SUPREME COURT OF SEYCHELLES

Reportable
MC 04/2024

In the matter between:

THE REPUBLIC **Applicant**
(rep. by Mr. Barry Galinoma)

versus

TERENCE PAYET **Respondent**
(rep. by Mr. Clifford Andre)

Neutral Citation:	*The Rep v Payet* (MC 04/2024) 14 January 2025
Before:	Adeline J
Summary:	Order for forfeiture of cash seized/section 74 (2) and 76 (1) of the AMLCFT Act.
Heard:	By Submissions
Delivered:	14 January 2025

ORDER

1) In exercise of the powers conferred upon this court by virtue of Section 74 (8) of the AMLCFT Act, I order continued detention of the total sum of Seychelles Rupees 266, 389.75 with retrospective effect from the expiratory of the last order, being cash seized from the Respondent on the 1st February 2024 at the Seychelles International Airport.
2) In Exercise of the powers conferred upon this court by virtue of Section 76 (1) of the AMLCFT Act, I order the forfeiture to the Applicant, the entire sum of Seychelles Rupees 266, 389.75 converted from USD to Seychelles Rupees at the rate of USD = SCR14.25, seized from the Respondent on the 1st February 2024 at the Seychelles International Airport.
3) The Respondent shall be notified of this order by copy of the same to be served on him.
4) The FCIU of the Police Force shall be notified of this order by copy of the same to be served on them.

RULING ON MOTION

Adeline j

INTRODUCTION

[1] This is a Ruling on motion on notice dated 8th April 2024 filed in court on the same date by the Republic ("the Applicant"), against one Terence Payet of The Redeemed Christian Church of God of Bel Ombre Mahe, Seychelles ("the Respondent"), which motion is supported by an affidavit sworn by one Corporal Emmanuel Perreau ("CPL Perreau") of the Financial Crime Unit ("FCIU") of the Police Force, to which affidavit are exhibited the necessary relevant documents to corroborate the averments made therein. By its motion, pursuant to Section 74 (8) and Section 76 (1) of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 as amended, ("the AMLCFT Act"), the Applicant applies to this Court for the following orders;

1. An order to hear this application as a matter of urgency.
2. An order pursuant to Section 74 (8) of the AMLCFT Act for the cash seized to continue to be detained by the FCIU pending the determination of the case.
3. An order pursuant to Section 76 (1) of the AMLCFT Act for forfeiture of the cash seized in the table appended to this application in Seychelles Rupees Two Hundred and Twenty Six and Three Hundred and Eighty Nine and Seventy Five Cents (SCR 226,389.75).
4. An order providing for Notice of any such order to be given to the Respondent, or any other person directed by the court, and
5. Such further or other orders as the court shall deem just and proper in all circumstances of this case.

SUMMARY OF THE FACTS UPON WHICH THE APPLICATION IS BASED

[2] A summary of the salient facts pertaining to the grounds upon which these orders are being sought for as alluded briefly by the Applicant are the following;

i. *That in the evening of Thursday 1st February 2024, the Respondent was searched at the airport. That at the time, he was bound to Dubai on flight EK708.*

ii. *Prior to the search, the Respondent was asked if he has money to declare and he provided only two envelopes containing cash amounting to USD 5,440.*

iii. *That a further search was conducted in his hand luggage and more cash was found in several other envelopes. Upon questioning, the Respondent apologised that he did not declare and mentioned these envelopes because he had forgotten he had the cash in his possession. He added that the same is not his and that it was the Church's money. He mentioned that he was leaving for Nairobi for a conference and also to Dubai for medical purposes. He later showed two invoices on his mobile phone, stating, that he is also leaving to pay for these invoices, which had a list of materials and he mentioned also that they needed the same for the Church. However, he was unable to state the exact amount he had in his possession in total. When asked, he replied that he was not sure.*

iv. *The inconsistencies between the versions provided pertained to what happened during the search and what the footage actually shows.*

v. *The suspicion surrounding the fact that the cash had to be exchanged almost always by a third party and not the Pastor or the Treasurer.*

vi. *That the purposes narrated on the exchange slips contradict the alleged purpose of buying materials or anything related to Church construction.*

vii. *That the source narrated on the exchange slips also contradicts the versions given by the persons who exchanged the cash as explained in the affidavit.*

viii. *The statement of Ms. Pady King explains the purpose of which she cashed certain cheques under the Pastor and Treasurer's instructions but the explanation she provided for the use of these proceeds derived from these cheques does not relate to the invoices for the materials, nor medical reasons. Therefore the proceeds from the cheques could not be the whole or part of the cash seized.*

ix. *That Cpl Perreau has reasonable grounds to believe that the cash seized is connected with or represents proceeds of crime, namely, money laundering. This is supported by the concealment by the Respondent, and the fact that the source of the cash seized remains unknown. That concealment is an element of money laundering.*

