

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2011/1110

BETWEEN:

THE DIRECTOR OF PUBLIC PROSECUTIONS

Claimant/Applicant/Respondent

and

JULIAN ADJODHA

Defendants/Respondents/Applicants

AND

CLAIM NO. SLUHCV 2011/1111

BETWEEN:

THE DIRECTOR OF PUBLIC PROSECUTIONS

Claimant/Applicant/Respondent

and

MOEITA ADJODHA

Defendants/Respondents/Applicants

Appearances:

Ms. Tina Mensah for the Respondent/ Applicant/Claimant, the Director of Public Prosecutions

Mr. Mark Maragh for the Applicants/Respondents/Claimants, the Adjodhas

2013: November 25;
December 12

REASONS FOR DECISION

- [1] **THOMAS W.R. ASTAPHAN, J.:** These are the Reasons for the Decision given on the hearing of two Applications filed by the Defendants/Respondents/Applicants (the "Applicants") on April 25, 2012 wherein they sought the discharge or variation of Ex-Parte Orders of Restraint granted by the

Court on 27th October 2011, and subsequently extended and varied on the 26th July 2012, in respect of various properties owned by the Applicants and their company, Julian Adjodha Group of Companies Inc., which Order was made pursuant to Sections 2, 30 and 31 of the Proceeds of Crimes Act Chapter 3.04 of the Laws of St. Lucia. The Act will hereafter be referred to as POCA. That the Applicants are charged with predicate offences under the Act is not in dispute.

- [2] The Parties agreed with this Court that the facts, issues and the applicable Law in both Applications were identical, and that therefore the Applications could properly be heard together.
- [3] At the outset Ms. Tina Mensah, Counsel for the D.P.P., in the highest tradition of the Legal Profession, correctly conceded that the D.P.P could not properly, on the state of the evidence before the Court, oppose the Applications to discharge the Restraining Orders against the personal properties of the Applicants, but stated that the D.P.P. would vigorously defend the Restraining Order against the property upon which the alleged illegal substances were found, on the ground that, according to the Act, that property was "Tainted property". That property is registered, not in the name of the Applicants, but in the name of a company entitled Julian Adjodha Group of Companies Inc. which company, the D.P.P submits on affidavit, is owned and/or controlled by the Applicants. That ownership and/or control was, for the purposes of these Applications, not disputed by the Applicants.
- [4] What therefore this Court is required to determine is whether the said property is 'Tainted Property' in accordance with Section 31(1) (d) of the POCA, it having not been disputed by the Applicants at this Hearing that POCA provides a lawful basis for the granting of a Restraining Order against the third party company's property under Section 31(1) (d), *if the requirements of the Act are met*. [It is to be noted that the D.P.P. is relying on Section 30 (2) (g) to *ground* the application for the extension of the restraining order in relation to the subject property, and on Section 31 (1) (d) for the restraining order to be extended.]
- [5] Section 31(1) (d) of POCA. states, so far as is relevant for present purposes, and given that the applicants do not deny that they "effectively control" the subject property, as follows-

"31. (1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property and the Court is satisfied that-

(a) ...,

(b) ...,

(c) there are reasonable grounds for believing that the property is tainted property in relation to an offence....”

[6] As relied on by Learned Counsel Miss Mensah, 'tainted property', is defined in section 2 of the Act thus-

“tainted property”, in relation to a scheduled offence, means-

(a) Property used in, or in connection with, the commission of the offence;...”

[7] The offences with which the Applicants are charged are possession of a controlled drug, suspected to be cannabis, and, by virtue of the amount of that substance, the deemed offence of possession with intent to traffic in a controlled drug, namely, the said suspected cannabis.

[8] These charged offences provide the statutory predicate for the invocation of Section 31 (1) (d) by the Director of Public Prosecutions.

[9] It is therefore necessary for the D.P.P to establish by evidence on affidavit the following facts, in order to satisfy this Court that the subject property is 'Tainted Property'-

(a) that the Applicants, or either of them, are/is likely to have committed either of the offences with which they stand charged, [necessary to engage section 31 (1) (d)] or Section 31 at all; and,

(b) that the subject property was used in, or in connection with, the commission of either of the offences charged.

[10] In relation to sub-section (a) above it is necessary to state at this juncture that, while the purpose of this Hearing is in no way to determine whether or not the offences charged were committed, it is *necessary* for this Court to be satisfied on the evidence provided by the D.P.P, that there is a *likelihood* that the one or both of the charged offences *may* have been committed by the Applicants, or either of them.

