

JEEBUN R S v THE FINANCIAL INTELLIGENCE UNIT

2023 SCJ 173

Serial No. 1725/2021

THE SUPREME COURT OF MAURITIUS

(Before the Judge in Chambers)

In the matter of:-

Mr Jeebun Runal Singh

Applicant

v

The Financial Intelligence Unit

Respondent

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JUDGMENT

By way of a second amended proceipe, applicant is praying for an order to rescind the Restriction Order dated 9 August 2021 made in application bearing SCR 121976 - SN 1182/21 (Restriction Order A), the Restriction Order dated 9 November 2021 made in application bearing SCR 122411 - SN 1787/2021 (Restriction Order B) and the Restriction Order dated 6 January 2022 made in application bearing SCR 122603 – SN 4/2022 (Restriction Order C).

Alternatively, applicant is praying for an Order to vary the Order by excluding:-

- (a) all the applicant's bank accounts which he holds with:
 - (i) SBM Bank (Mauritius) Ltd,
 - (ii) Afrasia Bank Ltd,
 - (iii) The Mauritius Commercial Bank Ltd,
 - (iv) The Hong Kong and Shanghai Banking Corporation Ltd;

- (b) the portion of land of the extent of 950 m² situate in the District of Pamplemousses place called Mare Sèche, Pereybere and the whole morefully described in title deed registered and transcribed in Vol 201702 No. 001490,

from the purview of the Restriction Order A;

- (c) the 1000 units which applicant holds in SBM Holdings Ltd from the purview of the Restriction Order B; and
- (d) the sum of Rs 1,782,408 payable to SICOM Group, representing the premium payable to him by way of a settlement for the total loss of the motor vehicle double cab of the make "Ford Rangers" bearing registration mark J 1951 from the purview of the Restriction Order C.

It is observed that the proeipce failed to mention the relevant provision of the law which gives the Judge in Chambers jurisdiction to deal with this application. However, it is clear that the application is made under section 31 of the Asset Recovery Act.

In Restriction Order A, the Judge in Chambers directed *inter alia* that –

- (a) all sums of money held by applicant with all local banks of Mauritius;
- (b) the portion of land of the extent 950 m² situate at Mare Sèche, together with a building existing thereon, as well as the furniture to be found therein PIN No. 1307200720 and transcribed in Vol 201702 No. 001490 belonging to applicant;
- (c) two motor cars bearing registration numbers J 1951 of the make "Toyota" model "Vitz" and J 2484 of the make "Nissan Qashqai" belonging to applicant should not be disposed.

As regards Restriction Order B, upon an *ex parte* application made by respondent the Judge in Chambers varied the Restriction Order A by deleting therein the motor vehicle of the make "Toyota" model "Vitz" bearing registration number J 1951 and motor vehicle of the make "Nissan Qashqai" bearing registration Number J 2484 and directed that –

- (a) motor vehicle Double Cab of the make "Ford Rangers" bearing registration mark J 1951 leased to applicant by Sicom Financial Services Ltd; and
- (b) 1000 units held by applicant in SBM Holdings Ltd should not be disposed.

Pursuant to Restriction Order C, the Judge in Chambers directed the Mauritius Union Assurance Company Limited to remit to respondent, for safekeeping, the sum of Rs 1,782,408 representing the premium payable to applicant, by way of a settlement, for the motor vehicle double cab of the make "Ford Rangers" bearing registration mark J 1951, which had already been restrained by virtue of Restriction Order B, and which was met with an accident on 27 November 2021 and declared a total loss.

Respondent is resisting the application.

In support of the application, applicant has averred that on 3 June 2013, he took up employment as a Sales and Service Representative with Linkopia (Mauritius) Ltd ("Linkopia") which is a private company incorporated on 14 February 2012 under the laws of Mauritius.

