

SUPREME COURT OF SEYCHELLES

Reportable

MA 172/2024

(Arising in MC 62/2023)

In the matter between:

THE GOVERNMENT OF SEYCHELLES

(Represented by Mr. Alvin Marie)

APPLICANT

And

RINO D'UNIENVILLE

of

Anse Possession

Praslin

(Represented by Mr. Basil Hoareau)

RESPONDENT

Neutral Citation: *The Government of Seychelles and Rino D'unienville* (MA 172/2024) (17 July 2025)

Before: Adeline J

Summary: Application for leave to allow oral evidence pursuant to Section 4(8) of the Proceeds of Crime (Civil Confiscation) Act ("POCCCA") in proceedings for interlocutory orders under Section 4 and 8 of POCCCA.

Heard: By submissions

Delivered: 17 July 2025

FINAL ORDER

Leave is granted for the Applicant to examine Sharifah Ernesta and Pamela Dugasse, two licensing officers viva voce during the hearing of the interlocutory application under Section 4 and 8 of POCCCA in MC 62/2023.

RULING ON MOTION

Adeline, J

- [1] The Government of Seychelles, the Applicant in MC 62/2023, has instituted legal proceedings in the Supreme Court against one Rino D'unienville, the Respondent, for orders of this court pursuant to Section 4 and 8 of the Proceeds of Crime (Civil (confiscation) Act, ("POCCCA") prohibiting the Respondent or such other person specified in the orders from disposing of or otherwise dealing with the whole or any part of the property, or diminishing the value of the property, namely, vehicle S 37456, a Brown Toyota CHR valued at SCR 450,000.00.
- [2] The Applicant's application is supported by an affidavit deposed by Sergeant ("Sgt") Dave Jeanne of the Seychelles Police Force, attached to the Financial Crime Investigation unit ("the FCIU") and the belief evidence of the said Sgt Dave Jeanne.
- [3] In the course of the proceedings, the Applicant, by Notice of Motion supported by an affidavit, applied to this Court for leave to examine two officers of the Seychelles Licensing Authority ("SLA") namely, one Sharifah Ernesta, and one Pamela Dugasse as viva voce witnesses during the hearing of the interlocutory application brought by the Applicant in MC 62 of 2023.
- [4] The facts giving rise to the application stem, in the context of vehicle S37456 transfer documents (exhibit DJ3) relied upon by the Applicant, and concerns a transaction allegedly involving unexplained cash used by the Respondent in the purchase of the motor vehicle. The affidavit of Sgt Dave Jeanne in support of the application, makes references to the SLA documents. The Respondent objects to the viva voce examination of the two officers, contending, that no good cause has been shown, and that the matter should proceed on affidavit evidence only.
- [5] Therefore, the key issue which has to be determined, is whether the Applicant has advanced sufficient justification under Section 4 (8) of the POCCCA, to depart from the default evidentiary procedure and permit oral testimony in support of the application.
- [6] Learned Counsel for both, the Applicant and the Respondent, tendered submissions for and against the grant of the order sought for.

SUBMISSIONS BY THE APPLICANT

- [7] Learned Counsel for the Applicant submits, that the Applicant filed an application on the 10th August 2023 for an Interlocutory and Receivership Orders pursuant to Section 4 and Section 8 of the POCCCA Act, in case bearing reference *MC62 of 2023* against the Respondent.
- [8] As submitted by Learned Counsel, the matter was heard on the 3rd July 2024 whereby the Applicant then moved the court to allow for two officers of the Seychelles Licensing Authority (SLA) to be examined on matters within their personal knowledge based on the matters averred in the Vehicle Transfer Documents dated 2nd August 2022 marked as DJ3 and attached to the affidavit of Sgt Dave Jeanne in support of the Application.
- [9] On the 8th July 2024, the Applicant filed a written application seeking leave of the court to allow counsel for the Applicant to examine two SLA officers, namely, Sharifah Ernesta and Pamela Dugasse, on matters within their personal knowledge during the hearing of the Application *MC 62 of 2023*.
- [10] On the 11th September 2024, the Respondent filed an affidavit in reply whereby he objected to the application *for viva voce* examination of the two SLA officers, on the basis that the Applicant had not advanced sufficient grounds or shown good cause as to why they have to be examined during the hearing of *MC 62 of 2023*.
- [11] The Applicant hereby provided written submissions and prayed that the Court grant the application for the examination of the two SLA officers during the hearing of *MC 62 of 2023*.
- [12] On the 13th September 2020, the Respondent was convicted of the offence of Trafficking and Conspiracy to traffic in Controlled drugs, namely Cocaine, having a net weight of 54.85 grams. He was given suspended sentence of imprisonment of three years and a fine of SCR 40,000.00 was imposed on him.
- [13] It is the submission of learned Counsel, that the Respondent purchased the specified property from one Sharon Labiche and the change of ownership vehicle form was dated 2nd August 2022. According to the change of ownership vehicle form, at the time of transfer, the specified property had the registration No S361 and Chassis No ZYX10

2007513, the purchase was for a sum of SCR 300,000.00 and the mode of payment was declared as “*cash*”.

