

FINANCIAL INTELLIGENCE UNIT v CHOWRIMOOTOO C & ANOR

2023 SCJ 297

Record No. 122559

THE SUPREME COURT OF MAURITIUS

In the matter of:

Financial Intelligence Unit

Applicant

v

1. Curly Chowrimootoo

2. Mrs Marie Nadia Samantha Chowrimoothoo

Respondents

JUDGMENT

The respondents and other co-accused were charged with the offence of drug dealing before the Supreme Court. The two respondents pleaded guilty to the information whereas other co-accused pleaded not guilty.

During the hearing today learned Counsel for the applicant informed the Court that the trial is still on going. The respondents have not been convicted yet.

Now, the applicant is moving for a confiscation order under Section 17 of the Asset Recovery Act 2011 which reads as follows –

“17. Application for Order under this Sub-Part

*(1) (a) Where a person **is convicted** of an offence, the Enforcement Authority may apply to the Court for a Confiscation Order in respect of –*

- (i) *any benefit or proceeds derived or likely to be derived by that person or any other person from that offence or from any other unlawful activity which the Court finds to be sufficiently related to that offence;*
- (ii) *any instrumentalities used or intended to be used in any manner in connection with that offence or from any other unlawful activity which the Court finds to be sufficiently related to that offence.*

(b) *The Enforcement Authority shall attach to the application a statement setting out an assessment of the value of the benefit obtained or likely to be obtained by the defendant.*

(c) *The Court may require a defendant served with a copy of a statement under paragraph (b) to respond to each averment in it and, insofar as he does not accept any averment, to indicate on oath any facts upon which he proposes to rely.*

(2) Except with the leave of the Court, the Enforcement Authority shall make an application under subsection (1) within 6 months of the date on which a person was convicted of the offence.

(3) *The Court shall only grant leave under subsection (2) where it is satisfied that –*

- (a) *the benefit to which the application relates was or is likely to be derived, realised or identified after the period referred to in subsection (2); or*
- (b) *the application is based on evidence that could not reasonably have been obtained by the Enforcement Authority before the period referred to in subsection (2); and*
- (c) *it is in the interests of justice to do so.*

(4) *The Enforcement Authority may amend an application for a Confiscation Order at any time before the final determination of the application by the Court, provided that reasonable notice of the amendment is given to every person on whom the application has been served.*

(5) *Where an application is made for a Confiscation Order, the Court may, in determining the application, have regard to any evidence received in the course of the proceedings against the person convicted before the trial court and to any other relevant evidence gathered in the course of an Investigation.*

(6) (a) *Where an application under this section has been finally determined, the Enforcement Authority may not make a further application for a Confiscation Order in respect of the same offence without the leave of the Court.*

(b) The Court shall not grant leave under paragraph (a) unless–

- (i) the further application is made not more than 6 years after the final determination; and*
- (ii) the benefit to which the new application relates was identified after the determination of the previous application; or*
- (iii) the Court is satisfied that –*
 - (A) necessary evidence became available after the previous application was determined; or*
 - (B) the benefit to which the further application relates was identified after the final determination; or*
 - (C) it is otherwise in the interests of justice to do so.*

(Emphasis added)

A reading of section 17 of the Asset Recovery Act clearly shows that an application for a confiscation order can only be made by the Enforcement Authority where a person is convicted of an offence and within 6 months of the date on which a person was convicted of the offence.

True it is that the respondents have pleaded guilty. However, since the trial is not over and the respondents have not yet been convicted the present application is therefore premature. Although learned Counsel for the respondents has stated that the respondents have no objection to a confiscation order being granted, I find that it would not be in order to make a confiscation order at this stage.

For the above reasons the application is set aside.

V. Kwok Yin Siong Yen
Judge

21 July 2023

For Applicant: Mr N. Ramasawmy, Attorney at Law

Ms. V. Nursimhulu, of Counsel

For Respondents: Mr R Appa Jala, Attorney at Law

Mr J. Chummun, of Counsel