

2023 SCJ 314

Mr P. J. FERREIRA & ANOR v ICAC

THE SUPREME COURT OF MAURITIUS
(Before the Judge in Chambers)

Serial No. 1548/2019

In the matter of:-

- 1. Mr Paul Joseph Ferreira**
- 2. Mrs Manjula Sungkur**

Applicants

v

Independent Commission Against Corruption (ICAC)

Respondent

INTERLOCUTORY JUDGMENT

On 19 July 2019, following an *ex parte* application by the Independent Commission Against Corruption, the respondent, an Attachment Order was issued against the applicants. The said Attachment Order concerned both immovable and movable properties which include four apartments and two portions of land, three motor vehicles, 11 watches make Rolex and Omega. It was further ordered that the applicants should disclose in writing the nature and source of the assets and properties and they were prohibited from transferring, pledging or otherwise disposing of those assets. In virtue of a subsequent *ex parte* application a second attachment Order dated 11 September 2019 was issued against the applicants prohibiting them from transferring, pledging and disposing of a number of watches, items of jewellery and yellow bricks of Suisse fine gold.

The applicants are now moving for an order (i) releasing and returning all movable properties, as per the list mentioned in paragraphs 13 and 32 of the Applicants' affidavit dated 20.08.2019, seized by the Respondent at Applicants' house on 04 June 2019 and (ii) setting aside and revoking the attachment order dated 19 July 2019 issued at the request of the Respondent. The jurisdiction of the judge in chambers which is being invoked is under Section 71 (1)(e) of the Courts Act.

The respondent has, in its first counter affidavit, raised a preliminary objection in law and is moving that the present application should be set aside inasmuch as the applicants have failed to enter the application under the relevant enactment as provided by law and have instead applied for the revocation of the attachment order under Section 71 (1)(e) of the

Courts Act. It is contended that the application ought to have been entered under Sections 57 (1) and (2) of the Prevention of Corruption Act 2002.

The applicants have thereupon moved to amend the praecipe by adding “**Section 57(2) of the Prevention of Corruption Act**” [POCA] in the heading to indicate the section of the law under which the jurisdiction of the judge in chambers is being invoked. In addition, prayer A (ii) is also being amended moving to set aside and revoke the “**attachment orders respectively dated 19 July 2019 and 11 September 2019.**”

The respondent is objecting to the proposed amendments to the praecipe.

Applicant no. 1 is a citizen of India and Applicant no. 2 is a Mauritian. They contracted civil marriage in India in 2007 and have moved to Mauritius in July 2012. Applicant no. 1 avers that he was working as a pilot until 2009 and then as an independent representative of QNET LIMITED [QNET] which is an international company based in Hong Kong with subsidiaries in 25 countries. Applicant no. 1 avers that he has earned a total of USD 5,104,523.69, that he operates only one main bank account at the Mauritius Commercial Bank Ltd which receives all funds to which he is entitled by reason of the services he renders to QNET. On 4 June 2019 the officers of the respondent searched his residence and secured a number of movables. It is the applicants' case that all the movable and immovable properties belonging to them, and subject to the Attachment Orders have either been acquired prior to Applicant no. 1 being an independent representative of QNET and in his position as Independent Representative of QNET for which commissions have been paid to him lawfully and which have been duly declared to the Mauritius Revenue Authority for income tax purposes.

Counsel appearing for the respondent submitted that applicable legislation is the POCA and Section 57(2) deals with the revocation of attachment orders and not under Courts Act. He pointed out that where there is a special legislation which deals with a specific issue it is that special legislation which should be applied. It is his submission that since the proper section of the law has not been averred the praecipe, there has been noncompliance with Rule 3 of the Rules. This is fatal to the application and that the applicants cannot invoke the discretion of the Judge in Chambers inviting them to cure this defect. He added that the purpose of the proposed amendment is to forestall the objection raised by the respondent and ought not be allowed.

