenders, none of whom admitted the loans at all to the police when queried.

² Affidavit in Support sworn by Detective A/CPI 5958 Talemaitoga Dautu sworn on 02 June 2025, paras 43-44 & 56

³ Ibid paras 32-40

⁴ Ibid para 74-89

Inferences from the Evidence

32. From the evidence, we can infer the following: -
 - a. Denarau Finance Ltd did not have any legitimate source of income for 2017, 2018, 2019 and 2020;
 - b. There was no legitimate source of the monies used by Denarau Fitness to purchase SL 16829 being Lot 8 on SO 5486 AND SL 16827 being Lot 14 on SP 5468;
 - c. SL 16827 was purchased with funds from an illegal source to store illicit drugs imported into the country and was so used to store over 4.2 tons of methamphetamine for 3 days in December 2023-January 2024;
 - d. Both properties were purchased for the same purpose, that is, to be used in the import and export of illicit drugs; and
 - e. Both properties were purchased from proceeds of crime.

Analysis

33. Tainted property is defined in section 4 of the Act as: *“tainted property in relation to a serious offence of 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.*
34. The evidence in the affidavit is that the first accused was controlling the other accused to get the barge to meet the vessel that brought the drugs, to land it at Fantasy Island, to move it to the warehouse on SL 16827 being Lot 14 on SO 5468 and to move it to where it was finally seized by the police. The Second Respondent was in control of the whole operations but left the country before the drugs were seized. A reasonable person, aware of the above facts could infer:
 - a. That SL 16827 being Lot 14 on SP 5468 and SL 16829 being Lot 8 of SO 5468 were purchased by from the proceeds of crime, for the purpose of storing the illegal drugs after being imported into Fiji prior to being exported to a third country; and
 - b. SL 16827 being Lot 14 on SP 5468 was used to store the methamphetamine and is therefore tainted property;
 - c. SL 16827 and SL 16829, being purchased with illegal funds and for the purpose of storing or otherwise processing the methamphetamine for export are tainted property as defined in section 4 of the Proceeds of Crime Act;

Result

35. For the reasons given, I am satisfied on the balance of probabilities that SL 16827 and SL 16829 are tainted and therefore can be subject to a restraining order.

Orders

36. From the conclusions, the court makes the following orders:
- a. The Respondents and the Interested Party by themselves or their agents or servants are prohibited from disposing of, or dealing with State Lease SL 16827 being Lot 14 on SO 5486 known as Denarau in the Tikina of Nadi, Province of Ba containing an area of 11157 square meters until further orders of this court;
 - b. The Respondents and the Interested Party by themselves or their agents or servants are prohibited from disposing of or dealing with State Lease SL 16829 being Lot 8 on SO 5486 known as Denarau in the Tikina of Nadi, Province of Ba containing an area of 1293 square meters until further orders of this court.
 - c. The DPP is to serve the Second, Third and Fourth Respondents with a copy of this Ruling out of the jurisdiction within 21 days.
 - d. The DPP is to serve a copy of the orders on the 1st, Respondent and the Interested Party a copy of this order within 14 days;
 - e. No order as to costs.
37. Leave to appeal to be filed in the High Court within 21 days of the order being served.


Penijamini R Lomajona
A/Judge

