

SUPREME COURT OF SEYCHELLES

Reportable

CM138/2024

In the matter between:

MUKESH VALABHJI

1st Applicant

(rep by Mr Bonte & Ms Aglae)

LAURA VALABHJI

2nd Applicant

(rep by Mr Bonte and Ms Aglae)

And

ANTI-CORRUPTION COMMISSION

Respondent

(rep by Ms Nelson, Mr Hucklesby & Mr Skelley)

Neutral Citation: *Mukesh Valabhji & Or V ACCS* (CM138/2024) (8 July 2025)

Summary: Application seeking an Order from the Court for a variation of the Restraint Order pursuant to section 27(6) of the Anti-Money Laundering Act 2006 (as amended)

Heard: By way of written submissions

Before: D. Esparon, J

Delivered: 08 July 2025

ORDER

Application seeking an Order from this Court for a variation of the Restraint Order pursuant section 27(6) of the Anti- Money- Laundering Act- the Court allowed the 1st Applicant to make payment from **SIMBCL (Nouvobanq)** for the agreed disbursements incurred by Ms Samantha Aglae,

amounting to is SCR 19 461,71 and € 243.68, allowed the 1st Applicant to make payments from **SIMBCL (Nouvobanq)** for the agreed disbursements incurred by Mr France Bonte, Exhibit FB9, amounting to SCR 900. The Court declined to grant the application in respect of the personal expenses of the 2nd Applicant and any disbursements on her behalf, unless and until up-to-date bank statements are furnished to show that she lacks sufficient unrestrained funds. The Court allowed the 1st Applicant to make payment of future retainer fees as from January 2025 for Ms Samantha Aglae and Mr France Bonte from **SIMBCL (Nouvobanq)** containing sufficient funds, subject to the submission of properly particularised monthly invoices to the Court. The Court further allowed the 1st Applicant to apply to the Court for pre-approval of reasonable pending and future legal disbursements and his personal expenses from **SIMBCL (Nouvobanq)** identified to the Court and the Respondent, provided the account contains sufficient funds.

RULING

D. Esparon, J

INTRODUCTION

- [1] The Applicants seek a variation of the Restraint Order issued in XP1/2023, pursuant to section 27(6) of the Anti-Money Laundering Act 2006 (as amended), to permit payments of locally incurred legal disbursements and certain personal expenses.
- [2] The Respondent, the Anti-Corruption Commission Seychelles (the ACCS), does not oppose the Applicants' prayer to allow payment of legal fees and disbursements already incurred, provided the Court is satisfied that the relevant bank account contains sufficient funds and that the invoices presented are properly particularised. However, the Respondent opposes the prayer in respect of the personal expenses of the Second Applicant and

maintains that such expenses should not be met from restrained funds where unrestrained personal funds of the Second Applicant are available.

- [3] The issues arising in this matter include the extent to which restrained funds may be used to meet legal and personal expenses, the mechanism by which such payments should be approved, and whether the affidavit sworn on behalf of the ACCS was duly authorised. In support of its opposition, the Respondent relies on its previously stated position that judicial oversight is required for any such variation and that payments of a general or bulk nature, such as a standing petty cash provision, ought not to be permitted, in line with the rulings of this Court in CM75/2024 and CM105/2024.

SUBMISSIONS BY THE 1st APPLICANT AND 2nd APPLICANT

- [4] Counsel for the Applicants submitted that the 1st Applicant is the 1st Accused and defendant in CR 114 of 2021 (*Anti-Corruption Commission v Valabhji and & Or*), and also the 1st Accused and defendant in CR 04 of 2022 (*Republic v Valabhji and others*). The 2nd Applicant, who is the 1st Applicant's wife, is an interested party to the application and is herself the 2nd Accused in CR 04 of 2022.
- [5] It was submitted that on the 31st March 2023, Carolus J granted an ex parte without notice of the Restraint Order against the 1st Applicant, extending not only to property owned solely by the 1st Applicant but also to property jointly held by the Applicants and to property belonging solely to the 2nd Applicant.
- [6] Counsel stated that the Applicants have retained the services of Zaiwalla & Co, a reputable firm of solicitors based in London, to prepare their defence. Zaiwalla & Co in turn instructed lead counsel James Lewis KC, assisted by Rachel Scott and Jessica Hocking ("Foreign Counsel"). The Foreign counsel are supported by local legal representatives,

namely France Bonte and Samantha Aglae (“Local Counsel”), who acts for the 1st and 2nd Applicants respectively.

- [7] It was submitted that the Foreign Counsel and Zaiwalla & Co are paid on the basis of work completed and invoices rendered, in line with the court order dated 16 August 2023 in *Valabhji & ors v Anti-Corruption Commission (CM 75 of 2023)*. That order provided for payment of legal fees for Zaiwalla & Co from account number 6085120 held at Deutsche Bank AG (Singapore), in the name of CFH Investments Limited.
- [8] Counsel stated that the Local Counsel are engaged on a monthly retainer: SCR 58,000 for Mr Bonte and EUR 6,000 for Ms Aglae. These fees, as well as related disbursements and personal expenses of the Applicants and their family, have been paid through the 1st Applicant’s personal accounts held at SIMBCL (Nouvobanq), upon submission of variation applications supported by invoices.
- [9] It was further submitted that this mechanism has become impractical. The necessity of filing a fresh variation application every month is burdensome, inefficient, and results in significant delay, each application taking over three months to be determined. This, counsel submitted, causes Local Counsel to remain unpaid for long periods, and impedes the Applicants’ right to a fair trial and adequate legal representation.
- [10] The Applicants contended that there is no dispute over the amount and recurrence of the monthly legal retainer fees for Local Counsel, and that these have previously been acknowledged by the Respondent and the Court in CM 75 of 2023. Nonetheless, Carolus J, in line with the position taken by the Respondent, has declined to authorise the Applicants to make monthly retainer payments to Local Counsel from the SIMBCL accounts without filing fresh variation applications each time, despite allowing a similar arrangement in relation to payment of Foreign Counsel.

- [11] It was submitted that Local Counsel have since notified the Applicants that they will not bear any further legal or personal expenses on behalf of the Applicants and will not continue representation unless funds are made available in advance of the work being done.
- [12] The Applicants' legal team submitted that legal expenses previously paid by Local Counsel include filing fees, Gainful Occupational Permit (GOP) and licence fees for Foreign Counsel, printing, and court stationery, while personal expenses include medical costs, toiletries and food. Without access to regular funds, these basic and case-related expenses cannot be met.
- [13] The Applicants therefore indicated their intention to file for pre-approval of invoices in respect of future legal and personal expenses, or, in the alternative, to seek a standing order from the Court authorising a quarterly petty cash facility to be made available to Local Counsel. It was proposed that this facility be used to meet ongoing legal and personal needs without the burden of repeated court applications.
- [14] It was further submitted that there remain outstanding disbursements incurred by Local Counsel which were not paid under CM 105/2024. These are detailed in the supporting affidavits of Samantha Aglae and France Bonte.
- [15] In addition, it was submitted that the 2nd Applicant had previously filed for reimbursement of personal expenses (invoices for dental care, optical treatment and medical supplies), which she later withdrew due to resistance from the Respondent and an inclination by the presiding Judge to agree with the Respondent. The invoices for those expenses are attached as part of the supporting exhibits

AFFIDAVIT IN SUPPORT BY THE 1ST APPLICANT

- [16] The 1st Applicant made an affidavit in support of an order to vary the Restraint Order in relation to legal fees, disbursements and personal expenses for himself and his family. He confirmed that a Restraint Order was issued *ex parte* against him on 31 March 2023, without prejudice to the ongoing criminal proceedings and while denying all allegations made in CR 04 of 2022 and CR 114 of 2021.
- [17] He referred to paragraph (b) of the Restraint Order, which permits the payment of legal and living expenses upon application to the Court, and paragraph (a), which extends the order to property jointly held with his wife and property owned solely by her.
- [18] He confirmed the retainer of Zaiwalla & Co and Foreign Counsel and the appointment of Local Counsel. He also confirmed that Local Counsel are on monthly retainers of SCR 58,000 and EUR 6,000 respectively, and that these and other disbursements have been paid through his SIMBCL bank accounts upon court variation orders and submission of invoices.
- [19] He deponed that this method is burdensome, inefficient, and results in Local Counsel not being paid in a timely manner, since court rulings take up to three months per application. He averred that the payment of Local Counsel fees is not contentious, and the monthly amounts and retainer agreements are known and undisputed.
- [20] The 1st Applicant stated that Carolus J, following objections from the Respondent, refused to grant standing authorisation for payment of monthly fees and disbursements, and instead requires fresh applications for each payment. As a result, he averred, Local Counsel have refused to continue payment of legal or personal expenses unless advance funds are

available. He noted that they have been paying for a variety of case-related and personal costs, including court filing fees, medical care and food.

