

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCV2024/0059

BETWEEN:

DIRECTOR OF THE ONDCP

Claimant/Respondent

And

KENROY CHRISTIAN

Defendant/Applicant

Appearances:

Mr. Marvin Hall and Ms. Shannon Potter for Claimants
Mr. Wendel Alexander for the Defendant

2025: March 25;
May 1

RULING

[1] **WILLIAMS, J.:** This matter concerns an application to strike out a forfeiture claim brought by the Director of the Office of National Drug and Money Laundering Control Policy (ONDCP). The claim seeks forfeiture of the sums of EC\$172,736.65 and US\$0.95 respectively, which were seized from the defendant/applicant-Mr. Kenroy Christian. Mr. Christian alleges that these proceedings are an abuse of the process of this court and should be struck out accordingly.

[2] Although some aspects of this matter may be disputed, the basic facts are as follows:

1. The monies referred to above were seized from the defendant on 15th June 2022.

2. This seizure was made pursuant to section 18 of the Money Laundering Prevention Act on the suspicion that the monies were derived from or intended for use in some unlawful activity.
3. The Proceeds of Crime Unit of the Royal Antigua and Barbuda Police Force obtained continued detention orders in respect of the monies from the Magistrate's Court for the periods 22nd June 2022 to 19 December 2022 and 19th December 2022 to 19th June 2023 respectively.
4. Another application for continued detention was filed on 16th June 2023, however this application was not heard and the continued detention order lapsed.
5. An application for forfeiture of the monies was filed in the Magistrate's Court on 22nd September 2023.
6. On 21st February 2024, a Magistrate dismissed the forfeiture application and ordered as follows:
 1. The Continued Detention Order in this matter expired on the 19th June 2023. There being no monies lawfully detained pursuant to section 18A (1) to which an Application for forfeiture may be made. The Application for Forfeiture filed on the 22nd day of September 2023 is dismissed for the reasons set out above.
 2. The Respondent is entitled to the return of his monies seized from him on the 15th day of June 2022.
7. Following this, the Director of the ONDCP (the Respondent/Claimant) on 21st February 2024 commenced the instant proceedings in the High Court by seeking a Freeze Order.
8. A Freeze Order was granted by a judge of the High Court on 23rd February 2024.
9. The Applicant/Defendant (Mr. Kenroy Christian) filed an application on 2nd April 2024 to set aside the Freeze Order.
10. The Respondent/Claimant filed a Claim Form with a Statement of Claim on 1st August 2024 seeking forfeiture of the funds and on 8th November 2024 the Defendant filed an application to strike out these proceedings as an abuse of process.

Defendant's Application

- [3] At the hearing of this application, counsel for the Applicant/Defendant indicated that his latter application of 8th November 2024 superseded his previous application to set aside the Freeze Order which was filed on 2nd April 2024. The application filed on 8th November 2024 seeks the following orders:

1. The Claim Form dated the 1st August, 2024 be struck out;
2. The application for a freeze order against the applicant be discharged with costs;
3. Costs associated with this application be awarded to the applicant.

Grounds of Application

[4] The grounds of the application are as follows:

- a. The Respondent made a similar application before Magistrate Hamilton and the learned Magistrate ruled against the Respondent/ Claimant.
- b. The learned magistrate in his written decision ordered that the monies held by ONDCP is to be returned to the applicant defendant.
- c. There is provision for appealing the magistrate's decision, but the respondent claimant failed to do so.
- d. The respondent did not judicially review the decision of the learned magistrate before the High Court of Justice.
- e. The respondent claimant did not ask for a stay of the judgement of the learned magistrate; therefore the applicant is entitled to enjoy the fruits of his judgement.
- f. The application to strike out/vacate or discharge of the freeze order came first in time; and the court should treat it as such.
- g. The respondent/ claimant sealed the proceedings on the portal at the application stage and the applicant nor counsel was able to see what all was filed apart from what was served on the applicant.
- h. The respondent is abusing the process of the court by circumventing the learned magistrate decision and orders and this is highly improper, unethical, unlawful, unfair and unjustified.
- i. The respondent/ claimant's claim, application to freeze etc. are frivolous and vexatious, an abuse of the process of the court, improper and unjustifiable.

[5] The Application was accompanied by an affidavit sworn to by the Defendant which outlines the history to the matter as outlined above.

[6] The application came on for hearing on 17th January 2025 and the parties were directed to file written submissions ahead of a further hearing scheduled for 25th March 2025. The parties did so and also made oral submissions to the court at the hearing.

Applicant's Submissions

[7] The Applicant/Defendant filed brief written submissions on 24th February 2025. The Applicant argues that **section 167(3)** of the **Magistrate's Code of Procedure Act** allows for an appeal of the order of the court. However, the Respondent/Claimant did not appeal the Magistrate's decision and order(s). The Respondent/Claimant also did not make an application available under the Magistrate Code of Procedure Act for a stay of the court's order.

