

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**CIVIL ACTION NO: HBM 114 of 2015**

**BETWEEN** : **THE DIRECTOR OF PUBLIC PROSECUTIONS OF THE  
REPUBLIC OF FIJI, 25 Gladstone Road, Suva.**  
**Applicant**

**AND** : **CHRISTOPHER ARTHUR ROGER CHASE** of Auckland  
Prison, Paremoremo Road, Auckland 0632, New  
Zealand.

**First Respondent**

**RAECHELLE NINA CHASE** of 339 Waitakere Road,  
Taupaki, Auckland 0782, New Zealand.

**Second Respondent**

**BANK OF THE SOUTH PACIFIC** of Suva Central Building,  
Suva, Fiji.

**Third Respondent**

**BEFORE** : Justice Riyaz Hamza

**COUNSEL** : Ms. Jayneeta Prasad for the Applicant

**Date of Hearing** : 3 February 2017

**Date of Ruling** : 28 February 2017

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**RULING**

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## INTRODUCTION AND BACKGROUND

- [1] The Applicant instituted these proceedings by way of an Originating Summons seeking the registration and enforcement of a foreign restraining order over Certificate of Title No. 39964, Lot 30, DP 10178, Naisosovu, Ba District, Viti Levu (the Property).
- [2] The application is made pursuant to Sections 45, 46 and 47 of the Proceeds of Crime Act 1997 (Chapter 22D) and Sections 31 (2), (3) and (6) of the Mutual Assistance in Criminal Matters Act 1997 (Chapter 23A).
- [3] An affidavit in support of the Originating Summons was filed by Moira Konrote, Legal Officer of the Office of the Director of Public Prosecutions (DPP).
- [4] As per the said affidavit filed in support of the Originating Summons, it is stated that the New Zealand Crown Law Office has requested the Attorney General's Office of the Republic of Fiji to assist in the enforcement and service of an order of the High Court of New Zealand restraining a real property registered in the names of the First and Second Respondents in Fiji.
- [5] Copy of the letter of request, dated 15 October 2015, made by Mr. Brendan Horsley, Deputy Solicitor General, on behalf of the Attorney General of New Zealand is annexed to the Affidavit. This letter requests the assistance of the appropriate authorities in Fiji in this matter.
- [6] Annexed to the letter of request is an Affidavit sworn by Wayne Lloyd Gray, on 29 October 2015. The said Wayne Lloyd Gray is a Detective Sergeant, attached to the Asset Recovery Unit of the Financial Crime Group of the New Zealand Police, an Officer who had conducted investigations in this matter.
- [7] Further to this request, the Attorney General had written to the DPP, on 27 November 2015, granting authorizing for this application to be made to court, seeking a restraining order against the Property.



- [8] A copy of the restraining order over the Property, dated 9 October 2015, made by the High Court of New Zealand is annexed to the Affidavit.
- [9] Also annexed to the Affidavit is a copy of the Certificate of Title to the Property. It can be ascertained from the said Certificate of Title that the Property was transferred in the names of the First and Second Respondents on 11 March 2011. On the same day, a mortgage has been registered in the name of the Third Respondent Bank.

#### **THE INTERIM RESTRAINING ORDER**

- [10] The Applicant filed an Ex-Parte Notice of Motion, seeking an interim restraining order, prohibiting any transactions or dealings in the aforesaid Property. An affidavit in support of the Ex-Parte Notice of Motion was again filed by the said Moira Konrote.
- [11] When the matter was taken up for hearing on 9 December 2015, an application was made by the Counsel for the Applicant to file an amended Ex-Parte Notice of Motion, along with an amended affidavit in support of same. Court permitted this application.
- [12] Accordingly, an amended Ex-Parte Notice of Motion, along with an amended affidavit in support of same, was filed on the same day.
- [13] As per the amended affidavit filed in support of the amended Ex-Parte Notice of Motion, it was stated that the First Respondent had already been convicted and sentenced in New Zealand for committing an offence in terms of section 6(1)(a) of the Misuse of Drugs Act 1975. He is said to be currently serving his sentence in the Auckland Prison.
- [14] It was stated that if any dealings in the Property were to take place before a final decision was made by this Court in the substantive proceedings it would defeat the whole purpose for which the application was filed.
- [15] Accordingly, on 11 December 2015, Court issued an interim restraining order in terms of Section 45 of the Proceeds of Crime Act 1997, prohibiting any transactions and dealings in the Property, effective until the 10 of January 2016.