- [11] This is so because Section 8 (2) (a) of the Constitution of St. Lucia vests in the Applicants the Fundamental Right to the Presumption of Innocence, and therefore to presume that the charged offences, or either of them, can *properly* predicate the D.P.P.'s applications for Restraining Orders without examining the evidence upon which those applications are grounded, is to 'taint' the Applicants' Constitutionally mandated Presumption of Innocence. Further, it cannot be doubted that the Applicants' Constitutional Rights to the protection of their property, guaranteed by Section 6, is also engaged by the invocation of POCA, because a *restraint* of the use of a Citizen's property is, prima facie, an infringement of his/her Right to the enjoyment of that property. These reasons are why the Constitution makes express exceptions to these Rights, and in order for these exceptions to be *lawfully* engaged, the Court *must* ensure that the predicate charges are with basis in fact, and therefore are reasonable in Law. This is why the POCA requires evidence on affidavit in support of an application for a restraining order; so that "...the Court is satisfied...".
- [12] The evidence which the D.P.P relied on to premise the applications for the restraining orders is contained in the affidavits of Troy Lamontange sworn 24 October 2011, Kendell President sworn 24th October 2011, and another of Troy Lamontange sworn 19th April 2012.

TROY LAMONTANGE'S AND KENDELL PRESIDENT'S EVIDENCE

- [13] At paragraph 4 of his first affidavit Lamontange states-

"It is to my knowledge that on Thursday 17th March 2011 a search warrant in the name of Julian Adjodha was executed on the premises of JAG Motors situate at Beausejour in the quarter of Gros Islet, by members of the Drugs Squad of the Royal St. Lucia Police Force, with assistance of officers of the Customs and Excise Department. During the search four (4) metal drums were discovered in a locked room which was opened by the Defendant [Moeita Adjodha] upon the request of the police. The four drums all had welded inner compartment which were opened by the police in the presence of the Julian Adjodha and the Defendant, [Moeita Adjodha] who is the manager and a Director of JAG Motors, A quantity of green plant material which appeared to be cannabis was found in each of the inner compartments of the drums." [All errors are in the original].

- [14] What is immediately obvious from the foregoing is that (a) that Mr. Lamontange does not give the source of "It is to my knowledge..." as is required by CPR 2000 Part 30.3 (2) (b), and (b) the Search Warrant which was executed on the subject premises, owned by the company, and not by Julian Adjodha, was a Search Warrant directed to premises of Julian Adjodha and not to premises

owned by the Company. In respect of (a) above, at the hearing of these applications it appeared to be common ground that Lamontange was *not* present at the JAG Motors premises on 17th March 2011 when the search was carried out, and therefore his affidavit does not comply with Part 30.3 (2). This, however, shall not hinder this Court from giving full attention to the contents of this paragraph in his affidavit, as it appears to be a reflection of what is deposed to in the affidavit of Kendell President on 24th October 2011. In respect of (b) above, that issue is of no moment in these proceedings.

[15] At paragraph 9 of the said affidavit Lamontange states-

"I state further that based on the information contained herein and the Affidavit of Constable Kendell President dated 24th October 2011 and filed herein on 24th October 2011 that I have reasonable grounds to believe that the Defendant [Moeita Adjodha] has committed the offence of drug trafficking and that she has benefitted from the offence of drug trafficking".

[16] At paragraph 2 of his first affidavit President states-

"2. On Thursday the 17th of March 2011 about 3:07pm, I along with inspector Samuel, other police officers from the Drugs Squad and Customs Officers executed a search warrant for controlled drugs on the business place, "JAG Inc" which is situated at Beausejour in the quarter of Gros Islet and owned by Julian Adjodha and his wife, Moeita Adjodha, who is hereafter referred to as "the Defendant".

[17] At paragraphs 3 and 4 President states-

"3. Upon arrival at the aforesaid business place Julian Adjodha was not present but we were met by the Defendant [Moeita Adjodha] who is also the manager of the business. ...,

4. I informed the Defendant [Moeita Adjodha] that I had a warrant to search the premises for controlled drugs. I read the contents of the warrant to her, gave her a copy of the search warrant, and then commenced a search of the premises in the presence of the Defendant". [Moeita Adjodha].