[21] He confirmed that several outstanding disbursements remain unpaid as the Court refused to authorise their release, and he referenced exhibits MV1 and MV2 in support. He also referenced expenses previously filed under CM105/2024 by the 2nd Applicant, which were later withdrawn.

[22] He expressed the view that as husband, he bears a legal and moral duty to maintain his wife, including provision of basic needs and medical care, and that many of the assets restrained under the order are jointly owned or solely owned by his wife, daughter or parents.

[23] The Applicants prayed the Honourable Court for the following orders:

a) That this application be heard urgently.

b) That the Restraint Order be varied pursuant to section 22(6) of the Anti-Money Laundering (Amendment) Act, 2008:

(i) To allow the 1st Applicant to pay the monthly retainer of SCR 58,000 to France Bonte and EUR 6,000 to Samantha Aglae (plus travel disbursements), from his SIMBCL (Nouvobanq) bank accounts upon monthly invoice presentation and filing with the Supreme Court Registrar;

(ii) To allow payment of disbursements incurred by France Bonte (SCR 903) and Samantha Aglae (SCR 73,468.88 and EUR 243.68) into their respective ABSA bank accounts;

(iii) To authorise a quarterly petty cash facility of SCR 75,000 to be paid to Samantha Aglae's client account or, in the alternative, to allow pre-approval applications for legal and personal expenses in pending and future matters;

Affidavit in support by Ms. Samantha Aglae

- [24] Ms. Samantha Aglae affirmed that she has been retained by the 1st Applicant, Mukesh Valabhji, to provide legal services on a monthly retainer of EUR 6,000, exclusive of disbursements, which are to be paid separately as and when incurred. She stated that the scope of legal services under her retainer includes representation of the 1st and 2nd Applicants in miscellaneous and ancillary matters arising out of or connected to CR 114 of 2021 and CR 04 of 2022, including legal advice, drafting, client consultations, and correspondence with various public authorities and agencies, both local and international, such as the Attorney General's Office, Anti-Corruption Commission, Police, and Court Registries. Her services also include coordination of case management, legal administration and research on behalf of the defence team for the Applicants, and acting as one of their local counsel in both trial matters.
- [25] Ms. Aglae further averred that, pursuant to the order of Carolus J dated 16 August 2023 in CM 75 of 2023, she was advised, requested and authorised by the learned Judge to pay legal and personal expenses of the Applicants and thereafter apply for reimbursement of those disbursements by way of variation applications under the Restraint Order. In line with that arrangement, she regularly provided petty cash to Ms. Myra Melanie, the private secretary of the 2nd Applicant, and also advanced funds to Local Counsel Mr. France Bonte. She produced an affidavit by Ms. Melanie marked as Exhibit SA1 confirming this arrangement.
- [26] She further deposed that, in addition to services under the retainer, she also provides legal advice to the 1st Applicant in his capacity as shareholder/director of Felicite Island Development Limited, Zil Pasyon Resort Limited, and Zil Pasyon Residences Limited, and reviews relevant documentation.

[27] The deponent stated that numerous invoices remain unpaid, including:

a) Signed invoice dated 5 August 2024 (Exhibit SA3)

b) Various court filing fees for CP4/23, MA82/22, CP6/23, SCA5/24, CS73/24, CP12/23 (Exhibits SA4–SA6, SA9–SA13)

c) Transportation costs (Aircoach and Aer Lingus tickets) for travel to the UK for a meeting with Foreign Counsel in relation to CR 04 of 2022 (Exhibits SA7, SA8)

d) Printing and photocopying services by Au Cap Publications for substantial case documentation over the period August 2023 to July 2024, including constitutional petitions, human rights submissions, and trial bundles (Exhibit SA14).

[28] She averred that Exhibits SA4–SA14 formed part of the disbursement component in the previous variation application (CM 105/2024), which Carolus J declined to allow by ruling dated 9 October 2024.

[29] Ms. Aglae clarified that refusal for Exhibit SA4 (CP4 of 2023) was based on lack of clarity about its connection to the Applicants' legal expenses, though she had verbally confirmed with the Registrar of the Supreme Court that it relates to a constitutional matter involving the 2nd Applicant. She explained that the Registrar had indicated she could verify such receipts if approached by the Court.

[30] She averred that the learned Judge's refusal to approve payment for Exhibits SA5, SA6, and SA9-SA13 was, according to the deponent, based on the fact that the invoices were paid by Mr Bonte. However, she clarified that the funds used for such payments were in fact advanced by her, a fact supported by Exhibits SA1 and SA2.

[31] She stated that the transportation expenses (SA7 and SA8) were incurred for her travel from Ireland to the UK to meet with Foreign Counsel in relation to the defence of both Applicants in CR 04 of 2022.

[32] Regarding the printing invoice (SA14), Ms. Aglae explained that AuCap Publications issued the invoice only upon her request, as she was unable to settle interim payments pending court authorisation. She clarified that the printer does not record case-specific data but only a running page total, as it is not privy to the legal content of the materials.

Affidavit in support by Ms. Myra Melanie

[33] Ms. Myra Melanie affirmed that she is the personal assistant at the law chambers of the 2nd Applicant and assists Ms. Aglae in matters relating to both the 1st and 2nd Applicants. She stated that the affidavit was made at the request of Ms. Aglae in support of the application for reimbursement of two receipts, following the ruling of Carolus J dated 9 October 2024.

[34] She confirmed that she received petty cash from Ms. Aglae for the following purposes:

- a) Payment of court filing fees and other litigation-related costs in respect of the legal matters of the 1st and 2nd Applicants;
- b) Payment of personal expenses for both Applicants.

[35] Ms. Melanie produced receipts marked as Exhibit MM1 and Exhibit MM2 for personal items and stationery purchased using those funds. She clarified that the receipts were issued by retail outlets in Seychelles and do not bear customer names, as most outlets issue only automated or computer-generated receipts.

Summary of Affidavit in support by Mr. France Bonte

- [36] Mr. France Bonte affirmed that he has been retained by the 1st Applicant to provide legal services on a monthly retainer fee of SCR 58,000, exclusive of disbursements. The disbursements, he averred, are to be settled separately as and when they arise.
- [37] He stated that his scope of legal work includes representation of the 1st and 2nd Applicants in miscellaneous or ancillary applications, petitions, and matters related to CR 114 of 2021 and CR 04 of 2022. His services also include legal advice and the drafting of documents in connection with the two aforementioned cases.
- [38] Mr. Bonte confirmed that pursuant to the order of Carolus J dated 16 August 2023 in CM 75 of 2023, and following the advice, request and authorisation from the learned Judge, Ms. Samantha Aglae, acting as Local Counsel, was instructed to pay legal and personal expenses on behalf of the Applicants. Thereafter, Ms. Aglae would seek reimbursement through variation applications made to the Court under the Restraint Order.
- [39] Mr. Bonte confirmed that he received funds from Ms. Aglae for the following disbursements and submitted that reimbursement for the same should now be made directly to Ms. Aglae:
- a) Court filing fees CP4/23 (Exhibit FB1)
 - b) Court filing fees MA82/22 (Exhibit FB2)
 - c) Court filing fees CP6/23 (Exhibit FB3)
 - d) Court filing fees SCA5/24 (Exhibit FB4)
 - e) Court filing fees CP6/23 (Exhibit FB5)
 - f) Court filing fees CS73/24 (Exhibit FB6)

g) Court filing fees CP6/23 (Exhibit FB7)

h) Court filing fees CPI2/23 (Exhibit FB8)

[40] Further, he stated that pursuant to the ruling of Carolus J in CM 105/2024 dated 9 October 2024, the Court declined to authorise payment of the Legal Practice Licence Application fee for James Lewis and Varun Zaiwalla, as the supporting exhibit was not included in the record. That omitted document is now produced and marked as Exhibit FB9.

