IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction
(Bird J)

Civil Case No. 292 of 2023

BETWEEN: **SOLOMON ISLANDS GOVERNMENT** Claimant

AND: **GERALD TAUOHU** Defendant

Date of Hearing: 30th September 2025
Date of Decision: 16th December 2025

Mr Jonathan Auga for the Claimant/Respondent
Mr Martyn Hauri'i for the Defendant/Applicant

RULING ON APPLICATION TO DISMISS CLAIM

Bird PJ:

1. This proceeding was commenced by the Solomon Islands Government (Respondent) for this court to deal with proceeds of crime pursuant to the Money Laundering and Crime Proceeds Act 2002. Mr Gerald Tauohu (Applicant) was convicted by the Central Magistrates Court on the 29th October 2021 on five (5) counts of simple larceny contrary to section 258 (1) & (2) of the Penal Code (Cap 26). He was sentenced to a total of 3 ½ years imprisonment on the 30th November 2021. The Respondent filed their claim on the 19th June 2023.

2. Since the filing of the claim, the Respondent had difficulty to personally serve it on the Applicant. Various attempts were made to effect service but were unsuccessful. That had led the court to issue a contempt warrant against the Applicant on the 8th December 2023.

3. The Respondent was also unable to execute the warrant and an application for substituted service was filed. Whilst the application for substituted service was pending hearing and determination, the Respondent was able to execute the warrant against the Applicant. He was brought before the court on the 3rd February 2025 and was remanded in custody. He was released on bail with conditions on the 5th February.

4. On the 2nd May 2025, the Applicant filed his application to dismiss the claim. A supporting sworn statement titled "Sworn Statement of Gerard Tauohu" was also filed on the same date. The deponent of the sworn statement was not Mr Tauohu but one Relma Ha'ananga. The court raised issue about the sworn statement and a further sworn statement in support was filed by the Applicant on the 27th July 2025.

The Application

5. The gist of the Applicant's application is premised upon the application of section 28 (1) (a) and section 29 (1) (a) & (b) of the Money Laundering and Proceeds of Crimes Act 2002 (the Act). I reproduce the provisions:

Section 28 (1) Where a person is convicted of a serious offence, the Director of Public Prosecutions may, not later than two years after the conviction, apply to the Court for one or both of the following orders:

(a) A confiscation order against property that is tainted property or proceeds of crime in respect of the offence.

Section 29 (1) Where the Director of Public Prosecutions applies for a confiscation order against property in respect of the person's conviction of a serious offence:

(a) The Director of Public Prosecutions shall give not less than fourteen days written notice of the application to the person and to any other person who the Director of Public Prosecutions has reason to believe may have an interest in the property;

(b) The person and any other person who claims an interest in the property may appear and adduce evidence at the hearing of the application;

6. In light of the above provisions, the Applicant argues that the requirement of section 28 (1) (a) of the Act is for the Director of Public Prosecutions (Director) to apply to the court. The Applicant contends that the word "apply" connotes, an application to be filed in order to validate the commencement of the proceeding.

7. It is further argued that the Director has not filed any application but a Category A Claim. It is therefore also argued that by the filing of a claim, the Director has not complied with the requirement stipulated under section 28 (1) (a) of the Act. He says that the filing of a Category A Claim in this court constitutes an improper procedure thereby justifying dismissal of the claim.

8. The second ambit to the Applicant's application for dismissal is premised under section 29 (1) (a) & (b) of the Act. The Applicant argues that it is mandatory for the Director under the provision to give fourteen days written notice of the application to him. That provision was not complied with by the Director. He said that he was served with the claim about 3 months after it was filed.

9. The Applicant argues that in not complying with the mandatory requirement of section 29 (1) (a) & (b) of the Act, it renders the whole proceeding frivolous, vexatious and an abuse of the process of the court. It is further his case, that the Director has committed an error in form and says that the court has discretion to dismiss the proceeding on technical grounds even if the underlying issues are compelling. The case of Horst Heinz Bodo Dettke -v-Francis Sade, James Tiva & Greg Douglas – HCC No. 205 of 2024 was cited in support of his argument.

10. In order to further support his contention, the Applicant also says that the Respondent in failing to file an application as opposed to a claim amounts to an error in form. The error in form would render the claim to be frivolous and vexatious and an abuse of the process of the court. The claim should be dismissed under rule 9.5 of the CPR.

