

**INTEGRITY REPORTING SERVICES AGENCY v GRI-OOR COMPANY LTD & ANOR**

**2023 SCJ 83**

**Serial No.: 31/2022**

**In Chambers**

**THE SUPREME COURT OF MAURITIUS**

**In the matter of:-**

**Integrity Reporting Services Agency**

**Applicant**

**v**

- 1. Gri-Oor Company Ltd**
- 2. Sendeepsingh Rai Bungsrax**

**Respondents**

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**JUDGMENT**

This is an application made under **sections 14 and 16 of the Good Governance and Integrity Reporting Act** (“the Act”) for a summons to show cause as to why an Unexplained Wealth Order should not be made for the confiscation of a portion of land of an extent of 2,370 m<sup>2</sup>, being lot No.10 at D’Epinay, Pamplemousses, together with a furnished residential building standing thereon (together referred to below as “the property *in lite*”), registered and transcribed in the name of the first respondent.

It is the contention of the applicant that –

- (a) the respondents have failed to discharge the burden imposed upon them by **section 3(5) of the Act** to prove on a balance of probabilities that the property *in lite* does not constitute unexplained wealth;

- (b) the second respondent has failed to satisfactorily account for his lawful possession and ownership of the property through the first respondent company, and that it therefore has reasonable grounds to believe that the first respondent has acquired, and both respondents are in possession and/or have custody and/or control of, unexplained wealth as defined under the Act.

#### Applicant's affidavit

In his affidavit in support of the application, the Director of the applicant agency has stated *inter alia* that –

- (a) the second respondent is the sole shareholder and director of the first respondent;
- (b) one Mrs Rubina Katty Jaeck (“Mrs Jaeck”), who is a Mauritian citizen married to a French national, appears to have sold the property *in lite* to the first respondent for the sum of Rs 16 million by virtue of a Deed of Sale drawn up before a notary and registered and transcribed on 30 May 2019;
- (c) on 19 May 2020, one Mr Felix, acting as Mrs Jaeck’s proxy, gave a declaration as precautionary measure to the police to the effect that Mrs Jaeck had sold the property *in lite* for the sum of Rs 16 million to the first respondent but received the sum of Rs 200,000 only, that the first respondent had undertaken to settle the whole amount but had not done so, and that she had subsequently come across an advertisement stating that the property *in lite* was on sale;
- (d) the matter was referred by the Commissioner of Police to the applicant by letter dated 4 November 2020 after the second respondent, acting as Director of the first respondent, stated to the police on 13 October 2020 that the sum of Rs 15 million had been paid to Mrs Jaeck “*hors la vue du notaire*” and “*in several amounts of Rs 200,000 to Rs 300,000 in cash*” without any receipt or record. According to the Deed of Sale the vendor (Mrs Jaeck) had declared having received Rs 15 million “*hors la vue du notaire*”.

#### Statutory requests

Following the referral by the Commissioner of Police, the applicant has made three statutory requests to the second respondent, in his capacity of Director of the first respondent, under **section 5 (1) of the Act**, as follows –

- (a) in the first request, dated 20 November 2020, the second respondent was asked to inform the applicant of the source of the funds used to acquire the property *in lite* as well as another plot in Grand Gaube in 2019.

By way of an affidavit dated 11 December 2020, the second respondent replied *inter alia* that he had an extramarital relationship with Mrs Jaeck; that she was “*at all times ready and willing*” to transfer the ownership of the property *in lite* to him; that there was no monetary transaction and he only paid the duties and taxes pertaining to the property; that he paid the duties and taxes out of the first respondent’s bank account; that he acquired the land in Grand Gaube in 2019 for Rs 4,200,000 and there are two pending Court cases in respect of that property;

- (b) in the second request, dated 8 January 2021, the second respondent was asked to provide evidence which supports his averment that he has been gifted the property *in lite*; the source of funds as regards the cheque deposit in the sum of Rs 3,800,000 which had been used to pay the duties and taxes in respect of the property *in lite*; and the source of funds used to acquire the property in Grand Gaube.