- [16] On an application made by the Counsel for the Applicant in terms of Section 45(3) of the Proceeds of Crime Act 1997, on 11 January 2016, Court extended the interim restraining order prohibiting any transactions and dealings in the property until the final determination of these proceedings.

#### **SERVICE OF SUMMONS ON THE FIRST AND SECOND RESPONDENTS**

- [17] The Applicant filed a Summons on 15 December 2015, seeking an order for the Applicant to be granted leave to serve Summons on the First and Second Respondents outside of the jurisdiction of this Court and for such other orders that this Court deems just and expedient. The Summons, which was filed pursuant to Order 11, Rules 1 and 2 of the High Court Rules 1988, was supported by an Affidavit by Moira Konrote, Legal Officer of the Office of the Director of Public Prosecutions (DPP), dated 14 December 2015.
- [18] On 11 January 2016, Court made order as prayed for in the Summons, and supporting Affidavit, for leave to serve the Originating Summons and Affidavit on the First and Second Respondents, by sending the documents to the Crown Law Office in New Zealand, who will then have the documents served on the First and Second Respondents.
- [19] An Affidavit of Service, sworn on 18 February 2016, was filed by Wayne Lloyd Gray, Detective Sergeant, attached to the Asset Recovery Unit of the Financial Crime Group of the New Zealand Police, to the effect that he had duly served the said Originating Summons and Affidavit in Support on the First Respondent, at the Auckland South Corrections Facility, in Auckland.
- [20] At this stage, it was brought to the notice of Court that the Second Respondent had moved to Australia. A Summons pursuant to Order 65, Rule 4 of the High Court Rules, was filed by the Applicant seeking leave for substituted service of the Originating Summons and Affidavit in Support on the Second Respondent by way of an advertisement in a daily newspaper in circulation in Australia.



- [21] On 24 May 2016, Court granted leave to the Applicant as prayed for in the Summons for Service of the Originating Summons and Affidavit in Support on the Second Respondent by way of an advertisement in a daily newspaper in circulation in Australia. This Order was varied on 28 June 2016, consequent to Court granting leave to the Applicant to amend the Originating Summons and for variation of the interim Restraining Order. Accordingly Court made order that the amended Originating Summons and Affidavit in Support be served on the Second Respondent by way of an advertisement in a daily newspaper in circulation in Australia.
- [22] On 21 October 2016, an Affidavit verifying advertisement was filed by the Applicant confirming that an advertisement had been published in the Sydney Morning Herald, on Friday 2 September 2016, notifying the Second Respondent of these proceedings.
- [23] Accordingly, Court is satisfied that both the First and Second Respondents have been duly served with the Originating Summons/Amended Originated Summons and Affidavit in Support filed in these proceedings and as such that they had proper notice of these proceedings. However, neither the First Respondent nor the Second Respondent was represented during these proceedings.

**SUMMONS SEEKING AMENDMENT OF THE ORIGINATING SUMMONS AND VARIATION OF THE INTERIM RESTRAINING ORDER**

- [24] On 24 May 2016, the Applicant informed Court that a request had been made to the Crown Law Office in New Zealand to apply for a variation of the restraining order dated 9 October 2015, to allow the Third Respondent bank to exercise its right of sale over the Property.
- [25] Pursuant to this request, the Crown Law Office in New Zealand had applied for a variation of the restraining order on 16 May 2016. A copy of the amended restraining order, bearing the seal of the High Court of New Zealand, was filed in Court.

- [26] Thereafter, on 7 June 2016, the Applicant filed a Summons seeking leave to amend the Originating Summons (filed on 2 December 2015) and seeking a variation of the Order made by this Court, on 11 January 2016, to allow the Third Respondent bank to exercise its right of sale over the Property and for proceeds of the sale, following repayment of the mortgage and associated costs, to be deposited in the Forfeited Assets Fund Account.
- [27] On 28 June 2016, Court granted the Applicant leave to amend the Originating Summons. Court also granted leave to the Third Respondent bank (who was represented by Mr. Roneil Prakash) to exercise its right of sale over the Property and for proceeds of the sale, following repayment of the mortgage and associated costs, to be deposited in the Forfeited Assets Fund Account.
- [28] On 23 August 2016, the Counsel for the Third Respondent bank submitted that the bank had concluded the mortgage sale of the property and deposited the surplus funds (amounting to Fijian Dollar 89,623) to the Forfeited Assets Fund Account.

