

INTEGRITY REPORTING SERVICES AGENCY v KAVIRAJ CHUCKOWREE

2025 SCJ 308

Serial No. 1231/2022

THE SUPREME COURT OF MAURITIUS

(Before the Judge in Chambers)

In the matter of:

Integrity Reporting Services Agency

Applicant

V

Kaviraj Chuckowree

Respondent

In the presence of:

- 1. The Commissioner of Police**
- 2. The Financial Intelligence Unit**

Co-Respondents

JUDGMENT

The applicant, the Integrity Reporting Services Agency [IRSA] [the Agency] acting in virtue of sections 14 and 16 of the Good Governance and Integrity Reporting Act [the Act] is seeking for an Unexplained Wealth Order against the respondent under section 16 of the Act for the confiscation of the sum of Rs 3,020,750 [the impugned funds] which was seized from by ADSU officers on 17 June 2017 at his dwelling house and which has been deposited at the SBM Bank (Mauritius) Ltd, Port Louis branch in account number 61030100057001 in the name of Co-Respondent No. 2.

The respondent is resisting the application whereas the co-respondents are abiding by the decision of the Judge in Chambers.

It is undisputed that on 17 June 2017 following a search of the respondent's premises at Central Flacq, the Anti-Drug Smuggling Unit [ADSU] secured the total sum of at least Rs 3,020,750 which were kept in various locations in his house: Rs 60,800 from the shelves of a wooden furniture in his bedroom, Rs 2,955,500 in several carton boxes labelled "Rajah Pure Vegetable Oil" in a store and Rs 4,450 from a purse found in that same store. On being cautioned, the respondent replied that he picked up the money from a trash bin. It is the respondent's contention that it was the sum of Rs 3,500,000 which was secured.

It is also undisputed that the respondent is on record for different offences but mainly related to drugs and possession of stolen property as listed at paragraphs 9 to 20 of the applicant's affidavit. He was provisionally charged with money laundering before the District Court of Flacq and is now standing trial before the Intermediate Court.

The matter was referred by the Deputy Commissioner of Police of the ADSU to the applicant for investigation under the Act on 20 September 2021. On 24 February 2022 the applicant caused a statutory request to be served on the respondent under section 5(1)(a) of the Act requesting him to explain the source of the money seized from his premises by the ADSU.

On 15 April 2022 the respondent replied to the statutory request dated 18 February 2022 by way of an affidavit in which he stated that since 1991 he has been working in his mother's business cooking fried snacks and selling them at Flacq on weekdays. As from January 1992 he has been saving money out of his daily earnings which was ranging from Rs 1,800 to 1,900. He had been buying his supplies from a shop which is now closed and thereafter from Sam Bay Supermarket but has not kept the receipts over the years. As at December 2009 he had saved up to Rs 3,200,000. From January 2016 to June 2017, he has been selling fried snacks and fruits so that by June 2017 he had saved up to Rs 3,830,000. He has paid the NHDC the sum of Rs 50,000, deposited Rs 150,000 at the SBM Bank for his fruit business and spent Rs 140,000 to purchase a plot of land in Flacq. He has kept all his savings in cash to avoid paying taxes. It is his contention that the source of the funds is derived from his earning from his business and not from any illegal activities.

The applicant has carried out a detailed analysis of the respondent's response in its supporting affidavit and referred to the report of the forensic examination of the carton boxes in which the money in cash were kept and, in the report, dated 01 September 2017, the FSL found that particles from those boxes revealed the presence of heroin.

The Integrity Reporting Board held at its 98th meeting dated 28 July 2022 that the respondent has failed to afford a satisfactory explanation for his ownership and possession of the funds and had directed the applicant to apply for an Unexplained Wealth Order.

Section 2 of the Act has defined the term "unexplained wealth" as follows:

"Unexplained wealth" includes 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.*

However, at paragraph 49 of the applicant's affidavit, the applicant Agency is relying on subsection (b) of the definition of unexplained wealth to justify the present application, that is the *ownership, possession, custody or control of the sum of Rs 3,020,750 cannot be satisfactorily accounted for* by the respondent.