SUBMISSIONS BY THE 1ST AND 2ND APPLICANTS DATED 21ST FEBRUARY 2025

[41] The 1st and 2nd Applicants respectfully submit that the Respondent does not oppose the prayer for an order under paragraph 9(b)(i) of the Notice of Motion, namely:

“An order pursuant to section 27(6) of the Anti-Money Laundering (Amendment) Act 2008, to vary the Restraint Order to allow the 1st Applicant to make payments for monthly retainer fees upon presentation of the invoices to SIMBC Limited for Mr. France Bonte in the sum of SCR 58 000 and for Ms Samantha Aglae in the sum of EUR 5 000 (plus travel disbursements), from the 1st Applicant's SIMBC Limited (Nouvobanq) bank accounts, with a copy of the invoices to be filed with the Registrar of the Supreme Court.”

[42] The Applicants submit that the following prayers remain in contention, as set out in paragraph 19(b)(ii) and (iii) of the Notice of Motion and under paragraph 19(b)(ii), the Applicants seek an order allowing the 1st Applicant to pay legal disbursements already incurred, namely:

“SCR 903 for Mr. France Bonte, and SCR 73 468.88 for Ms. Samantha Aglae, from the 1st Applicant's Nouvobanq SIMBC Limited bank account into Ms. Aglae's SCR

Account No 1091201 held at ABSA Seychelles Bank, and EUR 243.68 into her EUR Account No 0107583998 at ABSA Seychelles Bank.”

- [43] The Respondent has agreed to the full disbursement in favour of Mr. Bonte (SCR 903), and a partial payment of the disbursements due to Ms. Aglae, except for the sum of SCR 47 000 relating to an invoice from Au Cap Publications.
- [44] The Applicants maintain that the entirety of the disbursements incurred by Ms Aglae are lawful and properly incurred in the course of her legal representation, and she should be reimbursed in full in accordance with the prayers in the application.
- [45] The Applicants further submit that the disbursements for the 2nd Applicant should also be permitted, as was previously allowed. They assert that a number of the 2nd Applicant's assets have been restrained without legal justification, particularly as the Restraint Order was not made against her personally. These include cash and jointly held accounts at Nouvobanq with the 1st Applicant.
- [46] The Court is further invited to note that it was upon the application of the Respondent in January 2021 in CR114 of 2021 that the 2nd Applicant's license to practice law was suspended, a suspension which, the Applicants submit, was unjustified, given that all charges against the 2nd Applicant were withdrawn by the Respondent three months later.
- [47] The 2nd Applicant, a sole trader and legal practitioner, has had no income for the past three years. She has been compelled to rely on her personal savings to meet office expenses, including staff salaries. It is, the Applicants submit, wholly unjustified that the Respondent now objects to the payment of her medical bills, whilst simultaneously restraining her assets.

- [48] The Applicants seek an order allowing quarterly payment of a petty cash amount of SCR 75 000 to be paid into Ms. Aglae's client account (Account No 1090876, ABSA Seychelles Bank), or alternatively, an order permitting the Applicants to file applications for pre-approval by the Court for payment of pending and future legal and personal expenses in accordance with the categories of allowable expenses under the Restraint Order.
- [49] The Applicants submit that all client accounts of local lawyers are regulated and supervised by the Registrar of the Supreme Court. Foreign counsel, namely Zaiwalla and Co, receives prepayments of legal fees and disbursements (for printing, flights, etc.) into its client account for matters including CR04 of 2022 and CR114 of 2021. These prepayments have never been objected to by the Respondent. However, the Respondent now appears to treat local counsel differently, without justification, effectively treating local counsel as inferior to foreign counsel.
- [50] The Applicants state that Zaiwalla and Co is responsible for making payments to UK based lawyers and for related disbursements, submitting all invoices to the Registrar of the Supreme Court, who retains oversight. The same model could and should apply to local counsel, specifically to disbursements from Ms. Aglae's client account. The Respondent has been reviewing Zaiwalla's invoices on the court file and can do likewise with the invoices for local counsel.
- [51] The Applicants further argue that requiring a court application for each and every minor disbursement would cause delay and prejudice, particularly in matters such as:
- a) Gainful Occupation Permit applications for foreign counsel,
 - b) Stationery, medical expenses, and routine administrative costs.

- [52] The need to file separate applications for each minor item, including expenses such as a ream of paper, bottled water, or toiletries, the Applicants submit, is disproportionate and unnecessary burden on both the Court and the parties. Counsel for the Applicants, including Mr. Bonte and Ms. Aglae, have indicated that they will not be filing separate applications for trivial expenses, particularly as they are about to enter a four-month period of full time engagement in the defence hearing.

Authority to Swear Affidavit on Behalf of the Respondent

- [53] The Applicants submit that any person who purports to act or swear an affidavit on behalf of another must exhibit documentary proof of such authority. The persistent failure by the Respondent to produce such authority when affidavits are sworn by individuals on behalf of the Commissioner of the ACCS amounts to a continuing procedural irregularity.
- [54] The Applicants note that this issue has been raised on multiple occasions, including before Carolus J, but has been consistently disregarded. The Applicants submit that this disregard sets a poor precedent for Seychelles jurisprudence, particularly when foreign counsel are seen to bypass established practice. The Court of Appeal and the Supreme Court have reaffirmed the procedural requirement that authority must be exhibited when an affidavit is sworn on behalf of another person.
- [55] In *Pro Diving (Seychelles) (Pty) Ltd v J.J Spirit Foundation (MA33 of 2023)* [2023] SCSC 726, this Honourable Court held that:
- [56] “A mere averment that the deponent is a duly authorized representative of the Applicant does not suffice... the Power of Attorney should have been exhibited in order for the Court to know in which capacity the Applicant is before the Court. Such irregularity or defect... cannot be waived by the parties or by the Court... the defect in the Affidavit is fatal.”

- [57] The Applicants further cite the decisions in *Elmasry v Hua Sun* [SCA28 of 2019], *D L de Charmoy v P L de Charmoy* [SCA MA08 of 2019], *Trevor Zialor v Republic* [SCA MA 2017], and *Boniface v Maxime Marie* [SCA MA01 of 2019], all of which affirm the principle that any document used in combination with an affidavit must be exhibited and the capacity of the deponent clearly stated and proved.
- [58] The Respondent, unlike the Attorney General's Chambers, is not empowered under the Criminal Procedure Code to delegate legal authority in the same manner. While State Counsel enjoy express statutory authority to act on behalf of the Attorney General, the Anti-Corruption Commission Act does not grant the Commissioner equivalent power to authorize others to swear affidavits on their behalf.
- [59] Section 9(3) of the Anti-Corruption Act provides that the Commissioner may "*by order in writing*" direct an officer of the Commission to conduct an inquiry or investigation into an alleged offence. However, this provision does not extend to authorizing the swearing of affidavits.
- [60] In contrast, Article 76 of the Constitution provides that the Attorney General may exercise powers through subordinate officers acting under general or special instructions. No such provision applies to the Commissioner of the ACCS.
- [61] The Applicants submit, therefore, that Mr Kevin Stephenson lacks the requisite authority to swear an affidavit on behalf of the Respondent in these proceedings. In consequence, the affidavit filed in opposition to the application is fatally defective, and no objections raised in that affidavit can properly be entertained by this Honourable Court.

[62] In light of the above submissions, the Applicants respectfully submit that:

a) The Respondent's objections, being grounded in a fatally defective affidavit, should be disregarded in their entirety; and

b) The Court is left with an uncontested application properly supported by affidavit and evidence.

[63] The Applicants further submit that, unless the Court finds that any of the orders sought are unlawful or inconsistent with the spirit or express terms of the Restraint Order, the prayers as set out in the Notice of Motion ought to be granted.

SUBMISSION BY THE RESPONDENT

[64] The Applicants seek to amend the existing Restraint Order to allow payment of locally incurred legal fees and expenses. As acknowledged by the Applicants in their written submissions, the Respondent does not object to the payment of already incurred legal fees and expenses due to instructed counsel. Contrary to the Applicants' submissions, the Respondent is willing to agree to the payment of future legal fees and disbursements without requiring a further court order, provided that sufficient evidence is produced showing that the Applicants' bank accounts have adequate funds to meet the payments, and that properly particularized invoices are submitted.

[65] However, the Court is respectfully invited to refuse the application insofar as it concerns the 2nd Applicant's personal expenses. The Respondent also addresses below the Applicants' submissions regarding the authority of Mr. Kevin Stephenson to depose affidavits on behalf of the Anti-Corruption Commission of Seychelles (ACCS).

