FCD CN: 87/2020
CN: 777/2016

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIME DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

1. **Marie Gerard Delettre**
2. **Raffick Kulhan**
3. **Mootin Engineering Ltd**

JUDGMENT

1. All three accused parties have been prosecuted, each under one count of the Information for the offence of Money Laundering in breach of sections 3(1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA). The charge of Money Laundering for accused no.3, being a company was coupled with section 44(2) of the Interpretation and General Clauses Act.

2. Accused parties no.1 and 2 have pleaded guilty to counts 1 and 2 respectively. Accused no.3 has pleaded not guilty to count 3.

CASE FOR PROSECUTION

3. Witness no.9 produced the certificate of incorporation (true copy) of accused no.3 as Doc A.

4. Witness no.1, the main enquiring officer, produced the following documents by virtue of section 161BA of the Courts Act:
   a. Docs B and B1, two defence statements of accused no.1.
   b. Docs C and C1, two defence statements of accused no.2.

c. Docs D and D1, two defence statements of accused no.3.
d. Doc E, letter of authorisation to represent accused no.3 during enquiry.
e. Doc F, bank statements of accused no.3 for the period from 20th March 2014 to 31st March 2014.
f. Docs G and G1, two cheques from accused no.3 issued to 'Boss Business Consulting Ltd' for the sums of Rs19,500 and Rs81,000 respectively.
g. Docs H and H1, two invoices from 'Boss Business Consulting Ltd' showing payments of Rs19,500 and Rs81,000 respectively.

5. The witness stated that the ICAC investigated into this case when information was received about irregularities in payment of grants from the Human Resource Development Council (HRDC) to employers. The original file of accused no.3 at the HRDC was retrieved during enquiry. Same was produced as Doc J, consisting of 20 pages. The witness has given some description of the various documents found in the file. It is noted that the transcript of the court record dated 11th February 2022 refers to some of those documents as J1 and J3 applications, when they are in fact G1 and G3 applications, within Doc J.

6. Upon further examination, the witness stated that the HRDC refunded Rs162,000 to accused no.3. The G3 application form within Doc J is submitted to the HRDC together with a letter confirming the attendees or attestation to be signed by the employer and course provider. The receipt of payment with corresponding invoice issued to the employer is enclosed. Employers are eligible to refund which is equivalent to 60% of the amount disbursed for training.

7. Upon analysis of the produced documents the witness stated that the total payment made by accused no.3 amounted to Rs100,500, consisting of two cheques of Rs19,500 and Rs81,000. Sixty percent of the said total amount would have been approximately Rs60,000. However, accused no.3 has obtained a refund of Rs162,000 from the HRDC. Same has been obtained since accused no.3 had inflated the costs of their training by providing a receipt of Rs270,000.

8. Under cross-examination on behalf of both accused nos.1 and 2, the witness agreed that it was the versions of both accused parties that the excess amount of money received, was spent on employees and not for their own benefit. Accused no.1 cooperated with the investigators and accused no.2's

version was that he was too undereducated to understand the complex scheme put in place.

9. Defence counsel on behalf of accused no.3 has cross-examined the witness to the effect that no specific enquiry was carried out with regards to forged documents having been provided to the HRDC. But the witness intimated that other evidence is available to show that the receipts are fake. Reference was made to the G3 form within Doc J. Further, accused no.3 has entrusted all procedures to Boss Business Consulting Ltd (BBCL). However it was stated by the witness that accused no.3 was aware that all documents it provided to BBCL would be remitted to the HRDC so that arrangements for refunds would be made by BBCL.

10. Still under cross-examination, the witness stated that it was the version of the accused no.3 that it received neither the letter dated 10.03.14 nor the email dated 11.02.14, both emanating from the HRDC stipulating that refunds would be effected. It also transpired that the official email address of accused no.3 was the one used by the HRDC.

11. Witness no.2 was called by the prosecution, who in the years 2014 and 2015 was the senior accounting technician at the HRDC. She dealt with all matters related to payments, including refunds. The witness provided the ICAC with the file of accused no.3, Doc J. The said file was in relation to the application for refund for training paid by accused no.3. The HRDC would refund 60% of the training fee. The employer would normally submit a G1 application form prior to the start of the training. The form would require information and relevant documents to be provided by the employer including the relevance of training. Thereafter an acknowledgement letter would be sent to the employer so that the latter can proceed with the training. Once the training is completed, the employer would have to submit a G3 application form together with all relevant documents, including the invoice, receipt and certificate of attendance. The invoice and receipt would be issued by the training centre or the course provider. Once the refund is approved and the bank transfer effected, the employer is notified by email.

