SUPREME COURT OF SEYCHELLES

Reportable
MC 78/2023

In the matter between:

THE GOVERNMENT OF SEYCHELLES — **Applicant**
(Brandon Francoise)

and

JOSELIN CUSHION — **1st Respondent**

ANGELA JEANNEVOLE — **2nd Respondent**
(Basil Hoareau)

Neutral Citation:	*Gov of Sey v Cushion & Or* (MC 78/2023) (3 April 2025).
Before:	Burhan J
Summary:	An Interlocutory Order and an Order for the Appointment of a Receiver
Heard:	Written Submissions
Delivered:	03 April 2025

ORDER

I therefore proceed to grant the reliefs as claimed by the Applicant the Government of Seychelles in respect of items 2, 3 and 4 of the Table set out in [2] herein and issue.

a) *An interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act, 2008 as amended (the POCA), prohibiting the Respondent or such other person or any other person having notice of the making of this order from disposing of or otherwise dealing with whole any part of the property set out in the table appended to the notice of motion or diminishing its value;*

b) *An Order Pursuant to Section 8 of the POCA, appointing Sergeant Dave Jeanne of the Financial Crime Investigation Unit (FCIU) to be the Receiver of all or part of the property to manage, to keep possession or* *dispose of or otherwise deal with any other property in respect of which he is appointed in accordance with the Court's directions;*

c) *An order that notice of this Order to be served on the Respondents.*

ORDER

BURHAN J,

[1] This is an application under Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 (POCA) as amended. The Applicant the Government of Seychelles seeks the following reliefs.

b. *An interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act, 2008 as amended (the POCA), prohibiting the Respondent or such other person as this Honorable Court shall order or any other person having notice of the making of this order from disposing of or otherwise dealing with whole any part of the property set out in the table appended to this notice of motion or diminishing its value;*

c. *An Order Pursuant to Section 8 of the POCA, appointing Sergeant Dave Jeanne of the Financial Crime Investigation Unit (FCIU) to be the Receiver of all or part of the property to manage, to keep possession or dispose of or otherwise deal with any other property in respect of which he is appointed in accordance with the Court's directions;*

d. *An order providing for notice of any such orders to be given to the Respondent or any person directed by the Court; and*

e. *Such further or other order as the Court shall deem just and proper.*

[2] The specified property for which these orders are sought is set out in the Table to the motion which is set out below:

Item	Description	Estimated Value in SCR
1	One Suzuki Scooter with registration number S24615	SCR22, 000.00
2	One white Isuzu Elf Truck with registration number S17570	SCR350, 000.00
3	One White Hyundai H1 Minibus with registration number S17570	SCR125, 000.00
4	One Blue and White mini Mahe boat with 60hp Yamaha outboard engine	SCR155, 000.00
		Grand Total: SCR652, 000.00

[3] This application for an Interlocutory and Receivership order brought by the Government of Seychelles by way of a notice of motion, is supported by the sworn affidavit of Sergeant Dave Jeanne of the Financial Crime Investigation Unit (hereinafter the FCIU).

[4] On notice of this application being served on the 1st and 2nd Respondents they filed an affidavit in reply to that of Sergeant Dave Jeanne on the 24th of January 2024.

[5] The joint reply affidavit filed by the Respondents reads as follows:

*"We **Joselin Eddy Cushion and Angela Angie Jeannevole** both of Marie Jeanne Estate, Praslin, Seychelles being a Christians hereby make oath and state as follows:*

1. *We are the deponents above-named.*
2. *The facts and matters herein are from our own knowledge unless stated otherwise.*
3. *We categorically deny all the allegation made by Sergeant Dave Jeanne in his affidavit that the Suzuki Scooter of registration number S24615, the white Isuzu Elf truck of registration number S21062, the Hyundai H1 Minibus of registration S17570 and the mini Mahe boat with the 60hp Yamaha outboard engine boat (hereinafter collectively*

referred to as the properties) are properties constituting proceeds of money laundering and drug trafficking.