- [14] It is also the submission of learned Counsel, that at the time of effecting the transfer of the specified property at the Seychelles Licensing Authority (SLA), the Respondent refused to provide the source and the origin of the funds which he had used to effect such a purchase to the relevant SLA officer.
- [15] Learned Counsel submits, that as can be seen from the exhibit DJ3, one Pamela Dugasse, the SLA officer who was on duty that day, wrote that the purchaser signed the document in her presence, and that “*Proof of SCR 80,000.00 only provided.*” She further described that “*he has paid the outstanding amount in cash, but he refused to provide any document.*” The SLA officer further recorded, that the Respondent herein stated that “*I en travayer dan Sesel*” therefore made a declaration of “*No Comment*” as to the source of the cash which was used to effect the purchase of the specified property.
- [16] Ms. Sharifah Ernesta, a SLA officer who was on duty, signed the change of ownership of vehicles document (Exhibit DJ3) and the vehicle transfer certificate for the Respondent’s purchase of the specified property.
- [17] On 10th August 2023, the Applicant filed an application for Interlocutory and Receivership Orders pursuant to Section 4 and 8 of the POCCCA Act in case MC62 of 2023 against the Respondent.
- [18] Counsel for the Applicant wishes to examine the SLA officers namely Sharifah Ernesta and Pamela Dugasse during the hearing of MC62 of 2023 to testify as to matters within their personal knowledge as the maker and signatories of the document.
- [19] Pursuant to Section 4(8) of the POCCCA, oral evidence may be adduced during an application made under Section 4 of the said Act if the Court shall so require or permit.
- [20] The Respondent has objected to the application to examine the two SLA officers on the basis that the **Applicant had not advanced sufficient grounds or shown good cause** as to why they had to be examined during the hearing of MC 62 of 2023.

- [21] However, the Applicant submits that Section 4(8) of POCCCA Act permits oral evidence to be adduced during an application made under Section 4 of the said Act if the Court shall so require or permit.
- [22] The Applicant further submits, that the reason for this application is that the two SLA officers were on duty on the day that the Respondent effected the purchase of the specified property, and given that the statements made to them by the Respondent are within their personal knowledge only, it is necessary for them to be examined orally so that they may testify accordingly.
- [23] Furthermore, it is submitted by learned Counsel for the Applicant, that the SLA officers are the makers and signatories of the documents and therefore it is imperative that they are orally examined as to the contents of the documents. In the circumstances, the Applicant prays for the Court to allow Counsel for the Applicant to examine the SLA officers, namely Sharifah Ernesta and Pamela Dugasse, to adduce oral evidence in the interest of justice.

SUBMISSIONS BY THE RESPONDENT

- [24] Learned Counsel for the Respondent submits, that the Respondent objects to the application. In his affidavit in reply, the Respondent had stated, that the application has “*no merits whatsoever*” and that the Applicant, the Government of Seychelles, “*has not advanced sufficient grounds or the basis or shown good cause*” for allowing the viva voce evidence of Sharifah Ernesta and Pamela Dugasse to be led. Counsel submitted, that there is “*no good grounds*” “*no sufficient cause*” and “*no basis advanced*” by the Applicant.
- [25] On to the law, Mr. Hoareau submits, that the application is brought under section 4 of the Proceeds of Crime (Civil Confiscation) Act, in respect of a request for an interlocutory order. He notes that the hearing had already commenced and evidence of Officer Jeanne had already been led. It was only after this that the Applicant, *viva voce*, sought leave to lead further oral evidence from the two SLA officers. Eventually, a written motion was filed.
- [26] Learned Counsel refers the Court to Section 4(7) (b) of the POCCCA Act, which requires an application to be supported by an *affidavit*. Section 4(8) of the Act states, “*Oral evidence*

may be adduced during an application made under this section if the Court shall so require or permit.” It is submitted by learned Counsel, that this provision shows, that the rule is affidavit evidence and oral evidence is the exception. The word “*permit*” implies, that leave must be sought and good cause must be shown, as the Court’s discretion must be exercised judiciously and within the law.