2ND APPLICANT'S PERSONAL EXPENSES

- [66] The Respondent relies on the affidavit of Mr. Kevin Stephenson dated 6 December 2024 and his further affidavit dated 3 February 2025, to which the Court is respectfully referred. In summary, the Respondent submits that the 2nd Applicant has access to significant personal funds in Seychelles. It would be inconsistent with the underlying purpose of the restraint regime to permit the use of suspected tainted assets to meet her expenses when she has access to her own unrestrained wealth.
- [67] The 2nd Applicant has not produced any evidence to rebut the clear indication that she holds substantial wealth. Mr. Stephenson's affidavit shows that, as at 6 May 2024, her Nouvobanq Savings account alone contained nearly SCR 1 000 000. This has not been denied by the 2nd Applicant, nor has she challenged the existence of this account or the authenticity of the bank statements annexed to her joint affidavit.
- [68] The 1st Applicant's assertion in his affidavit dated 13 November 2024 that Carolus J was "*inclined to agree*" with the Respondent regarding the 2nd Applicant's personal expenses is factually inaccurate. The Applicants themselves voluntarily withdrew their request for those expenses after being directed by Carolus J to file up to date bank statements. This request was in furtherance of the Court's duty to supervise the restrained assets. The Applicants' decision to withdraw and refile the same application appears to be an attempt to secure a more favorable outcome, which the Court should not countenance.
- [69] Regarding the invoice from Au Cap Publications for SCR 47 000, which was previously refused for lack of particularization by Carolus J, the Respondent submits that the invoice still lacks essential details such as the nature of the services rendered, the number of pages printed, and the price per page. Furthermore, no explanation has been given as to why monthly invoices were not issued, nor why this expense was not previously claimed in the Applicants' earlier May 2024 application.

[70] The Applicants claim that the Restraint Order is “*not against*” the 2nd Applicant and that “her” assets have been restrained “*without justification*”. The Respondent recalls that the Restraint Order was issued to prevent dissipation of assets belonging to the 1st Applicant that may be subject to a pecuniary penalty order following trial. This includes assets held jointly with another person, including his spouse. It would undermine the entire purpose of the Restraint Order if the 1st Applicant’s wife could unilaterally liquidate or spend jointly held assets, thereby enabling dissipation of the restrained property.

[71] The 2nd Applicant also complains of the removal of her legal practitioner’s licence, stating it was “*unjustified given that the Respondent withdrew all charges against (me)*”. The status of her licence is a matter that falls solely within the jurisdiction of this Honourable Court and is not within the control of the Respondent. The Respondent further notes that the 2nd Applicant is currently on trial for terrorism and firearms related offences.

PRE-PAYMENT OF LOCAL COUNSEL

[72] The Applicants submit that advance “*petty cash*” payments to their local legal representatives should be authorized, or alternatively, that local lawyers should be permitted to submit invoices for pre-approval of payment. They suggest that current arrangements treat local counsel differently from foreign counsel without justification.

[73] However, as clarified in Mr. Stephenson’s further affidavit, the Respondent does not oppose the payment of properly incurred legal fees and expenses whether for local or foreign counsel without the need for variation of the Restraint Order, provided the Court is satisfied with the supporting evidence and detailed invoices. The same standard is applied uniformly. The objection raised by the Applicants is thus to a position the Respondent has never taken.

[74] For clarity, the Court is referred to the proposed orders set out by Mr Stephenson. The Respondent invites the Court:

a) To make such orders as it sees fit to allow the 1st Applicant to make future payments, as from January 2025, to Ms. Samantha Aglae and Mr. France Bonte for retainer fees from a specified bank account upon proof of sufficient funds and monthly itemized invoices;

b) To permit the 1st Applicant to apply for pre-approval of reasonable future legal disbursements and personal expenses (in respect of himself), from a specified bank account identified to the Court and the Respondent.

[75] However, the Respondent maintains its position that it does not agree to advance "petty cash" payments. Such payments would enable the Applicants' lawyers to receive funds in advance without itemized accounting for expenditure, thereby frustrating the Court's supervisory duty over restrained assets. Notably, the Applicants' foreign legal representatives are not accorded such a concession either.

AUTHORITY OF KEVIN STEPHENSON

[76] The Respondent refers to Mr. Stephenson's further affidavit, which responds to the Applicants' challenge to his authority. The Respondent's position is that Mr. Stephenson has deposed numerous affidavits under powers delegated to him by the ACCS Commissioner pursuant to section 9 of the Anti-Corruption Act 2016 (as amended).

[77] The Applicants appear to argue that Mr. Stephenson must exhibit his authorization in every affidavit. No legal authority has been cited for this proposition. If the Applicants doubted his authority, they could have applied under section 169 of the Civil Procedure Code to

cross examine him under oath. They have never done so in any application, suggesting that their submission is meritless.

[78] This very issue was raised in the firearms trial before the Chief Justice in February 2024. After full argument, the Applicants did not pursue the objection further. This shows that the Applicants accept Mr. Stephenson's authority but raise the issue here without genuine basis.

[79] The Applicants rely on *Pro Diving (Seychelles) (Pty) Ltd v I Spirit Foundation* [2023] SCSC 776, in which the deponent claimed to be an authorized representative but failed to exhibit a power of attorney. That case is clearly distinguishable. Mr. Stephenson, unlike the deponent in *Pro Diving*, explicitly states the capacity in which he acts and does so under a statutory delegation that is publicly accessible. Furthermore, unlike the *Pro Diving* case, the Applicants have in their possession eight witness statements and multiple affidavits from Mr. Stephenson, all of which establish that he acts as an ACCS officer. His involvement as a search officer at Morne Blanc and his sworn evidence in the firearms trial further corroborate this.

[80] If the Court considers that any defect exists in Mr. Stephenson's affidavit, the Respondent respectfully seeks leave to amend the affidavit to include the authorization. It would be contrary to natural justice to disregard his affidavit given the clear authority under which he acts, especially when the defect if any can be easily remedied. In this regard, the Court is reminded of authorities such as *Lea Raja M. Chetty v Mariapen S. Chetty, Paul Chow v Commissioner of Elections*, and *United Opposition v Attorney General*, which permit amendment of procedural defects. In *Chetty v Estate of Regis Albert* [2020] SCSC 500, the Court reiterated that procedural irregularities should not bar substantive legal rights. The learned Chief Justice cited this case in *The ACCS v Valabhji & Ors* (CO 114/21), applying it in a criminal context as well.

[81] Accordingly, the Respondent respectfully invites the Court:

- a) To allow the 1st Applicant to pay the disbursements incurred by Ms. Samantha Aglae in the sums of SCR 19 645.72 and €243.68 from a specified bank account, as evidenced in the table annexed as Exhibit KS/B2;
- b) To allow the 1st Applicant to pay the disbursement of SCR 900 incurred by Mr France Bonte from a specified bank account;
- c) To refuse the 2nd Applicant's request for personal expenses and disbursements in her favour unless and until up to date bank statements are provided;
- d) To permit the 1st Applicant, from January 2025, to pay future retainer fees to Ms. Aglae and Mr. Bonte from a specified bank account upon proof of funds and properly detailed monthly invoices;
- e) To allow the 1st Applicant to apply for the Court's pre-approval of any pending or future disbursements and personal expenses (in respect of himself), from a specified bank account identified to the Court and the Respondent with sufficient funds.

AFFIDAVIT IN RESPONSE TO NOTICE OF MOTION APPLYING FOR VARIATION OF THE RESTRAINT ORDER

[84] Kevin Stephenson, Officer/Investigator and Review Team Manager at the Anti-Corruption Commission Seychelles (hereinafter "the ACCS"), of Victoria House, Victoria, Mahé, makes this affidavit in response to the Applicants' Notice of Motion in CM138/2024 applying for a variation of the Restraint Order issued in XP01/2023. The application seeks authorisation for payment of legal disbursements for Seychelles-based counsel and personal expenses of the Applicants.

[85] Mr Stephenson avers that he is currently the Anti-Money Laundering and Counter-Financing of Terrorism Resident Advisor to Seychelles, with over thirty-five years of experience investigating money laundering, corruption, asset recovery, and related matters. He was requested by the Commissioner of the ACCS to assist in the investigation of the 1st Applicant and the 2nd Applicant. He has been supporting the ACCS in investigations concerning money laundering and, in respect of the 1st Applicant, the alleged theft of USD 50 million, as well as alleged corruption and money laundering committed in the course of the 1st Applicant's public functions.

