

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

Civil Action No. **HBM 107** of 2022

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

**APPLICANT**

**AND:**               **MERETI MATEIWAI** of Nukuloa Village, Gau Island.

**FIRST RESPONDENT**

**AND:**               **SEMESA VEISOROVI** of Nukuloa Village, Gau Island.

**SECOND RESPONDENT**

**BEFORE:**           **Hon. Justice Vishwa Datt Sharma**

**COUNSEL:**       **Ms. Konrote M. for the Applicant**

**Mr. O'Driscoll G. for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents**

**DATE OF JUDGMENT:** 21<sup>st</sup> January, 2026 @ 9.30am

**JUDGMENT**

*[Restraining Order Application]*

## **Introduction**

1. The Applicant filed a Notice of Motion coupled with an affidavit and sought for a restraining order over the following properties:
  - a. 1 x Heller chest freezer
  - b. 1 x solar panel
  - c. 2 x black solar battery
  - d. 1 x white CAS scale
  - e. 1 x solar blue inverter
  - f. 1 x black Samsung
  - g. 1 x A20 black Samsung mobile phone
  - h. 1 x Yamaha HP outboard engine
  - i. Assorted groceries valued at \$3606.50.
  - j. 1 x food wrapper [pro wrap glad wrap]
  - k. \$26.00
  - l. \$4400.00
2. The Application is made in support of an affidavit deposed by Sgt 3413, Sunia Maniala.
3. Both parties furnished Court with written submissions and argued the matter orally.

## **Applicant's Contention**

4. Police received information that drugs were being cultivated on Gau Island and then transported to Suva for distribution and sale.
5. The First Respondent was located and arrested on 8<sup>th</sup> August 2022 and she handed over \$4,400 which found hidden under the living room carpet.
6. The First Respondent admitted to Police in her caution interview that the money (\$4,400) was the remaining cash from \$10,000 which the First Respondent received from the sale of marijuana.
7. The First Respondent admitted that she used a portion of the \$10,000 for the purchase of groceries for her Canteen back in Gau.
8. The First Respondent admitted that the drugs she sold were given to her by the Second Respondent which was obtained from his farms.
9. The First and Second Respondents are husband and wife.

10. Subsequently, a Police search was conducted at the residence of the First and Second Respondents on 9<sup>th</sup> August 2022.
11. A sachet of dried leaves was also found and the Second Respondent admitted that the drugs belonged to him.
12. The Second Respondent showed police his farm and 732 plants were uprooted weighing 192,940 grams.
13. The Dried Leaves and plants were tested and came back with positive result for cannabis sativa which is an *Illicit Drugs Control Act 2004*.
14. The First Respondent was charged for 'Being in possession of property' suspected of being proceeds of crime contrary to *Section 70 (1)(a) of the Proceeds of Crime Act 2009* and the Second Respondent charged with *unlawful possession of Illicit Drugs contrary to Section 5(a) of the Illicit Drugs Control Act 2004*.
15. The Second Respondent had pleaded guilty, convicted and sentenced.
16. The Applicant contends that the property subject to this application is 'Tainted Property'.

#### **First and Second Respondents Contention**

17. Second Respondents plead guilty to the amended charge on 25 January 2023 and the Court discharged him without conviction.
18. Voir Dire hearing will be conducted in the First Respondent's Case. The charge against the First Respondent is 'possession of property' suspected of being proceeds of crime and alleges groceries to the value of \$3,606.50.
19. First Respondent has a charge involving \$4,400. Basically, this charge has been withdrawn against him.
20. There is no sufficient basis upon which to find the orders sought by the Applicant.
21. There is no evidence in either the disposed charge against the Second Respondent or extant charges against the First Respondent that the items subject to this action are part of the evidence in respect of the impending charge against the First Respondent.
22. There is no serious charged that could lead to the conclusion that property seized and subject of this action was brought with proceeds of crime.

23. There is no evidence that the property is tainted. The groceries were purchased from shop income.
24. Seek that the application should be dismissed with costs and the items to be returned forthwith.

#### **Law**

25. The application is made under **Section 19A and 34 of the Proceeds of Crime Act 1997**.

#### **Section 19A** reads:

*"Division 2A - Civil forfeiture Orders Application for a Restraining Order for tainted property or terrorist property.*

*Section 19A - (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 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 accompanied by an affidavit. Section 34 of the Proceeds of Crime Act 1997 deals with an 'Application for Restraining Order'.*

#### **Determination**

26. Before Court is the Applicant's application for Restraining Order made pursuant to Section 19A and Section 34 of the Proceeds of Crime Act 1997.