From the date of incorporation of Linkopia to 10 January 2017, the sole shareholder of Linkopia was Yosef Herzog. On 11 January 2017, Yosef Herzog transferred all his shares in Linkopia to Mr Shalva Tetrushvili. On 13 November 2017, Yosef Herzog purchased back all his shares in Linkopia from Mr Shalva Tetrushvili and he remained the sole shareholder of Linkopia. Yosef Herzog was issued with a Permanent Residence Permit bearing reference RIRE1610420 by the Board of Investment (now the Economic Development Board) under the Real Estate Scheme on 1 June 2016. The presence of Yosef Herzog in Mauritius was sporadic, however, all financial and commercial decisions were solely in his control.

During and after 2014, Linkopia's place of business was Cybertower 2, Ebene, 4th Floor. In September 2013, applicant was promoted as the Branch Manager of Linkopia. The then Chief Executive Officer of Linkopia was Yakov Cohen who was issued with an Occupation Permit bearing reference ORRP1500792 by the then Board of Investment. After the departure of Yakov Cohen, he was nominated and promoted to the post of Chief Executive Officer. In the beginning of 2015, Yosef Herzog proposed him to become a resident director of Linkopia and he was appointed on 30 May 2015. However, he was told by Yosef Herzog that such appointment was only on form as in substance the latter would take all decision for Linkopia. He is still a director of Linkopia.

The company's turnover for the year 2016 to 2018 was in the range of Rs 125 million to Rs 180 million which was drastically reduced to Rs 44 million in 2019 when it ceased its business activities. In 2018, with the downfall of the business activities of Linkopia, Yosef Herzog stopped coming to Mauritius and all his decisions for the financial and commercial affairs of Linkopia were communicated to applicant by phone. Linkopia ceased its business activities in October 2019, with no employees and its rent agreement for the leased premises

was terminated. As at date, Linkopia has no income but a debt of Rs 22 million to suppliers with no precise information about the whereabouts of the shareholder except those provided to the Registrar of Companies and to the then Board of Investment at the time of incorporation of Linkopia. He had made repeated attempts to contact Mr Yosef Herzog, but in vain and he was unable to carry the duties assigned to him by Mr Yosef Herzog as director of Linkopia.

Upon the request of Yosef Herzog, he incorporated Synaegis Co Ltd (Synaegis) on 23 October 2017. Although he was the sole director and shareholder of Synaegis, Yosef Herzog was the decision-maker for all its financial and commercial affairs. Synaegis was providing Customer and IT Support services to its clients. The main client of Synaegis was HF & Co Ltd based in Seychelles. He averred that respondent has not given him notice of the Restriction Order A within the prescribed delay as provided under section 27(5) of the Asset Recovery Act and he believed that the Restriction Order made against him may have been triggered by the fact that the Commodities Futures Trading Commission of the United States of America issued a complaint for injunctive relief, civil monetary penalties, and other equitable relief against Linkopia and other entities associated with Yosef Herzog and Yakov Cohen. The complaint is against all the brands that were running under the entities which Yosef Herzog and Yakov Cohen owned and controlled. He remembered that such complaint for injunctive relief was sent to Linkopia in or about August 2019 which was delivered at the aforesaid office of Linkopia. He also recollect that he sent a text message to Yosef Herzog about such complaint for injunctive relief and the latter phoned and told him to discard same as it was a civil matter involving him and Linkopia which has nothing to do with applicant.

He averred that from 1 January 2014 until date, his sources of revenue is his income derived from his employment and as such, all monies deposited on his bank accounts and all assets acquired by him are not proceeds of any crime or from any tainted origin (**Annexes K1 & K2**). Also, he averred that from July 2017 to October 2019, on several occasions, Yosef Herzog transferred money on his aforesaid bank account which he hold with the SBM Bank (Mauritius) Ltd in order to pay for expenses for the maintenance of Yosef Herzog's villa A5 situate at Le Clos du Littoral, Grand Bay. He duly paid such expenses as evidenced by receipts of payment for the period of 13 July 2017 to 15 October 2019. (**Annex L**)

