

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

**Civil Action HBM No. 79 of 2019**

**BETWEEN** : **DIRECTOR OF PUBLIC PROSECUTIONS**

**APPLICANT**

**AND** : **JOSATEKI CAMA**

**FIRST RESPONDENT**

**AND** : **ADI RAVI MANU**

**SECOND RESPONDENT**

**BEFORE** : **M. Javed Mansoor, J**

**COUNSEL** : **Mr. S. Shah for the Applicant**  
: **Mr. I. Romanu for the Respondents**

**Date of Hearing** : **17 July 2020**

**Date of Decision** : **10 August 2020**

# DECISION

*PROCEEDS OF CRIME ACT 1997: Proceeds of crime – Sections 19A, 31, 34 & 35 of the Proceeds of Crime Act 1997 – Restraining order – The court’s discretion and whether circumstances apt for the issue of a restraining order*

*The following cases are referred to in this decision:*

- a. Inoke Bulivou [2020] FJHC 73; HBM 90.2019 (12 February 2020)*
  - b. The State v Vinesh Babu Vere [2011] FJHC 831; HBM 120.2011 (8 December 2011)*
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1. The applicant filed an *ex-parte* notice of motion dated 30 May 2019, supported by affidavit, seeking a restraining order over a sum of \$12,208.65 seized from the respondents, following a raid on their residence at 92, Nailuva Road, and held at the Raiwaqa police station.
2. Initially, a temporary restraining order was issued on 6 June 2019, effective until 28 June 2019. That order lapsed, in the absence of an application for renewal. Subsequently, the applicant filed notices of motion on 1 August 2019 and 2 October 2019 seeking a restraining order over the sum of \$12,208.65 held by police: both notices sought the same relief under sections 19A and 34 of the Proceeds of Crime Act 1997, and the relief was identical to what was sought in the initial notice of motion.
3. Detective Constable Shamal Shavneel Chand, the investigating officer attached to the Raiwaqa police station, stated in his affidavit in support filed on 30 May 2019 that there were reasonable grounds to believe that the property is tainted, and that the applicant intended to file a forfeiture application concerning the monies seized by the police.
4. Mr. Chand averred in his affidavit that the 1<sup>st</sup> respondent’s house was searched by the police on 16 March 2019, and the following sums of money were found: \$4,008.65 from the first respondent’s bedroom; \$8,000.00 from the upper floor bedroom; and, \$200.00 from the 2<sup>nd</sup> respondent.

5. According to the police officer, the 1<sup>st</sup> respondent is unemployed, but sells fish from his residence. At the 1<sup>st</sup> respondent's residence, he found a 200 liter refrigerator, which had about 12-15 bundles of fish. However, neighbours of the 1<sup>st</sup> respondent were unaware of the sale of fish by the respondents. He described the 1<sup>st</sup> respondent as a well-known drug peddler, who had a previous conviction. Based on his investigations, he was of the belief that the 1<sup>st</sup> respondent was involved in selling illicit drugs, namely, methamphetamine.
6. The investigator deposed that during another search at the residence of the respondents on 1 February 2019, a sum of \$13,942 in cash and 0.18 grammes of methamphetamine were found; the money was hidden in a wooden cupboard inside the bedroom and the drug was identified in a forensic laboratory. Mr. Chand was involved in the previous search as well.
7. The 1<sup>st</sup> respondent, in his affidavit in response filed on 21 November 2019, denied wrong doing on his part, and stated that he is yet to be charged for any offence and asked that the application be dismissed, and for the sum of \$ 12,008.65 held by the Raiwaqa police be released to him. The 2<sup>nd</sup> respondent's affidavit was broadly similar to the content of the 1<sup>st</sup> respondent and sought the release of a sum of \$200.00 from police custody.
8. Counsel for the respondents submitted that as the applicant did not reply the affidavits in response filed on 21 November 2019, the applicant must be taken to have admitted to the contents of the respondents' affidavits in response. He submitted that neither respondent has yet been charged and that the applicant is yet to file a forfeiture application in respect of the seized money; the applicant conceded to both these positions. He contended – though erroneously – that section 19A could not be relied upon by the applicant as it was applicable to a foreign forfeiture order. Counsel relied on the decisions of *DPP v Inoke Bulivou* and *The State v Vinesh Babu Vere*<sup>1</sup> in submitting that it was not necessary to restrain monies that are already in the custody of the police.