By way of an affidavit dated 20 January 2021, the second respondent –

- (i) enclosed copies of screenshots of messages exchanged between Mrs Jaeck and himself with a view to showing that the property had been gifted to him;
- (ii) stated *inter alia* that the sum of Rs 3,800,000 was derived from the sale of a portion of land in Cap Malheureux by the first respondent to Mr and Mrs Sandiren Itteea for the sum of Rs 4 million;
- (c) in the third request, dated 11 February 2021, the second respondent was asked to provide the Agreement relating to the sale of a portion of land to Mr and Mrs Itteea;

explain the source of the funds which the first respondent had used to acquire the land; and show that the deposit of Rs 3,800,000 was the proceeds of the sale to Mr and Mrs Ittea and did not arise from another source.

By way of an affidavit dated 19 May 2021, the second respondent replied that he was not provided with a copy of the Deed of Sale for the sale to Mr and Mrs Ittea; that the first respondent had acquired the land from fees derived from the second respondent's professional activities; and that the sum of Rs 3,800,000 deposited was derived from the proceeds of the sale to Mr and Mrs Ittea and did not arise from any other source. An acknowledgment letter from a notary which, according to the second respondent, attests that a payment of Rs 4,000,000 was received in respect of the said sale was appended to the affidavit. He further averred that a sum of Rs 200,000 was paid as Land Transfer Tax and the remaining Rs 3,800,000 was credited into the second respondent's bank account held with MauBank Ltd.

#### Mrs Jaeck's affidavit appended to applicant's affidavit

Mrs Jaeck has sworn an affidavit dated 21 July 2021 in France, in which she states *inter alia* that the first respondent, represented by the second respondent, had agreed to purchase the property *in lite* from her for the sum of Rs 18,800,000; that she received a cheque in the sum of Rs 200,000 from the second respondent on the day of the signature of the Deed of Sale and was assured by him that the balance on the purchase price (Rs 18,600,000) would be paid to her shortly after; that she has not received any other payment from the respondents and is facing financial hardship; that the second respondent has committed an "*abus de confiance*" and she has been defrauded of the sum of Rs 18,600,000; that she did not gift the property *in lite* to the first or second respondent; that she has not been paid the sum of Rs 15 million mentioned in the Deed of Sale; that she was shocked to see the property *in lite* advertised for sale for the price of Rs 25 million; that she will not initiate legal proceedings in Mauritius to nullify the sale of the property or to recover same, as she is unable to travel to Mauritius and does not have the means to initiate proceedings in Mauritius; that she has no objection to the applicant applying for an Unexplained Wealth Order against the respondents.

#### The Board's decision

On 18 August 2021, after having considered the report submitted to it by the applicant in relation to the property *in lite* under **section 5(2) of the Act**, the Integrity Reporting Board determined and directed as follows –

*“When asked to explain the source of the wealth which enabled him to acquire this property, [Respondent No 2] alleged that he had received it as a gift from Mrs Jaeck.*

*This explanation is not compatible with an affidavit sworn by Mrs Jaeck dated 21<sup>st</sup> July 2021.*

*In these circumstances, the Board is satisfied that Mr Bungraz [the Respondent No. 2] has not provided a satisfactory explanation for his acquisition of the property through his company.*

*In her Affidavit Mrs Jaeck has stated that she will not initiate any proceedings in Mauritius for the recovery of her property and agreed to the Agency applying for an Unexplained Wealth Order.*

*In these circumstances, the Board is satisfied that this is a proper case for an application for an Unexplained Wealth Order and directs the Agency to apply to the court for such an Order”.*

#### Affidavit of second respondent

In an affidavit dated 24 March 2022, the second respondent, as sole shareholder and director of the first respondent, has maintained that he has furnished all relevant documents to support the payments mentioned in the Deed of Sale, “*vehemently*” denied any evasiveness or failure to account for the property *in lite* and averred that a seller is never provided with a copy of a Deed of Sale but that the applicant “*as a Reporting Authority*” could “*easily retrieve*” a copy of same from the Registrar-General. He took note of the affidavit sworn by Mrs Jaeck but maintained that the agreed sale price was for the sum of Rs 16 million and that all documents to prove the transaction have been “*tabled*” to sustain his version. He maintained his version of facts “*throughout the inquiry*”. He moved that the application be set aside with costs.