He is currently working at Prime Biz Consultancy Ltd as Operations Manager and therefore, his current source of income is the salary which he derives from his employment. The portion of land situate in the District of Pamplemousses place called Mare Sèche, Pereybere and the whole morefully described in title deed registered and transcribed in Vol 201702 No. 001490 was acquired by means of a Homeloan which he had contracted with

SBM Bank (Mauritius) Ltd (**Annex M**). The car bearing registration number J 1951 make "Toyota" model "Vitz" was acquired by him on a leasing facility granted to him by SICOM Financial Services Ltd (**Annex N**). In January 2016, he was offered a motor vehicle of make "Nissan" model "Qashqai" bearing registration number J 2484 (hereinafter referred to as "the Qashqai") by Yakov Cohen (**Annex O**). The motor vehicle "Toyota Vitz" was sold on 13 December 2017 to Travel Point Tours (Mauritius) Ltd as evidenced by the certificate of "*gage sans déplacement*". He caused the transfer of the registration number J 1951 onto the motor vehicle "Nissan Qashqai" and returned the registration J 2484 to the National Transport Authority (now National Land Transport Authority) (**Annex P**). Also, he averred that in November 2017 he was provided with a car make Mercedes Benz bearing registration number CB 150 by Linkopia. The said motor vehicle was on lease from Travel Point (Mtius) Ltd. He requested Linkopia to cause the transfer of the registration number J 2484 onto the Mercedes Benz. The Qashqai was sold to Mr P. Munbod in or about October 2020. **Annex Q** is a letter dated 1 October 2020 witnessing the grant of leasing facility of Rs 400,000 to the said P. Munbod, for the purchase of the Qashqai, by Sicom Financial Services Ltd. In or about October 2020, he was granted leasing facilities by Sicom Financial Services Ltd for the purchase of a motor vehicle make "Ford Ranger" and the aforesaid registration number J 1951 was transferred on that motor vehicle. (**Annex R** - copy of lease agreement of Sicom Financial Services Ltd)

As regards the 1000 units held by applicant in SBM Holdings Ltd, he averred that same were acquired by his father and bequeathed to him when he was of tender age. He is currently unable to operate his aforesaid banking accounts and this is causing him serious prejudice.

Respondent has, on the other hand, averred that applicant has failed to disclose in his application that he is also being prosecuted, together with Yakov Cohen, Yosef Herzog and twelve (12) other defendants, in the United States District Court for the District of Maryland, United States of America, in Criminal No. PX-19-77 for (Conspiracy to commit Wire Fraud, 18 U.S.C. 1439; Wire Fraud, 18 U.S.C. 1343; Aiding and Abetting, 18 U.S.C. 2; Forfeiture, 28 U.S.C. 2461, 18 U.S.C. 981, 21 U.S.C. 853). (**Annex A**)

In reply to the averments made by respondent that –

- (i) on 13 December 2018, there has been a transfer of Rs 370,000 from Yosef Herzog to the Savings Account No. 002792000000017 of applicant held with AfrAsia Bank Ltd and on the same day, the money was transferred to Account No. 001410951610016 of the said Yosef Herzog held with AfrAsia Bank Ltd;

- (ii) on 14 December 2018, there has been a transfer of Rs 1,730,000 from the aforementioned account of applicant to that of Yosef Herzog;
- (iii) on 4 January 2019, there was a transfer of Rs 1.2 m from Herzog's aforementioned account to that of applicant and on the same date, the applicant transferred the said sum as a loan in the account of Synaegis Co Ltd, a company incorporated by the said Yosef Herzog and having applicant as its sole director and shareholder; and
- (iv) on 9 January 2019, the said Yosef Herzog credited the sum of Rs 900,000 in the account of applicant and the latter transferred the sum of Rs 840,000 in account No. 055877000000049 of Synaegis Co Ltd held with AfrAsia Bank Ltd,