[18] As stated earlier, it appeared to be common ground at this hearing that the warrant was directed to premises owned by Julian Adjodha, *and not* to any premises owned by the separate legal entity "Julian Adjodha Group of Companies Inc." Thus it appears that Mr. President may well have executed a search warrant *on the wrong premises*. This, however, does not impact this hearing as the D.P.P. is defending only the restraining order with respect to the property owned by the company on the basis stated above.

[19] President then goes on in his first affidavit to state that he searched a room which was locked and which Moeita Adjodha opened with keys, and that in that room there were four metal drums in which he discovered what appeared to be "inner compartments", which aroused his suspicion, and upon cutting the drums open he saw green vegetable matter which he suspected to be cannabis in each drum. These drums contained three labels each which read 1. "LIQUID CHEM. ALL PURPOSE LIQUID SOAP", 2. "ST. LUCIA", and 3. "FROM LIQUID CHEM LTD 4 BELL ROAD KINGSTON JAMAICA W.I"

[20] President states at paragraph 6 of the said affidavit-

"6. I proceeded to examine one of the drums closer by unscrewing and taking off the larger of two caps at the top of the drum, I looked in the drum through the opening that was now present as a result of the removal of the cap. I observed that the drum was empty of liquid but I observed a bulge on the inside which appeared to be an inner compartment. This inner compartment aroused my suspicion. I examined the other three drums and I observed that they had similar inner compartments." "

[21] On the opening of the first drum Moeita Ajodha was present. Julian Adjodha was present "...and his lawyer, Gerard William..." when the inner compartments of the three other drums were cut open by President.

[22] At paragraph 9 of the said affidavit President deposes to the fact that during the search of the premises eleven buckets containing green liquid were found and that after he cautioned the applicants "...Julian Adjodha said that the contents of the buckets were liquid soap."

[23] At paragraph 12 of the said affidavit President states-

"Based on the information contained herein I have reasonable grounds to believe and verily believe that the Defendant [Moeita Adjodha] and Julian Adjodha committed the offences of possession of controlled drugs with intent to supply..."

[24] In his second affidavit at paragraph 8 Lamontange deposes that "It was further revealed that the property known as 1256B 254 was not held in the name of the Respondent [Moeita Adjodha] and her husband Julian Adjodha but was held in the name of Julian Adjodha Group of Companies Inc. The Respondent and Julian Adjodha are the owners and directors of the said Julian Adjodha Group of Companies Inc." He further states, at paragraph 9, that the alleged controlled drugs were found on the said property.

- [25] In essence, both the first and second affidavits of Lamontange and both the first and second affidavits of President contain the identical information in each first, and in each second, none of either generation adding any new information to the other.
- [26] In his third affidavit sworn on 4th June 2012, the only new information Mr. Lamontange provides to the Court is the fact that Moeita Adjodha "...has been indicted for (1) possession of controlled drugs to wit: Cannabis and (2) possession of controlled drugs with intent to supply to another by indictment dated 4th April 2012." I pause to say that this appears to be a misleading statement as the controlled drug to which the Indictment refers is cannabis, and the statement claims that she had been indicted for "possession of controlled **drugs**" which can only mean more than one drug.
- [27] There are two further affidavits sworn by Mr. Lamontange on the 7th September 2012, neither of which adds any further relevant information for the purposes of these applications.
- [28] The above constitute the entirety of the evidence on Affidavit upon which the D.P.P. relies to ground the predicate offences and the 'tainted property' relief.
- [29] As stated earlier in this Decision, Ms. Mensah abandoned any claim by the D.P.P, for the purposes of this application, that the Defendants benefitted from any of the alleged crimes with which they stand charged. This Court is nevertheless constrained to state that *nowhere* in any of Mr. Lamontange's affidavits or in any of Mr. President's affidavits is there *one single shred of evidence* to support the "...reasonable grounds to believe...that the Defendant(s) [both Moeita and Julian Adjodha] has benefitted from the offence of drug trafficking", or from the offence of possession of cannabis. This is why Ms. Mensah, as an Officer of the Court and a Minister of Justice, and in the excellent tradition of the Legal Profession, *did not hesitate* to abandon the restraining orders against the property of the Adjodhas personally. She readily conceded that there was, on the affidavit evidence before the Court, no evidence to support any allegation that the Adjodhas, or either of them, benefitted from either of the offences with which they are charged.
- [30] What is the evidence required to satisfy this Court that the subject property is "tainted property"?
- [31] The evidence before this Court is as is stated in the affidavits of Mr. President, who was manifestly present on the scene on the day in question, set out in paragraphs 16, 17, 19, 20, 21, 22 and 23 above.