[86] On 31 March 2023, in EXP01 of 2023, the Supreme Court made a Restraint Order in respect of the assets of the 1st Applicant. Mr Stephenson avers that he is duly authorised to swear this affidavit on behalf of the Respondent to assist the Court in relation to the Applicants' motion in CM138/2024 seeking variation of the Restraint Order, specifically to permit payment of legal disbursements and personal expenses. He refers to paragraph 1(b) of the said Order, which states:

"This Order shall allow for the payment of living and legal expenses of Mukesh Valabhji as the Court thinks fit upon application being made to this Court by Mukesh Valabhji, as permitted under section 27(2) of the Anti-Money Laundering Act 2006 (as amended)."

RETAINER LEGAL FEES, DISBURSEMENTS AND EXPENSES

[87] The Respondent agrees, subject to the Court's approval, that the 1st Applicant may make payment of monthly retainer fees for local lawyers, provided that the relevant bank account is identified and that the account contains sufficient funds. Such payments must be made upon presentation of properly drawn invoices.

- [88] Further, the Respondent agrees that in relation to other legal disbursements and/or personal expenses, where a bank account has been identified and sufficient funds are held, the 1st Applicant may make an application for pre-approval of those expenses.
- [89] Mr Stephenson confirms that he has reviewed the supporting exhibits filed by Samantha Aglae and France Bonte in relation to disbursements, and by the Applicants regarding personal expenses. He notes that the requests to vary the Restraint Order for these payments were previously dealt with by the Supreme Court in its ruling in CM105/2024, delivered on 9 October 2024. In that ruling, Carolus J authorised payment of legal fees and certain disbursements but refused those not sufficiently supported by evidence. A copy of that ruling is produced and exhibited as KS/B1.
- [90] Having reviewed the new evidence submitted in CM138/2024, he agrees on behalf of the Respondent that most of the disbursement requests are now adequately supported by affidavit and exhibit. To assist the Court, he has created a schedule summarising the exhibits and the Respondent's position on each item. The schedule is exhibited and marked KS/B2. Amounts agreed by the Respondent are highlighted in green; those in dispute are highlighted in red.

ITEMS 1, 2 AND 3 ON THE SCHEDULE: PERSONAL EXPENSES OF THE 2ND APPLICANT

- [91] Mr Stephenson avers that the invoices at items 1, 2 and 3 of KS/B2, exhibited by the 1st Applicant as MV3, MV4, and MV5, relate to dental, optical, and other personal expenses incurred by the 2nd Applicant in June and August 2023.
- [92] He notes that the 1st Applicant claimed the 2nd Applicant had to withdraw her claim for personal expenses as the Respondent was opposing them and Carolus J was inclined to

agree with the Respondent. However, Mr Stephenson avers, based on information received from the Respondent's counsel present in court, that the 2nd Applicant withdrew her claim following the learned Judge's indication that she required up-to-date bank statements evidencing the balances in the 2nd Applicant's personal accounts.

[93] The Respondent's position remains that the restrained funds are suspected proceeds of criminal conduct. The 2nd Applicant has access to significant personal funds within Seychelles. As such, there is no justification for allowing the dissipation of the 1st Applicant's restrained funds to satisfy personal expenses of the 2nd Applicant. This would impose additional strain on the limited funds held in the Nouvobanq accounts (as shown in exhibit MVA (1) of the 1st Applicant's further Affidavit of 27 November 2024) which are earmarked for legal fees and disbursements.

[94] Mr. Stephenson avers that the 2nd Applicant holds at least two personal bank accounts in Seychelles:

a) Al Salam US Dollar Account No. 500000012915, with a balance of USD 286,329.92 as at 23 November 2023.

b) Nouvobanq Seychelles Rupee Account No. 0120107253007, with a balance of SCR 925,750.42 as at 6 May 2024.

c) A copy of the Al Salam Bank statement is produced and exhibited as KS/B3. As at 31 March 2023, the balance was USD 551,026.64. On 5 April 2023, USD 147,058.82 was transferred out. The remaining balance of USD 286,329.92 post-dates the invoices now relied upon.

d) A copy of the Nouvobanq statement is exhibited as KS/B4. The balance on 31 March 2023 was SCR 2,004,885.38. Numerous withdrawals were made thereafter, including:

i. SCR 250,000 on 18 April 2023

- ii. SCR 93,272.59 on 6 December 2023 (to Victorian Bathrooms)
- iii. SCR 275,000 on 12 December 2023
- e) Other cheque withdrawals totalling hundreds of thousands of rupees

[95] He avers that the 2nd Applicant has had access to and made significant withdrawals from her personal accounts. Despite this, she has chosen not to pay the invoices now submitted in support of the application. He believes she still has sufficient means to do so.

ITEM 6 ON THE SCHEDULE: ACCRUED FEES OF SAMANTHA AGLAE

[96] Referring to paragraph 6 of Samantha Algae's affidavit dated 13 November 2024, he avers that the invoice dated 5 August 2024 (exhibit SA3) has already been addressed. The 1st Applicant was previously authorised to pay the retainer fee element of €84,000 from a specified Nouvobanq account pursuant to paragraphs 15 and 25B(iii) of the ruling of 9 October 2024. No further order is required absent explanation for non-compliance with the previous ruling.

ITEM 17 ON THE SCHEDULE: INVOICE FROM AU CAP PUBLICATIONS

[97] Mr. Stephenson notes that the invoice for SCR 47,000 produced as SA27 by Samantha Aglae was previously refused by Carolus J in the ruling dated 9 October 2024. The Respondent maintains its objections to this item on the following grounds:

- a) The invoice is insufficiently particularised, lacking dates, services rendered, and cost breakdowns.
- b) It does not specify the number of pages printed, the cost per page, or any discounts.

c) The explanation provided in paragraphs 11 and 12 of Samantha Aglae's affidavit does not account for the absence of monthly invoicing nor explain why the claim was not made in the May 2024 application.

[98] Mr. Stephenson respectfully invites this Honourable Court to make the following orders:

- a) That the 1st Applicant be allowed to make payment from a specified bank account for the disbursements incurred by Samantha Aglae, amounting to SCR 19,645.72 and €243.68 respectively.
- b) That the 1st Applicant be allowed to make payment from a specified bank account for the disbursements incurred by France Bonte, amounting to SCR 900.
- c) That the application for payment of personal expenses of the 2nd Applicant and the disbursement related to Au Cap Publications be refused.
- d) That the 1st Applicant be allowed, as of January 2025, to pay the future retainer fees of Ms Aglae and Mr Bonte from a specified bank account containing sufficient funds, subject to submission of properly particularised monthly invoices.
- e) That the 1st Applicant be allowed to apply for pre-approval of reasonable future legal disbursements and personal expenses (in respect of himself) from a specified bank account with a sufficient balance, identified to the Court and the Respondent.

APPLICANTS FURTHER WRITTEN SUBMISSIONS –03 APRIL 2025

[99] The 1st and 2nd Applicants submit these arguments in reply to the Respondent's further submissions dated 24 March 2025. The Respondent maintains its opposition to the reimbursement of expenses incurred on behalf of the 2nd Applicant, the reimbursement of SCR 47,000.00 paid by Counsel Samantha Aglae to Au Cap Publications, and the transfer

of SCR 75,000.00 into Ms Aglae's client account for ongoing petty cash and litigation-related expenses.

[100] The Applicants reiterate their earlier submissions and emphasise that the 1st and 2nd Applicants are **lawfully married and not subject to a regime of separation of property**. Under Seychelles law, a husband has a continuing obligation to support his wife, including during periods of incarceration. The 1st Applicant is therefore legally and morally entitled to cover the personal expenses of the 2nd Applicant from assets over which he holds a proprietary or beneficial interest.

[101] The Applicants argue that the invoice issued by Au Cap Publications is clear and properly explained in the sworn affidavit of Samantha Aglae, who is an officer of the Court. The Respondent's refusal to allow reimbursement appears to be driven solely by concern for asset depletion, rather than fairness or respect for counsel's right to be repaid for expenses legitimately incurred.

[102] The Applicants further submit that the Respondent is applying a double standard. Foreign legal counsel has been permitted to receive estimated legal fees and reimbursements for expenses up front, and significant sums have already been disbursed into a foreign counsel's account without prior approval of each itemised expense. Local counsel, by contrast, is being refused a far more modest request for a quarterly sum of SCR 75,000.00 to be transferred into Ms Aglae's client account to manage ordinary case expenses.

[103] The Applicants contend that the proposal made for local counsel is even more conservative than the arrangements approved for foreign counsel. Instead of seeking a large estimated figure for the entire duration of the trial, local counsel is merely requesting quarterly advances of a fixed sum to be disbursed strictly in accordance with the Restraint Order.