11. Pertaining to his arguments as presented, it is the Applicant's position that the Respondent's claim be dismissed in breach of the requirements under sections 28 (1) (a0 and 29 (1) (a) & (b) of the Act as well as under rule 9.75 of the Solomon Island Courts (Civil Procedure) Rules 2007 (CPR).

12. On the contrary, the Respondent's position is that proceedings that are commenced under the Act are civil proceedings. They therefore come under the ambit and provisions of the CPR. The Respondent relies upon the interpretation provision under section 2 of the Act. They further rely upon rules 1.9 and 2.1 of the CPR. They say that there is no other rules that governs the proceeding under the Act but the CPR.

13. They say that they have complied with the requirements under section 28 (1) (a) of the Act. The Defendant was convicted of a serious offence on the 29th October 2021. The Claim was filed in this court on the 19th June 2023 about 1 year and 8 months from the date of conviction.

14. The Respondent also say that the filing of the claim was made pursuant to rule 2.1 of the CPR. They say that there are two ways of starting a proceeding in the High Court viz by filing of a claim and the filing of an application. The claim shall be used to start proceedings and an application shall be used to seek an interlocutory order before, during or after proceedings. It is therefore the Respondent's argument that there is no error committed in the filing of the claim.

15. In respect of the Applicant's alternative argument on the fourteen days written notice under section 29 (1) (a) 7 (b) of the Act, the Respondent says that there was no strict compliance with the requirement. They admitted notice was supposed to have been given to the Applicant by the 3rd July 2023, after having filed the claim on the 19th June.

16. They nonetheless say that their attempts to serve the claim on the Applicant were unsuccessful until the 26th September. They have sought the assistance of the Solomon Islands Royal Police Force (RSIPF) but the initial attempts were futile. They managed to serve the documents on the Applicant's wife on the 26th

September. The Defendant admitted receiving all relevant documents from his wife in paragraph 10 of his sworn statement filed on the 22nd July 2025.

17. They also say that the purpose of giving notice under the Act is to give interested parties, including the Applicant, an opportunity to respond. It is obvious that even after the Applicant has admitted receiving the documents served on his wife on the 26th September 2023, he did nothing about it until his arrest on the 3rd February 2025. It is therefore the Respondent's case that the Applicant has not been prejudiced in any way upon the deficiency of service. He has chosen not to respond to the claim from the 26th September 2023 until his arrest on the 3rd February 2025.

18. The Respondent has cited case authorities in support of their position. I have perused and noted the ratio used by the various courts. The summary of the decisions is to take into account the purpose of the relevant Act. In doing so the court must have regard to the language of the relevant provision, as well as the scope and object of the statute as a whole, and decide whether invalidity would best serve the legislative purpose. They distinguish the Dettke case from this proceeding on the basis of the purpose and time limits stipulated in the Electoral Act. It is therefore their case that the Applicant's application must be dismissed with cost.

Discussion

19. I have had the opportunity to peruse, note and discuss the respective positions of the Applicant and the Respondent. In saying that, I intend to look into the main purpose and objects of the Act. In perusing the Act and comparing our Act with other legal jurisdictions, it could be seen that the main purpose and object of the Act is to disrupt and deter criminal activities, to confiscate the proceeds of crime through civil proceedings, to prevent money laundering and funding terrorism. In order to implement the purpose and object, the Act gives law enforcement agencies powerful tools to freeze, seize and confiscate assets from criminal activity. The Act also establishes reporting obligations for financial institutions to detect suspicious activity.

20. Having said that, the issue that I am required to determine here is whether or not the claim filed by the Respondent should be dismissed. There is no issue that the Applicant was convicted of a serious offence and was imprisoned as a result. The issue is the use by the Respondent of the civil process under the CPR to commence this proceeding. It is argued by the Applicant that instead of filing a claim under the CPR, an application should have been filed as required under section 28 (1) (a) of the Act. Secondly the Applicant asserts that he was not given fourteen days written notice by the Director about the application as required by section 29 (1) (a) & (b).

21. In trying to decide on the issue raised under section 28 (1) (a), the starting point is to look at the provision. The catch words in my view on the provision are "the Director of Public Prosecutions may apply to the court". From the wordings, it is at the discretion of the Director to apply to the court. The provision does not specify by what means and process, he/she can apply.

