

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action HBM No. 68 of 2020

BETWEEN: **THE DIRECTOR OF PUBLIC PROSECUTION** of the Republic of Fiji, 25 Gladstone Road, Suva,  
for and on behalf of the STATE.

APPLICANT

AND: **NIMILOTE KEREVI** of Vuda Back Road, Viseisei.

FIRST RESPONDENT

AND: **MICHAEL FRANCIS HO** of 1 Kaihua Terrace, Mangere, Auckland, New Zealand.

SECOND RESPONDENT

AND: **HOINVEST ENTERPRISE** having its registered office at Shop 14, Commercial Street, Namaka,  
Nadi.

THIRD RESPONDENT

AND: **SURESH PRATAP** of Pratap Industrial Estate Waqadra Nadi.

INTERESTED PARTY

BEFORE: Hon. Mr Justice Vishwa Datt Sharma

COUNSELS: Ms. Konrote M. - for the Applicant  
Mr. Rabuku J. - for Respondent (Plaintiff)  
Mr. Nair D o/i - Ravneet Charan Lawyers

Date of Ruling: 8<sup>th</sup> September, 2020 @ 9.30 am

**RULING**

*[Inter Parte Notice of Motion seeking Restraining Orders]*

## INTRODUCTION

- [1] The Applicant filed the **Inter Parte Notice of Motion** and sought for a Restraining Order over the following properties:
- (a) Vehicle Registration Number JK 240, Hyundai Tucson, white in colour;
  - (b) Vehicle Registration Number HQ 811, Toyota Prado, black in colour;
  - (c) The sum of \$11,287.83 currently held in Bred Bank Account No. 00360044019 in the name of Ho Trading and Investment Pte Ltd; and
  - (d) Such other orders as this Honourable Court deems just and expedient to make in the circumstances of the Application.
- [2] The Applicant intends to rely upon the Affidavit in Support of **Originating Summons** and **application for restraining order** of Suliasi Dulaki which was sworn on the 4<sup>th</sup> and 25<sup>th</sup> of June 2020 in addition to the affidavits of Miliana Wereaunona and Venti Chandra which was sworn on the 3<sup>rd</sup> June 2020 and filed on the 4<sup>th</sup> of June 2020.
- [3] The application is made in terms of **Section 19A and Section 34 of the Proceeds of Crime Act 1997**.
- [4] The Respondents filed their respective affidavits opposing the application for the Restraining Order sought by the Applicant.
- [5] The application was heard by the Court on 21<sup>st</sup> of August 2020 and adjourned for Ruling on Notice.
- [6] Subsequent to this impending Ruling on Notice, the Applicant filed another application seeking the same Restraining Orders but sought for an urgent relief since they alleged that some money from the Bred Bank Account Number 00360044019 was already withdrawn.

By consent, on 3<sup>rd</sup> September 2020 an Interim Restraining Order was granted restraining the Respondents from further withdrawal of the money held in Bred Bank Account Number 00360044019 until Tuesday 8<sup>th</sup> September 2020 4 pm when the pending Ruling in the matter will be henceforth delivered.

- [7] **Section 19A of the Act provides:**
- (1) *Where there are reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under section 19E or 19H, the Director of Public Prosecutions may apply to the Court for a restraining order under subsection (2) against that property.*
  - (2) *An application for a restraining order maybe made ex parte and shall be in writing and be accompanied by an affidavit stating-*
    - (a) *a description of the property in respect of which the restraining order is sought;*
    - (b) *the location of the property; and*
    - (c) *the grounds for the belief that the property is tainted property or terrorist property for which a forfeiture order may be made under section 19E or 19H.*



**Section 34(1) & (4) provide:**

- (1) *Where there are reasonable grounds to suspect that any property is property in respect of which a forfeiture order may be made under sections 11 or 19, the Director of Public Prosecutions may apply to the Court for a restraining order under subsection (3) against that property.*
- (4) *An application under subsection (1) shall be accompanied by an affidavit stating-*
- (a) *a description of the property in respect of which the restraining order is sought;*
  - (b) *the location of the property; and*
  - (c) *the grounds for the belief that the property is tainted property or terrorist property for which a forfeiture order may be made under sections 11 and 19.*

**Tainted property is described in section 3 of the Act as follows:**

*Tainted property in relation to a serious offence or a foreign serious offence means -*