27. **Section 34(1)** states:

*"Where there are reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under Section 11 or 19, The Director of Public Prosecution may apply to the Court for **Restraining Order** under Section 3 against that property."*

28. However, **Subsection 4** states that an application under **Subsection (1)** shall be accompanied by an affidavit stating the following:

- *A description of the property in respect of which the restraining order is sought.*
- *The location of the property; and*

- *The grounds for the belief that the property is tainted property or terrorist property for which a forfeiture order may be made under subsection 11 and 19.*
29. I have perused the affidavit deposed by Sgt. Sunia Maniala wherein he has provided at paragraph 4 a description of the prospective subject to this application.
30. At paragraph 5, he deposed that the property is currently held at the Totogo Police Station, Exhibit Room Safe and in a container housed at Nasova in Police Custody.
31. At paragraphs 7 to 22 inclusive, Sgt. Maniala deposes the grounds for belief that the properties mentioned are 'tainted properties'.
32. 'Tainted property' is defined at **Section 3 of the Proceeds of Crimes Act** is hereunder;
- '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.*
33. Therefore, there are two (2) broad categories of tainted properties, and they are 'used in or in connection with' and 'proceeds of crime'. The property used in connection with has very wide application, but it needs to be interpreted with the purpose of non-conviction based Civil forfeiture [NCBCF] in mind and not to include all properties even with slightest connection without application of proportionality in forfeiture Exercise of Discretion of the Court should also be reasonable in the circumstances.
34. Non-conviction based civil forfeiture [NCBCF] requires only civil burden of proof which is lower than in criminal prosecutions, for proof of an offence Similarly, safeguards for an accused such as rights to silence, right against self-incrimination, Doctrine of Double Jeopardy, etc are not available in non-conviction based civil forfeiture [NCBCF], as action is in rem.
35. Proceeds of Crime are defined in Section 4A of the Act which states that the proceeds of crime means any benefit that is:
- (a) wholly or partly derived or realized directly or immediately by any person from a commission of a serious offence or a foreign serious offence.
  - (b) wholly or partly derived or realized from a disposal or dealing with proceeds of a serious offence or foreign serious offence or

- (c) wholly or partly acquired proceeds of a serious offence or a foreign serious offence.
36. The actual test for a restraining order to be granted is reasonable grounds to suspect that the property is 'tainted'.
37. Reference is made to the case of *Director of Public Prosecution v. Manu* [2019] FJHC 1141; HBM 52.2019 (10 December 2019):
- At paragraph (14): *'the relevant portion of Section 35(1) of the Act states that where the DPP applies to the Court for a restraining order against the property under Section 34(1) of the Act and the Court is satisfied that there are reasonable grounds of suspecting that the property is tainted property or terrorist property, the Court may make an order under subsection (1B) prohibiting the Defendant or any person from disposing, dealing with the property or interest in the property except in the manner specified in the order:*
38. I find that the Applicant has provided reasonable grounds to the satisfaction of this Court to suspect that the **properties subject** to the current application are '**tainted properties**' based on the following facts of this case.
- (a) Admission of the First Respondent that she obtained \$10,000 from selling marijuana, that she used part of the money to purchase groceries and balance remaining at hand \$4,400,
  - (b) Analyst report confirming Drug uplifted from Respondent's residence in Gau is cannabis sativa,
  - (c) The Second Respondent admits the drugs found in the residence belonged to Second Respondent.
  - (d) The Second Respondent guided Police to the marijuana plantation in Gau Island.
  - (e) Police investigations indicate that Respondents are involved in drug dealing operating out of Gau Island and
  - (f) The Second Respondent has since pleaded guilty to the offence of possession.
39. Case of the *Director of Public Prosecution v. Prasad*, HBM 44.2018, (1<sup>st</sup> March 2019), Justice Amaratunga held that:
- '18. For a criminal forfeiture, it is imperative to obtain a conviction and for a civil forfeiture (NCBF), it is necessary to obtain a Conviction or even to charge for an offence.*
- 19. An action of criminal forfeiture is an action in possession and civil forfeiture is an action in rem. An action in civil forfeiture can be made when there is a*

*criminal prosecution. Non-conviction based Civil forfeiture (NCBF) is not dependent on criminal action or conviction. The burden of proof is balance of probability. (See Section 19E and 72 of Proceeds of Crime Act 1997).'*

40. Section 4 of the Proceeds of Crime (Management and Disposed of Property) Regulations 2012 provides-

***'That any property that has been restrained or forfeited to the State shall immediately become the responsibility of the Attorney General. The Attorney General has the responsibility for the central and management of property that is subject to a restraining order'.***

#### **In conclusion**

41. I have considered the application, strong opposition, written and oral submissions of the Applicant and the Respondents and grant the hereunder orders.

#### **Costs**


42. There will be no order as to costs at the discretion of this Court.

#### **Orders**

- i The application seeking for a **restraining order** under **Section 19A and Section 34 of the Proceeds of Crime Act, 1997** succeeds and accordingly granted.
- ii Under Section 35(1)(B) of the Proceeds of Crime Act 1997, I grant the restraining order over the properties mentioned at paragraph 1 of my Judgment hereinabove.

Dated at **Suva** this **21<sup>st</sup>** day of **January** ,2026.



  
VISHWA DATT SHARMA  
PUISNE JUDGE

CC: The Director of Public Prosecutions, Suva  
Messrs. O'Driscoll & Co, Suva