[3] In the affidavit in support of the application, Cpl Perreau avers, that the averments in his affidavit is based on facts within his knowledge except where otherwise appeared, and where so appearing, he believes the same to be true. Cpl Perreau also avers, that he has reasonable grounds for suspecting that the cash seized from the Respondent represents proceeds of crime, or intended to be used in connection with criminal conduct, namely, money laundering. His suspicion is borne out of the facts averred in his affidavit in support of application for the forfeiture order being sought for.

DISCUSSION OF THE LAW AND THE AFFIDAVIT EVIDENCE

[4] The powers of this court to grant the order of forfeiture of the cash seized in USD equivalent to Seychelles Rupees 226,389,75 /- being sought for by the Applicant under Section 76 (1) of the AMLCFT Act, reads

"*76 (1) A Judge may order the forfeiture of any cash which has been seized under the subsection (2) of Section 74, if satisfied, on an application submitted by the Attorney General, a prosecutor on behalf of the Anti-Corruption Commission of Seychelles, <u>that the cash seized is not less than the prescribed sum or the Judge has reasonable grounds for suspecting that it directly or indirectly represents any person's benefit from, or is intended by a person for use in connection with any offence</u>.*" (underlined emphasis is mine).

[5] My reading of Section 76 (1) of the AMLCFT Act indicates, that there is a pre-condition to the making of the forfeiture order being sought for by the Applicant. That is to say, the cash to be made the subject matter of the forfeiture order must have been seized under Section 74 (2) of the AMLCFT Act. To better understand the effect of Section 74 (2) of the AMLCFT Act, one must be conversant with the provisions of Section 74 (1) of the AMLCFT Act which reads as follows;

" (1) An officer of the Seychelles Police Force or an officer of the Anti-Corruption Commission of Seychelles or an Officer of Customs or an Immigration Officer or an officer of any other authority as may be specified by notice, may search without warrant, a person within the jurisdiction, his or her luggage or other property in his or her possession or in the immediate vicinity and any vehicle belonging to him or her, or in which he or she was found or in the vicinity, which is suspected of being connected to him or her, if;

(b) the cash found on the person represents the proceeds of crime or is intended by any person for use in connection with any criminal conduct; or

(c) the cash is in excess of the prescribed sum and was not declared by the person when entering or leaving the Seychelles.

(2) The officers referred to in subsection (1) may seize, any cash found during a search under subsection (1) if;

(a) it is not less that the prescribed sum, and

(b) he has reasonable grounds for suspecting that it represents proceeds of crime, or is intended by any person to be used in connection with any criminal conduct and shall have the authority to seek further information from the carrier regarding the origin of the cash and their intended use and also notify the FIU regarding such cash seizure in such form and manner as may be prescribed."

[6] The word "prescribed sum" used in different provisions of the AMLCFT Act, has a statutory meaning under Section 74 (10) of the AMLCFT Act, that reads as follows'

" (10) For the purposes of this section "prescribed sum" means, such sum as may be prescribed by the Minister from time to time and until such time, it shall be SCR50,000 or its equivalent in any currency."

[7] A summary of the facts of the instant case as transpired in the affidavit evidence of CPL Perreau is that in the evening of the 1st February 2024, Cpl Emmanuel Perreau of the Financial Crime Investigation Unit of the Police Force, was asked by Police Superintendent Tirant to proceed to the Seychelles International Airport Departure Lounge, following receipt of information that a substantial amount of cash was found in the possession of the Respondent during a search conducted by a Customs Officer, one Lyndy Freminot.