12. Further examination revealed that in the current case, the G1 application from the accused no.3 was received by the HRDC on 10.02.14, although dated 07.02.14 and the training was supposed to start on 16.02.14. An acknowledgement letter dated 11.02.14 was sent to the employer by email,

the address of which was provided by the accused no.3 on the G1 application form. It is noted here that the witness corrected herself on how the said letter was sent to accused no.3 after she referred to the file, Doc J. As per the enclosed attendance sheet, the course provider BBCL confirmed the attendance of 20 participants. The official receipt found in Doc J is dated 18.02.14 for the sum of Rs270,000, as payment from accused no.3 to BBCL. The G3 form is equally dated 18.02.14. It was confirmed by the witness that the sum of Rs162,000 was paid by the HRDC as refund to accused no.3. The money was transferred to the bank account of which the number was provided by accused no.3 in the G3 application form.

13. Under cross-examination, it was made clear that the HRDC was at no point before the enquiry, aware of any suspicious activity from the accused no.3. The HRDC refunded the sum of Rs162,000 based on the documents provided to them. The witness was not aware if it was BBCL which submitted the G1 and G3 applications to the HRDC. She did explain that it is the employer who contributes to the training levy. It is the responsibility of the employer to submit the G1 and G3 applications. The HRDC communicates with the employer and not the training provider.

14. Further cross-examination revealed that it was seen from the reception dispatch book dated 21.02.14 that there was an entry on the name of BBCL. The witness explained that the receptionist simply acknowledges the person who submits the application form. It appears that the HRDC considers the submission to be made on behalf of the employer, whoever submits the G1 application form.

CASE FOR THE DEFENCE

15. Accused nos. 1 and 2 did not adduce any evidence for their case.

16. Accused no.3 made a statement from the dock. The representative confirmed the defence statements of accused no.3 and asserted that she was not aware that she was refunded more money than she was entitled to, until she was contacted by the ICAC.

ASSESSMENT OF THE COURT

17. Accused nos. 1 and 2 have pleaded guilty to counts 1 and 2 respectively and their defence statements have been produced. Accused no.3 has pleaded not guilty to count 3. The court shall assess the case laid against the accused no.3.

The law

18. The accused parties have been charged under **section 3(1)(b) of FIAMLA** which is reproduced as such:

3. Money Laundering

(1) Any person who -

(a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime; or

(b) receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime,

where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence.

19. The Supreme Court, in the case of **Audit v State 2016 SCJ 282** has given clear pronouncements as to the constitutive elements of the above offence which is akin to the one couched in the current Information:

The elements of the offence under section 3 of FIAMLA are:

(a) possession of property;
(b) in whole or in part directly or indirectly represents the proceed of any crime;
(c) has reasonable grounds for suspecting;
(d) the property is derived or realised;
(e) in whole or in part, directly or indirectly from any crime.

20. It is not disputed that the accused no.3 has been transferred the sum of Rs162,000 from the HRDC into its bank account. This is evidenced by Doc F, the bank statements of the accused no.3, the latter's defence statements and the testimony of witness no.2. It can safely be deduced that the latter was in possession of the property in question.

21. The property must in whole or in part, directly or indirectly represent the proceeds of a crime. This second element has kindled much literature and case law. The English Supreme Court case **R v GH [2015] UKSC 24** has explored the array of cases which have dealt with criminal property. The English counterpart of the offence of money laundering is found under sections 327, 328 and 329 of the Proceeds of Crime Act 2002. Whilst the sections are not drafted in similar fashion to our section 3 of FIAMLA, the basic concepts of the offence of money laundering seem to be ubiquitous.

22. The following extract from the cited case JSC BTA Bank v Ablyazov [2009] EWCA Civ 1124, [2010] 1 WLR 976 defines money laundering as *"parasitic" offences, because they are predicated on the commission of another offence which has yielded proceeds which then become the subject of a money laundering offence.* In common language, it is the use of money derived from a criminal activity rather than using 'clean' money for a criminal purpose which creates the offence.

23. The case for the prosecution is that the receipt sent to the HRDC as payment from the accused no.3 to the trainer (BBCL) has been inflated to the amount of Rs270,000. The alleged payment for the training provided was twofold, in the form of two cheques of Rs19,500 and Rs81,000 respectively, which aggregates to Rs100,500. The prosecution in its submissions has suggested that the refund to the amount of Rs162,000 was received as a result of an act of forgery of a commercial document through the fabrication of an obligation (false invoice) and discharge (false receipt).

