

The DPP directed the police to investigate the allegations and applied to this court for a restraining order the effect of which is to freeze the accounts of the respondents.

Application to court

The DPP moved court U/S 71, 72 and 73 of the Anti Money Laundering Act (AMLA) seeking orders to freeze the accounts of the respondents on grounds that the police had launched investigations against the respondents vide CID GEF 623/2018 because the respondents are suspected to be receiving money from terrorist sources and using the same to finance terrorist activities.

When the matter came for hearing on 23rd August 2018 the respondents' counsel sought an adjournment. The matter was adjourned to 12th September 2018 but a freezing order was issued in the interim until this application is disposed of inter parties.

After that further adjournments followed until the file was allocated to me in January 2019.

Applicant's case.

Ms J. Namatovu who appeared for the state asked court to issue a restraining order on grounds that the respondents' businesses are used as a conduit for terrorist financing. It was her case that the 1st respondent which is supposed to be a Forex Bureau and money remittance company has suspicious transactions. It receives money in bits from abroad and when the amounts become substantial, the funds are sent to the 2nd respondent which distributes it to companies abroad.

It was her submission that respondents 7 to 9 are the signatories to all accounts and share holders of the respondents. However, respondent 7 ceased being a signatory and shareholder in April 2018 after he was investigated and eventually deported to Somalia by Kenya Police.

Ms Namatovu complained that respondents 2,4 and 5 are shell companies with no known physical address or business. Relying on the affidavit of Ag Commissioner of police Sisye, she submitted that the 1st respondent's bank statement shows that it

is just a collection account as opposed to a normal business account of a Forex bureau.

It was her view that the operations of the 2nd respondent in distributing the money amounted to money laundering. This is because it was an attempt to 'clean' the money making it appear legitimate.

Respondents' case.

M/s Matsiko, Kyagaba and Dr Karuhanga made a spirited defence of the actions of the respondents and asked court to unfreeze the accounts of what they called innocent business men.

Mr Matsiko criticized the applicant for failing to demonstrate with evidence that there exists a reasonable belief that the frozen accounts are proceeds of crime. He submitted that there are no grounds to satisfy court to issue the freezing order.

He rested his submission on the supplementary affidavit of the 8th respondent on which was annexed an interim report by the investigating officers that included Ag. Commissioner Sisye to the director CID dated 28th November 2018 in which investigators raised serious challenges in finding evidence against the respondents. This interim report was made after the FIA had requested for the progress report on the investigations by letter dated 10th October 2018.

Before I delve further, I note that there is no evidence on how this interim report ended up in the hands of the respondents. Interestingly, counsel for the respondents wrote to the police for a copy of the report on the same day the interim report was made to the director CID. There is no evidence that he was given a copy.

The interim report reveals that the investigators were challenged by the respondents to prove charges of money laundering or terrorism against them. It seems to be a desk report written after interviewing the respondents only instead of investigating the **sources**, the **destinations** and the **bankers** of the money. I get the impression that the investigators relied on interviews of the respondents to find evidence against them. The respondents are under no obligation to incriminate themselves as the team appears to have believed. The report shows that there was no credible investigation either because of lack of tools or facilities for the job or because of incompetence by the team. It is an internal report which cannot be used

in these proceedings to reach a credible verdict. Its interim nature shows that it cannot be a basis for the decision the respondents are asking for. On the contrary I find that no credible investigation has ever been made. Both conclusions favour the respondents one way or the other.

Investigations of global crimes such as terrorism, money laundering, trafficking in persons, arms trafficking and drug trafficking are mainly based on Mutual Legal Assistance (MLA) between states because they are organised trans-border crimes. They are not domestic crimes that can be investigated by police officers interviewing suspects at their offices.

Mr Kyagaba for the respondents also submitted that the transactions in Annexure 'H' was not adequate to conclude that the 1st respondent had no other business with other customers. He cited amounts of USD 600,000 and 800,000 which were transactions from other persons other than the respondents.

Dr Karuhanga for the respondents also challenged the application contending that agencies of the state are misusing governmental powers to punish innocent business people just because of their nationalities.

Resolution

This was a lengthy application with both sides demonstrating passion. Both counsel made strong submissions for and against the issuance of a restraining order. I have had the advantage of perusing the large volumes of affidavits and **annextures thereto in support and opposition.**

At this stage the court is not required to find if there is evidence of proof of money laundering or terrorism financing against the respondents. That is a matter for the trial court if formal charges are preferred against them.