Every expense paid from that account would be justified through itemised receipts submitted to the Court Registry within 7 days of disbursement.

[104] It is submitted that the Respondent's refusal reflects an unfounded assumption that local practitioners cannot be trusted to manage litigation funds in accordance with their legal and ethical obligations. This inference is both disrespectful and prejudicial. The Applicants find it particularly objectionable that this position is supported by Mr. Stephenson, a foreign national working in Seychelles, and by other foreign lawyers appearing on behalf of the Respondent.

[105] The Applicants further submit that any system requiring prior judicial approval of individual litigation expenses would be cumbersome, inefficient, and a misuse of judicial time. The need to file separate motions for expenses such as printing trial bundles, photocopying, witness accommodation, or other logistical costs would delay proceedings significantly, particularly as rulings on such motions may take up to eight weeks. The trial in CR 4 of 2022 is scheduled to resume on 10 April 2025, and logistical arrangements for foreign witnesses are already hindered by the inability to secure timely funds.

[106] With regard to the Respondent's concern that the Court cannot know in advance how the SCR 75,000.00 would be spent, the Applicants contend that the same argument could apply to foreign counsel, yet that concern has not precluded the approval of much larger advance payments in their case. The proposed local system includes post-payment accountability through the filing of receipts and is fully aligned with the ethical and audit obligations imposed on client accounts under the Legal Practitioners Act.

[107] On the question of the authority of Kevin Stephenson to swear affidavits on behalf of the ACCS, the Applicants maintain that Mr. Stephenson lacks the legal capacity to do so in the absence of an express written delegation. Section 9 of the Anti-Corruption Act provides

that the Commissioner may delegate investigatory functions to officers in writing, but this delegation does not include the authority to swear affidavits in restraint order proceedings unless explicitly provided.

[108] The Applicants draw a distinction between the ACCS and the Attorney General. The Attorney General's authority to delegate legal powers to subordinate officers, including the swearing of affidavits, is expressly provided for in Article 76 of the Constitution and sections 63 and 64 of the Criminal Procedure Code. That delegation framework has been recognised by the Court of Appeal in *Intershore Consult v Govinden* (2013) SLR 469. The Anti-Corruption Act contains no equivalent provisions permitting such delegation in respect of the swearing of affidavits.

[109] In conclusion, the Applicants submit that the Respondent's position is inconsistent, discriminatory, and unsupported by law. The proposed system for local counsel disbursements is legally sound, procedurally fair, and essential for ensuring the Applicants' right to a fair trial. The continued objections to the reimbursement of valid expenses and the management of litigation funds through audited client accounts should be dismissed.

RESPONDENT'S FURTHER WRITTEN SUBMISSIONS – 19 MAY 2025

[110] These further submissions are in response to the Applicants' submissions dated 3 April 2025 ("Applicants' Submissions in Reply"), which replied to the Respondent's written submissions of 24 March 2025 ("Respondent's Submissions"). The Respondent has already addressed the substance of the Applicants' submissions in reply and maintains its position as set out in the Respondent's submissions.

[111] As to paragraph 1 of the Applicants' submissions in reply (concerning payment of the 2nd Applicant's personal expenses), the Court is respectfully referred to paragraphs 3(a) to (c),

4 and 5 of the Respondent's submissions. As to paragraph 2 of the Applicants' submissions in reply (concerning payment of the Au Cap invoice), the Court is respectfully referred to paragraph 13(d) of the Respondent's Submissions.

[112] Paragraphs 3 to 7 of the Applicants' Submissions in reply concern the mechanism of payment of the disbursements of local counsel. The history of this aspect of the application is somewhat confused. The relevant chronology is summarised below for the Court's assistance:

[113] In their original Notice of Motion dated 14 November 2024, the Applicants prayed at 19(b)(iii) for an order in the following terms (emphasis added):

i) To allow a quarterly payment of a petty cash of SCR 75 000 to be paid to Local Counsel, Samantha Aglae's client Account No 1090876 held at ABSA Seychelles Bank or alternatively to allow the Applicants to file applications for pre-approval by the Court for payment of legal and personal expenses in respect of pending and future expenses in accordance with the allowable expenses under the Restraint Order.

[114] In its Affidavit in Response dated 6 December 2024, the Respondent, agreeing to the second (but not the first) of the Applicants' alternative proposals, invited the Court at paragraph 18(v):

i) To make an order allowing the 1st Applicant to apply to the Court for pre-approval of reasonable future legal disbursements and personal expenses relating to himself, as of January 2025, from a specified bank account identified to the Court and Respondent with sufficient balance to meet such expenses.

[115] In their Joint Affidavit in reply dated 21 January 2025, the Applicants:

i. averred at paragraph 6:

"That the proposal by the Respondent for pre-approval of all disbursements for our Local Counsels instead of a quarterly payment of a petty cash of SCR 75 000 to be paid to Samantha Aglae's client Account [...], as proposed by us, is a cumbersome process that hinders our defence and wastes Court's time [...]"

ii. prayed at paragraph 25(a)

(iii) for the grant of an order:

"to allow a quarterly payment of a petty cash of SCR 75 000 from the 1st Applicant SIMBC Limited (Nouvobanq) SCR bank account[...] to be paid to Samantha Aglae's SCR client account [...] for payment of personal and legal expenses for the Applicants in respect of pending and future expenses in accordance with the allowable expenses under the Restraint Order."

d. The Applicants have from that point no longer pursued their originally proposed alternative approach involving pre-approval of expenses by the Court (reproduced in bold at 5(a) above).

[116] The Applicants' characterisation of pre-approval of disbursements as "the proposal by the Respondent" in their joint Affidavit is therefore misleading. As noted by Mr Kevin Stephenson in his further Affidavit dated 03 February 2025, the proposal was in fact the second alternative originally proposed by the Applicants themselves, to which the Respondent has agreed.

[117] The Applicants have abandoned their proposal for Court pre-approval of disbursements and have sought in submissions to reframe their prayer regarding payment of

disbursements. However, the Respondent maintains its previous submission that it is the second of the Applicants' original proposals concerning expenses, requiring pre-approval, and reproduced in bold at 5(a) above, that would be the appropriate mechanism in this case for reimbursement of properly incurred expenses from restrained funds.

- [118] Moreover, this issue has already been before the Court and ruled upon by Carolus J. In CM75 of 2024, as set out at paragraph 16 of Carolus J's ruling, the Applicants prayed for an order permitting:

“future payments from the CFH Investments Limited Account and the SIMBC Nouvobang Account, for the monthly retainer and incurred expenses of local counsel as per invoices lodged with the Registrar's office within 15 days of payment being made until the conclusion of the Case CR04 of 2022 and CRI 14 of 2021, without the need to make fresh variation application each time.”

- [119] In dismissing the application, Carolus J stated at paragraph 17 of her ruling on 2 August 2024:

“In my view this is not an ideal solution as the Court needs to have oversight over the sums being claimed and whether they are sufficiently particularised and supported by documentary evidence which pass the tests of admissibility, as demonstrated in the present application.”

- [120] In CM105 of 2024, as set out at paragraph 24 of Carolus J's ruling, the Applicants prayed for an order allowing the 1st Applicant to make:

“future payments from the SIMBC Limited account for the monthly retainer of local counsel as per invoices lodged with the Registrar's office within 15 days of payment being made

until the conclusion of the Case CR04 of 2022 and CR114 of 2021, without the need to make fresh variation application each time”

[121] In her ruling on 9 October 2024, Carolus J refused to make an order in those proposed terms (again at paragraph 24), referring to her earlier ruling:

“However it is the Court which has the power to vary a Restraint Order upon application being made to it under section 27(6) and not the Registrar. Furthermore, if the sums being claimed by counsels include disbursements over and above the retainer fee, as this court stated in CM75 of 2024 ‘this is not an ideal situation as the Court needs to have oversight over the sums being claimed and whether they are sufficiently particularised and supported by documentary evidence which pass the tests of admissibility’.

[122] Thus the Court has previously and repeatedly refused to make an order permitting the payment of disbursements of local counsel without them having first been pre-approved by the Court.

[123] The Respondent acknowledges that there may be legal disbursements of local counsel that are recurring in nature. The Respondent would agree, in the interests of saving the time of the Court and local counsel, that pre-approval may in principle be granted for the repeated payment of such recurring legal disbursements, provided that the application for pre-approval is properly substantiated by and particularised in evidence of the sum being claimed and the anticipated period and frequency of its recurrence.