[8] When Cpl Perreau arrived at the Seychelles International Airport he was met by Customs Officer Freminot who briefed him of the incident. Customs Officer Freminot told Cpl Perreau that she has been questioning the Respondent about whether he had cash in his possession, and in answer, he showed two envelopes containing cash. Customs Officer Freminot told Cpl Perreau, that she then conducted a search in the Respondent's hand luggage and found more cash in several other envelopes. Ms Freminot, the Customs Officer, told Cpl Perreau, that the Respondent did not declare that he is leaving Seychelles with cash above the prescribed sum.

[9] Cpl Perreau questioned the Respondent about the source of the funds that were seized from him as well as the purpose of the funds he was travelling with. The Respondent's response to the questions, was that he had forgotten about the cash that was in his hand luggage. The Respondent added, that the money seized is church money, and that he would be travelling to Nairobi for a conference and then to Dubai for medical purposes. The Respondent then showed two invoices from his mobile phone and added, that he would be paying those invoices which contained a list of materials. Quiet interestingly, the Respondent was unable to tell Cpl Perreau the exact amount of cash that was in his possession and to justify the amount.

[10] In his attempt to show that the cash was from legitimate sources, the Respondent provided CPL Perreau with the telephone number of the church's Treasurer, one Mercianne Renaud. Witnessed by Cpl Perreau and Superintendent James Tirant, Customs Officer Freminot

counted the cash seized. The first count added up to USD 14,972.00 and a recount added up to USD 15,887.00 the total sum seized from the Respondent which when converted into Seychelles Rupees added up to 266,389.75.

[11] It is averred by Cpl Perreau, that based on the facts and circumstances of the incident as reported to the police by Customs Officer Freminot, as well as the responses to questions put to the Respondent, the FCIU registered a criminal case as CR 12/02/24 for the offence of Money Laundering against the Respondent on the basis of the Respondent's concealment of the cash seized as well as his failure to declare the cash. Cpl Perreau was assigned as the investigating officer in the matter.

[12] On the 6th February 2024, at the Seychelles International Airport, in the presence of one WPC Janice Jean Baptiste, the cash seized was counted again and handed over to Cpl Perreau. The cash was put in five batches in different envelopes, and each batch contained cash as well as documents. The envelopes had labels written on them.

[13] Upon receipt of all the cash in different batches, Cpl Perreau placed them in an exhibit bag number M 23988350 and took them to the FCIU office. Same was registered as FCIU exhibit number 07/24. After taking photographs of the exhibit of the cash seized, and the sealed exhibit bag, Cpl Perreau then placed the exhibit bag in the safe at the FCIU office.

[14] As part of the continuing investigation into the offence of Money Laundering, on the 9th February 2024, the Respondent accompanied by counsel, Mr. Clifford Andre, arrived at the FCIU office. The Respondent was cautioned and thereafter he opted to give a written statement. The Respondent explained, that he sees a lot of individuals for counselling and praying sessions, and that even earlier during the day on the day of his departure to Nairobi, Kenya he did see some individuals and as a consequence he forgot about the cash in his possession and that it was only upon seeing Customs Officer at the Airport that he realised that he did not declare the cash in his possession.

[15] In his affidavit in support of the application, CPL Perreau avers, that the Respondent was asked if he wished to provide clarifications on the documents previously provided and the internal accounting procedure of the church. The Respondent's response was that he has

given the number of Ms Mercianne Renaud, the Church's Treasurer who can give such explanation. It is averred by Cpl Perreau, that although the Respondent mentioned that the cash was church money, he could not show how the cash allegedly belonging to the church were generated and from which source.

[16] It is in evidence, that Cpl Perreau did make a request to customs division to obtain the Respondent's embarkation form which form shows that the Respondent declared that he was not travelling with cash greater than SCR 50,000 or foreign equivalent.

[17] As part of the investigation, several persons were interviewed after their names appeared on receipts seized from the Respondent, notably, one Derreck Rioux, one Dorlin Maryila Theresa, and one Elvis Malbrook. They were interviewed under caution and a statement was recorded from them. In the presence of counsel Mr. Andre, Mr Derreck Rioux who gave a statement stated, that he is assisting with the church building project and that he volunteered to assist in exchanging cash. According to him he exchanged SR 30,200 at GCC Exchange at the Airport, which he said was cash collected from the church's faithful. Although he was asked from whom he received the cash, Mr. Rioux did not provide a clear answer.