4. *We aver that the money used to acquire the properties, are from a legitimate and legal source.*
5. *We aver that Joselin Eddy Cushion is also a carpenter by profession."*

[6] Thereafter, both parties moved for time to file submissions. Learned Counsel for the Applicant filed his submissions on the 5 September 2024. However, learned Counsel for the Respondents failed to file his submissions even though several opportunities were given for same. This has resulted in unnecessary delay. No further time can be given.

[7] The Applicant submits that there are reasonable grounds based on the belief evidence of Sergeant Dave Jeanne's to grant the application which contains compelling evidence against the Respondents in the affidavit and appended annexures.

[8] The Applicant further contends that Sergeant Jeanne's affidavit sets out the financial investigation conducted on the 1st Respondent, where it was observed that the 1st Respondent was employed with the Ministry of Health in 2010 to February, 2022, as an Ambulance Driver earning a monthly salary of approximately SCR13, 329.23/-.

[9] Further in observing the two bank accounts of the 1st Respondent, it was observed that his monthly salary was being credited into his Seychelles Credit Union (SCU) account number 16159002 and not to the account at Nouvobanq (NVB) account number 01201102123007. According to paragraphs 13-17, Sergeant Jeanne's investigations reveal that between 2017 and 2022, the 1st Respondent was depositing substantial amounts of cash into the above mentioned accounts, totalling approximately SCR1,834,164.00 in cash across both of his accounts. This far exceeds his net salary for five years assuming he had not incurred any living expenses.

[10] The Applicant's submits that it is highly unlikely that an Ambulance Driver earning SCR13,329.23 monthly, and sustaining not only himself but his partner (2nd Respondent)

as well, would reasonably and/or legally be able to amass such an amount of cash to deposit into his accounts.

[11] Paragraphs 21 to 25 of Sergeant Jeanne's affidavit relates to a Suzuki Scooter bearing Registration number S2415. According to SLA records this property was purchased by the 1st Respondent on 11th August 2018, from one Sam Nicette for SCR22,000.00. This transaction is not reflected in the 1st Respondents bank statements and, on the basis of the unexplained funds for the acquisitions of the said scooter, the Applicant submits that it was purchased using illegal funds acquired from drug, trafficking and money laundering.

[12] Paragraphs 26 to 36 of Sergeant Jeanne's affidavit relates to an Isuzu Elf Truck Scooter bearing registration number S21602. According to SLA records and further analysis this property was acquired by way of an elaborate exchange. The 1st Respondent initially purchased a Toyota Starlet S11966 using an unidentified amount of funds. The 1st Respondent then proceeded to sell this Toyota Starlet S11966 to one Yannick Cedras for the sum of SCR125,000.00, and subsequently made an exchange of vehicle numbers with one Yannick Cedras from S11966 to S18943 and S18943 to S11966. After this exchange had been made, the 1st Respondent then made an exchange of vehicles with one Basil Hoareau, where they exchanged another Toyota Starlet for one white 3000 cc, Isuzu Pick-Up truck with registration No: S21602.

[13] The Applicant further submits that the fact that the purchase of this truck was done by way of like for like exchange of a vehicle which was acquired through unknown means suggests that the 1st Respondent wanted to "get rid" of an asset acquired with funds from illicit means, and acquire a new one through a car for car exchange irrespective of the difference of valuation of the vehicles.

[14] Paragraphs 37 to 51 of Sergeant Jeanne's affidavit relates to the 2nd Respondent where it is found that she has been unemployed, fully sustained by her partner the 1st Respondent and has a MCB bank account, with account No: 610712. It was observed that several cash deposits made on the account, and that the method in which these deposits were made are common money laundering techniques known as smurfing.

[15] It is the Applicant's contention that it is highly unlikely that 1st Respondent could sustain not only himself but his partner (2nd Respondent) as well, to the extent of the 2nd Respondent depositing large amounts of cash regularly. It is further submitted that the 2nd Respondent was assisting the 1st Respondent in depositing cash into the financial system, likely due to the shear amount of cash on hand. Therefore, it is clear that both Respondents were laundering funds and the funds originated from drug activities.