[124] Such application for pre-approval should, as emphasised by Carolus J in her ruling in CM105 of 2024, be in the form of an application to the Court to vary the Restraint Order under section 27(6) of the Anti-Money Laundering Act 2006 as amended.

[125] As to paragraphs 8 to 10 of the Applicants' Submissions in reply (concerning the authority of Mr Kevin Stephenson to swear an affidavit on behalf of the ACCS), the Court is respectfully referred to paragraphs 10 to 15 of the Respondent's Submissions.

[126] The Respondent respectfully asks the Court to note that paragraph 18 of the Applicants' submissions has inaccurately cited section 9(1) of the Anti-Corruption Act 2016 (as amended). The correct provision is:

"9(1) The Commissioner

a) may sign documents on behalf of the Commission; and

b) may delegate any function of the Commissioner to any employee of the Commission."

[127] This Honourable Court is respectfully invited (with new additional proposed wording in prayer (e) italicised):

- a) To allow the 1st Applicant to make payment from a specified bank account for the agreed disbursements incurred by Ms Aglae which amount to SCR 19 645.72 and EUR 243.68 (see the totals of rows 4, 5 and 7 to 16 in the table exhibited by Kevin Stephenson, exhibit KS/B2).
- b) To allow the 1st Applicant to make payment from a specified bank account for the agreed disbursements incurred by Mr France Bonte amounting to SCR 900.
- c) To refuse the applications for personal expenses of the 2nd Applicant and any disbursements on her behalf, subject to having sight of up to date bank statements of the 2nd Applicant.
- d) To make whatever order this Court sees fit in respect of allowing the 1st Applicant to make payment of future retainer fees as of January 2025 for Ms Samantha Aglae and

Mr France Bonte from a specified bank account held by the 1st Applicant upon being satisfied that it contains sufficient funds to meet such fees and on the submission of properly particularised monthly invoices to the bank and Court.

- e) To make an order as sought in the Applicants' original prayer, allowing the 1st Applicant to apply to the Court for pre-approval of reasonable pending and *future occasional and recurring legal disbursements and his personal expenses, from a specified bank account identified to the Court and Respondent with sufficient balance to meet such expenses.*

FURTHER SUBMISSIONS ON BEHALF OF THE 1ST AND 2ND APPLICANTS IN RESPONSE TO RESPONDENT'S SUBMISSIONS OF 19 MAY 2025

[128] The Applicants submitted that in paragraph 18(a) and (b) of the Respondent's further submissions dated 19 May 2025, the Respondent is agreeable to part payments specified in prayers (b)(i) and (ii) of the present Application being made from a specified account. These payments include SCR 19,645.72 payable to Ms. Aglae and SCR 900 payable to Mr. Bonte.

[129] The Applicants submitted that the full amounts claimed as disbursements by Ms. Aglae were legally and legitimately incurred, and she should be paid in full. It was submitted that both items at prayer (b)(i) and (ii) can be paid from the 1st Applicant's SCR account at Nouvobanq (Account No. 01201002577018), as evidenced by Exhibit MVa(1). The Court was urged to make an immediate order to that effect, without the need for further process.

[130] In respect of paragraph 18(d) of the Respondent's submissions, where it was stated that the Court may make any order it deems fit to allow the 1st Applicant to pay retainer fees upon proper invoices and subject to sufficient funds, the Applicants submitted that the Court should immediately order the payment of the Local Counsel's retainer fees for the period January to June 2025.

- [131] It was specifically submitted that the retainer fees of Samantha Aglae for January to June 2025 be paid from the 1st Applicant's USD bank account at Deutsche Bank AG (Singapore), account number 8013310.001 held in the name of Golden Dragon International Investments S.A. ("Golden Dragon Account"). Likewise, the retainer fees of France Bonte for the same period be paid from the same Golden Dragon Account.
- [132] The Applicants further submitted that the Respondent had misconstrued the alternative prayer set out at paragraph 19(b) (ii) of the Application. The intention, it was clarified, was for the Local Counsel to be treated similarly to Foreign Counsel, in that a pre-approved budget be established for retainer payments, and funds be released to Ms Aglae who would in turn disburse payments upon receipt of properly supported invoices from herself and Mr Bonte, mirroring the existing Zaiwalla protocol.
- [133] However, the Applicants acknowledged that this particular alternative proposal was no longer relevant due to the lapse of six months since the original filing of the Application and in view of the final paragraph of the Respondent's most recent submissions.
- [134] Finally, the Applicants submitted that urgent payment to Ms Aglae is essential. The 1st Applicant is presently without lead counsel, and the continued non-payment of fees places the defence in jeopardy. Should Ms Aglae withdraw from representation in CR 04 of 2022, it would likely compel Foreign Counsel for the 2nd Applicant to also withdraw, as they are administratively and legally tied to Ms. Aglae's law chambers.

RESPONDENT'S FURTHER WRITTEN SUBMISSIONS IN RESPONSE TO THE APPLICANTS' FURTHER SUBMISSIONS DATED 2 JUNE 2025

- [135] The Respondent maintains its position as previously set out in its written submissions dated 24 March 2025 and its further written submissions dated 19 May 2025.

- [136] The Respondents argue that the Applicants appear to conflate the issue of legal fees and disbursements. The Respondent has, in its previous prayers, already invited the Court to make whatever order it sees fit to allow payment of future retainer fees for Ms Samantha Aglae and Mr France Bonte. The Respondent has at no stage taken issue with the payment of legal fees properly incurred by the Applicants.
- [137] The “*alternative prayer*” referred to is the prayer originally set out at paragraph 19(b)(iii) of the Application dated 14 November 2024 (“the Application”). That prayer is understood to relate to personal and legal expenses, not to professional fees. The Respondent maintains that the appropriate mechanism for the reimbursement of such expenses is that originally proposed by the Applicants, namely court pre-approval, in accordance with the ruling of Carolus Jin CM75 of 2024 dated 2 August 2024.
- [138] The Respondent agrees that properly incurred fees and the agreed expenses should be paid and notes that the Applicants now propose that legal fees be paid from the account of Golden Dragon International Investments SA, account number 8013310001 (“the Golden Dragon Account”). This is a new proposal introduced without any corresponding application to amend the prayers in the Application, which expressly proposed payment from the 1st Applicant’s SIMBCL (Nouvobanq) account.
- [139] The issue of the payment of legal fees from the Golden Dragon Account is presently the subject of separate and ongoing proceedings before this Court in Case No CM18 of 2025. In that matter, as in this one, the Applicants have failed to provide any supporting evidence concerning the source, nature, or status of the Golden Dragon Account.
- [140] The Respondent has objected to the payment of legal fees from the Golden Dragon Account in those proceedings, as detailed in its written submissions dated 16 May 2025 in CM18 of

2025. The Respondent maintains that objection in the present proceedings for the same reasons.

- [141] It is respectfully submitted that the Court should not grant permission for the payment of legal fees from the Golden Dragon Account in this matter until it has ruled on the very same issue in Case CM18 of 2025

ANALYSIS AND DETERMINATION

- [142] Section 27(1) and (2) of the Anti-Money Laundering Act 2006, as amended provide as follows.

“27(1). The court may by order (in this Act referred to as a “restraint order”) prohibit any person from dealing with any realizable property, subject to such conditions and exceptions as may be specified in that order.

(2) Without prejudice to the generality of subsection (1), a restraint order may make such provision as the Court thinks fit for living expenses and legal expenses of the defendant where the court considers it essential to do so”.

- [143] Reading of Section 27 (2) of the Anti-Money Laundering Act, 2006 as amended, instructs the court, that statutorily, it is empowered to vary a restraint order to provide for living expenses and legal expenses, and that words “*as the court thinks fit*” means, that the court does have a discretionary power to make such decision where it is of the view that it is essential to do so. That being the legal position, means, that even when it comes to living expenses and legal expenses, the expenses have to be reasonable.

[144] In the case of *Rene v Anti-Corruption Commission of Seychelles (CM 171 of 2023) [2024] SCSC 126 (12 June 2024)*, Adeline J held that there is nowhere in any statute in Seychelles, where the term “judicial discretion” is defined, although, it is exercised regularly by the courts in our jurisdiction. The exercise of judicial discretion is exercised when a judge is conferred with a power under a statute as in the instant case, the Anti-Money Laundering Act, 2006, and it requires the court to choose between several different but equally valid courses of action. It is a discretionary power for the judge to decide justly based on the facts and circumstances of the case laid before it. In many statutes, such discretionary power is conferred on the court through the use of the following words, such as, “*as the court deems proper, as the court thinks reasonable, as the court otherwise direct,*” and under Section 27(2) of the Anti-Money Laundering Act 2006, as amended, “*as the court thinks fit*”.