Counsel appearing for the applicants submitted in reply to the said objection that the procedure adopted is perfectly valid. Even though the jurisdiction of the Judge in Chambers has been seized under Section 71(1)(e) of the Courts Act and that the application has not

been made under Section 57(2) POCA, this is not fatal as these two provisions are not mutually exclusive. Rule 3(d) of the Supreme Court (Judge in Chambers) Rules 2002 provides for the Judge in Chambers to exercise his discretion to give the applicants' attorney an opportunity to comply with the Rules. The fact that the relevant provision of the POCA has not been set out does not oust the jurisdiction of the Judge in Chambers in such a case.

It is beyond dispute that where an application is made to the Judge in Chambers, the praecipe must clearly specify which aspect of the jurisdiction of the Judge in Chambers is being invoked except in the case of an application for an Order for the issue of a writ habere facias possessionem or an interim or interlocutory injunction; and if that jurisdiction is laid down in a specific enactment that enactment together with the precise provision of that said enactment has to be mentioned in the praecipe. Rule 3 of the **Supreme Court (Judge in Chambers) Rules 2002 [SCR]** provides as follows:

- 3 *“(a) Subject to paragraph (c) of this Rule, where an application is made to a Judge in Chambers, the praecipe shall clearly specify which aspect of the jurisdiction of the Judge in Chambers is being invoked, in accordance with the requirements set out in paragraph (b) of this Rule.*
- (b) Where the jurisdiction being invoked-*
 - (i) is that of the Judge in Chambers as "Juge des Référés" under article 806 of the Code of Civil Procedure, it shall be so specified;*
 - (ii) is laid down in any other specific enactment, that enactment shall be mentioned and the precise provision of that enactment shall, where applicable, be specified.*
- (c) In the case of an application for an Order for the issue of a writ habere facias possessionem or an interim or interlocutory injunction, no compliance is required with paragraphs (a) and (b) of this Rule.*
- (d) A Judge may, acting proprio motu or at the instance of any respondent or co-respondent, set aside an application where the applicant fails to comply with this Rule, either straightaway or after giving the applicant's attorney an opportunity to comply with the Rule.”*

The present application is stated to have been made under Section 71(1)(e) of the Courts Act which reads as follows: -

“71. Matters disposed of by Judge in Chambers

(1) Subject to subsection (2), applications for or concerned with or in respect to any matter specified in this section and any matter connected therewith may, subject to the discretion of the Judge in any particular case to refer them to the Court, be

finally disposed of at Chambers by a Judge's order, which order shall be a sufficient authority to the Registrar to issue thereon a rule of Court de plano—

(a) ...;

(b) ...;

(e) applications for the validity or nullity of attachments;”

According to the respondent an application like the present one for the revocation of an attachment order is to be made under Sections 57(1) and (2) of the POCA which provide as follows:-

“57. Features of attachment order

- (1) An attachment order shall be served on each of the persons named in the order and on the suspect by an usher of the Supreme Court.*
- (2) Subject to subsection (3), an attachment order shall, unless revoked by a Judge in Chambers, remain in force for 180 days from the date on which it is made.”*

An application for an attachment order by the respondent is made under Section 56 POCA after having satisfied the Judge in Chambers that there are reasonable grounds to suspect that a person has committed an offence under the POCA or the Financial Intelligence and Anti-Money Laundering Act 2002 [FIAMLA]. As rightly submitted by Counsel for the respondent, it is settled law that where a special law deals with a specific matter it is that special law which must be applied in derogation to the general law. It stands to reason that an application for the revocation of an attachment order issued under the POCA has to be made as provided by that same enactment, that is under Section 57(2) POCA. In any case, Section 71 of the Courts Act does not deal with the revocation of an attachment order but application to validate or nullify an attachment.