#### Applicant’s affidavit in reply

The applicant maintained the averments in its first affidavit. It reiterated that the respondents have failed to satisfactorily account for their ownership, possession, custody and/or control of the property *in lite* which therefore constitutes unexplained wealth.

No further affidavit was filed on behalf of the respondents.

## Submissions

It was essentially submitted by learned Counsel for the applicant that –

- (a) the property *in lite* falls within the scope of “*actionable*” unexplained wealth under **section 3(6) of the Act**;
- (b) there are *prima facie* reasonable grounds to suspect that the property *in lite* constitutes unexplained wealth so that the respondents have to discharge the legal burden upon them to satisfactorily account for their ownership, possession, custody or control of same on a balance of probabilities;
- (c) the respondents have not seriously rebutted the applicant’s case that the property *in lite* constitutes unexplained wealth. An analogy was drawn with the need, albeit in other contexts, for the Judge in Chambers to assess whether the respondent has raised a “*contestation sérieuse*” (see e.g. **Ramnauth v Ramnauth [1969 MR 31]**);
- (d) reference was made to the second respondent’s statement to the police on 13 October 2020 that he has paid Rs 15 million to Mrs Jaeck in several tranches in cash and to the absence of any explanation as to the source of these cash payments; the subsequent allegation, in reply to the applicant’s statutory request, of the second respondent that the property *in lite* was gifted to him by Mrs Jaeck, which goes “*outré et contre*” the notarial deed; the admissions made by the second respondent in his affidavit in this application; and the fact that the second respondent has not, in his affidavit filed in this application, denied the version of Mrs Jaeck that the property *in lite* was not gifted to him;
- (e) the only affidavit put in by the second respondent consists of mere averments (“*mere one-liner statements*”) unsubstantiated by any documentary evidence. The applicant’s second affidavit has not been rebutted;
- (f) this is not a fit case to be referred by the Judge in Chambers to the Court under **section 16(2) of the Act**;

- (g) an Unexplained Wealth Order must be made if the respondents have failed, in their affidavit, to discharge the legal burden of proof placed on them under **section 3(5) of the Act**. No serious and *bona fide* defence has been raised by the respondents.

Learned Counsel for the respondents has, for his part, highlighted that the respondents have, in their affidavit filed in this application, maintained the explanations provided in their affidavits in reply to the three statutory requests. He submitted that it had not been established on a balance of probabilities that the respondents had paid the sum of Rs 16 million and that it is not for the applicant to intervene in a private dispute involving non-fulfilment of a party's contractual obligation under an agreement.

He further submitted that an explanation that the land had been gifted to the second respondent on account of his past relation with the vendor was a satisfactory explanation for the acquisition of the property *in lite* so that the respondents were "*relieved of any further burden*". Further the source of the funds for the payment of duties and taxes has been satisfactorily explained as emanating from the sale of another portion of land, which was confirmed in the notary's letter. It was now for the applicant to rebut the respondents' explanations and show that they are unsustainable. If affidavit evidence is not enough, the matter has to be referred to the competent Court to decide whether the evidence discloses a gift or a massive fraud.