[18] A statement under caution was also recorded from Maryila Dorlin on the 22nd March 2024, in the presence of counsel, Mr. Andre. Ms Dorlin did accompany the Respondent to the Airport on the 1st February 2024, and received from him SCR 10,000 which she exchanged at the GCC Exchange at the Airport and then handed over to the Respondent. When Ms Dorlin was asked whether she was informed of the purpose for the money she exchanged. On counsel's advice, she opted not to answer this question.

[19] On the 25th March 2024, in the presence of counsel, Mr. Clifford Andre, a statement was recorded from one Elvis Malbrook who confirmed that he received cash in the total sum of SR 49,142 from the Respondent on the 30th January 2024 who at the time was on La Digue. He exchanged the cash received at Cash Plus and Nouvobanq. According to Mr. Malbrook, the cash was to purchase material for the construction of the new church. He confirmed, that he handed over the exchanged cash to the Respondent. It is to be noted, that Cpl Perreau observed, at paragraph 25 in his affidavit in support of the application, that the

cash was exchanged by those people interviewed instead of the Respondent himself, or the Treasurer, and that this practice appears suspicious given that both the Respondent and the Treasurer had other transactions which they undertook themselves without the involvement of other persons.

[20] Also interviewed was one Mercianne Renaud ("Ms Renaud") in the presence of counsel, Mr. Andre. Ms Renaud stated, that the church is in the process of building a new church building at Perseverance, and that the purchase of materials are being funded from money collected from church members as well as voluntary contributions towards the project. According to Ms Renaud, the money seized from the Respondent was from the church's accounts which was exchanged by different people who are church members and were willing to assist. Ms Renaud, through counsel, tendered as self-prepared statement which Cpl Perreau received on the 20th February 2024. Attached to the statement were several documents including the money exchange receipts as well as two bank accounts indicating certain transactions.

[21] It is averred by Cpl Perreau, that the transactions undertaken show, that three cheques were drawn in the name of one Pady King. One dated 29th January 2024 in the amount of SCR 21,509.55, one dated 30th January 2024 in the amount of SCR 40,490.93 and one dated 1st February 2024 in the amount SCR 50,950. The purpose for the cheques issued was stated to be "to purchase forex". The total amount added up to Seychelles Rupees 112,950.48. Cpl Perreau also indicated two account transfers. One dated 3rd January 2024 in the amount of SCR 30,400 to Ms Mercianne Renaud, the purpose recorded for the purchase of USD, the other dated 3rd January 2024 in the amount of SCR 30,400 transferred to Mr Derreck Rioux also for the purpose of purchasing USD which when added to the SCR 112,950.48 makes a total sum of SCR 173,750.48.

[22] It is averred that the invoice of Al Danube in the amount of USD 6,667.36, the tax invoice Western & Middle East amounted to 11,550 AED and the medical appointment in the sum of 2,500 AED, added up to a total sum of USD 104,922.36 based on a conversion rate of 1 USD = AED 3.67.

[23] Quite significantly, is that during the interviews and questioning, the Respondent indicated that the Al Danube invoice was to be paid in cash. Yet, the account showed, that payment to Al Danube was made by way of bank transfer on the 29th January 2024 in the sum of SCR 48,241.21. Cpl Perreau avers, that such inconsistency gives rise to the suspicious as to whether the cash was really to be used for payment of the invoices as the Respondent had stated. It was the conclusion of Cpl Perreau, that if the cash was to be used to pay the invoice, only the amount of approximately USD 3,340.38 would have remained outstanding from the invoice and not the total sum of USD 6,667.36. Cpl Perreau avers, that deducting the amount that was allegedly paid to Al Danube, the total amount that would have remained, including the other invoices and the medical expenses, would have added up to USD 7,165.38 which sum is far less than what the Respondent was travelling with undeclared.

[24] In an affidavit in reply to CPL Perreau's affidavit in support of the application for a forfeiture order of the cash seized sworn by the Respondent himself, he denies the propositions made by the Applicant that the cash seized from him represents proceeds of crime or in intended by any person for use in connection with any criminal conduct.

