

**BAYANNE CIE LTÉE & ORS v  
THE INDEPENDENT COMMISSION AGAINST CORRUPTION**

**2021 SCJ 405**

**SN 1605/2020**

**THE SUPREME COURT OF MAURITIUS**

**In Chambers**

**In the matter of:-**

- 1. Bayanne Cie Ltée**
- 2. Gayetree Seewoobudul**
- 3. Vicky Coomarassen Veeramootoo**

**Applicants**

**v**

**The Independent Commission against Corruption**

**Respondent**

**JUDGMENT**

By way of an amended proceipe, the applicants are moving for an order-

- (1) directing the respondent to communicate to the applicants a copy of the applications for attachment lodged by it against the applicants;
- (2) directing the respondent to communicate to the applicants all applications made by the respondent for the extension of the attachment orders dated 25 February 2019 and 17 April 2020; and
- (3) discharging and/or revoking the attachment orders referred to in paragraph 2 above.

The respondent is resisting the application.

It is apposite to make a brief chronology of events in relation to the application in order to situate matters as regards the present application.

On 25 February 2019, an attachment order was obtained by the respondent with regard to –

- (1) a BMW car bearing registration number 7052;
- (2) a plot of land of 703 square metres situated at Terre Rouge transcribed in Vol. 8358 No. 1; and
- (3) a Mercedes car bearing registration number 5302.

The said attachment order was renewed for successive periods of 60 days until 4 April 2020 when it expired. However, on 17 April 2020, the respondent obtained a fresh attachment order which was subsequently renewed for periods of 60 days on 15 June 2020, 12 August 2020 and 08 October 2020. On 15 October 2020, the applicants filed the present application but moved to amend the praecipe when it came to their knowledge on 11 November 2020 that the initial attachment order had lapsed during the lockdown period and there was a new attachment order which had been issued on 17 April 2020.

It is the contention of the applicants that they need to know the basis for the attachment order and the reason for its extension and this in order to enable them to know which case they have to meet. It is also the contention of the applicants that the communication of the said records will enable the Judge in Chambers to determine the real question in controversy between the parties and that any subsequent application for extension of the attachment order should be made *inter partes* and not *ex parte*. It has also been stated on behalf of the applicants that the respondent ought to have served the attachment order dated 17 April 2020 and the subsequent renewal orders as laid down in section 57(1) of the POCA but the respondent failed to do so. However, in reply, the respondent has stated that the usher who proceeded to effect service of the Rules issued in relation to the orders, could not do so as the premises of the applicants were found closed and unattended on each occasion as may be witnessed by the returns of service. It is equally the contention of the respondent that, pursuant to section 56(3)(a) of the POCA, the attachment order of 17 April 2020 was thereafter published in the Government Gazette on 16 June 2020 so that the applicants cannot claim that they were not aware of the said order.

The applicants have also averred that they are being deprived of their properties without any valid reason and this for over 2 years now as the enquiry by the respondent has still not been completed.

On the other hand, the respondent is contending that the applicant cannot pray for the discharge of the attachment order dated 25 February 2019 which is no longer valid for all intents and purposes as it has already lapsed.

The respondent has explained that the order dated 25 February 2019 lapsed during the lockdown of 2020 and, therefore, an attachment order had to be applied for and was obtained on 17 April 2020 and subsequently renewed. It has, *inter alia*, stated that it has reasonable grounds to suspect that applicants nos. 2 and 3 have been using applicant no. 1 as a channel to launder tainted money and funds to acquire the plot of land on which a building has been constructed. The respondent has further alleged that the applicants have failed to substantiate the source of money which has allegedly been used to finance the construction. The respondent has also reasonable grounds to believe that the deposit and monthly lease for the car BMW bearing registration number 7052 has been paid out of tainted money. However, the respondent has stated that in view of the fact that there is a facility letter dated 28 June 2020 which is a private agreement for an operating lease entered between applicant no. 1 and Spice Finance Ltd, the respondent has no objection that the said car be removed from the purview of the attachment order dated 17 April 2020 as the respondent intends to attach the said car in the hands of the proper parties, that is, in the hands of both the lessor and lessee. The Mercedes car bearing registration number 5302 is also suspected to have been acquired through tainted money. It is also averred that there is reasonable suspicion that part of the income derived by applicant no. 1 comprises of proceeds of crime obtained by one Kusraj Lutchigadoo from drug trafficking. Likewise, with regard to the Mercedes car, the respondent has no objection that the said car be removed from the purview of the attachment order dated 17 April 2020 in the light of a private agreement entered between applicant no. 1 and Tsusho Capital (Mauritius) Limited as respondent intends to attach the car into the hands of the proper parties.

It is the contention of the respondent that investigation is still ongoing since it is a complex financial investigation involving several protagonists, legal entities and schemes and the fact that the applicants have not yet been called for interrogation is not *per se* a ground to discharge or revoke the attachment order. Moreover, investigations carried out by the respondent are done in

strict confidentiality and affidavits in support of a renewal of an attachment order may contain information on third parties as well as names of potential witnesses, accomplices or suspects other than the applicants, and therefore, a request for a copy of same would defeat the purpose of respondent's functions of investigation.

It has equally been argued on behalf of the respondent that the application for the renewal of an attachment order is an integral part of an ongoing criminal investigation and that such application, if lodged *inter partes* would be tantamount to disclosing beforehand to a possible suspect all information that may be used against him as evidence in an eventual prosecution, thus forestalling the investigation process. It would also be contrary to the provisions of the Prevention of Corruption Act (the POCA) to disclose such affidavit/s put in support of an application for an attachment order as it will be contrary to the confidentiality obligations that the legislature has imposed on the respondent. The respondent has further argued that an attachment order is a "*mesure conservatoire*" to prevent disposal of assets and that the applicants are still in possession of their assets and it cannot, therefore, be said that they are being deprived of same. It is the contention of the respondent that the onus is on the applicants to prove that the funds handled by them are not proceeds of crime and making mere averments to discharge such burden is not sufficient.