- [27] Learned Counsel cites Section 9 and Sections 3(8), 3(7) (d), and 24 of the Act, all of which reinforce the principle that proceedings should be conducted by affidavit unless the Court permits oral evidence. He refers the Court to the Proceeds of Crime (Civil Confiscation) Procedure Rules of 2016 (the Rules), specifically Rule 3(1), Rule 4(1), Rule 6(1), 6(2), and 6(5), which emphasize that affidavit evidence must relate to facts within the deponent’s personal knowledge and contain sufficiently specific averments to verify the grounds of the application.
- [28] Referring to rule 6(5) of the Rules, learned Counsel, states that after a matter is fixed for preliminary hearing, further affidavits can only be filed with leave of the Court or consent of all parties. Therefore, once a matter has passed the preliminary hearing stage, leave must be sought for any additional evidence, whether by affidavit or oral testimony.
- [29] Learned Counsel submits, that this is precisely where the Applicant has failed. The Applicant had knowledge of the document DJ3 from the outset, as it formed part of the affidavit of Sgt Dave Jeanne in support of the original application. It is the submission of Counsel, that the Applicant knew of the existence of the SLA officers and of their relevance to the matter, yet did not seek affidavits from them at that stage. He argues that the Court should ask, “*Why have you not led the evidence of these persons by way of affidavit?*” This is a key factor that the Court must consider.
- [30] It is further submitted by Counsel, that the Applicant’s motion merely states a wish to examine the SLA officers, but “*the Court cannot just act on the wish of counsel.*” The affidavit of Officer Jeanne does not explain why affidavits from Officer Ernesta and Officer Dugas were not sought at the appropriate time, and there is no attempt to explain why their evidence cannot be given in affidavit form.

- [31] Learned Counsel contends, that the application is vague and lacks explanation. It is not enough for the Applicant to say it is “*necessary*”; they must explain why. The Respondent had already filed an affidavit in response to the original application, and the Applicant cannot now “*move the goal post.*” This undermines the principle of fair hearing.
- [32] There was no indication that the SLA officers refused to swear affidavits or that new evidence came to light after pleadings closed. The Applicant has made no effort to show good cause. Learned Counsel submits, that this is a “*complete failure*” on the Applicant’s part and describes the application as “an abuse of process.”
- [33] Citing the Court of Appeal judgment in *Gill v Filmonzac*, Counsel emphasized, that “*the Court has a duty to intervene to put a stop to such misuse of legal and judicial process.*” Learned Counsel compares the Applicant’s plea to a party asking for “a life raft,” simply because their case has revealed Weaknesses.
- [34] Finally, it is reiterated by Counsel, that the Court should not come to the aid of a party who cannot justify its position. The discretion under section 4(8) of the Act must be exercised on the basis of “*good grounds, sufficient grounds, [and] good cause being shown.*” In the absence of a proper explanation for the failure to obtain affidavit evidence from the SLA officers, the Respondent submits that the application be dismissed.

DISCUSIONS OF THE LEGAL AND FACTUAL ISSUES.

- [35] The legal issue that is called for a determination in respect of this application, is whether, pursuant to Section 4 (8) of POCCCA, the Applicant has shown adequate grounds or good cause to justify allowing oral evidence to be adduced by two officers of the Seychelles Licensing Authority, namely, one Sharifah Ernesta and one Pamela Dugasse, both of whom were present when the Respondent registered vehicle S 37456 that is alleged to have been purchased using unexplained cash source.
- [36] In this regard, Section 4 (8) of POCCCA is relevant and of assistance for the Applicant to show adequate grounds or good cause to justify allowing oral evidence to be adduced by two officers of the Seychelles Licensing Authority, namely, one Sharifah Ernesta and one

Pamela Dugasse, both of whom were present when the Respondent registered vehicle S 37456, that is alleged to have been purchase using unexplained cash source.

- [37] In that regard, Section 4 (8) of POCCCA is relevant and of assistance for the purpose of making a determination on the legal issue. Section 4 (8) of POCCA reads;

“Oral evidence may be adduced during an application made under this Section if the Court shall so require or permit.”

- [38] Under this statutory provision, the court is vested with a discretionary power to allow oral testimony during interlocutory application under Section 4 of POCCCA. However, such a discretion must be exercised judiciously and in line with the procedural frame work under POCCCA and its subsidiary rules. It is well settled, that proceedings under POCCCA are primarily conducted on affidavit evidence. (see Section 3,4 and 9 of POCCCA and Rules 3-6 of the Proceeds of Crime (Civil Confiscation) Procedure Rules 2016, with oral evidence being exceptional, and subject to good cause being shown.