applicant has averred that –

- (i) on 13 December 2018, he was requested by Yosef Herzog to lend him a sum of Rs 370,000 from the monies belonging to Synaegis Co Ltd ("Synaegis"), the company which was set up and controlled by him. Due to Yosef Herzog having no legal connection to Synaegis, there was no direct transfer from Synaegis to him. Consequently, he transferred such sum from the bank account bearing No. 055877000000049 which Synaegis holds with AfrAsia Bank Ltd to his savings account bearing No. 002792000000017 which he holds with the same bank. Such transfer of funds was accounted in the records of Synaegis as a loan to him, being the shareholder. Subsequently, on the same day, he transferred the said sum to the bank account bearing No. 001410951600126 which Yosef Herzog holds with AfrAsia Bank Ltd; (**Annex D** - copy of the statement of the bank account bearing No. 055877000000049 for the period between 1 January 2018 to 31 January 2018, which Synaegis holds with AfrAsia Bank Ltd witnessing the said transfer of funds to his savings account.)
- (ii) on 14 December 2018, Yosef Herzog again requested applicant to lend him a sum of Rs 1,730,000 from the monies belonging to Synaegis. Consequently, he repeated the same aforesaid banking transaction and the said sum was again accounted as a loan to him in the records of Synaegis;

- (iii) the sums of Rs 1.2 million and Rs 900,000 were so transferred to his aforesaid bank account which he holds with AfrAsia Bank Ltd by Yosef Herzog as reimbursement of the aforesaid sum of Rs 2.1 million which was provided to the latter. He consequently, refunded the said sum of Rs 2.1 million to Synaegis as evidenced by, **Annex E**, the attached bank statement of Synaegis for the period of 1 January 2019 to 31 March 2019.

On the whole, respondent has averred that the acts and doings of applicant as expatiated in the First Superseding Indictment may constitute a money laundering offence or any other offence and that pursuant to the First Superseding Indictment applicant was a resident of Mauritius. From at least in or about May 2014 through at least in or about December 2016, applicant was an employee at Yukom and worked as head of the customer service and internal investigation departments for BinaryBook and BigOption. In correspondence and other communications, applicant identified himself as a “Customer Support Representative” for BinaryBook and “Linkopia Branch Manager”. Applicant supervised representatives of BinaryBook and BigOption. He also supervised the “Finance Department”, which determined whether to permit investors to withdraw their funds and he has been involved with Yakov Cohen and other parties in illegal activities or money laundering transactions.

I have given due consideration to the submissions made by both counsel.

As regards the issue of the respondent’s failure to give timely notice to applicant in respect of Restriction Order A, respondent conceded that it failed to follow the statutory delay of 21 days for service of the notice to applicant. In her written submissions, learned Counsel for the respondent submitted that there are cogent reasons for such failure and she had set out some additional facts as to why service was done outside delay and referred to some documents (**Annexes A and B**), which did not form part of respondent’s affidavit.

I disregard this part of her submissions as I consider it improper for learned Counsel to refer to facts and matters which are not averred in respondent’s affidavit. Also, I cannot take judicial notice of the Annexures A and B which are subsequent Orders made by a Judge in Chambers.

Now, section 27(5)(a) of the Asset Recovery Act 2011 provides as follows –

- “(5) (a) *Where a Judge grants a Restriction Order, the Enforcement Authority shall, within 21 days from the making from the Order or such longer period as the Judge may direct, give notice of the Order –*

- (i) *to every person known to the Enforcement Authority to have an interest in the property;*
- (ii) *such reporting person as it considers appropriate, in such form and manner as it may determine; and*
- (iii) *such other person as the Judge may direct.”*

It is clear from the wording of section 27(5)(a) that a Restriction Order could be served on a person known to the Enforcement Authority to have an interest in the property within such longer period when the Judge so directs. It is common ground that no application was made by respondent to the Judge in Chambers to extend the 21 days period in respect of Restriction Order A.

Be it as it may, the Asset Recovery Act (ARA) does not provide for the consequence of a failure to timely serve the notice of the Restriction Order in accordance with section 27(5).

Learned Counsel for applicant submitted that failure to give notice of the Restriction Order A within the 21 days, the Restriction Order A should be rescinded.