[8] The Applicant/Defendant argues that the Respondent/Claimant also had the option of seeking judicial review of the Magistrate's decision and failed to do so. Accordingly, the Magistrate's order remains binding upon the Respondent/Claimant. Thus, in making an application to the High Court based on the same facts, same parties, same issues, virtually the same procedure etc., amounts to an abuse of process, as it is *res judicata*; and should be struck out.

Respondent/Claimant's Submissions

[9] In its submissions filed on 17th March 2025 the Respondent/Claimant focuses on the circumstances surrounding the seizure of the monies. These do not need to be repeated at this stage of the proceedings. The Respondent/Claimant argues that it was lawful to re-seize after the Magistrate's decision and thereafter obtain a Freeze Order from the High Court. This action was taken pursuant to section 19(1) (c) and (d) of the Money Laundering Prevention Act.

[10] Learned counsel for the Respondent/Claimant also relies on **Chief Constable of Merseyside Police v. Hickman and another**¹ which he says supports the principle that monies already in custody may be re-seized where there are overlapping statutory provisions. The Respondent/Claimant also relies on the case of **Customs and Excise Commissioners v. T**² which permits the reliance on evidence from previous proceedings in forfeiture proceedings. The authority of Hickman will be examined in greater detail later in this decision.

[11] The Respondent/Claimant argues that the authorities have acted at all times in accordance with the relevant statutory provisions. The Respondent/Claimant also relies upon the authority of **Jennings v Crown Prosecution Service**³ to support the argument that an ex parte application was appropriate in this case to prevent the dissipation of assets.

[12] It is also pointed out that the Applicant/Defendant has the right to be heard in the proceedings and in particular a right to seek to have the Freeze Order varied or discharged. Further, The Applicant/Defendant has not demonstrated any hardship as a result of the Freeze Order. Therefore, the forfeiture proceedings should be allowed to continue.

Issue

[13] The only issue for determination is whether the instant claim for forfeiture is an abuse of the court's process and should be struck out?

Legislative Framework

[14] Before the issue of abuse of process can be determined it is necessary to examine the relevant statutory framework. The proceedings in the Magistrate's Court (which were ultimately dismissed) were taken pursuant to sections **18A**

¹ [2006] EWHC 451 (Admin)

² (1998) 162 J.P 193

³ [2005] EWCA Civ 746

and **18B** of the **Money Laundering Prevention Act**. This Act was originally enacted in 1996 but has been amended several times since.

[15] **Section 18A** permits a Customs Officer, Police Officer, an officer of the ONDCP or member of the Defence Force to seize currency “if it is an instrumentality of an offence against **section 18 (1)** or **18(2)** or is the proceeds of crime or is intended by the person or use in unlawful activity.” **Section 18A(3)** provides for the continued detention of currency so seized by order of a Magistrate for such periods not to exceed six months on each occasion. **Section 18B (1)** provides for the forfeiture of any currency seized by virtue of **section 18A (1)**.

[16] **Section 18B(4)** of the Act states as follows:

“Upon hearing an application pursuant to subsection (1) and upon being satisfied that the seized currency is:

- a. The proceeds of some form of unlawful activity; or
- b. An instrumentality of an offense (whether or not a person has been convicted of any offense)

The court may, subject to subsection (5) order that all or part of the currency be forfeited to the Government of Antigua and Barbuda.”

[17] It can be seen from the foregoing, that **sections 18A** and **18B** of the Act create a summary procedure in the Magistrate’s Court for the seizure and forfeiture of currency including cash. It is not controversial that the learned Magistrate did not forfeit the monies seized pursuant to **section 18B (4)** of the Act which has prompted the instant proceedings.

[18] The proceedings before this court are governed by **section 19** of the Act. These proceedings are applicable to different types of property and are not confined to currency unlike the summary procedure pursuant to sections 18A and B. In this case a Freeze Order was obtained pursuant to **section 19(1A)** of the Act. A freeze order ceases to have effect upon being discharged by the Court or on the expiration of a period specified in the order unless the defendant has been

charged with a money laundering offence, or any of the following applications has been filed:

- a. An application for a civil forfeiture order,
- b. An application for a civil proceeds assessment order,
- c. An application for an unexplained wealth order.

[19] It is undisputed that by virtue of filing a Claim Form on 1st August 2024 to initiate forfeiture proceedings the Freeze Order obtained on 23rd February 2025 remains in effect.

Discussion

[20] In oral submissions, learned counsel for the Applicant/Defendant conceded that the institution of these proceedings by itself was not prohibited. His primary contention is rather that the instant forfeiture proceedings are an abuse of process as the Respondent/Claimant should have appealed or sought judicial review of the Magistrate's decision.

[21] In my view, learned counsel for the Applicant/Defendant was right to make that concession. In **Chief Constable of Merseyside Police v Hickman**⁴ the court held that monies remaining in the custody of the police after the conclusion of criminal proceedings could lawfully be re-seized under the United Kingdom's **Proceeds of Crime Act 2002**.