I cannot but conclude that the objection raised by the respondent is well taken in that the present application ought to have been entered under Section 57(2) POCA and not under Section 71(1)(e) of the Courts Act. The issue that is left to be decided is whether the present application should be set aside as submitted by the respondent. Rule 3 (d) of the SCR provides that where an applicant has failed to comply with this Rule, the judge may set aside an application where the applicant fails to comply with this Rule either straightaway or after giving the applicant's attorney an opportunity to comply with the Rule.

In the case of **Monroe v The State Bank of Mauritius** [\[2008 SCJ 73\]](#) it was held that it would not be proper to allow an amendment the effect of which would be to forestall an

objection raised by the defendant. The court should not interfere with the state of play and integrity that goes with every stage of the procedural process: Also **Bengraz v The State of Mauritius and Ors** [\[2019 SCJ 15\]](#); **Ramful v The Central Water Authority and Ors** [\[2022 SCJ 76\]](#).

However, I am of the view that the present case is distinguishable from the decision in the above cases. In the case of **Monroe** (supra), a plea of time bar was raised, and the amendment being sought was to plead facts which occurred after the date on which the cause of action arose, and the effect of the proposed amendment was to cause the plea in bar to fall. In the present matter we are dealing with strictly procedural issues (*incident de procédure*) where the respondent has already filed its counter affidavit. We are not dealing with any legal right acquired to the respondent on the basis of the very averments made by the applicants such as lack of jurisdiction or time bar. It is not disputed that the Judge in Chambers has jurisdiction to hear an application for the revocation of an attachment order issued under the POCA and that it is only the enactment under which the Judge in Chambers derived his jurisdiction to revoke the attachment order that have been wrongly mentioned. It is noteworthy that the enactment referred to by the applicants is not one where the Judge in Chambers did not have jurisdiction at all, and the amendment being sought is to bring the application within the proper enactment.

In any event, Rule 3 (d) SCR only provides that the Judge in Chambers **may** set aside an application not compliant with the Rule indicating that the judge can equally give an opportunity to the applicants to cure the defect. Counsel for the applicants rightly referred to the case of **O. Vignaud v Temple Corporate Services** [\[2011 SCJ 153\]](#), where the application made no mention in the praecipe of any specific enactment under which the application was made nor was it specified whether it was the jurisdiction of the *juge des référés* under article 806 of the *Code de procédure civile* which was being invoked. Upon objection being taken, it was held that “*This is not necessarily fatal to the application as there is further provision under Rule 3(d) for the Judge in Chambers to give the Applicants’ attorney an opportunity to comply with the Rule so that this lacuna may be cured.*”

Similarly, in relation to the other proposed amendment to the praecipe which is to include in the application the revocation of the second attachment order **dated 11 September 2019** which was issued in connection with the same sets of facts and circumstances and is therefore closely linked to the first attachment order dated 19 July 2019. The applicants are therefore entitled to amend the praecipe to include the second attachment in the present matter so that the issue of whether the revocation of the two

connected attachments might be finally determined instead of going through the process of two separate applications the moreso that no prejudice would be caused to the respondent.

For the reasons given, I find that although the preliminary objection raised by the respondent is well taken, I would nevertheless exercise my discretion in allowing the applicants to amend the praecipe, namely by adding "**Section 57(2) of the Prevention of Corruption Act**" [POCA] in the heading and in prayer A (ii) by substituting the phrase "**attachment order dated 19 July 2019**" by the following "**attachment orders respectively dated 19 July 2019 and 11 September 2019.**"

In view of the present decision allowing the amendments, the applicants are required to file the proper amended praecipe and the parties would be allowed to file any additional affidavit.

**P. M. T. K. Kam Sing
Judge**

08 August 2023

**For Applicants: Me J. Gujadhur, Senior Attorney
 Mr G. Glover, Senior Counsel
 Me M. Hassamal, Barrister at Law**

**For Respondent: Me D Nawjee, Attorney at Law
 Me T Naga, Barrister at Law**