It has been provided in section 3 (6) and (7) as amended by Act No. 5 of 2020, that the Act shall not apply to

- (7) (a) *any property acquired or having come in the possession or under the custody or control of a person more than 7 years before 1 January 2016*
- (b) *unexplained wealth of less than 10 million rupees, other than to unexplained wealth of at least 2.5 million rupees in cash which has been seized by an enforcement authority during a criminal investigation.*

No application for an Unexplained Wealth Order shall be made under section 14 in relation to any property acquired or having come in the possession or under the custody or control of a person more than 7 years before the date on which a request under section 5(1)(a) is made.

It is noteworthy that the ADSU had seized the impugned funds of Rs 3,020,750 from the respondent's dwelling house on 17 June 2017 and at the material time of the seizure, the Act did not apply to "unexplained wealth" worth less than 10 million rupees. Following the amendment by Act No. 5 of 2020 which came into operation on 09 July 2020 the Act now applies to unexplained wealth of at least 2.5 million rupees in cash *which has been seized by an enforcement authority* (which includes the Commissioner of Police) during a criminal investigation. It has been pertinently held in the case of **Integrity Reporting Services Agency v Louis John Brant Vivien & Ors** [\[2023 SCJ 133\]](#) that: -

“Given the wording of section 3(6), it is clear that as from 9 July 2020, the Act also applies to unexplained wealth of at least 2.5 million rupees in cash which has been seized by an enforcement authority during a criminal investigation even where the seizure has been effected prior to 9 July 2020.”

In the present case, the applicant caused a statutory request to be served on the respondent on 24 February 2022 requesting him to explain the source of the impugned funds. Had the wealth been in the nature of an immoveable property or a motor vehicle a simple verification with the Conservator of Mortgages or the Registrar General would have determined when the respondent had come into possession thereof but the wealth in issue is in cash. Section 3(5) of the Act provides for the burden and standard of proof when an application for an Unexplained Wealth Order is made, which constitutes civil proceedings, the onus lies on the respondent to establish, on a balance of probabilities, that any property is not unexplained wealth.

In **Case Noyale Limitée v Association Socio Culturelle Rastafari** [\[2018 SCJ 76\]](#) it was held that a mere statement of the facts that would, if established, constitute a defence to the appellant’s action will not suffice. Instead, there must be averred such facts and circumstances as are likely to help the court or judge in assessing the seriousness of the defence as it was pertinently held in the case of **Hossen (Opticians) Ltd v Mauritius Printing Co Ltd** [\[1977 MR 270\]](#),

Hence if the respondent is asserting that he came into possession or custody of the cash in excess of Rs 2.5 million seized by an enforcement body 7 years before 24 February 2022, it is for him to adduce sufficient and convincing evidence to that effect. It is therefore not enough for the respondent to make bare or vague averments regarding the property subject matter of the application. He must put forward such facts and circumstances and adduce adequate and convincing evidence annexed to his affidavit in order to enable the Judge to determine whether there is any veracity in his averments regarding the source of the impugned funds or that it had come into his possession or custody or control before 24 February 2015, that is more than 7 years before the date on which the statutory request under section 5(1)(a) has been made. Once the respondent establishes his assertions on the balance of probabilities, no unexplained wealth order could be made. Alternatively, where the explanations put forward by the respondent require further investigation and an in-depth assessment into complex issues of fact and accounts, the parties would have to be referred to the competent court.

In 1991, the respondent was 17 years old when he started selling fried snacks in the business belonging to his mother and registered in his mother's name. He has also stated that he and his brother were working in their mother's business together but that their earnings were separate and he kept all his earnings. He has made the following averments concerning his income:

1. His daily earnings were at an average of Rs 1800 to 1900.
2. His weekly earnings were between Rs 9,000 and 9,500.
3. His expenses for materials were between Rs 2,800 to Rs 3,000
4. His weekly profits varied between Rs 6,200 to Rs 6,500 (24,000 to 26,000 monthly)
5. His monthly personal expenses were between Rs 8,000 and Rs 9,000
6. His savings for one month: Rs 16,000 to Rs 17,000 (Rs 200,000 for one year)
7. Rs 3,200,000 over 16 years.