[25] In his affidavit the Respondent avers, that the Applicant has shown no connection between any criminal conduct and the cash seized, and that CPL Perreau has not indicated what reasonable grounds he has for his belief that the cash seized represents proceeds of crime, or is intended by a person to be used in connection with any criminal conduct. The Respondent avers, that information as to the source of the cash seized were sought for by the FCIU which information was provided by the church's accountant, and himself in a statement he voluntarily made to the Police.

[26] The Respondent also denies the suggestion that he is involved in money laundering based on the definition of money laundering under Section 3. He avers, that in the interview with Police Officers, he told them that the money seized from him was church money, and that it was intended to be used to settle invoices due for payment for building materials which the church had purchased from suppliers outside the country for a building construction project being undertaken by the church. The Respondent also avers, that those facts are

stated in a statement he gave to the Police, which was supported by documents as proof of the source of the funds seized, notably, the church bank statements.

[27] It is further averred by the Respondents, that on the 1st February 2024 when he was travelling abroad and was asked by a Customs Officer whether he had money in his possession over the prescribed limit to declare, that he did reply "yes", and that he did hand over an envelope containing the money taken from his laptop bag to the Customs Officer. The Respondents avers, that when he was attempting to open the other bag which also contained cash money he was refrained from doing so by the Customs Officer.

[28] In reply to paragraph 7 of CPL Perreau's affidavit in support of the application, the Respondent denies that following further searches by Customs Officer Freminot in his hand luggage more cash were found in several envelopes besides the two envelopes containing cash he had handed over to Customs Officer Freminot. It is averred by the Respondent, that CPL Perreau would have known the number of envelopes containing the cash which he failed to state in his affidavit evidence. In addition, the Respondent avers, that he did give the Customs Officer the necessary information pertaining to the source of the cash seized from him. He added, that in anyway, by not declaring that he was leaving the country with cash above the prescribed limit does not mean that the cash seized from him was from illegitimate sources.

[29] It is also averred by the Respondent in his affidavit in reply, that he did give CPL Pererau the telephone contact number of the church treasurer whom he said could provide other information pertaining to the source of the cash seized, and that he did tell CPL Perreau that the funds/cash seized was collections from church members attending services and those making their offerings.

SUBMISSIONS

[30] In his written submissions, learned counsel for the Applicant departs by summarizing the facts that led to the seizure of the cash, relying on the affidavit evidence of CPL Perreau, the salient aspects of the evidence summarized in the preceding paragraphs of this ruling as the grounds for which the order of forfeiture is being sought for. Learned counsel, then

proceeds to discuss the relevant law for the making of such order under the Anti-Money Laundering and Countering the Financing of Terrorism Act (Second Amendment) Act 2021 9Act 62 of 2021) specifically Section 76 of the AMLCFT Act. It is contended by learned counsel, that given that the cash which the Applicant seeks for an order of forfeiture was seized pursuant to section 74 (2) of the AMLCFT Act, the Judge may only make an order if satisfied, that;

i. the cash seized is not less than the prescribed sum or

ii. the Judge has reasonable grounds for suspecting that it directly or indirectly represents any person's benefit from or is intended by any person for use in connection with any offence.

[31] It is submitted by learned counsel, that the Respondent's affidavit in reply to the application is not compelling, whereas, the statement of the Customs Officer is compelling, in that, interalia, the Respondent only declared and handed over to her two envelopes containing cash. The other envelopes containing cash were only discovered after Customs Officer Freminot conducted a search in the Respondent's hand luggage.

[32] Learned counsel takes issue with the Respondent's suggestion, that conclusive evidence of criminal activity is required for the making of such application, contending that, under Section 76 (1) of the AMLCFT Act, all that the Judge must be satisfied in respect of the cash seized is that there are reasonable grounds for suspecting that the cash directly or indirectly represents any person's benefit from or is intended by any person for its use in connection with any offence. Learned counsel also quotes Section 76 (3) of the AMLCFT and relies on the *Republic v/s Mica Faure* (MC11/2022) [2023] to suggest that the court shall only refused to make the order if it is proved by the Respondent, or any other person, that the cash does not constitute directly or indirectly the benefit from criminal conduct or was not intended by any person to be used in connection with criminal conduct.