- (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 crime.*

- [8] Currently the application before Court is seeking for a **Restraining Order** and not a **Forfeiture Order** of the above properties mentioned at paragraph 1 (a) - (c).
- [9] The substantive Originating Summons seeking for the **civil Forfeiture Order** of the above properties at paragraph 1 (a) - (c) is impending hearing and determination.
- [10] The Affidavit in Support of the Originating Summons and the Application for Restraining Order deposed by Suliasi Dulaki, Acting Inspector Number 3689 of the Fiji Police Force based at the Criminal Investigation Department in the Head Quarters, Suva in the Anti-Money Laundering and Proceeds of Crime Unit reveals the details of the properties mentioned hereinabove at paragraph 1(a)-(c) subject to the Restraining Order sought, and he believes on reasonable grounds that the properties mentioned hereinabove are tainted properties.
- [11] The Affidavit at paragraph 19 further deposes that the investigations conducted by police suggested that vehicle JK240 was used to transport drugs into the Lautoka Wharf on the 9<sup>th</sup> of November 2019.
- [12] At paragraph 24 of his Affidavit Mr Dulaki mentions that upon checks with the Land Transport Authority, it was established that vehicle JK240 is registered to one Nihilote Kerevi who happens to be the 1<sup>st</sup> Respondent in these proceedings.
- [13] As part of his search of the vehicle JK240, it was located at the residence of Nihilote Kerevi.
- [14] It is not disputed by the Respondents that the vehicles in question JK240 and HQ811 are currently in the possession and control of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents but under the possession of the relatives of the 2<sup>nd</sup> Respondent here in Fiji as the 2<sup>nd</sup> Respondent resides in New Zealand.

- [15] Based on the investigations it is believed that the vehicle registration numbers JK240, HQ811 and HC345 were being used to transport illicit drugs namely cocaine and methamphetamine.
- [16] Based on this investigation, the counsel for the Applicant submitted that the vehicles are used to commit the offence of selling/being in possession of illicit drugs.
- [17] Vehicle registration number HC345 was sold by the 2<sup>nd</sup> Respondent on the 4<sup>th</sup> of May 2020 to Fakataufon who paid a sum of \$34,902.50 for the vehicle via cheque number 001168 through his operating account which is held by the BSP. This cheque was made out to the 2<sup>nd</sup> Respondents agent Meiva Qaranivalu.
- [18] Cheque Number 001168 was deposited into Meiva Qaranivalu's Bank of the South Pacific account on 4<sup>th</sup> May 2020. On 5<sup>th</sup> May 2020 Meiva Qaranivalu telegraphically transferred \$30,000 to the 3<sup>rd</sup> Respondent's bank account held with the Bred Bank.
- [19] A sum of \$20,000 was withdrawn on the 18<sup>th</sup> of May 2020 from the 3<sup>rd</sup> Respondent's Bred Bank Account. As of 12<sup>th</sup> June 2020, \$11,287.83 remains in the 3<sup>rd</sup> Respondent's Bred Bank Account. The Applicant's believe that \$11,287.83 is tainted property since it was gained from the sale of vehicle registration number HC345 which was used in the commission of an offence of transportation of illicit drugs.
- [20] I make reference to the case of *State v Vere [2011] FJHC 831; HBM120.11 (8 December 2011)* the Court held that-

*"The purpose of a restraining order is to protect the properties that are in possession or effective control of a suspect from disposal before the commencement of any prosecution. If the properties are already in the lawful possession of the State, as is the case here, then there is no jurisdiction to issue a restraining order. In other words, the court lacks jurisdiction to restrain properties that are already in the safe custody of the State and are protected from disposal by the potential accused."*

- [21] In the current case before this Court, the properties in particular vehicle Registration No. JK240 and HQ 811 for which a Restraining Order is sought by the Applicant, are in the possession and effective control of the 1<sup>st</sup> and the 3<sup>rd</sup> Respondents respectively. Further, the money received from the sale of the vehicle HC 345 remains in the 3<sup>rd</sup> Respondents Bred Bank Account. This Court therefore has the jurisdiction to restrain the properties sought for hereinabove.
- [22] The purpose of the Restraining Order should not be seen to be defeated in one way or another rather protected to the extreme.
- [23] Bearing in mind the affidavit evidence, written and oral submissions together with the abovementioned case authority, I have no other alternative but to accede to the Applicant's application for the restraining order.
- [24] Accordingly, I grant a Restraining Order for the following properties:
- Vehicle Registration Number JK 240, Hyundai Tucson, white in colour;
  - Vehicle Registration Number HQ 811, Toyota Prado, black in colour;



- The sum of \$11,287.83 currently held in Bred Bank Account No. 00360044019 in the name of Ho Trading and Investment Pte Ltd. (or any amount standing in this account after withdrawal to the time of the interim consent order as mentioned at paragraph 6 hereinabove).

ORDERS

- A Restraining Order is granted in terms of the following properties:
  - Vehicle Registration Number JK 240, Hyundai Tucson, white in colour;
  - Vehicle Registration Number HQ 811, Toyota Prado, black in colour;
  - The sum of \$11,287.83 currently held in Bred Bank Account No. 00360044019 in the name of Ho Trading and Investment Pte Ltd. (or any amount standing in this account after withdrawal to the time of the interim consent order as mentioned at paragraph 6 hereinabove).
- The Substantive Originating Summons seeking for the forfeiture order to be assigned a Hearing date and determination accordingly.
- Each party to bear their own costs.

DATED AT SUVA THIS 8<sup>TH</sup> DAY OF SEPTEMBER, 2020



  
VISHWA DATT SHARMA  
JUDGE  
SUVA

cc: Director of Public Prosecutions, Suva  
Law Solutions, Suva  
Ravneet Charan Lawyers