22. I have noted that the subsequent subsections mentioned an application to be filed and determined. It is my view that the provision is unclear as to the process to be followed in relation to the provision. Section 79 of the Act gives the Minister discretion to make regulations, not inconsistent with the Act, for or with respect to any matter that by the Act is required or permitted to be prescribed or that is necessary or convenient. Upon the court's finding, there has been no regulations made by the Minister.

23. It is my view that had section 79 been utilised by the Solomon Islands Government and lawmakers and necessary regulations were put in place, it could have assisted the court and parties on the specifics of the requirement of the provision. At the present time, there is specifics on the requirement and how the Director could apply to this court.

24. It is uncontested that the appropriate court to deal with matters involving proceeds of crime under the Act is the High Court. Civil proceedings before the court are governed by the CPR. Rule 1.9 provides that the rules apply in all civil proceedings in the High Court and the Magistrates Court. Exceptions are provided under subsections (a) and (b). Subsection (a) is relevant in this instant which provides "a proceeding for which other rules made under an enactment are in force".

25. As stated in paragraph 23 above, there was no regulations or rules made pursuant to section 79 of the Act. In the absence of relevant rules or regulations being prescribed under the Act, the CPR applies. Chapter 2 provides how to start proceeding in this court. Rule 2.1, provides for two types of proceeding. The first is claims and second is applications. The notes inscribed thereto further provide that a claim shall be used to start proceedings and an application shall be used to seek an interlocutory order before, during or after proceedings. Rule 2.2 further provides that unless otherwise provided, a proceeding is started by filing a claim.

26. In view of the above discussions, I am of the considered view that the proper process by which the Director is to commence civil proceedings under the Act is by way of filing a claim in this court under the CPR. So, until rules and regulations are prescribed under section 79 of the Act, the provisions and requirements of the CPR apply mutatis mutandis.

27. As to the argument on form, I have taken into account the main purpose and object of the Act as discussed above. With those in mind, and what is stated in the preceding paragraph, the issue of form does not matter. The Applicant does not raise any issue on the substance of the claim but form. I have perused the

statement of case in the Respondent's claim. The facts are simple and can easily be understood by the Applicant. The statement of case does not cause him any embarrassment because it is based on a conviction and sentence that he had fully served. It is also obvious in his sworn statement that he understands the content of the claim and sworn statements that he has responded to.

28. In relation to the argument under section 29 (1) (a) & (b) of the Act, the Respondent had admitted that they were unable to strictly comply with the requirement of service. Reasons were advanced supported with evidence from sworn statements filed. The court is aware of the circumstances having being raised in court on various occasions. Application for substituted service was made and a contempt warrant was issued. The execution of the warrant had forced the Applicant to come to court.

29. It is also noted that the Applicant admitted receiving and perusing the court documents served on his wife on the 26th September 2023. He made no attempt to exercise and or protect his right by coming to court and raising the issues he is now raising. In effect, he has sat on his right for about 1 year, 7 months and 2 days until his application was filed on the 2nd May 2025.

30. Upon the above reasons, I am therefore of the view that with lapse of time, the Applicant is not entitled to complain that the Director has not complied with the requirement of section 29 (1) (a) & (b) of the Act. The Applicant has contributed to the delay in effecting service. According to Police Officer Kita Ta'ake's sworn statement filed on the 27th September 2023, the Applicant has been evading police to effect service of the documents.

31. In conclusion, I am also guided by the decision of the Court of Appeal in the case of Vunagi -v- Isabel Customary Land Appeal Court (2024) SBCA 31; SICOA-CAC 8 of 2022. They referred to section 59 of the Interpretation and General Provisions Act (Cap 85) which provides:

Section 59 Where a form is prescribed for use, the use of the form is not invalidated by any variation or alteration of the form that is not calculated to mislead and does not affect the substance of the form".

32. With the above concluding remark, I am hereby of the view that even is I am wrong in the above determination, I am further of the view that in applying section 59 of the Interpretation and General Provisions Act, the Respondent's claim is not calculated to mislead the Applicant and it does not affect the substance thereof. It is nonetheless noted that no prescribed form has been made under the Act. I hereby refuse to grant the Applicant's application. The application is dismissed with cost.

33. Orders of the Court are:-

1. The application by the Applicant is hereby dismissed.
2. Cost is ordered against the Applicant.

THE COURT

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Justice Maelyn Bird
Puisne Judge