What court is required to decide is whether there is reasonable suspicion to believe the allegations of money laundering or terrorism financing against which a restraining order can be issued to enable the investigating authorities to confirm or disprove the suspicion. The court must be satisfied that reasonable suspicion exists to warrant an investigation. The court is not required to satisfy itself if the suspicion is true or not as the respondents suggested in their affidavits and

submissions. That is the spirit of section 71(c) of the AMLA under which this application falls.

This order is given to protect the exhibit from disappearing at the click of a mouse. Money is volatile and can be moved in this digital age in a matter of seconds.

However, such an order made pending investigations cannot last forever. It must have time limits to ensure that if there is credible evidence, a trial is held to determine the guilt or innocence of the respondents. If investigations are negative the respondents should not be unduly punished by withholding their funds illegally. The order would expire automatically if no action is taken under criminal law in a given period. This ensures justice for both sides.

Money laundering and terrorism are serious global crimes which are raking havoc to world economies and the stability of states. International conventions under the auspices of the UN, AU and European Union have been signed to detect, trace, arrest and prosecute money launderers and terrorists where ever they may surface. This court takes judicial notice of this and cannot casually gloss over such allegations when made by agencies of state mandated to fight terrorism and money laundering.

The duty of the court is to ensure that whenever such allegations are made, they are investigated as speedily as possible and if they are false, innocent persons are not put to hardship by wild allegations. In other words the role of the court is to balance the interests of law enforcement agencies to protect society from crime but **also ensure that no abuse of such powers is exacted on innocent businesses.**

So far, the applicant has shown that though the 1st respondent is a money remittance business, it hoards money and instead of remitting the same directly in real time to the payees, it sends it to the 2nd respondent which does the distribution. This would necessarily mean additional banking expenses!

On the other hand the respondents explain that the money belongs to senders such as UPDF officers in Somalia. This money is collected later by beneficiaries. The respondents also deponed that they are sugar and rice dealers who receive payment through the 1st respondent before paying the suppliers in Dubai thus earning a commission. These are matters which the investigation should have addressed.

Having gone through the arguments for and against the application I am satisfied that it raised issues that need investigation by competent investigators to establish if the respondents were engaged in terrorism financing or funding or in money laundering or both.

I am fortified in reaching this conclusion because of the strange manner in which the respondents carried out business. It was strange that the 1st respondent receives money on behalf of the other respondents who also have bank accounts. The 1st respondent keeps this money for some time and once it has accumulated it sends it to respondent number 2 who distributes it to recipients abroad. It is also strange that respondents 8 and 9 are the share holders of the respondent companies and the signatories to the bank accounts. This movement of money between bank accounts in a consistent pattern gives credence to suspicion which the state has a duty to verify through an investigation. The investigation should establish if the commercial banks where these accounts are domiciled are complicity or not.

Some of the respondent companies are shell companies with no known location or business. These are not ordinary events which should be overlooked.

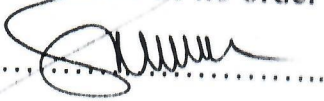
But noting that the state has had a restraining order against the respondents since August 2018 and all it has is an interim report written after interviewing the respondents only, I am of the view that the state unless checked will abuse the order thereby placing hardship upon the respondents. For a period of four months, no serious investigation has been made despite the fact that terrorism and money laundering are serious international crimes with devastating effect on society. Deaths of innocent people have been caused world over by terrorists. Movement of people across the globe is inconvenienced because of terrorism. The court cannot be blind to these realities.

Conclusion

Upon consideration of the arguments for both sides, and doing the best I can to balance the mandate of state agencies to fight crime with the rights of the respondents to own property, I hereby issue a **restraining order** against the respondents in respect of funds contained in banks named in the notice motion for a period of **90 days** with effect from today 18th January 2019. This period should be sufficient for the police and the DPP to investigate to confirm or disprove the

suspicion against the respondents. This order shall lapse automatically after the expiry of 90 days unless reviewed by the court.

There shall be no order as to costs

A handwritten signature in black ink, appearing to be 'J. Gidudu', written over a dotted line.

Gidudu, J

18th January 2019.