#### Analysis and findings

For long, forfeiture of property by the State could only take place after conviction, provided the Court was satisfied that the property was the subject matter of the offence, used in the commission of the offence or obtained from the commission of the offence (see e.g **section 47(5) (a)(b) of the Dangerous Drugs Act** and **section 82 (4) of the Prevention of Corruption Act**). The law now provides for confiscation, or forfeiture, of ill-gotten wealth in the absence of a conviction under different enactments upon specified conditions being satisfied (see **Part IV of the Asset Recovery Act** and **Part IV of the Act**). It is for the enforcement authority under each Act to ensure that any application for confiscation is properly made under its governing Act, in view of the constitutional right to protection from deprivation of property.

Indeed the legislator took the trouble of amending the Constitution (see the **Constitution (Amendment) Act 2015** [\[Act No. 30 of 2015\]](#) inserting a new **section 8(4)(aa)** in the Constitution) at the time of enacting the Act to provide that confiscation of unexplained wealth

under the authority of a law shall not be held to be in contravention of an individual's right to protection from deprivation of property under **section 8 of the Constitution**. Careful use should be made therefore by the applicant of this wide power to apply for an Unexplained Wealth Order.

The Act provides in that regard that it is for the Integrity Reporting Board to determine, upon consideration of a report made by the applicant under **section 5 of the Act** after enquiry, whether to make an application for an Unexplained Wealth Order. The present matter was referred to the applicant by the Commissioner of Police after Mrs Jaeck gave a declaration to the police. Three statutory requests were then made by the applicant to the respondents and a report was duly submitted by the applicant to the Board. The Board, having reasonable grounds to believe that the respondents have unexplained wealth, directed the applicant to make the present application for an Unexplained Wealth Order for confiscation of that unexplained wealth.

Now **section 16 of the Act** provides as follows –

**16. Unexplained Wealth Order**

(1) *Where the Agency makes an application –*

(a) *for an Unexplained Wealth Order,*

(b) –

*and the Judge in Chambers is satisfied that the respondent has unexplained wealth, he shall make an Unexplained Wealth Order or an order for the payment of its monetary equivalent.*

(2) *Where the Judge in Chambers considers that an application for an order under subsection (1) cannot be granted on the basis of affidavit evidence, he shall refer the matter to the Supreme Court.*

The mechanism set up under the Act provides for the burden to be cast on the person who has ownership, custody or control of the property to establish on a balance of probabilities that it is not unexplained wealth, failing which it will be considered as unexplained wealth (see **section 3(5) of the Act**).

It appears clear, and it does not seem to be disputed by the applicant<sup>1</sup>, that the applicant first needs to show on the basis of affidavit evidence that there are *prima facie* reasonable grounds

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<sup>1</sup> See paragraph 19 of the applicant's Written Submissions



to suspect that the property constitutes unexplained wealth, before the burden is cast on the respondent to establish that the said property is not unexplained wealth.

I have carefully considered the application and the relevant provisions of the law.

The term “*unexplained wealth*” is defined at **section 2 of the Act** as including any property-

- “(a) *under the ownership of a person to an extent which is disproportionate to his emoluments and other income;*
- “(b) *the ownership, possession, custody or control of which cannot be satisfactorily accounted for by the person who owns, possesses, has custody or control of the property; or*
- “(c) *held by a person for another person to an extent which is disproportionate to the emoluments or other income of that other person and which cannot be satisfactorily accounted for”.*

The applicant is relying on the contention that the respondents cannot satisfactorily account for their ownership of the property *in lite* (see **paragraph (b)** of the definition of “*unexplained wealth*” at **section 2 of the Act** above). True it is that the second respondent has given inconsistent versions, including one that the property *in lite* was gifted by Mrs Jaeck to the first respondent, but the stark fact is that, irrespective of the provisions of the Deed of Sale, Mrs Jaeck has maintained in her affidavit, upon which the Board relied in its decision dated 18 August 2021, that she has not received the Rs 15 million referred to in the Deed. It was therefore futile for the applicant to attempt to find out the source of the sum of Rs 15 million which, according to the vendor herself, has never been paid. The source of the money used to pay the taxes was of even less relevance as an unsatisfactory explanation in relation thereto cannot in itself result in the property *in lite* constituting “*unexplained wealth*”.