I have given due consideration to the affidavit evidence exchanged before me as well as to the oral and written submissions and authorities relied upon by learned Senior Counsel for the applicants and learned Counsel for the respondent.

It is apposite to consider the relevant sections of the law. Section 56(1) of the POCA provides that a Judge in Chambers may, on an application by the Independent Commission against Corruption (ICAC), grant an attachment order where he is satisfied that the ICAC has reasonable ground to suspect that a person has committed an offence under the POCA or the Financial Intelligence and Anti-Money Laundering Act (FIAMLA). Further, section 56(2) of the POCA provides that the order shall attach in the hands of any person named in the order, whether that person is himself the suspect or not, all the money and other property due or owing or belonging to or held on behalf of the suspect. The person named in the order should declare in writing to the Commission, within 48 hours of service of the said order, the nature and source of all the money and property that have been attached. The named person is also prohibited from

transferring, pledging or otherwise disposing of any money or property so attached except in such manner as may be specified in the order.

Hence, a reading of the above-mentioned sections of the POCA shows that the ICAC is empowered statutorily to obtain an attachment order *ex parte* as an exception to the rules of due process by allowing an applicant to apply to the court without having to notify or serve the other parties involved in the matter given the nature of the offence with which they are suspected to be involved with; however, such order can only be temporary. Section 56(2) of the POCA gives the opportunity to any person named in an attachment order to declare in writing the nature and source of any money or property attached within 48 hours of service of the said order.

It is of relevance to refer to what Lord Bingham had said in the **McIntosh case** and which was reproduced in the case of **Williams v The Supervisory Authority 2020 UKPC 15** and referred to in the case to **Bheemul R v The Independent Commission against Corruption [2021 SCJ 237]** that a defendant is in a much better position than the Authority to know how he has acquired his property and, having regard to the legitimate preventive aims of the legislation, it is fair to put the burden of proof on him so that the inference is clear that the burden to prove that assets have been derived from legitimate sources will rest with the applicant failing proof to the contrary.

In the case of **Manraj D & Ors v ICAC [2003 SCJ 75]**, the Court held that no special effort is needed to understand section 56 and that the Judge in Chambers, before granting the attachment order, needs to be satisfied that ICAC has reasonable ground to suspect that an offence under either FIAMLA or POCA has been committed.

From the affidavit evidence put in on behalf of the respondent, it can be gathered that investigation carried so far by the respondent has revealed that there is reasonable ground for the respondent to suspect that money laundering offences may have been committed and that the monies and funds involved in the various transactions described by the respondent may be proceeds of crime. Consequently, the need for an attachment order to remain in force is justified in the circumstances and cannot at this stage be discharged or revoked given that the investigation is still ongoing and there is a need to preserve confidentiality in line with provisions of the POCA. Therefore, it would not be in order for an order to issue to allow the applicants to be apprised of the affidavits in support of the attachment orders issued on 25 February 2019 and

17 April 2020 or affidavits in support of subsequent renewals. These affidavits, I agree, may contain information on third parties, names of possible witnesses or other suspects other than the applicants which the respondent may have obtained during the investigation and which may have a direct or indirect bearing on the investigation; hence, the qualm of the respondent to ensure that the investigation is not compromised by any disclosure at this juncture.

Learned Senior Counsel for applicants, in his submissions, has referred to the principle of equality of arms. It is apposite to understand that equality of arms is a concept that has been created by the European Court of Human Rights in the context of a right to a fair trial. Equality of arms requires that there should be a fair balance struck between the opportunities afforded to the parties involved in litigation.

True it is that equality of arms should prevail in order to ensure that each party is afforded a reasonable opportunity to present its case but I need not remind parties that the investigation in relation to the present application is not over yet and the applicants will have full latitude to put forward their case as and when they are called to do so. It would, therefore, be premature to believe that the principle of equality of arms is being breached when renewal orders are being done *ex parte* instead of *inter partes*.

However, I hasten to add that the investigation, albeit as described by the respondent as being a highly complex one, has still not been completed after 2 years which gives rise to quite some concern. True it is that an attachment order may be renewed for successive periods of 180 days as provided for under section 57(3) of the POCA where the Judge in Chambers is satisfied that the ICAC has obtained or is likely to obtain substantial new information but an investigation needs to be carried out expeditiously in the light of section 10 of the Constitution. Although an attachment order is a '*mesure conservatoire*' with the objective to prevent assets under investigation from being disposed of, yet such an order cannot be extended for an indefinite period. The right to enjoyment of a property is a constitutional right which cannot be frustrated over indefinite periods of time. Given that the respondent has indicated that it shall be in a position to complete the inquiry in six months' time, the respondent is urged to complete at the earliest its investigation in relation to the applicants within such time frame failing which there will be no *raison d'être* for the attachment order of 17 April 2020 to continue remaining in force over an indefinite period of time.

In the light of the above, I decline to grant the orders prayed for by the applicants and the application is set aside with costs. I certify as to counsel.

**P.D.R. Goordyal Chittoo  
Judge**

**30 November 2021**

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**For Applicants** : **Mr. J. Gujadhur, Senior Attorney**  
**Mr. G. Glover, Senior Counsel**

**For Respondent** : **Ms. N. Seetaram, Attorney at Law**  
**Mr. M. Roopchand, of Counsel**