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<sup>1</sup> [2011] FJHC 831; HBM 120.2011 (8 December 2011)

9. In *DPP v Inoke Bulivou*<sup>2</sup>, Seneviratne, J held that if monies are held by the police, the court would not issue a restraining order. The current application, counsel for the applicant submitted, was filed before the decision in *DPP v Inoke*. That decision, he conceded, was applicable only to situations where tainted property was held in lawful custody. Following that decision, he submitted, the applicant sought restraining orders where there was an imminent risk of disposal of seized property.
10. In *The State v Vere*, Goundar, J stated that the purpose of a restraining order is to protect from disposal the properties that are in the possession or effective control of a suspect prior to prosecution. In that case, the state moved for a restraining order after the respondent's wife filed a civil action for recovery of the seized movable properties. The court held that it lacked jurisdiction to restrain properties in the safe custody of the state, and that such properties were at the time protected from disposal by the potential accused.
11. In this case, the subject property – cash amounting to \$12,208.65 – has been in protective police custody since 19 March 2019. The applicant makes no claim of an imminent risk of disposal of or dealing with the property in custody. The affidavit in support of the restraining order is by an officer of the police station where the monies are held in safe custody; he is, in fact, the investigating officer who conducted the search and seized the property and would be aware whether there is in fact an imminent risk of disposal. The court has the discretion, however, to make a restraining order whether or not there are reasonable grounds for believing that there is an immediate risk of the property being disposed of or otherwise dealt with<sup>3</sup>.
12. As it is now close upon a year and half since the raid, the police have had enough time to investigate and press charges. The application for a restraining order was made in October 2019, with no sign of urgency in the matter, with this case having been mentioned on a number of dates for steps and adjournment applications by the applicant. There is no formal application by either respondent – except for an averment in their affidavits – for release of the seized

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<sup>2</sup> [2020] FJHC 73; HBM 90.2019 (12 February 2020)

<sup>3</sup> Section 35 (6) *ibid*

property. There is no explanation to satisfy court as to the necessity to restrain these funds at this juncture, while the property is in police custody.

13. The Director of Public Prosecutions may apply *ex parte* for a restraining order where there are reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under section 19 E or 19 H of the Act<sup>4</sup>. There is no application before court to forfeit the property, although the investigator's supporting affidavit filed in May 2019 made assurance of a forfeiture application to follow.
14. The objective of the legislation is clear: to deprive persons of the proceeds, benefits and properties derived from the commission of serious offences and to assist law enforcement authorities in tracing those proceeds, benefits and properties. The director of public prosecutions, in order to assist law enforcement authorities, may apply to the High Court for forfeiture orders and restraining orders in connection with tainted or terrorist property. There are detailed provisions with regard to these powers and limitations. The law promotes the wider public interest through the prevention of crime. In doing so, Parliament has provided safeguards.
15. Section 31 prescribes certain limitations on law enforcement authorities in regard to seized property. Where property is seized otherwise than because it may afford evidence as to the commission of an offence and no forfeiture order has been made against the property within the period of 14 days after the property was seized and the property is in the possession of the Commissioner of Police at the end of that period, the Commissioner, subject to section 31 (5) and (6)<sup>5</sup>, must arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the end of that period<sup>6</sup>. Similarly, at the end of the period of 48 hours after the time when the property was seized, if information has not been laid in respect of a relevant offence<sup>7</sup>, seized property must be returned. Notwithstanding its objectives, the legislation provides for

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<sup>4</sup> Section 19A Proceeds of Crime Act 1997

<sup>5</sup> *ibid*

<sup>6</sup> Section 31 (4) *ibid*

<sup>7</sup> Section 31 (3) *ibid*

safeguards in the way the law is to be administered, and law enforcement authorities are not excused from fairness in conduct.


16. There is no evidence as to what amount or benefit of the seized property is tainted; this is relevant in the context of the 1<sup>st</sup> respondent's claim that the seized property comprises business and rent income – matters that the police would have had enough time to investigate. What has sustained the investigator's suspicion over a long period, though no charges have been filed, is not clear enough to satisfy court. Though the filing of charges is not a pre-requisite to grant a restraining order, the omission to do so over a significant period raises questions. A temporary restraining order was given initially, as an interim measure, to preserve the property and facilitate investigations on the basis of the matters averred by the police investigator. At this stage, so long after the initial suspicion and belief of serious criminal activity, that suspicion may need to be buttressed by something tangible or of substance. There is no evidence of that in this case. The applicant has failed to satisfy court that this is a fit case in which to exercise its jurisdiction to grant a restraining order over the monies already secure in the hands of the police.

**ORDER**

- A. The applicant's notices of motion dated 1 August 2019 and 2 October 2019 are dismissed.
- B. Parties will bear their own costs.

Delivered at Suva this 10<sup>th</sup> day of **August, 2020**



  
M. Javed Mansoor  
Judge