A close examination of the above averments reveals a very simplistic arithmetical calculation which fail to take into account the increase in the costs of supplies and raw materials as well as the rise in the cost of living. The respondent would have the Agency to believe that he has been selling fried snacks from Mondays to Fridays constantly and consistently without fail over a period of 16 years without taking into account public holidays, illness, bad weather or other events falling on weekdays, the time he spent to attend Court on at least two occasions in 1995 and 2000 and when he got involved in the commission of criminal offences. It is indeed very odd that over 16 years, his income and earnings, his personal expenses and his investment in his business as well as his profits have remained static and identical. It is equally surprising that he did not contribute anything in the expenses relating to his mother's business be it in terms of utility bills and contribution in the payments of permits, licences and trade fees, if not the very least, the sharing of profits. He has complained that as he was detained at the Central Prison he had not been given the opportunity to freely justify his sources of funds but when that opportunity has been given to him to file his two counter affidavits to resist the present application, he did not avail himself of that opportunity to adduce the relevant supporting evidence.

The respondent mentioned his supplier as a wholesale shop which has, conveniently already closed. He started purchasing his supplies and materials from Sam Bay supermarket without his costs having increased. It can be said that as a regular and longtime customer of Sam Bay supermarket it was fairly easy for him to request the owner or manager of Sam Bay

supermarket to provide him with an affidavit to support his contentions which he failed to do. More importantly, since he has alleged to have been working in his mother's business with his brother, and this despite his assertion in his second affidavit that many members of his family including his mother and his brother and neighbours bear witness to the fact that he was working in his mother's business of selling fried snacks, he has not caused any affidavit from both his brother and his mother or from the concerned neighbours to be annexed to support his contentions.

In view of the above, coupled with the fact that on the ADSU securing the money the respondent replied that he found them from a bin, it can be said that the respondent is not telling the truth. He contended in his affidavit years later that his reply was made out of fear but its spontaneity speaks volumes as to the origin of the impugned funds when taking into account the sheer amount of money, not in thousands but in millions of rupees concealed in six oil carton boxes. Additionally, the forensic analysis of particles from those carton boxes as well as a swabbing of two of the cartons have revealed the presence of heroin when coincidentally, the respondent is on record for drugs-related offences including administering, selling, possession and dealing in heroin. His explanation as to the presence of heroin on the carton boxes which had been handled by many individuals is baffling when considering that all of the 6 oil carton boxes had particles of heroin. Had the money been earned through legal commercial activities the respondent would not have uttered such unbelievable excuse of having discovered the money from a bin spontaneously. The same holds true in respect of his explanation that he has kept such large amount in cash so as to avoid being liable to pay taxes, when his mother was running a duly licensed business.

Insofar as his alleged business in respect for the sale of fruits for 18 months from January 2016 to June 2017 is concerned, the respondent has produced around 46 receipts from SKC Surat & Co Ltd and A. Chinatamby Co. Ltd but the majority of which have become illegible. In respect of A. Chinatamby Co. Ltd, the statement of accounts submitted by the latter indicates that the respondent purchased fruits for merely Rs 11,675 from 02 May 2017 to 16 June 2017 only. Most of the receipts from SKC Surat & Co Ltd have been issued in the name of one "Bundhun Vidyadev" and not in the name of the respondent. In his affidavit the respondent has explained that he did not purchase the fruits in person from SKC Surat & Co Ltd and it was one "Thierry" who used to deliver his order. It is to be noted that neither the name of Thierry nor that of the respondent are to be found on the receipts. No explanation has been given by the respondent as to his relationship with the said Bundhun Vidyadev. He gave no information as to his contact person at SKC Surat & Co Ltd to finalise his order and neither Thierry nor Bundhun Vidyadev have affirmed any affidavit to support his contentions.

In the light of all the above, the respondent's explanations as to the source of the money seized or the years over which the money had allegedly been derived, that is, since 1992 and for more than 7 years before 24 February 2022, are as unconvincing as implausible. He has thus failed to discharge his burden of proof on the balance of probabilities to establish that the impugned funds are not unexplained wealth. There are no issues of fact of such magnitude and complexity which would warrant that the parties should be referred to the competent Court.

For all the reasons given above, the application for the issue of an Unexplained Wealth Order against the respondent under section 16 of the Act for the confiscation of the sum of Rs 3,020,750 which was seized from his dwelling house at Central Flacq by ADSU officers on 17 June 2017 and which has been deposited at the SBM Bank (Mauritius) Ltd, Port Louis branch in account number 61030100057001 in the name of Co-Respondent No. 2 is granted.

P. M. T. K. Kam Sing
Judge

24 July 2025

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