

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU 084 OF 2018
(HBC 147 of 2017)

BETWEEN : ABINESH AJEET SINGH

Appellant

AND : 1. THE DIRECTOR OF PUBLIC PROSECUTIONS
2. WESTPAC BANKING CORPORATIONS, FIJI
3. SUNFLOWER AVIATION LIMITED

Respondents

Court : Almeida Guneratne, JA

Counsel : Mr J Sharma for the Appellant
Mr A Jack for the 1st Respondent
Ms M Fong for the 2nd Respondent
Mr A Narayan for the 3rd Respondent

Date of Hearing : 19 March 2020

Date of Ruling : 27 March 2020

RULING

- [1] This is a case in which the 1st Respondent (the original applicant, the DPP for the State) sought and obtained under and in terms of Sections 19C, 19D and 19E of the Proceeds of Crime Act (POCA) a Civil Forfeiture Order (CFO) a sum of money held in an account of the Appellant (Original 1st Respondent). The said CFO was obtained in the High Court of Lautoka by Ruling dated 27 July, 2018.
- [2] The original applicant (the DPP-State) had named Sunflower Aviation Limited (SFAL) as an “interested party” when he procured the said CFO against the Appellant.
- [3] When the present application for leave to appeal against the said judgment of the High Court was taken for hearing, Mr Narayan, seeking in effect a pre-audience to address this Court (without objection by the other parties) contended that, in the facts and circumstances of this case, his client is entitled to be cited and named as a Respondent to the Appeal that is on foot in which regard he submitted that, the 1st and 2nd Respondents are Nominal parties to the present Appeal and submitted further that, he was supporting the Appellant’s application for leave to appeal against the impugned judgment of the High Court, but is nevertheless seeking leave from this Court to file a Notice as a Respondent to the appeal advertent to the summons and affidavit filed of record dated 24 January, 2019.
- [4] However, Mr Sharma (for the Appellant) objected to the said “interested party” named as such in the High Court being named as a Respondent to his appeal relying on Section 13(3) of POCA as to the 6 months’ time limit contemplated therein (adverting in that regard to page 4 of his written submissions (at paragraph [9] therein) and submitting that, the said “interested party” was obliged to have had his name as a Respondent in the High Court and that this Court had no jurisdiction to accept such an “interested party” as a Respondent to his appeal.
- [5] In counter to that, Mr Narayan submitted that Section 13 of the POCA was on the merits of a substantive dispute and that it had nothing to do with how a party to a dispute had been

recover the sum forfeited by the State from his account, what would be his client's position? Of course, that is not a matter for me at this leave to appeal stage to go into by going into the relationship between the Appellant and SFAL in their dealings *inter se*.

In re: the substantive matter of the leave to appeal application

- [11] In that regard I have looked at the grounds of appeal urged.
- [12] I found that the several grounds urged therein are prolix but the distilled essence of them could be reduced to the question as to:-
- (a) whether, the Appellant's conduct in prevailing upon his employer's fees to be appropriated to his personal account could have been regarded as "tainted property" as being "proceeds of a serious crime" within the meaning of the provisions of the POCA.
 - (b) Whether, given the fact that, the learned High Court Judge himself being left in some doubt as to whether the Appellant was an employee simpliciter or a sub-contractor, whether there was "an intent" on the Appellant to have "misappropriated" the moneys (fees) in question.
 - (c) whether, the POCA contemplates an offence in the nature of Strict (Statutory) liability.
 - (d) If not, whether the High Court misdirected itself in relying on the Magistrate's Court finding in determining the matter in favour of the 1st Respondent (the original applicant) as a *factum probandum*.
- [13] The aforesaid matters need to be looked into and determined by the full Court and I proceed to grant leave on the said grounds I have articulated in paragraph (12)(a) to (d) above.

Conclusion and Orders of Court

[14] Accordingly I proceed to make my Orders in this matter as follows:

1. The “interested party” named in the original proceedings in the High Court is named as the third respondent to the present appeal.
2. The application for leave to appeal filed by the Appellant is allowed on the grounds specified in paragraphs 12(a) to (d) of this Ruling.
3. In the circumstances of this matter I make no order as to Costs.



Justice Almeida Guneratne

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Hon. Justice Almeida Guneratne
JUSTICE OF APPEAL