In **London and Clydeside Estates Ltd v Aberdeen District Council [1980] 1 WLR 182**, Lord Hailsham stated –

“When Parliament lays down a statutory requirement for the exercise of legal authority it expects its authority to be obeyed down to the minutest detail. But what the courts have to decide in a particular case is the legal consequence of non compliance on the rights of the subject viewed in the light of a concrete state of facts and a continuing chain of events”

[Emphasis added]

In **Attorney General Reference (No. 3 of 1999) [2001] 2 AC 91**, the House of Lords held *“that the emphasis ought to be on the consequences of non-compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity”*.

This decision led to the adoption of a flexible approach of focusing intensely on the consequences of non-compliance, and posing the question, taking into account those consequences, whether Parliament intended the outcome to be total invalidity.

The Court has therefore to examine the consequence that may follow from insisting on a strict observance of the particular provision and more importantly the scheme of the other provisions of which it forms part and whether the failure to comply with the particular provision has caused prejudice to applicant. (See for instance the approach taken by the Supreme Court in **A.C. Ping Fen & Ors v M. B. Tickfinc & Ors [1997 MR 43]**, **Rogers & Co**

Ltd v The Sugar Industry Pension Fund [\[2005 SCJ 114\]](#) and **M. C. C. Lebon & Ors v Byte In Co. Ltd.** [\[2006 SCJ 196\]](#) where the Court held that failure to comply with statutory time limits was not fatal in the absence of any prejudice.)

The ARA provides for the circumstances in which a Restriction Order would be issued. Pursuant to section 27 of ARA, the Enforcement Authority may apply to a Judge in Chambers where property is reasonably believed to be proceeds, a benefit, or an instrumentality or terrorist property. The Enforcement Authority has only to show that the property is proceeds, a benefit or an instrumentality or terrorist property, without having to show that the property was derived directly or indirectly from a particular offence or that any person has been charged in relation to such an offence. Where the Judge is satisfied that there are reasonable grounds to believe that the property is proceeds, a benefit or an instrumentality or terrorist property, he may make a Restriction Order. The Enforcement Authority shall within 21 days of the making of the Order or such longer period as the Judge may direct, give notice of the Order to every person known to the Enforcement Authority to have an interest in the property and such other person as the Judge may direct.

Under section 29 of ARA, upon an application made by a person who has an interest in property that is subject to a Restriction Order to a Judge to exclude his interest from the Order, the Judge may upon being satisfied of the conditions set out under paragraphs (a), (b), (c) and (d) of this section, grant such application.

Pursuant to section 31 of ARA, any person affected by a Restriction Order may apply to a Judge for the variation or rescission of the Order and the Judge may vary or rescind the Order where necessary in the interests of justice or shall rescind the Order where the proceedings concerned are concluded.

The legislative scheme under the ARA makes clear provisions not only for the Enforcement Authority to make an application to a Judge in Chambers in an appropriate case for the issue of a Restriction Order and for the notification of the Order to any interested party or an affected party by the Restriction Order but also provisions are made for any interested or affected person to access the Court by making an application to a Judge in Chambers to exclude his interest from the Order or to apply for a variation or rescission of the Order.

In view of the general scheme of the ARA and on a purposive interpretation, it cannot be said that Parliament intended to insist on a strict compliance of the time limit as prescribed under section 27(5)(a) ARA and that it was intended by Parliament that any delay in giving notice of the Restriction Order would be fatal and invalidate the Order made.

On the undisputed facts, applicant was not denied any access to the Court to make an application for a variation or rescission of Restriction Order A albeit the failure by respondent to give notice of the Order within the period of 21 days. The legal consequence of such non-compliance has not caused any prejudice to applicant in the light of the concrete state of facts and the continuing chain of events in as much as, applicant is praying for the variation or rescission of the Restriction Order A and also is challenging the Restriction Orders B and C which arose from the same investigation by the authorities in United States of America and which had led to the First Superseding Indictment in which applicant is being prosecuted together with 14 other persons in the United States District Court for the District of Maryland for conspiracy to commit wire fraud, wire fraud and Aiding and Abetting.

