

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

CIVIL JURISDICTION

**2018-HC-DEM-CIV-FDA-2215**

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 Seven million and eighty six thousand Guyana dollars (G\$7,086,000.00), Sixty eight thousand seven hundred and three United States of America currency (US\$68,703.00), One thousand seven hundred and forty one Trinidad and Tobago currency (TT\$1,741.00), Forty two thousand one hundred and forty Surinamese currency (SRD\$42,140.00), Twenty six thousand two hundred and five Eastern Caribbean currency (EC\$26,205.00), Fourteen Thousand nine hundred and forty five Euros (€14,945.00), Eight thousand seven hundred and ten Canadian currency (CDN\$8,710.00) and Seven thousand nine hundred and thirty British Pounds (£7,930.00) seized and detained from **Mohamed Jamalodeen Nazmodin**.

-and-

COMMISSIONER OF POLICE

Applicant

-and-

MOHAMED JAMALODEEN NAZMODIN

Respondent

The Honourable Justice Navindra A. Singh, Puisne Judge

Ms. Leslyn Noble for the Applicant

Messrs. Christopher Ram and Christopher Thompson for the Respondent

**Delivered April 15<sup>th</sup> 2019**

## 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].

### ISSUE I

The Court of its own motion will address the issuance of the search warrant that Superintendent of Police Trevor Reid states he executed to search the premises of the Respondent therein “unearthing” the currency that is the subject of this Application.

The Court observes that the **Search Warrant** was issued under the hand of Ashoke Kumar, a Justice of the Peace.

While it is permissible for a Justice of the Peace to issue such a warrant [see section 18 (2) of the Summary Jurisdiction (Magistrates) Act; CAP 3:05 of the Laws of Guyana], it is indeed bewildering to the Court that this Justice of the Peace was sought to issue this **Search Warrant** since Mr. Kumar resides on the East Bank of Demerara, more than 100 miles away from where the Respondent lives and the place where the **Search Warrant** was intended to be executed, in No. 79 Village, Corriverton, Berbice.

This further concerns the Court since there is a Magistrate's Court in Corriverton , in fact Superintendent Reid would have passed several Magistrate's Court travelling from Mr. Kumar's residence on the East Bank of Demerara to the Respondent's residence in Corriverton.

Further the **Information upon Oath** exhibited as the document that led to the issuance of the **Search Warrant** was not signed by Superintendent Reid though signed by Mr. Kumar.

The **Information upon Oath** is intituled in the "Georgetown Magisterial District" but declares that the oath was taken on the 8<sup>th</sup> day of June 2017 in the Springlands Magistrate's Court.

Sections 28 and 29 of the AMLCFTA address the obtaining of warrants in matters that come under the AMLCFTA and certainly the procedure purportedly adopted by Superintendent Reid was not contemplated by the drafters of the Act.

Further, any search warrant sought must be issued under the AMLCFTA. It has not been demonstrated to this Court that the warrant was issued, if in fact issued, under the AMLCFTA in so far as the Applicant has not satisfied the Court that the conditions set out in the aforementioned sections were satisfied.

The Court views the obtaining of the **Search Warrant** in this case as very suspicious. The Court finds that there was insufficient information in the **Information upon Oath** to warrant the issue of a **Search Warrant** under the AMLCFTA.

The Court is of the firm belief that the **Search Warrant** was sought from and obtained from Mr. Kumar because Superintendent Reid was fully aware that based on the information required to be provided in accordance with section 29 of the AMLCFTA to obtain a **Search Warrant** a Magistrate was not likely to have issued a **Search Warrant**.

There must be strict and honest compliance with the provisions of the Act.

The Applicant, clearly realising the less than acceptable circumstances surrounding the obtaining of the **Search Warrant** attempts to justify the search by stating that the Respondent consented to the search.

It is absurd to declare that a person consented to a search having presented a search warrant to the person.

### **CONCLUSION**

The Court finds that the **Search Warrant** was unlawful null and void and of no legal effect and since the AMLCFTA specifically requires a warrant to search premises, the search was unlawful and therefore anything said to be “unearthed” during the search cannot be used as evidence.

### **ISSUE II**

Counsel for the Respondent contends that the Applicant has improperly brought this Application under section 82 of the AMLCFTA.

Counsel for the Respondent contends that property that is capable of being the subject of a Civil Forfeiture Order pursuant to section 82 of the AMLCFTA must

be property that is already the subject of an Order under either section 80 or section 81 of the AMLCFTA.

The Court agrees with Counsel for the Respondent.

The general phrases used in Part VII of the AMLCFTA to refer to property that are the proceeds of crime are “**specified property**” or “**proceeds of crime**” [section 79 of the AMLCFTA].

Section 82 of the AMLCFTA makes reference to “*the property*” which is clearly a reference to property previously described under Part VII of the AMLCFTA beginning with section 79 of the AMLCFTA.