- [39] However, the term *good cause* is not specifically defined under POCCCA, nor in the Proceeds of Crime (Civil Confiscation) Procedure Rules 2016 (“the POCCCA rules”. Nonetheless, the meaning of ‘good cause’ in POCCCA applications, particularly under Section 4 (8) which allows oral evidence where the court “*shall so require or permit*”, must be interpreted contextually and judicially, in line with the principles of fair hearing, procedural integrity, and necessity.

- [40] In the case of *Financial Intelligence Unit vs Mares Corp (SCA 48 of 2011)* [2011] SCCA 33 (9 December 2011) the court held;

“I am of the view, that the decision to grant or refuse an interlocutory order at this stage is purely based on affidavit evidence before it. This is made clear by the provisions in Section 4 (8) that “Oral evidence may be adduced during an application made under this Section if the court shall so require or permit.” This, is my view is purely at the discretion of the court. Cross examining the deponent of any affidavit filed, will however be the right of the party opposing its contents.”

- [41] These reasoning affirms, that in applications made under Section 4 of POCCCA, the decision of whether to grant or refuse an interlocutory order must be based solely on the affidavit evidence put before the court, unless the court, in exercise of its discretion permits oral evidence under Section 4 (8). Therefore, under Section 4 (8) of POCCCA, oral evidence is exceptional, and therefore, the court is not obliged to permit it unless it deems it necessary for the fair determination of the matter.
- [42] In the case of Hackl vs Financial Intelligence Unit (FIU) & Anor (1 of 2009) [2010] SCCC1 (2nd June 2010), the constitutional court held that;
- “The court in this instance issues an interlocutory order after the evidence, either by way of affidavit or oral evidence in terms of sub Section (8) is led in the presence of both parties as this is an inter parte application. Therefore, a party cannot seek to complain that his or her rights are being infringed as he or she has been given the opportunity of being heard prior to the interlocutory order being made. At this stage, a court is free to use its discretionary powers to decide on whether or not to call for oral evidence, documentary evidence in the interest of justice, and could even permit cross –examination if the necessity demands as this is an inter parte application. However, such discretionary powers are vested strictly with the trial court.”*
- [43] Although, the term *good cause* is not expressly defined under POCCCA or the Rules, it must be understood contextually as requiring a legitimate, specific, and procedurally justified reason for departing from the standard evidentiary route. It is not enough for a party to simply state a wish to examine a witness viva voce.
- [44] In FIU vs Mares (Supra), the Court of Appeal affirmed that decisions on whether to issue interlocutory orders must, in principle, be based on affidavit evidence alone, unless the court, in exercise of its discretion, determines otherwise. It was further noted by the court, that while cross-examination of deponents is a right available to the opposing party, the calling of oral witnesses by the applicant is not automatic and must be justified. Similar reasoning was echoed in the Hackl vs FIU case (Supra), in which case the constitutional court confirmed, that although the trial court has the discretion to allow oral or

documentary evidence, and even cross-examination in the interest of justice, such discretion must be exercised cautiously and is strictly vested in the trial judge.

- [45] Accordingly, on account of both statutory provisions as well as case law that unless the Applicant demonstrates that the oral testimony of the SLA Officers is necessary for the fair resolution of a material factual dispute that cannot reasonably be resolved through affidavit alone, the application to call such witnesses ought not to be granted.
- [46] It is the argument of the Applicant, that both officers were on duty at the time the Respondent registered the specified vehicle S 37456 on the 2nd August 2022, and are therefore in possession of personal knowledge relevant to the transaction as reflected in the vehicle transfer document marked as exhibit D13.
- [47] It is noted, in particular, that officer Dugasse recorded that the Respondent provided proof of only SCR 80,000 and paid the balance in cash but refused to disclose the source of the funds. She further noted, that the Respondent made a “*no comment*” declaration regarding the origin of the cash. Officer Ernesta signed the change of ownership and transfer certificate documents.
- [48] It is the submission of the Applicant, that both officers are the makers and signatories of the document relied upon in support of the application. Their oral testimony is necessary to clarify the context and content of the transaction, especially given the Respondent’s failure to provide information about the source of the funds. The Applicant contends, that oral evidence is therefore justified under Section 4 (8) of the POCCCA, and should therefore be permitted in the interest of justice.
- [49] At this juncture, it is necessary to put Rule 6 (1) of the POCCCA Rules in perspective. It is submitted by the Respondent, that the averments in the affidavit of Sgt Dave Jeanne, the averments in respect of the Seychelles Licensing Authority is not based on facts in his personal knowledge, and therefore, it contravenes Rule 6 (1) of POCCCA which provides that “*the deponent of an affidavit shall only aver as to facts within his or her personal knowledge.*”