24. It is settled that there is no requirement for the prosecution to identify and prove the specific predicate offence which generated the proceeds. The following extract from **DPP v Bholah 2010 PRV 59** is of relevance:

The Board has therefore concluded that proof of a specific offence was not required in order to establish guilt under section 17(1) of ECAMLA. It is sufficient for the purposes of that subsection that it be shown that the property

possessed, concealed, disguised, or transferred etc represented the proceeds of any crime – in other words any criminal activity – and that it is not required of the prosecution to establish that it was the result of a particular crime or crimes. In light of this conclusion it follows that a failure to identify and prove a specific offence as the means by which the unlawful proceeds were produced is not a breach of section 10(2)(b) of the Constitution. In the Board's view, that section requires that the nature of the offence of which the accused person must be informed is that with which he is charged, in this case the offence of money laundering. Proof of a particular predicate crime is not an essential "element" of the offence of money laundering.

25. The contention of the accused no.3 is that it was unaware of the content of the applications submitted to the HRDC. That process was carried out by the trainer (BBCL). Indeed the case for the said accused centred on its lack of suspicion that the money received in its bank account were proceeds of crime. A perusal of the defence statements of the accused no.3 (Docs D and D1) shows that its version does not really dispute the allegation that forged documents were submitted to the HRDC. Furthermore, the accused no.3 has at no point confirmed that a payment of Rs270,000 was made to the trainer (BBCL). In fact at page 10 of transcript of the court record dated 13.04.22, counsel for the accused no.3 did not dispute that the documents submitted to the HRDC were forged. The argument is restricted to the fact that it was not the accused no.3 which forged the said documents. It is therefore clear that the case for the accused no.3 never touched upon the issue of whether the Rs162,000 is criminal property in the first place.

26. At this juncture, it is apposite to cite the relevant extracts of **R v Anwoir [2009] 1 W.L.R. 980** where the following was stated:

We consider that in the present case the Crown are correct in their submission that there are two ways in which the Crown can prove the property derives from crime, (a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime.

The Court of Appeal supported the direction of the judge at first instance when the following was pronounced:

"you will note from the definition of criminal conduct that you do not have to be satisfied what conduct it was that produced a financial benefit for the other person. While it could be the proceeds of theft or fraud it could equally be the proceeds of unlawful gambling, prostitution, revenue offences or any other kind of dishonesty. The useful test, you may think, is to ask yourselves whether the financial benefit was honestly derived from legitimate business or commercial activity." (Emphasis is mine)

27. At Doc D, the first defence statement of accused no.3, when asked if a payment of Rs270,000 was effected to BBCL, the former answered that she did not remember the amount that was paid to the latter. The accused no.3 then confirmed that two cheques to the total sum of Rs100,500 have been paid to the trainer BBCL. At answer 36 of Doc D, the accused no.3 stated that the two cheques represent the total amount paid to BBCL for the training delivered on 16.02.14. Such payment was effected after the completion of the training course. Without implicating the accused no.3 for the wrongdoings with HRDC, it is clear that the HRDC has been misled on the quantum paid to the course provider, BBCL. The HRDC relied on the inflated sum of Rs270,000 instead of the actual cost of Rs100,500 to calculate the refund. The first cheque of Rs19,500 as payment to BBCL from the accused no.3 is dated 15.03.14. The sum of Rs162,000 as refund from the HRDC was credited into the bank account of accused no.3 on 25.03.14. The second cheque of Rs81,000 as payment to BBCL is dated 01.04.14. It can be inferred that the scheme was setup so as to secure a refund to a certain amount from the HRDC and thereafter payment for the training would be effected, in this case also making a profit (Rs101,700) at the expense of HRDC. Whilst the evidence to prove the technical elements of the offence of forgery has not been adduced by the prosecution, there is enough evidence to prove that the unlawful scheme put in place has generated an excess sum of Rs101,700. The property therefore represents proceeds of crime, or can be termed as criminal property.

28. The mens rea for the offence requires that the accused no.3 must have suspected or had reasonable grounds to suspect that the money transferred to its bank account was derived or realised from any crime. The phrase 'suspected or had reasonable grounds to suspect' has had the benefit of some interpretation by the Supreme Court with regards to the applicable test, i.e. objective or subjective. In the case of **Antoine v State 2009 SCJ 328**, the

following extract from **Manraj and Others v ICAC 2003 SCJ 75** was cited with approval:

"First, the suspicion should be reasonable: King v Gardner (1979) 71 Cr. App. R. 13; Prince [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view..... It should be appreciated from the objective standard, the point of view of a dispassionate bystander: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: Pedro v Diss [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236."