I, therefore, hold that respondent's failure to comply with the time specified in section 27(5) of the ARA in so far as the giving of the notice to applicant of Restriction Order A is concerned, is not fatal on the specific circumstances of the present case as no significant prejudice is caused to applicant. The intention of Parliament is to provide for an avenue of challenge by an interested or affected party to apply to a Judge in Chambers for the exclusion of his interest from the Order or alternatively for the variation or rescission of the Order. Consequently, Parliament could not have intended a total invalidity for non-compliance of the provision relating to the timely notification of the Order to an interested or affected party.

I shall now deal with the merits of the application.

As regards the prayer for the rescission of Restriction Orders A, B and C, it is observed that applicant together with Yakov Cohen, Yosef Herzog and 12 other persons (the defendants) is, according to First Superseding Indictment wherein the Grand Jury for the District of Maryland charged, in the United District States District Court for the District of Maryland, of the offence of Conspiracy to Commit Wire Fraud, 18 U.S.C. 1439; Wire Fraud, 18 U.S.C. § 1343; Aiding and Abetting, 18 U.S.C. § 2; Forfeiture, 28 U.S.C. § 2461, 18 U.S.C. § 981, 21 U.S.C. § 853.

Under the heading Defendants, in terms of the Indictment, the involvement of applicant is set out under paragraph 16 as follows:-

“Defendant RUNAL JEEBUN, a/k/a “Ryan Jeebun”, was a resident of Mauritius. From at least in or about May 2014 through at least in or about December 2016, JEEBUN was an employee at Yukom and worked as head of the customer service and internal investigation departments for BinaryBook and BigOption. In correspondence and other communications, JEEBUN identified himself as a

“Customer Support Representative” for BinaryBook and “Linkopia Branch Manager”. JEEBUN supervised representatives of BinaryBook and BigOption who performed conversion and retention services on behalf of BinaryBook and BigOption. JEEBUN also supervised the “Finance Department”, which determined whether to permit investors to withdraw their funds.”

Under Count I, (Conspiracy to commit Wire Fraud), applicant is charged *“with knowingly and intentionally, that is with the intent to advance the conspiracy, combine, conspire, confederate, and agree with each other and others, both known and unknown to the Grand Jury, to commit wire fraud, that is, to knowingly wilfully, and with intent to defraud, having devised and intending to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing such pretenses, representations, and promises were false and fraudulent when made, transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, pictures, and sounds for the purpose of executing the scheme and artifice in violation of Title 18, United States Code, Section 1343”.*

The purpose of the conspiracy was to obtain the maximum deposit from binary options investors and to take steps to ensure that investors lost the money in their accounts or were otherwise unable to withdraw funds, thereby enriching the defendants, their co-conspirators, and the Binary Options Organization in the process.

The manner and means of conspiracy was to induce investors to deposit funds based on misrepresentations, including:

- a. false statements and material omissions regarding the alignment of financial incentives between investors and representatives;
- b. false statements and material omissions regarding the suitability of binary options as investments and returns on investments in binary options;
- c. false statements and material omissions about the names, qualifications, and physical location of representatives assisting investors; and
- d. false statements and material omissions regarding investors’ ability to withdraw investment funds and about the reasons that funds could not be withdrawn.

The defendants made or caused to be made materially false statements and failed to disclose material information to binary options investors about whether the financial incentives of representatives of BinaryBook and BigOption were aligned with those of binary options investors.

Representatives of BinaryBook and BigOption, including retention agents working under the supervision of *inter alia* Cohen, Herzog and applicant claimed to be representing the interests of investors when, in fact, they were not representing the interests of investors. Retention agents falsely told investors and potential investors that they only made money when the investors made money.

Applicant and the co-conspirators concealed from investors that they made money on net deposits. The defendants and their co-conspirators also falsely claimed that their financial interests were aligned with those of investors.