[16] It is further submitted that Paragraphs 52 to 54 Sergeant Jeanne's affidavit relates to a Hyundai H1 with Registration Number S7217. Once again, the Respondents can be observed laundering illicit funds through the purchase and exchange of assets. The sum of SCR 127,000.00 was used for the purchase of a White Hyundai i10 with registration number S7271 from Okap Cars. However, the Respondents then exchanged the said Hyundai i10 with one Frederick Balette for a Hyundai H1 and paid the market price difference of SCR40,000.00. Analysis on Cushion's SCU bank account revealed that prior to the cash withdrawal of SCR40,000.00, he conducted a series of cash deposits on his account, all below the 50,000 threshold. The Applicant submits that this further shows the money laundering technique known as smurfing and suggests that this property is proceeds of crime.

[17] Further and additionally, a substantial amount of drug related material was found at the residence of the Respondents, such as phones which contained text messages, Whatsapp messages, photographs, photographs of ledgers. The Applicant therefore submits, that considering all the evidence before the Court, there are reasonable grounds to believe that the specified property are proceeds of crime.

[18] It is further submitted by the Applicant that the grounds for the said beliefs of Sergeant Dave Jeanne are the averments as mentioned in his affidavit dated 14th June 2023 as summarized below indicate the following:

a) The credible information received that the Respondents are actively engaged in illegal drug transactions on Praslin;

b) That given that the 1st Respondent was employed as an ambulance driver from 2010 to 2022, and received an average salary, it was observed that he was making substantial cash deposits across various bank accounts of which their sources are unknown;

c) The 2nd Respondent is unemployed, and has never been in employment. It had been observed that substantial cash deposits were also being made on her personal bank account, of which their sources are unknown;

d) The Respondents patterns have demonstrated common money laundering techniques, such as purchase of assets namely vehicles with cash, and smurfing;

e) That based on what Sergeant Jeanne has found and explained, he is of the belief that the criminal conduct of which the said properties have been acquired in whole or in part is drug trafficking and money-laundering.

[19] The law as contained in Section 4 of the Proceeds of Crime (Civil Confiscation) Act 2008 as amended reads as follows:

1) Where, on an inter parties application to Court, in that behalf by the applicant, it appears to the Court, on evidence, including evidence admissible by virtue of Section 9, tendered by the applicant, that –

(a) a person is in possession or control of –

(i) specified property and that the property constitutes, directly or indirectly, benefit from criminal conduct; or

(ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes benefit from criminal conduct; and

(b) the value of the property or the total value of the property referred to in subparagraphs (i) and (ii) of paragraph (a) is not less than R50, 000, the Court shall make an interloctary order prohibiting the person specified in the order or any other person having notice of the making of the order from disposing of or otherwise dealing with the whole or, any part of the property, or diminishing its value, unless, it is shown to the satisfaction of the Court, on evidence tendered by the Respondent or any other person, that –

(i) the particular property does not constitute, directly or indirectly, benefit from criminal conduct and was not acquired, in whole or in part, with or in connection with property, that directly or indirectly constitutes benefit from criminal conduct; or

(ii) the total value of all the property to which the order would relate is less than R50, 000:

Provided that the Court shall not make the order if it is satisfied that there would be a risk of injustice to any person (the onus of establishing which shall be on that person), and that the Court shall not decline to make the order in whole or in part to the extent that there appears to be knowledge or negligence of the person seeking to establish injustice, as to whether the property was as described in subsection (1) (a) when becoming involved with the property.

[20] Therefore based on the aforementioned law, the Court needs to be satisfied on the evidence, including affidavit evidence, documents and submissions that there are reasonable grounds to suspect that the specified property constitutes directly or indirectly, benefit from criminal conduct, or was acquired in whole or in part with or in connection with property that is directly or indirectly benefit from criminal conduct.

[21] In **Financial Intelligence Unit v Contact Lenses Ltd & Ors (MC95/2016) [2018] SCSC564 (19 June 2018)** the case on which the Applicant relies on, the Court summarized the approach to the law in this respect. It stated:

"...that once the applicant provides the Court with prima facie evidence that is, reasonable grounds for his belief in compliance with section 9 (1) in terms of his application under section 4 (1) of POCCCA, the evidential burden shifts to the respondent to show on a balance of probability that the property is not the proceeds of crime..."