The Supreme Court thereafter opined that the trial court has to *analyse the whole of the evidence on record in order to determine whether or not it can be inferred, from the facts and circumstances of the case, that the accused reasonably suspected that the proceeds were proceeds of crime.*

In the more recent case of **Audit v State 2016 SCJ 282**, the Supreme Court considered the above two cases and stated the following:

We are not prepared to decide that the above extract regarding the objective test of a bystander is the test that should be applied in the present case for the obvious reason that in neither of the two cases referred to above was the present issue canvassed and decided. The case of Antoine (supra)referred to the above extract when deciding whether the legislator blundered by omitting to include in the money laundering offences "knowledge" as one of the mental elements. The Court was of the view that "'knowledge' necessarily implies and encompasses the notion of 'reasonable grounds for suspicion'".

29. As per the defence statement of the accused no.3 and the evidence on record, it is clear that the said accused was aware that an application was being made on its behalf to the HRDC for a refund of the training costs incurred. The law stipulates that a 60% refund is payable by the HRDC to the employer. The accused equally alleged that it was the trainer BBCL which submitted all applications to the HRDC. It is not disputed that the cost of the training and the money paid by the accused no.3 to BBCL was in the form of

two cheques for a total sum of Rs100,500. The money transferred into the bank account of accused no.3 on 25.03.14 from the HRDC was to the amount of Rs162,000. The said amount is manifestly more than the cost of the training. It is also evident that only a cheque of Rs19,500 was issued by the accused no.3 to BBCL before the refund was credited to the accused's bank account. At that point on 25.03.14, it would have been blatant to any reasonable person that there has been an overpayment of some sort by the HRDC. Thereafter, on 01.04.14 a second cheque of Rs81,000 representing the final payment for the training course, was issued to BBCL. At no point did the accused no.3 contact the HRDC to enquire about the deposit of Rs162,000. The version of the accused is that it was not aware of the details of the application made on its behalf at the HRDC. If such is taken as the truth, the deposit of an unexplained sum of Rs162,000 should have raised alarms from the accused no.3, the more so that the accused is a company. Its accounts should have been under the kind of scrutiny which would befit good corporate governance as opposed to a natural person.

30. The ongoing thread throughout the case for the accused no.3 is that it did not participate nor was aware of the wrongdoings that might have been committed at the HRDC. However, what can hardly be challenged is the fact that the accused no.3 was aware at the least and involved at the most in the applications submitted by the BBCL. At the 2nd page of Doc J is a letter (10.03.14) sent to the accused no.3 by the HRDC informing the former that the G3 application for refund has been acknowledged and same was being processed. The accused contends that it did not receive the said letter but there is no dispute as to the address used by the HRDC.

31. At the 14th page of Doc J is a letter dated 11.02.14. From the evidence on record (Witness no.2) and from the bottom of the document itself, it is understood that it was sent by email on 19.02.14 to the accused no.3, via the accused company email address. The document notified the accused company that the first application for refund has been received and set the deadline for the submission of the G3 application. Again, the accused no.3 pleads ignorance for the receipt of the said email even if it is admitted that the address was the correct one. Such contention cannot carry much weight and I find that the accused no.3 must have had constructive notice of the said correspondences.

32. In my judgment, the accused no.3 had knowledge of the applications for refund made on its behalf at the HRDC and would have expected the refund to be paid once it was notified of the approval of the application. The moment a sum of Rs162,000 was credited in its bank account from the HRDC, the accused no.3 must have known that the money constituted the refund. There is no rebuttal evidence that the accused no.3 was engaged in other pecuniary transactions with the HRDC at the material time. The sum of Rs162,000 exceeds by a large margin the total costs of the training delivered. Even if the accused no.3 was not aware of the rate of 60% of payable refund, which in itself is not an excuse, it should have known that a refund cannot exceed the amount applied for. Sixty percent of Rs100,500 amounts to Rs60,300. Having received Rs162,000, the accused no.3 must have had reasonable doubts to suspect that the excess Rs101,700 represent proceeds of crime.

33. For the above reasons I hold that the prosecution has proved all the elements of the offence laid against the accused no.3 beyond reasonable doubt and therefore the accused no.3 is found guilty as charged.

Accused parties no.1 and 2 having pleaded guilty to the Information are equally found guilty as charged.

P K Rangasamy
Magistrate of the Intermediate Court
23.06.22