[32] That evidence is that-

- (a) On the 17th March 2011 he executed a search warrant on the premises which house JAG motors
- (b) That premises is owned by Julian Adjodha Group of Companies Inc. Moeita Adjodha and Julian Adjodha are the shareholders and directors of that company.
- (c) Moeita Adjodha was present when he served the warrant. Julian Adjodha was not.
- (d) There was a room which was locked. Moeita Adjodha opened that room with a key.
- (e) In that room there were four metal drums which were taken outside.
- (f) These drums each had three labels on them. The labelled contents of the drums were "liquid soap".
- (g) He opened a drum and looked inside and he observed that it contained no liquid.
- (h) He noticed what appeared to be a bulge which appeared to be an inner compartment in the drum.
- (i) This inner compartment aroused his suspicion.
- (j) He cut open one drum in the presence of Moeita Adjodha and found green vegetable matter which appeared to him to be cannabis.
- (k) As he was opening a second drum Julian Adjodha arrived on the scene. With him was Mr. Gerard Williams, apparently, according to Mr. President, Adjodha's Lawyer.
- (l) On cutting open the three remaining drums more vegetable matter, believed to be cannabis, was found.
- (m) During the search of the premises eleven buckets of a green liquid were seen. After President administered a Caution to both Adjodhas, Julian Adjodha allegedly stated that the green liquid was liquid soap.
- (n) Both applicants were later arrested and charged, and subsequently indicted for possession of a controlled drug, (cannabis), and possession with intent to supply a controlled drug, (cannabis).

[33] At this point it will assist if I reiterate the Statutory requirements for the granting of a Restraining Order against "tainted property" in Section 31 (1) (d).

[34] Section 31 (1) (d) states-

"31. (1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property *and the court is satisfied that-*

(a) ...'

(b) ...'

(c) ...'

(d) there are reasonable grounds for believing that the property is tainted property in relation to an offence and that the property is subject to the effective control of the defendant, where the application seeks a restraining order against property of a person other than the defendant; and"

[35] "Tainted property" is defined in Section 2 of POCA as " (a) a property used in, or in connection with, the commission of the offence; or..."

[35] This Court must therefore be satisfied, on the evidence before it, of the following-

(i) that there are reasonable grounds for believing that the property is property used in, or in connection with, the commission of the offence of possession of a controlled drug (cannabis), and

(ii) in respect of the offence in (i) above, that the defendants not only are charged with the offence, but, on reasonable grounds on the evidence before it, the Court must be satisfied that it is *likely* that they, or either of them, *may* have committed that offence, so that the Court is satisfied not only that an offence *may* have been committed, but that the Defendants, or either of them *may* have committed *that* offence.

[37] It is not disputed that the alleged cannabis was found on the subject premises, and I so find.

[38] It is not disputed that the subject premises is owned by Julian Adjodha Group of Companies Inc., and I so find.

[39] It is not disputed that the Adjodas, as Defendants, are the shareholders and directors of the company and that they effectively control the company and therefore the subject property, and I so find.

[40] What is hotly disputed is whether there is any evidence which is contained in the affidavits in support of the D.P.P.'s position which can satisfy this Court that the Defendants, or either of them

are/is likely to have committed the offence of possession – and therefore the deemed offence of possession with intent.

[41] Ms. Mensah submits that "...basically...he [Constable President] found vegetable matter which was suspected to be cannabis on the subject premises and for which the Defendants were subsequently charged with possession [of that vegetable matter]".

[42] Ms. Mensah submits that "An element of possession is control. The alleged contraband were in effect controlled or "stored" on those premises. So the property acted as a conduit in the control of the drugs and hence in the possession of the alleged contraband. So therefore we can say it was used in the commission of the offence."

[43] Mr. Maragh submitted that the offence of possession requires knowledge and control of the contraband. He further submitted that the Court must be satisfied as to whether or not, on the evidence before it, the Defendants, or either of them, had exclusive control of access to the room in which the drums were found. Then, relying on the case of *Bell v Commissioner of Police 1972 18 W.I.R 1*, at page 3, where the Court sets out the principles of the law of possession of concealed contraband, Mr. Maraj submitted that the evidence must be sufficient to satisfy the Court as follows:

- (i) that the Adjodhas, or either of them, had exclusive control of the room in which the drums were found, and;
- (ii) they, or either of them, knew that the drums had the inner compartments, and;
- (iii) they, or either of them, knew that those inner compartments contained something, and;
- (iv) they, or either of them knew that that something was contraband.