[33] It is the submission of learned counsel, that the Respondent failed to prove the origin of the cash and the source of the funds, and that the explanation given to Customs Officer Freminot was unsatisfactory to prove the source of the funds to the extent that it prompted

FCIU Officers to pursue an investigation. Learned counsel stated, that initially, the Respondent had said that the cash seized were money from the church when in actual fact, the investigation shows, that the cash seized was from Derrick Rioux and Elvis Malbrook from their savings as well as the Respondent's savings, whereas, in respect of Dorlin Theresa and Mercianne Renaud, the cash was from their salary. It is also the submission of learned counsel, that the statement made by Ms Pady King that the cheque made payable to her by the church which she was instructed to cash differs from the explanation given by the Respondent that he was travelling with the cash to pay invoices and medical treatment.

[34] In his submissions made orally, learned counsel for the Respondent refers this court to Section 76 (3) of the AMLCFT Act, contending that the wordings of this statutory provisions require the Applicant to establish criminal conduct on the part of the Respondents and that in the instant case, "there has been no criminal conduct established by the prosecution in respect of this application". It is also submitted by learned counsel, that in respect of the requirement of proof that the cash seized does not constitute directly or indirectly the benefit from criminal conduct or was not interested by any person to be used in connection with criminal conduct that the Respondent has proved that the cash seized came from the banks, and that it was to be used to pay invoices issued to be settled by the church.

[35] It is further submitted by learned counsel, that when the Respondent was questioned about the source of the cash seized at the Seychelles International Airport, he told Customs Officer Freminot to get in touch with the church treasurer who would provide more information about the source of the cash seized and support the same with the necessary documents which he said, the Church Treasurer did when she provided the FCIU with the necessary documents. Learned counsel emphasized, that no alleged offence or offences have since been established and put before the court, and that the allegation of Money Laundering is not supported by concrete and real evidence.

[36] It was submitted by learned counsel, that the money seized, which was church money, was exchanged by different individuals at different banks and money changers, and that was

because what he said was "of the foreign currency issue". Learned counsel added, that the exchange of money is not an offence, particularly, because the foreign exchange was needed to be used to settle the church invoices.

DETERMINATION

[37] I have given due consideration to CPL Perreau's affidavit evidence upon which the Applicant relies for the order being sought for. I have equally given due consideration to the Respondent's affidavit in reply against the making of the order. I observed, however, that to a significant extent, the Respondent simply denies the facts aver by CPL Perreau without tendering much evidence from his perspective against the making of the order. The Respondent, having filed an affidavit in reply, was expected to provide evidence from its stand point, that is to say, evidence that seeks to prove that the cash seized doesn't constitute directly or indirectly the benefit from criminal conduct or was not intended by any person to be used in connection with criminal conduct. In other words, that the cash seized was from legitimate sources.

[38] Clearly, therefore, the Respondent's affidavit in reply offers very little in terms of evidence for consideration. It contains averments which deny what are averred by CPL Freminot, and averments about matters which are not material for the purpose of these proceedings. For example, it is immaterial whether or not it was the Police who asked Mercianne to prepare a statement at home and send it over for onward transmission (see paragraph 17 of the Respondent's affidavit in reply). Furthermore, the Respondent simplistic denial of involvement in Money Laundering without providing evidence that the cash seized was from legitimate sources does not help his cause because it was his failure to provide proof of the source of the cash found in his possession above the prescribed limit that in the first place gave rise to the suspicion of Money Laundering and caused the cash to be seized.

[39] The references to certain documents made by learned counsel for the Respondent in his submissions, which have neither been averred, nor exhibited to the Respondent's affidavit in reply cannot be considered as evidence in determining this application. It is observed, that on the law, learned counsel has centred his arguments around Section 76 (3) of the AMLCFT Act instead of Section 76 (1) of the AMLCFT Act under which the application

for forfeiture of the cash seized is sought for, and that in the process he seems to have muddled up the two provisions of the law which provide for different legal requirements.

[40] To make a determination on the merits of this application, it is necessary, at this juncture to once again remind this court of the provisions of section 76 (1) of the AMLCFT Act under which this court is empowered to make such order being sought for section 76 (10 reads;

"76 (1) A Judge may order the forfeiture of any cash which has been seized under subsection (2) of section 74 if satisfied, on an application submitted by the Attorney General, a prosecutor on behalf of the Anti-Corruption Commission of Seychelles, that the cash seized is not less than the prescribed sum or the Judge has reasonable grounds for suspecting that it directly or indirectly represents any person's benefit from or is intended by any person for use in connection with any offence".