- [50] In case of *MVI Consulting Ltd v Financial Intelligence Unit & Ors* (MA 359/2016) 2017 SCSC 14 the court held, that *Rule 6 (1) applicable to proceedings taken under POCCCA should be distinguished from the provisions of Section 170 of the Seychelles Code of Civil Procedure which allows both belief averments and knowledge averments.*"
- [51] The court also cited the case of *Union Estate Management (Proprietary) Limited vs Herbert Mittermeyer* (1979) SLR 140, in which case Sauzier J explained what constitutes a proper affidavit, when he stated the following;
- "... an affidavit which is based on information and belief must disclose the source of information and the grounds of belief. It is therefore necessary for the validity of an affidavit that the affidavit should distinguish what part of the statement is based on information and belief should be disclosed."*
- [52] In *Erne vs Brain and Ors* SC 1271/2011 (unreported) the Supreme Court had this to say;
- "The court has on countless occasion laboured the point that affidavits are evidence and are therefore subject to the same rules of admissibility as other evidence. In the present affidavit, it may well be that the deponent may have been told by the Plaintiff what her wishes are but that is hearsay evidence and is inadmissible. The deponent may however have personal knowledge of some of the facts but that it is not stated in his affidavit. That distinction is essential and will validate or invalidate an affidavit. In this case it is the latter that applies."*
- [53] Therefore, Rule 6 (1) of POCCCA Rules requires, that the deponent of an affidavit must only aver to facts within his or her personal knowledge. This imposes a stricter evidentiary threshold than that found under Section 170 of the Seychelles Code of Civil Procedure, which permits averments based on belief or information, provided the source and grounds for belief are disclosed. Interestingly, in *MVI Consulting LTD vs Financial Intelligent Unit U* SCSC (2017 SCSC 14) the court makes the point, that Rule 6 (1) must be applied distinctly in POCCCA proceedings and does not allow for belief-based averments. In my considered view, this stricter rule is designed to ensure reliability in proceedings which may result in the restraint or forfeiture of property.

- [54] The principle was emphasized in *Union Estate Management vs Mittermeyer* (1979) SLR 140 in which case the court explained that affidavit relying on information and belief must clearly identify the source and the basis of the belief. Nonetheless, this principle is not sufficient under POCCCA as it requires strict personal knowledge. Similarly, in *Erne vs Brain* (SC 127/2011) the court reiterated, that affidavits are evidence and are subject to the same rules of admissibility as other evidence, including the exclusion of hearsay.
- [55] In the instant case, the Respondent's objection is that Sgt Dave Jeanne's affidavit contains averments regarding the Seychelles Licensing Authority and the vehicle transfer documents (D13). This, therefore, emphasises the need for oral testimony of the SLA officers for the fair resolution of a material factual dispute that cannot be reasonably resolved through affidavit evidence alone.
- [56] Within the background of the above discussions, and having given due consideration to the objection raised by the Respondent in the light of the principles and case law authorities cited above, it is my considered view, that the Applicant in this matter has shown sufficient and legitimate grounds to justify the examination of the two SLA officers, Sharifah Ernesta and Pamela Dugasse, under Section 4 (8) of the Proceeds of Crime (Civil Confiscation) Act 2008.
- [57] This is because their anticipated evidence relates directly to material facts within their personal knowledge, since they were present at the time the Respondent registered the vehicle, and recorded first hand the Respondent's refusal to disclose the source of funds. It appears, that this piece of information forms a crucial part of the Applicant's case and is not capable of being adequately clarified or tested as to its *veracity* and *credibility* through affidavit evidence alone, particularly, the fact that the Respondent objects to what it considers as hearsay in the affidavit of Sgt Jeanne under Rule 6 (1) of the POCCCA Rules.
- [58] Therefore, in conclusion, based on the above analysis and discussions of the facts of the instant case as put before this court in the light of the law, albeit statutory or otherwise, I am inclined in favour of permitting oral evidence in this matter. To that end, I therefore grant the Applicant's application to examine Sharifah Ernesta and Pamela Dugasse viva

voce during the hearing of the interlocutory application in MC 62 of 2023 in the interest of justice and procedural fairness for a just determination of this interlocutory application.

Signed, dated and delivered at Ile du Port 17th July 2025.