### **LEGAL PROVISIONS AND ANALYSIS**

- [29] In terms of Section 31 (2) of the Mutual Assistance in Criminal Matters Act 1997 it is provided as follows:
- (2) Where a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign restraining order, made in respect of a serious offence, against property that is believed to be located in Fiji the Attorney-General may, authorise the Director of Public Prosecutions, in writing, to apply for the registration of the order in the Court.*
- [30] As stated before, it is on this basis that the Attorney General had written to the DPP, on 27 November 2015, granting authorizing for this application to be made to court, seeking a restraining order against the Property.
- [31] Section 31 (3) of the Mutual Assistance in Criminal Matters Act stipulates that:



*(3) Where the Director of Public Prosecutions applies to the Court for registration of a foreign order under this section, the Court may register the order.*

And at Section 31(6) it is stated:

*(6) A foreign restraining order registered in the Court under this section has effect, and may be enforced, as if it were a restraining order made by the Court under the Proceeds of Crime Act, 1997 at the time of registration.*

- [32] The Mutual Assistance in Criminal Matters Act 1997 sets out that the term “restraining order” means a restraining order within the meaning of the Proceeds of Crime Act 1997. The Proceeds of Crime Act defines the term “restraining order” as an order made by Court under subsection 35(1) of the said Act.
- [33] Subsection 35(1) reads as follows: *Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property under section 34(1) and the Court is satisfied that there are reasonable grounds for suspecting that the property is tainted property or terrorist property, the Court may make an order under subsection (1B).*
- [34] The term “foreign restraining order” is said to have the same meaning as in the Mutual Assistance in Criminal Matters Act 1997, which defines "foreign restraining order" to mean an order, made under the law of a foreign country, restraining a person, or persons, from dealing with property, being an order made in respect of an offence against the law of that foreign country.
- [35] In terms of Section 3 of the Mutual Assistance in Criminal Matters Act 1997, a “serious offence” has been defined as an offence for which the maximum penalty prescribed by law is death, or imprisonment for not less than 6 months or fine of not less than \$500. The very same definition is found in Section 3 of the Proceeds of Crime Act 1997 as well.
- [36] The Proceeds of Crime Act defines the term "tainted property" in relation to a serious offence or foreign serious offence to mean:

*(a) property used in, or in connection with, the commission of the offence;*

*(b) property intended to be used in, or in connection with, the commission of the offence;*

*(c) proceeds of the offence.*

- [37] Having perused all the documents filed in this application and the submissions made by Counsel for the Applicant, Court is satisfied that there are reasonable grounds for suspecting that the Property, which is the subject matter of this case, is tainted property. It is clear that the First Respondent had already been convicted and sentenced in New Zealand for committing an offence in terms of section 6(1)(a) of the Misuse of Drugs Act 1975, which is a serious offence. It has also been established that the First and Second Respondents are the registered owners of the Property in question. It is patent from the Certificate of Title that the Property was transferred in the names of the First and Second Respondents on 11 March 2011.
- [38] It is on this same basis that an interim restraining order was granted by this Court in terms of Section 45 of the Proceeds of Crime Act 1997, prohibiting any transactions and dealings in the Property. In terms of Section 45(3), Court extended the interim restraining order prohibiting any transactions and dealings in the property until the final determination of these proceedings.
- [39] In the circumstances, this Court is of the opinion that the application for the Registration and Enforcement of the foreign restraining order made by the High Court of New Zealand, dated 9 October 2015, as amended by Order dated 16 May 2016, over the Property, Certificate of Title No. 39964, Lot 30, DP 10178, Naisosovu, Ba District, Viti Levu, <sup>should</sup> be granted.



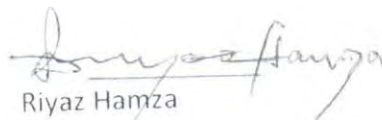
[40] Accordingly, I make the following order:

**ORDER**

Court grants the application for the Registration and Enforcement of the foreign restraining order made by the High Court of New Zealand, dated 9 October 2015, as amended by Order dated 16 May 2016, over the Property, Certificate of Title No. 39964, Lot 30, DP 10178, Naisosovu, Ba District, Viti Levu.

Dated this 28th day of February 2017, at Suva.



  
Riyaz Hamza

JUDGE

HIGH COURT OF FIJI