

THE FINANCIAL CRIMES COMMISSION v AUDIT Y. & ORS

2026 SCJ 204

Record No. 123184

THE SUPREME COURT OF MAURITIUS

In the matter of:

**The Financial Crimes Commission
(previously known as Independent Commission Against Corruption)**

Applicant

v.

- 1. AUDIT Yoshita**
- 2. AUDIT Tushya**

Respondents

In the presence of:

LUTCHMUN Martine

Co-Respondent

JUDGMENT

This is an application made by the then Independent Commission Against Corruption (ICAC), now Financial Crimes Commission (FCC) whereby it is seeking a number of orders against the respondents in an attempt to recover certain assets of the respondents which are averred to be proceeds of crime.

The orders prayed for are hereunder reproduced:

- a. to appoint an Usher to proceed with a "constat" of the portion of land together with building found thereon, situate at St Antoine, Goodlands, registered and transcribed in TV 5090/60 and put same under padlock;
- b. to appoint a land valuer to evaluate the portion of land together with the building found thereon, situate at St Antoine, Goodlands, registered and transcribed in TV 5090/60;
- c. to appoint a land auctioneer to call for a public auction for the sale of the portion of land together with building found thereon, situate at St Antoine, Goodlands, registered and transcribed in TV 5090/60;
- d. to appoint a Notary Public to officialise the sale of the portion of land together with building found thereon, situate at St Antoine, Goodlands, registered and transcribed in VT 5090/60;
- e. to order the said Notary Public to remit the sale price to the Applicant (ie the Commission);
- f. to allow the Applicant to deduct all expenses incurred in respect of the sale from the sale's proceeds;
- g. to allow the Applicant to credit the remaining amount into the Consolidated Fund;
and
- h. to make such other Order or Orders as may be necessary.

The respondents, Mrs Y. Audit, Ms T. Audit and the co-respondents (co-owners) are abiding by the decision of the court and were not represented by Counsel.

The present application is unusual and it is not disputed that there is no specific legislation in force for the forfeiture or seizure of assets which are either proceeds of crime, unexplained wealth for the specific situation of the respondents after their conviction and order for forfeiture by the Intermediate Court.

I am grateful for the submissions offered by all Counsel particularly, Assistant Parliamentary Counsel from the Attorney General's Office acting as *amicus curiae* given the novelty and implications of the present application.

The affidavit in support of this application sets out the history of legal proceedings which has led to the present application. Mrs Audit (the respondent No.1) was convicted on 25 February 2014 before the Intermediate Court for five counts of money laundering under the

Financial Intelligence and Anti-Money Laundering Act (“FIAMLA”). She was sentenced to forfeiture of her properties under section 8(2) of FIAMLA (cash in bank, land and motor vehicles).

The applicant is faced with a procedural hurdle inasmuch as neither the Proceeds of Crime Act (“POCA”) nor the FIAMLA have set out a defined procedure for the sale of immoveable properties which are subject to a forfeiture order. In light of this vacuum in the law, the applicant is seeking an order from the Supreme Court in its original jurisdiction, as reproduced above.

Submissions of the applicant

The applicant is relying on various legislations, including section 76 of the Constitution, section 16 of the Courts Act, sections 63 and 82(4) of the POCA and section 8(2) of the FIAMLA. It also refers to section 103 of the Constitution and sections 3(3) and 17(2) of the Asset Recovery Act.

Paragraphs 31, 33, 34, 37 and 38 of the applicant’s written submissions are hereunder reproduced:

“31. *Taking into account the abovementioned vacuum under PoCA and FIAMLA as regard the disposal of forfeited assets, it is submitted that the Applicant is the most suitable authority to effect the disposal of such assets for the following reasons:*

- i. the Applicant investigated, prosecuted and even resisted the appeal made by Respondent no.1;*
- ii. it is the Applicant which sought for the forfeiture order; and*
- iii. in light of the follow up from the Intermediate Court (refer to paragraph 11 above), it is understood that the Court expects the Applicant to enforce the forfeiture order by disposing of the Forfeited Immoveable Property.*

...

33. *Another important issue to deal with, is the expenses to be incurred by the Applicant during the afore-described procedure; the moreso that there are no*

provision in the PoCA and FIAMLA catering for the aforementioned process, as opposed to the provisions contained in ARA 2011 and the Insolvency Act 2009.

34. *We note that the ARA 2011 contains provisions clearly stipulating the procedure for the sale of property and the recuperation of the proceeds through a confiscation order. For instance, the Court may appoint a Trustee and make such further order to assist the Trustee in the discharge of his duties as the Court considers reasonably necessary.*

...