[145] In this present application, the legal framework governing this application is section 27(6) of the Anti-Money Laundering Act, which empowers the Court to vary a Restraint Order to allow for the payment of reasonable living and legal expenses. The Court must be satisfied that such expenses are both necessary and properly particularized, and must at all times preserve the integrity of the Restraint Order. The statutory discretion must be exercised in a manner that ensures the fair trial rights of the accused are not compromised, while preserving assets that may be subject to forfeiture or confiscation.

[146] In CM75/2024 and CM105/2024, Carolus J addressed similar applications and declined to permit blanket advance payments of legal disbursements without prior court scrutiny. At paragraph 17 of her ruling in **CM75/2024 (dated 2 August 2024)**, she held: “*the Court needs to have oversight over the sums being claimed and whether they are sufficiently particularized and supported by documentary evidence which pass the tests of admissibility.*” This principle was reiterated in **CM105/2024 (ruling dated 9 October 2024)**, where the Court again declined to vest oversight authority in the Registrar alone, emphasizing that only the Court can authorize variations under section 27(6).

[147] The Respondent, the Anti-Corruption Commission Seychelles (ACCS), represented by **Mr. Kevin Stephenson, maintains that he does not object to the payment of properly incurred legal fees and has invited the Court to make appropriate orders to that effect.** However, the Respondent strongly resists the inclusion of personal expenses claimed by the 2nd Applicant, asserting that she has substantial personal funds in unrestrained accounts, namely her Al Salam USD Account and her Nouvobanq SCR Account, which remain accessible to her. These averments are supported by bank statements referenced in the Respondent's affidavit, which the 2nd Applicant has not rebutted.

[148] In relation to disbursements, the Applicants initially proposed two mechanisms: either the Court authorizes a quarterly petty cash payment of SCR 75,000 into counsel's client account, or alternatively, the Applicants file for pre-approval of expenses on a rolling basis. The Respondent supported the latter approach. However, in their joint Affidavit dated 21 January 2025 and in subsequent submissions, the Applicants now only pursue the former (i.e., quarterly payment), describing the pre-approval mechanism as "*cumbersome*" and prejudicial to their defence. The Respondent maintains, and the Court agrees, that a system of pre-approval ensures the integrity of the restraint regime and comports with the rulings of Carolus J in CM75/24 and CM105/24.

[149] The Applicants have also introduced a new proposal in their further submissions dated 2 June 2025, **seeking that legal fees be paid from the account of Golden Dragon International Investments S.A., account number 8013310.001.** This proposed variation is procedurally irregular, having not been raised by formal application nor supported by any documentary evidence. The Respondent points out that this issue is the subject of pending proceedings before the Court in CM18/2025 and submits that the current Court should not pre-emptively determine the matter.

[150] The Applicants raised an objection concerning the authority of Mr. Kevin Stephenson to swear affidavits on behalf of the ACCS. The Applicants argue that section 9(3) of the Anti-Corruption Act limits the Commissioner's power to delegate only investigative functions, and that no written delegation to Mr. Stephenson has been exhibited. They cite the authorities of *Elmasry and Anor v Hua Sun (SCA 28 of 2019)*, *D.L. de Charmoy v P.L. de Charmoy (SCA MA 08/2019)*, and *Pro Diving (Seychelles) (Pty) Ltd v JJ Spirit Foundation (MA 33/2023)*, where the Seychelles courts have consistently held that powers of attorney or written authorizations must be exhibited when a person purports to swear an affidavit on behalf of another.

[151] In *Pro Diving Case* (supra), this Court held that “*a mere averment that the deponent is a duly authorized representative of the Applicant does not suffice.. the Power of Attorney should have been exhibited in order for the Court to know in which capacity the Applicant is before the Court.*” Similarly, in *Elmasry Case* (Supra), Fernando PCA held that documents used in combination with affidavits must be exhibited, and that procedural defects in affidavits may render the application fatally defective.

[152] The Respondent submits that section 9(1) of the Anti-Corruption Act (Amended) provides that the Commissioner “*may delegate any function of the Commissioner to any employee of the Commission,*” and that Mr. Stephenson acts under this authority. However, no such *written authorization* was exhibited to the affidavit in question. This omission is material, and in light of the above authorities, the affidavit filed by Mr. Stephenson is procedurally defective. As held by Twomey JA in *Savoy Development Ltd v Salum (SCA MA 16 of 2021) [2021] SCCA 45*, the defect in the affidavit is fatal and cannot be waived either by the Court or the parties.

[153] In CM75/2024 and CM105/2024, Carolus J **clearly held that any payments sought from restrained funds must be substantiated by detailed documentation and subjected to judicial oversight, not left to administrative discretion or broad authorisations.** These

decisions were made on the basis of principle and remain binding unless appealed. Accordingly, the legal argument advanced by the Respondent, namely the need for transparency, specificity, and judicial supervision in the variation of a Restraint Order, continues to stand on its own merit. The integrity of the restraint regime would be compromised if payments were permitted without the procedural safeguards previously endorsed by this Court.

[154] The Applicants are entitled to reasonable legal fees and lawfully incurred disbursements, subject to approval by the Court. The proposed mechanism of lump-sum quarterly payments lacks sufficient control and contradicts existing precedent. The personal expenses claimed by the 2nd Applicant cannot be entertained in the absence of evidence that she lacks access to unrestrained funds. **The proposed use of the Golden Dragon Account must await resolution in CM18/2025.**

[155] In conclusion, while procedural objections have been raised as to the admissibility of Mr Kevin Stephenson's affidavit, particularly regarding the absence of exhibited authority, the substantive legal position of the Respondent remains supported by binding authority. The rulings of Carolus J in **CM75/2024 and CM105/2024** reaffirm the principle that judicial oversight is essential where payments are sought from restrained funds under a Restraint Order pursuant to section 27(6) of the Anti-Money Laundering Act 2006 (as amended).

[156] The Court has consistently rejected bulk or standing authorisations for disbursements in favour of a case-by-case, evidence-driven approach to ensure accountability, transparency, and proper control over restrained assets. The averments raised by the Applicants in relation to the payment of the 2nd Applicant's personal expenses, including the monthly retainer exhibited as Exhibit SA3, have already been determined by this Court in CM 105/2024 and will not be revisited in the present application.

[157] There remains no sufficient justification for allowing a generalised quarterly payment of SCR 75,000 to local counsel's client account without detailed oversight, particularly when previous applications for similar relief have been dismissed. Moreover, the existence of unrestrained personal assets in the 2nd Applicant's bank accounts opposes against allowing personal expenses to be met from the 1st Applicant's restrained funds.

[157] In light of the foregoing, I accordingly make the following orders:

a) I accordingly allow the 1st Applicant to make payment from **SIMBCL (Nouvobanq)** for the agreed disbursements incurred by Ms Samantha Aglae, amounting to:

i) Exhibit MM2 (1), 2 (2) and 2(3) amounting to SCR 2731.72

ii) Exhibit MMI amounting to SCR 440.00

iii) Exhibit SA 4-SA6, SA 9-SA13 amounting to SCR 16 290.00

iv) Exhibit SA 7 and SA 8 amounting to € 243.68

The total of which to be paid is SCR 19 461. 71 and € 243.68

b) I also allow the 1st Applicant to make payments from **SIMBCL (Nouvobanq)** for the agreed disbursements incurred by Mr France Bonte, Exhibit FB9, amounting to SCR 900.

c) I decline to grant the application in respect of the personal expenses of the 2nd Applicant and any disbursements on her behalf, unless and until up-to-date bank statements are furnished to show that she lacks sufficient unrestrained funds.

d) I allow the 1st Applicant to make payment of future retainer fees as from January 2025 for Ms Samantha Aglae and Mr France Bonte from **SIMBCL (Nouvobanq)** containing sufficient funds, subject to the submission of properly particularised monthly invoices to the Court.

e) I accordingly allow the 1st Applicant to apply to the Court for pre-approval of reasonable pending and future legal disbursements and his personal expenses from **SIMBCL (Nouvobanq)** identified to the Court and the Respondent, provided the account contains sufficient funds.

Signed dated and delivered at Ile du port on the 8th July 2025.



D. Esparon J.