[41] The cash having been seized and detained pursuant to Section 74 (2) and (3) of the AMLCFT Act, for the application to succeed pursuant to Section 76 (1), this court has to be satisfied, that there are <u>reasonable grounds for suspecting that it directly or indirectly represents any person's benefit from or is intended by any person for use in connection with any offence</u>. Hence, the use of the word *may* in section 76 (1) indicates, that once satisfied that the cash seized is not less than the prescribed sum coupled with the fact that it has reasonable grounds for suspecting that it directly or indirectly represents any person's benefit from, or is intended by any person for use in connection with any offence, the court has a discretion as to whether or not to make the order of forfeiture of the cash seized.

[42] This court power to make an order of forfeiture of cash seized is also prescribed under Section 76 (3) of the AMLCFT Act which is couched in the following terms;

"76 (3) where it appears to the court on the evidence produced by or on behalf of the Attorney General or prosecutor on behalf of Anti-Corruption Commission of Seychelles consisting of or including evidence adduced under subsection (4) that the cash constitutes directly or indirectly the proceeds of crime or was intended by any person to be used in connection with criminal conduct, the <u>court shall make an order of forfeiture in respect of</u>

the whole or, a specified part of the cash: Provided that the court shall not make an order if it is proved by the Respondent or any other person that the cash does not constitute directly or indirectly, the benefit from criminal conduct or was not intended by any person to be used in connection with criminal conduct". (the underlined emphasis is mine).

[43] In essence, there is a mandatory requirement under section 76 (3) of the AMLCFT Act, for the court to make the order of forfeiture of the cash seized if on account of the evidence laid before it the court is satisfied, that the cash seized constitutes directly or indirectly the *proceeds of crime or is intended by any person to be used in connection with criminal conduct.* Interestingly, contrary to learned counsel for the Respondent stating otherwise, under section 76 (2) of the AMLCFT Act the court is allowed to make the order whether or not proceedings have been brought against any person for an offence with which the cash is connected.

[44] Equally under Section 76 (3) of the AMLCFT Act, the court is mandatorily prohibited from making the order of it is proved by the Respondent or any other persons that the cash seized does not constitute directly or indirectly the benefit of criminal conduct or was not intended by any person to be used in connection with criminal conduct. In the instant case, this would have been by way of the affidavit evidence of the Respondent.

[45] Therefore, a close examination of the wordings of Section 76 (1) and 76 (3) of the AMLCFT Act indicates, that the legal requirements for the exercise of the court's power to make an order of forfeiture of the cash seized under the Act, differ between the two statutory provisions. Under Section 76 (1), based on the evidence, the Judge must have reasonable grounds for having the suspicion that the cash seized represents any person's benefit from, or is intended by any person for use in connection with any offence. Under Section 76 (3) there must be evidence that the cash seized represents proceeds of crime, or was to be used for some sort of criminal conduct. Thus, based on the facts and circumstances of this case as laid in evidence before this court, it was proper for the Applicant to make this application, for a forfeiture order pursuant to Section 76 (1) of AMLCFT Act.

CONCLUSION

[46] Having meticulously examined the affidavit evidence of CPL Perreau, I find sufficient evidence to have reasonable grounds for suspecting that the cash seized from the Respondent on the 1st of February 2024 at the Seychelles International Airport, directly or indirectly represents the Respondent's benefit from, or was intended by the Respondent for use in connection with the offence of money laundering. Therefore, in exercise of the powers conferred upon this court by virtue of Section 76 (1) of the AMLCFT Act, I order the forfeiture to the Applicant, the entire sum of Seychelles Rupees 226, 389.75 converted from USD to Seychelles Rupees at the rate of USD 1 = SCR14.25.

[47] The Respondent shall be notified of this order by copy of the same to be served on him.

[48] The FCIU of the Police Force shall be notified of this order by copy of the same to be served on them.

Signed, dated and delivered at Ile du Port on 14 January 2025

Adeline J