In other words, “*the property*” referred to in section 82 of the AMLCFTA is property described in section 80 and/ or section 81 of the AMLCFTA.

### **CONCLUSION**

The Court finds that this Application is improperly brought under section 82 of the AMLCFTA.

### **ISSUE III**

Has the Respondent committed the offence of Money Laundering contrary to section 3 of the AMLCFTA?

### **FACTS**

The Applicant alleges that the Respondent has engaged in the business of buying and selling foreign currency in breach of section 17 of the Dealers in Foreign Currency (Licensing) Act; CAP 87:01 of the Laws of Guyana.

The Applicant alleges that the currencies seized from the Respondent were obtained from his engaging in the serious offence of buying and selling foreign currency without a licence.

### **LAW**

The offence of Money Laundering involves the process of concealing the origins of money obtained from criminal conduct by disguising the original ownership and control of the proceeds to make such proceeds appear to have been derived from a legitimate source.

The offence of Money Laundering usually involves three basic phases;

- I. Placement which involves taking money (dirty money) that is derived from criminal activity (the predicate offence) and introducing it in to a financial system or using it to purchase an asset which can later be sold with payment from legitimate sources.
- II. Layering - this phase involves concealing the criminal origin of the proceeds (dirty money) such as selling the asset purchased during the placement phase.
- III. Integration - this involves introducing the “clean” money obtained during the layering phase into the economy such as depositing the money obtained in the layering phase.

A predicate offence is the offence which generated the criminal property that is now being laundered.

Although under the AMLCFTA it is not necessary to prove which predicate offence was committed [section 3 (2) of the AMLCFTA] or that any person was convicted of the predicate offence [section 3 (4) of the AMLCFTA], the Applicant must establish that the Respondent managed proceeds (money/ currency in this Application) knowing or having reason to believe that such proceeds were the proceeds of crime in such a manner as to enable it to be characterised as legitimate funds (clean money).

### **ANALYSIS**

In the present case it appears as though the Applicant is essentially saying that the predicate offence **and** the offence of money laundering was committed by the same act, that is, by the Respondent engaging in the business of buying and selling foreign currency in breach of section 17 of the Dealers in Foreign Currency (Licensing) Act he committed the offence of Money Laundering.

On this analogy, the individual who steals a wallet by pick pocket would be guilty of money laundering once the proceeds of the crime (larceny contrary to section 66 of the Summary Jurisdiction (Offences) Act; CAP 8:02 of the Laws of Guyana) are in his possession.

In this light a great number of offences under the Summary Jurisdiction (Offences) Act and some under the Criminal Law (Offences) Act should no longer be prosecuted since they can all be prosecuted as Money Laundering Offences.

In the current case, at best, the Applicant may only be able to establish that the Respondent committed an offence Dealers in Foreign Currency (Licensing) Act but nothing more.

The Applicant states that the file was sent to the Director of Public Prosecutions for advise and by the time it was returned the statutory time to institute a charge for that offence had passed.

Could that be the reason that the Applicant now attempts to pursue a sanction under the AMLCFTA.

### **CONCLUSION**

The Court finds that the offence of Money Laundering has not been established by the Applicant against the Respondent.

### **ISSUE IV**

The granting of the Detention Order under section 37(5) of the AMLCFTA.

The Applicant obtained an Order from the High Court under section 37(5) of the AMLCFTA to detain the currency the subject matter of this Application and the Applicant obtained **several** renewals of that Order.

Section 37(5) of the AMLCFTA clearly deals with the detention of currency which is being **imported into or exported from** Guyana.

There has been no allegation that the currency seized in execution of the purported warrant was currency being imported into or exported from Guyana.

Further, Detention Orders obtained under section 37(5) of the AMLCFTA can only be renewed on the basis that the currency detained will be produced before a Court

in proceedings against the person for an offence with which the currency is connected.

This is clear in the wording of section 37(5) of the AMLCFTA and made clearer on reading section 37(7)(b) of the AMLCFTA which section 37(5) of the AMLCFTA is subject to.

In addition it is undisputed that the Application for the initial Detention Order and all of the Applications made for renewal were obtained without notice to the Respondent.

Applications under section 37 of the AMLCFTA are not intended to be made without notice to the person who is alleged to be the owner of the currency seized.

### **CONCLUSION**

The Court finds that those Detention Orders were improperly obtained by the Applicant.

Based on the foregoing the Court hereby denies this Application for a Civil Forfeiture Order.

The Court Orders that all currencies seized from the Respondent and detained by the Applicant be returned to the Respondent forthwith.

The Court Orders that interest at the rate of 6% per annum be paid in Guyana currency based on the value of all of the said currencies in Guyana dollars calculated at the Cambio exchange rates listed by the Republic Bank (Guyana) Limited on April 15<sup>th</sup> 2019 for the period from June 8<sup>th</sup> 2017 until fully paid.

The Court awards the sum of \$500,000.00 costs to the Respondent against the Applicant.

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Justice N. A. Singh