"... If the FIU relies on belief evidence under section 9 the court has to examine the grounds for the belief and if it is satisfied that there are reasonable grounds for the belief it should grant the order. There are appropriate and serious protections for the respondents as at

different stages they are permitted to adduce evidence to show the Court that the property does not constitute benefit from criminal conduct. Their burden in this endeavour is that "on a balance of probabilities". In other words, once the applicant establishes his belief that the property is the proceeds of crime, the burden of proof shifts to the respondent to show that it is not. Hence, unless the court doubts the belief of the officer of the FIU, which is reasonably made, it cannot refuse the order".

[22] It is clear to this court that learned Counsel for the Applicant moving for the aforementioned orders, relies on the contents of the affidavit filed by Sergeant Jeanne and other annexed documents referred to herein in the said affidavit, to establish that there are clearly reasonable grounds for suspecting that the said specified property referred to above at paragraph [2] herein and in the said Table to the Notice of Motion, constitutes benefit accrued from criminal conduct, namely money laundering and also to establish that the specified property in the Table of the Notice of Motion has a total value of more than SCR50,000.

[23] It is admitted by the Applicant that the 1st Respondent was working as an ambulance driver in the Ministry of Health for around 12 years and drawing a salary of SCR 13,329.23. Although he may not have been able to explain where his money came from when he purchased item one in the Table, this Court could come to a reasonable inference that having worked for such a long period even with household expenditures, he would have had the necessary means to buy a scooter which has been valued at only SCR22,000.00. Therefore this Court is of the view that item 1 i.e. One Suzuki Scooter with registration number S24615 in the Table has not been bought by illegal means and therefore should be returned to the 1st Respondent.

[24] I have also given due consideration to the joint affidavit of the Respondents. They merely deny the facts contained in the affidavit of Sergeant Jeanne and state they are in the carpentry business and all vehicles set out in the table have been purchased with legal money obtained from their carpentry business. However, they have not provided any documentation or tax returns or business registration documentation or receipts to show that they are carrying on such business. It is my view that the change of number plates and

the exchange of vehicles need further explanation from the Respondents which was not forthcoming.

[25] Having given due consideration to the facts set out in the affidavit of Sergeant Jeanne which stands corroborated by the attached documents, I am satisfied on consideration of the belief evidence before court under Section 9 of the Proceeds of Crime (Civil Confiscation) Act that;

i. the Respondents are in possession or control of specified property (with the exception of item 1) set out in the Table appended to the Notice of Motion and that the items of property numbered 2 to 4 constitute direct or indirect benefit from criminal conduct namely money laundering.

ii. the total value of property mentioned in the Table above is not less than SCR 50,000.

[26] As I am satisfied that the belief evidence by way of affidavit of Sergeant Dave Jeanne can be accepted and as I am satisfied that the belief evidence of Sergeant Jeanne by affidavit under section 9 of the Proceeds of Crime (Civil Confiscation) Act has established a prima facie case that the specified property (exception item 1 in Table) is proceeds of crime and has a value of over SCR 50,000/-, the burden now shifts to the Respondent to show that it is not, **Financial Intelligence Unit v Contact Lenses Ltd & Ors** supra.

[27] It is my considered view for reasons contained in [24] herein that the 1st and 2nd Respondents have failed to create any doubt in the belief evidence of Sergeant Jeanne even though ample opportunity has been provided to them.

[28] I therefore proceed to grant the reliefs as claimed by the Applicant, the Government of Seychelles in respect of items 2, 3 and 4 of the Table set out in [2] herein and issue.

a) *An interlocutory Order pursuant to Section 4 of the Proceeds of Crime (Civil Confiscation) Act, 2008 as amended (the POCA), prohibiting the Respondent or such other person or any other person having notice of the making of this order from disposing of or otherwise dealing with whole* *any part of the property set out in the table appended to the notice of motion or diminishing its value;*

b) *An Order Pursuant to Section 8 of the POCA, appointing Sergeant Dave Jeanne of the Financial Crime Investigation Unit (FCIU) to be the Receiver of all or part of the property to manage, to keep possession or dispose of or otherwise deal with any other property in respect of which he is appointed in accordance with the Court's directions;*

c) *An order that notice of this Order to be served on the Respondents.*

Signed, dated and delivered at Ile du Port on 3rd April 2025

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Burhan J