

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA

CIVIL JURISDICTION

2019-HC-DEM-CIV-FDA-299

BETWEEN:

In the matter of Section 82 of the *Anti-Money Laundering and Countering the Financing of Terrorism Act CAP 10:11* The Commissioner of Police as represented by Mr. Sydney James, Assistant Commissioner of Police and Head of the Special Organised Crime Unit.

-and-

In the matter of an Application made on notice by the Commissioner of Police of the Guyana Police Force for **Civil Forfeiture** of currency namely the sum of forty-eight thousand five hundred and sixty United States of America currency (US\$48,560.00) and fourteen hundred dollars Guyana currency (G\$1400.00) seized and detained, property of Kevin Gordon.

-and-

COMMISSIONER OF POLICE

Applicant

-and-

1. KEVIN GORDON

2. DEON WILLIAMS

Respondents

The Honourable Justice Navindra A. Singh, Puisne Judge

Ms. Leslyn Noble for the Applicant

Mr. Everton Singh-Lammy for the Respondent

Delivered November 13th 2020

DECISION

The Applicant applies herein for a Civil Forfeiture Order under section 82 of the Anti-Money Laundering and Countering the Financing of Terrorism Act; CAP 10:11 of the Laws of Guyana [the Act will hereinafter be referred to as the AMLCFTA].

On May 28th 2017 the First Named Respondent [FNR], who was under surveillance by the Customs Anti-Narcotics Unit [CANU] for trafficking in narcotics was detained and searched by officers of CANU and during that search the currency which is the subject of this Application was found in his haversack.

The FNR could not account for the source of the monies and told the officers that he was simply entrusted with the monies to deliver to a person whose identity had not yet been disclosed to him.

He claimed that the Deon Williams [the Second Named Respondent [SNR]] was the owner of the monies.

The monies were detained and such detention is allowed under section 37A(1) of the AMLFCTA since it was in excess of ten million dollars and the officers would have had reasonable grounds for suspecting that the currency was derived from a serious offence with respect to the FNR, considering that he was under surveillance for suspected trafficking in narcotics.

Counsel for the SNR submits that the currency was less than ten million dollars based on an exchange rate of G\$204.4 to US\$1.

This submission must be rejected for the following reasons;

- I. There is no evidence before the Court that that was in fact the rate of exchange on May 28th 2017.
- II. The SNR in his witness statement dated February 10th 2020 claims that the sum was equivalent to G\$9,954,800.00 which reflects an exchange rate of G\$205 to US\$1.
- III. The SNR in his affidavit of defence dated October 16th 2019 claims that the sum was equivalent to G\$10,058,000.00 which reflects an exchange rate of G\$207.125 to US\$1.

It is obvious to the Court that the manipulation of the figures is a rather poor and obvious attempt by Counsel for the SNR to cunningly convince the Court that the initial detention of the monies were unlawful.

Following this seizure, detention orders were granted by the Court to further detain the monies, and the Applicant then filed this Application for a Civil Forfeiture Order naming the FNR as the Respondent.

That Application was based on the predicate offence of trafficking in narcotics contrary to section section 5 (1)(a)(i) of the Narcotics Drugs and Psychotropic Substances Control Act; CAP 10:10 of the Laws of Guyana.

Based on the fact that the FNR was maintaining that the monies were the property of the SNR, the Court ordered that the SNR be joined as a party to these proceedings thereby giving him an opportunity to be heard in accordance with section 82(6) of the AMLCFTA.

The SNR contended that he buys and sells fuel and that in May 2017 he purchased 468 drums of fuel for the sum of G\$10,058,000.00 [ten million and fifty eight thousand dollars, Guyana currency] from 'Mikey' and since 'Mikey' is normally paid in United States currency he arranged for the Guyana currency to be converted into United States currency in Berbice.

He contended that the G\$10,058,000.00 [ten million and fifty eight thousand dollars, Guyana currency] was converted to US\$48,560.00 [forty eight thousand five hundred and sixty dollars, United States currency] which the FNR was *en route* to delivering to him [the SNR] when he was 'intercepted' by CANU.

The Applicant proceeded to trial based on the predicate offence of breach of the Petroleum and Petroleum Products Regulation 63(1) of the Guyana Energy Agency Act; CAP 56:04 of the Laws of Guyana [hereinafter referred to as the GEA Act]

The SNR's defence is that he is a businessman that buys and sells fuel and that the monies seized were monies converted from Guyana currency to United States currency to pay for the purchase of 468 drums of fuel.

The SNR having not claimed to be involved in any other business, the Court must conclude that the G\$10,058,000.00 [ten million and fifty eight thousand dollars, Guyana currency] and therefore the US\$48,560.00 [forty eight thousand five hundred and sixty dollars, United States currency] was obtained by him through the buying and selling of fuel.

The Applicant produced proof [Exhibit 'F'] that the SNR is not the holder of any licence issued by the Guyana Energy Agency and this was in fact confirmed by the SNR in his testimony to the Court.

This admission proves that the SNR is in breach of either Petroleum and Petroleum Products Regulation 63(1) or 63(2) of the GEA Act.

The Court can only make a Civil Forfeiture Order in accordance with section 82(2) of AMLCFTA if it is satisfied that the monies that are the subject of this Application are the proceeds of crime.

Section 79 of the AMLCFTA defines 'proceeds of crime' to mean any property obtained or received as a result of or in connection with the commission of a serious offence.

Section 2 of the AMLCFTA defines 'serious offence' to mean any offence against a provision of any law in Guyana, for which the maximum penalty is ... deprivation of liberty of not less than six months.

The penalty for breach of either Petroleum and Petroleum Products Regulation 63(1) or 63(2) of the GEA Act includes imprisonment for a period of three years.

In these circumstances the Court is satisfied that the monies seized and currently held under detention order/s issued by the Court are proceeds of crime.

Based on the foregoing the Court paragraph 1 of the Application and orders that the monies held under the detention order/s be transferred to the Consolidated Fund.

The Court awards the sum of \$1,500,000.00 as costs to the Applicant against the Second Named Respondent which is to be paid on or before December 18th 2020.

Justice N. A. Singh