Applicant and the co-conspirators also trained and encouraged retention agents employed by the Binary Options Organization to make such misrepresentations.

Applicant and the co-conspirators also trained and encouraged retention agents employed by the Binary Options Organization to maximize investor deposits for the purpose of generating profits for the defendants and their co-conspirators.

Also, applicant and the co-conspirators made or caused to be made materially false statements and failed to disclose material information to binary options investors about the suitability of their investments and about the expected returns on their investments. They knew that it was unlikely, if not impossible, to guarantee success or specific rates of return in any binary options investment and concealed from investors that most binary options investors lost money. The applicant and the co-conspirators also trained and encouraged retention agents employed by the Binary Options Organization to make such misrepresentations.

Applicant and the co-conspirators made or caused to be made materially false statements and failed to disclose material information to binary options investors about the true names, qualifications, and physical location of representatives of BinaryBook and BigOption who were purporting to assist investors. They falsely represented to investors that they had training and experience in financial markets and that they had degrees in finance or related fields. They concealed the fact that they were calling investors from Israel and falsely claimed to be located in London. They made or caused to be made materially false statements and failed to disclose material information to binary options investors about

investors' ability to withdraw funds from their accounts and they falsely represented to investors that investors could withdraw funds in their account upon request.

Under Count 2 through 4 (Wire Fraud) the charge against the defendants reads as follows:-

“aiding and abetting and being aided and abetted by each other and others known and unknown to the Grand Jury, did knowingly and wilfully, and with the intent to defraud, having devised and intending to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, knowing such pretenses, representations, and promises were false and fraudulent when made, transmit and cause to be transmitted, by means of wire communication in interstate and foreign commerce, writings, signs, picture and sounds for the purpose of executing the scheme and artifice.”

Also, the Indictment charges applicant together with the other accused that *“for the purpose of executing and attempting to execute the aforesaid scheme to defraud, knowingly caused to be transmitted by means of wire communications in interstate commerce, writings, signs, signals, pictures, and sounds.”* (Use of the Wires)

It is further averred in the Indictment that the United States will seek forfeiture as part of any sentence in accordance with 28 U.S.C. § 2461(c), in the event of the defendants' conviction under any of Counts One through Four of the Indictment, the defendants shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C), any property, real or personal, which constitutes or is derived from proceeds traceable to such violation. And if as a result of any act or omission of any defendant, any proceeds subject to forfeiture that have been placed beyond the jurisdiction of the Court, it is the intent of the United States of America, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of the said defendants up to the value of the forfeitable property.

Applicant is undoubtedly facing serious criminal charges before the Court in the United States and following due process and as part of any sentence that may be imposed in the event of a conviction, the authorities in the United States shall seek forfeiture of property which constitutes proceeds.

In the circumstances, I am of the view that the criminal process must follow its course and I decline to rescind the Restriction Orders A, B and C.

As regards the Variation Order prayed for in respect of Restriction Orders A, B and C, the evidence shows that there has been movement of funds from Yosef Herzog to and from applicant's bank account and to the bank account of Synaegis. Also, there is no document in support of applicant's averments in respect of 1000 units which applicant holds in SBM

Holdings Ltd. Moreover, applicant has failed to show how he is prejudiced by the Restriction Orders.

Applicant faces serious criminal charges in the United States and his involvement as particularised in the First Superseding Indictment indicates cross border commerce for the purpose of executing the scheme and artifice. Also, the foreign Court may make a forfeiture order in respect of the proceeds placed beyond the jurisdiction of the foreign Court.

For the above reasons, it will not be in the interests of justice to vary the Restriction Orders A, B and C.

The application is set aside. With Costs.

I certify as to counsel.

Chambers, this Thursday 11th May 2023.

M. I. Maghooa
Judge

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For Applicant : **Mr P. Rangasamy, Attorney-at-Law**
Mr S. Mohamed, of Counsel

For Respondent : **Mr N. Ramasawmy, Attorney-at-Law**
Ms V. Nursimhulu, of Counsel