37. *In light of the clear provisions made under the ARA 2011 and the Insolvency Act 2009 in respect of costs incurred, the Applicant humbly submits that it would be improper for the Applicant to deduct the expenses incurred from the sale price received on its own volition and may be acting ultra-vires should it proceed to deduct such expenses, without being mandated or allowed by any specific provision of the law to do so.*

38. *Therefore, in the absence of any set procedure as regard the disposal of forfeited assets as well as the deduction of expenses incurred during the said process, the Applicant humbly submits that the Supreme Court, by virtue of its unlimited jurisdiction and as a court of Equity, can grant the present order being sought.”*

Submissions of the amicus curiae

Learned Counsel cited relevant provisions of the law on forfeiture, namely, section 113(1) of the Courts Act, section 8 of the Criminal Code Act, section 8(2) of the FIAMLA and section 82(4) of the POCA.

It was submitted that the application could not succeed for two reasons, 1) there was no legislative underpinning and 2) it is an attempt to qualify or vary the order made by the Intermediate Court.

Learned Counsel referred to the judgments of **Mahboob v Government of Mauritius** [\[1982 MR 135\]](#), **The State v Khoyratty** [\[2006\] UKPC 13](#), **Lord Veer Siddha Ashram Association & Ors v Cinq Plus Ltee** [\[2021 SCJ 360\]](#) and **Narrain D. v Electoral Commissioner & Ors** [\[2005 SCJ 159\]](#) and drew the attention of the court to the respective functions of the court and of legislature and the executive.

I find it pertinent to reproduce the extracts as cited in the submissions of learned Counsel for the Attorney General from **Mahboob** and **Khoyratty** respectively:

“Mahboob A. R. v. Government of Mauritius 1982 MR 135

“Parliament under our Constitution has no more right to pronounce judgments than the Supreme Court has the right to pass laws.”

The State v. Khoyratty (Mauritius) [2006] UKPC 13

“First, Mauritius is a democratic state constitutionally based on the rule of law. Secondly, subject to its specific provisions, the Constitution entrenches the principle of the separation of powers between the legislature, the executive, and the judiciary. Under the Constitution one branch of government may not trespass upon the province of any other. Thirdly, the Constitution gave to each arm of government such powers as were deemed to be necessary in order to discharge the functions of a legislature, an executive and a judiciary.

(...)

But the function of independent judges charged to interpret and apply the law is universally recognised as a cardinal feature of the modern democratic state, a cornerstone of the rule of law itself. The Attorney General is fully entitled to insist on the proper limits of judicial authority, but he is wrong to stigmatise judicial decision-making as in some way undemocratic.”

The *amicus curiae* highlighted that the legislator had enacted laws “to empower specific persons or bodies to deal with assets in limitative circumstances”. The Asset Recovery Act and Good Governance and Integrity Reporting Act were alluded to.

He also referred to the powers of the ICAC under section 20 of POCA and submitted it was not the most suitable authority to dispose of assets as it had not been empowered to do so. He referred to an extract from **Hansard** to show that the ICAC had a supervisory role and was established as a watchdog.

Finally, he submitted that the court could not intervene to vary the forfeiture order of the Intermediate Court.

Conclusion

As one can see from the prayer and above submissions of the applicant at paragraphs 34 and 37, the procedure for forfeiture, selling and disposal of assets, the various professionals (valuer, auctioneer and notary public) required, all show that it is a fairly involved procedure. Safeguards are required when disposing of the property of a person who is normally protected in his proprietary rights in a democratic state as provided for under section 8 of the Constitution and rightly so. The deduction of expenses incurred are but one of the salient issues which arise. Apart from the strong argument put forward by the *amicus curiae* that the separation of powers should be upheld between the courts and the legislature, it is crystal clear that the court order as prayed is no substitute for a careful examination of all aspects which underpin the legislative drafting found in statutes and regulations. The drafting of a law should include careful considerations as well as policy decisions and the contribution of technical and administrative staff where relevant. I agree with the submissions of the *amicus curiae* that such acts need to be legalised and regulated and that the proper channel is through legislation.

Although there should not be “*legislation in vain*”, I find it would be ill-advised for a court to intervene in the present circumstances.

Having legislation to forfeit assets which are ill gotten gains may have been well intentioned at the time but the proof is in the enforcement of laws and the institutional capacity and will to apply them. There has been an evolution in the different legislations and it is noteworthy that the POCA is now repealed. The ideal situation being where a democratic State successfully legislates with due preparation, sets up the structure and successfully enforces the law.

Judgments and orders are not worded or crafted in the same way as legislation and cannot be interpreted in the same manner and the present order cannot fill the present “*vacuum in the law*”. I therefore decline to grant the order prayed. I do not make any order as to costs in this matter.

**R. Teelock
Judge**

15 May 2026

For Applicant : **Ms. B. M. Chatoos, Attorney at Law**
Mr. M. Roopchand, of Counsel together with
Mr. H. Jeeha and Mr. F. Arzamkhan, both of Counsel

For Respondents : **Ms. V. Nirsimloo, Chief State Attorney**
Mr. D. Reetoo, Assistant Parliamentary Counsel appears
***amicus curia* together with Mr. T. Ramtale, Temporary**
State Counsel