[44] Possession, submits Mr. Maragh, involves the custody and control of the object, coupled with knowledge.

[45] Ms. Mensah conceded that the only evidence contained in the affidavits in support of the D.P.P.'s position with regards to possession is that the door of the room in which the drums were found was locked, and that Moeita Adjodha opened the lock on that door with a key.

- [46] Ms. Mensah further conceded that "We cannot [on the evidence before this Court] prove that anyone else did not have access to the key and the room. And we have no evidence that Mr. Adjodha had access or not to the keys to the room."
- [47] The D.P.P. is not required to prove anything in these proceedings. All the D.P.P. is required to do in these proceedings is to satisfy the Court of the mere existence of the elements of the offence charged so that it is likely that the offence may have been committed and, that it is likely that the Defendants, or either of them, may have committed the offence charged, and that the subject property is 'tainted property'. That is a standard far below the requirement of proving anything.
- [48] All Ms. Mensah was required to do is to present evidence to this Court which could satisfy this Court of the foregoing.
- [49] This the D.P.P. has manifestly failed to do.
- [50] There is no evidence before me, direct or circumstantial, upon which I can be satisfied that no one, *other than Moeita Adjodah*, was likely to have access to the room, or to the keys to the room, so that I can be satisfied that she was likely to be the only person with access to the room, or to its keys. None at all. And I cannot therefore be satisfied that it is likely that she had exclusive access to, and control of the room and its contents. Even if I was so satisfied, which I am clearly not, I would be not to be satisfied that she was *likely* to know of the existence of the inner compartments of the drums, much less the contents of each inner compartment of each drum, because there is no evidence before me, direct or circumstantial, upon which I could be so satisfied.
- [51] There is no evidence at all before me, direct or circumstantial, which can satisfy me that it is likely that Julian Adjodha had access to the keys to the room, or to the room. Ms. Mensah quite honourably conceded this point.
- [52] There is no evidence at all before me, direct or circumstantial, upon which I can be satisfied that it is likely that either Julian Adjodha knew (a) that the drums contained the "inner compartments", much less (b) what were the contents of those "inner compartments". None at all.
- [53] There is no evidence before me, direct or circumstantial, which satisfies me that is likely to connect the Applicants, or either of them, to the alleged cannabis found in the drums.

- [54] I therefore find that I cannot be satisfied, on the whole of the evidence before me, that either of the Applicants is likely to have committed the offence of possession of cannabis found in the inner compartments of the four drums. I cannot be satisfied on supposition or speculation. I can only be satisfied on the evidence which is before me and, that evidence is woefully short of even beginning to satisfy me of such likelihood.
- [55] Absent evidence to the satisfaction of this Court that; (a) the charged offences were likely committed and (b) that they were likely committed by the Defendants, the predicate necessary to sustain the 'tainted property' remedy is absent.
- [56] It therefore follows that the requirements of Section 31 (1) (d) have not been met to the satisfaction of this Court and the Restraining Orders granted on 24th October 2011 and varied and extended on 26th July 2012 against all the property of the Applicants Moeita Adjodha and Julian Adjodha, and the company Julian Adjodha Group of Companies Inc. are wholly discharged.
- [57] The Applicants (Moeita and Julian Adjodha) are to have their Costs of these Applications paid by the Respondent (The Director of Public Prosecutions), to be agreed by the parties by 12th December, 2013, failing which said Costs are to be Taxed by the Registrar of the High Court.
- [58] I wish to thank both Counsel for their invaluable assistance in this case.

IT IS HEREBY ORDERED THAT:-:

- (1) The Restraining Order against the properties of Moeita Adjodha and Julian Adjodha and Julian Adjodha Group of Companies Inc. granted on the 24 October 2011 and extended and varied on the 26 July 2013 BE AND HEREBY IS DISCHARGED IN ITS ENTIRETY;
- (2) Costs of these Applications to the Applicants to be agreed between the parties, failing such agreement by 12 December 2013, Costs will be taxed by the Registrar of the High Court.



Thomas W.R. Astaphan
High Court Judge