In fact the issue in this case seems to be whether the respondents have been gifted the property *in lite* or have come in possession of the property *in lite* through fraudulent or dishonest means, rather than whether it is unexplained wealth the ownership of which they cannot account for satisfactorily. Recovery of the property *in lite* could have been sought by the vendor herself entering civil proceedings for the sale to be nullified, as rightly submitted by learned Counsel for the respondents, and, since this is not an option being envisaged by her, consideration could have been given to another appropriate enforcement authority applying for its forfeiture under its governing law, if relevant conditions are satisfied.

It must be noted that, although the UK Proceeds of Crime Act 2002 also provides for unexplained wealth orders, I could not derive any assistance from case-law under the 2002 Act as the scheme is significantly different from that which obtains under the Act in Mauritius. **Section 362B of the UK Proceeds of Crime Act 2002** provides, for instance, that the Court must be satisfied *inter alia* that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property and that the respondent is a politically exposed person or there are reasonable grounds for suspecting that he is involved in serious crime. The unexplained wealth order merely requires the respondent to explain the origin of assets appearing disproportionate to his income; failure to so explain will result in the property being presumed to be recoverable property in respect of which civil recovery proceedings may be taken. By contrast, an Unexplained Wealth Order made under the Act in Mauritius has the effect of confiscating the property and vesting the property in the applicant agency (see **sections 14 and 17 of the Act**).

It is noted that only **paragraphs (a) and (c)** of the definition of "*unexplained wealth*" in the Act refer to the element of proportionality to a person's lawful income, while **paragraph (b)** is couched in more general terms. It cannot, in my view, have been the intention of the legislator to provide that mere inconsistent or implausible versions from a private individual, who is not suspected of having otherwise breached the law, as to how he acquired any particular property are sufficient for an enquiry and an application to be made under the Act invoking **paragraph (b)** of the definition; for the burden to be cast on him to establish that it is not unexplained wealth; and for an Unexplained Wealth Order to be made for the confiscation of that property. In view of the burden cast on the respondent in such an application, it is up to the Board to ensure that an application is only made under **section 14** in appropriate cases justifying the exceptional use of the civil asset forfeiture regime.

A cursory reading of the relevant Board decision in this case makes it clear that the Board relied solely on the affidavit sworn by Mrs Jaeck to come to the conclusion that the second respondent had not provided a satisfactory explanation for his acquisition of the property *in lite* through the first respondent, in that his explanation that the property had been gifted by Mrs Jaeck was found to be "*not compatible*" with her affidavit. Nothing is said about the fact that Mrs Jaeck also maintained in that same affidavit that she has not received the balance of the purchase price, contrary to what is stated in the Deed of Sale, so that the statutory requests made by the applicant

in relation to the source of the said sum allegedly paid by the respondents were hardly justified. As rightly pointed out by learned Counsel for the respondents, the complaint of Mrs Jaeck disclosed at best a private dispute between parties to a deed involving non-fulfilment of a contractual obligation, for which appropriate civil redress could have been sought before Court.

In the light of the above, I am not satisfied that there are *prima facie* reasonable grounds to suspect that the property *in lite* constitutes unexplained wealth. I need not in the circumstances consider whether the respondents discharged the burden cast on them under **section 3(5) of the Act** and the question of referring the matter to the Supreme Court pursuant to **section 16(2) of the Act** does not arise.

The application is set aside. With costs.

I certify as to Counsel.

**A.D. Narain**  
Judge

**28 February 2023**

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**For Applicant** : **Mr P. Chuttoo, Attorney at Law**  
**Mr A. Hajee Abdoula, of Counsel**

**For Respondents** : **Mr Y. Bissessur, Attorney at Law**  
**Mr G. Bhanji-Soni, of Counsel**