[22] Similarly, the Court of Appeal in **Magistrate Bertlyn Reynolds v. Peter Hippolyte et al**⁵ similarly held that Saint Lucia's Financial Intelligence Unit (that country's equivalent of the ONDCP) could lawfully seize cash held by the police once criminal proceedings had been discontinued. However, neither of these cases considered the discrete issue raised in this case as to whether the subsequent forfeiture proceedings would constitute an abuse of process?

⁴ [2006] EWHC 451 (Admin)

⁵ SLUHCVP2022/0019 decided 16th April 2024 (unreported)

[23] One of the leading authorities on abuse of process is **Hunter v Chief Constable of the West Midlands Police**⁶ where Lord Diplock stated:

“My Lords, this is a case about abuse of the process of the High Court. It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power.”

[24] The above principles were accepted by the Court of Appeal in **Halstead v. Attorney General of Antigua and Barbuda**⁷ where Sir Vincent Floissac stated as follows:

“There can be no doubt that the High Court has an inherent power and is under a duty to exercise the power to strike out any pleading which is an abuse of the process or procedure of the court.”

[25] In accordance with the guidance in Hunter, the first consideration is whether the instant proceedings are manifestly unfair to the Applicant/Defendant? Counsel for the Applicant/Defendant argued in oral submissions that his client is prejudiced by being unable to benefit from the Magistrate’s decision which specifically requires that his money be returned to him.

⁶ [1982] AC 529, 536

⁷ (1995) 50 WIR 98, 107 per Sir Vincent Floissac CJ

- [26] I respectfully disagree. The Magistrate's order did not prevent the Director of ONDCP from instituting forfeiture proceedings in the High Court. This is a power available to the Respondent/Claimant by statute which he is free to exercise. More importantly, the monies have not been forfeited. The Applicant/Defendant has the option of participating in these proceedings to dispute the Respondent/Claimant's forfeiture application. The instant proceedings are therefore not manifestly unfair to the Applicant/Defendant.
- [27] The second aspect of abuse of process will now be considered. The court must ask itself whether these proceedings bring the administration of justice into disrepute among right-thinking people. In this regard, persons may regard these proceedings as an attempt to circumvent the Magistrate's order without an appeal. In other words, a collateral attack on the Magistrate's court proceedings. However, close attention must be paid to what Magistrate Hamilton actually decided.
- [28] At paragraph 11 of his written decision, the learned Magistrate stated as follows:
"The Respondent raises this point in limine. As such I must consider the merits of his submissions before hearing the merits of the Application for Forfeiture. If the Respondent is successful then I must dismiss the Application."
- [29] Thus, it is clear that the Magistrate did not determine the forfeiture application on its merits. He was of the view that no forfeiture application could be entertained since the continued detention orders had lapsed. It is also noteworthy that the Magistrate found that the ONDCP had actually applied within time for an extension of the continued detention order.
- [30] The ONDCP was therefore not called upon to prove that the monies were derived from or intended for use in some unlawful activity. Neither was the Applicant/Defendant required to demonstrate that the monies seized were obtained from legitimate sources.

[31] I therefore believe that right thinking persons would think that it is in the public interest for these issues to be determined by a court of competent jurisdiction. Had the learned Magistrate dismissed the forfeiture application on its merits, I would have probably found differently. Accordingly, the claim is not an abuse of process and the instant application must be dismissed. Directions will also be issued for this matter to progress in the usual manner.

Costs

[32] Costs generally follow the event. However, in this case the Applicant/Defendant rightfully complained that many of the documents filed by the Respondent/Claimant were filed under seal on the Electronic Litigation Portal. These documents including the Claim Form and Statement of Claim remained sealed until this court ordered them unsealed on 17th January 2025.

[33] In pursuing a Freeze Order ex parte, it was prudent to file the relevant documents under seal. This was necessary as the property sought to be restrained could have been dissipated if persons had advance knowledge of the application. However, once the Freeze Order was obtained, there was no justification whatsoever for filing the forfeiture claim itself under seal.

[34] The function of pleadings is to allow the opposing party to know what case he has to meet.⁸ It is no excuse that the hard copies of the documents were served on the Defendant in October 2024, the documents must be made available on the Electronic Litigation Portal. Thus, in the exercise of my discretion pursuant to **CPR Rule 64.6(2)** I will make no order as to costs.

⁸ Saint Lucia Motor and General Insurance Co. Ltd v. Peterson Modeste, SLUHCVP2009/0008 (delivered 11th January 2024) at paragraph 19

Order

[35] The court therefore orders as follows:

1. The application to strike out the claim is dismissed.
2. The Applicant/Defendant shall file a Defence to the claim within twenty-one (21) days and the Respondent/Claimant may file a Reply within fourteen (14) days after filing of the said Defence.
3. The matter is adjourned to 10th July 2025 for Case Management Conference before this court.
4. No order as to costs.

Rene Williams

High Court Judge



By The Court

Registrar