



**COURTS OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

MAGISTRATE DR MARSE-ANN FARRUGIA LL.D.

Sitting held to-day Monday, 18th July 2022

Committal Proceedings: 86/2020 MLF

**The Police
(Inspector Godwin Scerri)**

vs

Hannah Marie Langdale

The Court,

1. Having seen again the application of the defendant Hannah Marie Langdale of the 24th January 2022, wherein she requested that the salary she is receiving from her employer AKFX Financial Services Limited is excluded in whole from the effects of the freezing order issued against her on the 5th October 2020.
2. Having seen the reply of the Attorney General wherein he objected to the request.
3. Having seen the note of the applicant dated 17th February 2022 filed in accordance with the decree of the 9th February 2022.
4. Having seen the reply of the injured parties Carmel sive Charles Bezzina, Ramon Francalanza and Katia Francalanza were they also objected to the request.

5. Having heard the evidence on this application and the documents submitted.
6. Having heard the oral submissions of the parties on this application.

Considerations of this Court

7. The defendant is charged with fraud, misappropriation and falsification of documents. In her application of the 24th January 2022, the defendant is requesting that the salary she is receiving from her employer is excluded in whole from the effects of the freezing order issued against her on the 5th October 2020. This freezing order was issued in terms of Article 5 of the Money Laundering Act, Chapter 373 of the Laws of Malta made applicable to these proceedings by Article 23A(2) of the Criminal Code.¹
8. According to Article 5(1) of the Money Laundering Act, where a person is charged with a relative offence, the court shall at the request of the prosecution make an order *“attaching in the hands of third parties in general all moneys and other movable property due to or pertaining or belonging to the accused.”*
9. By virtue of a decree of the 4th November 2020, the Court acceded to the request of the defendant and authorized her to withdraw the sum of one thousand and sixty-four Euros and sixty-eight cents only from her Revolut account, for as long as she remains employed, and this in terms of Article 5(1)(b) of the Money Laundering Act.²
10. In this application, the defendant is requesting that all her salary is excluded from the effects of the freezing order. She submits that the salary she is earning from her employer is derived entirely from legitimate sources, that is from her lawful employment, and her employment and income are not related to the merits of the case. She also submits that the continued duration of the freezing order in relation to her salary is unreasonable and causing her unnecessary hardship in her daily life.

¹ See fol. 217 of the proceedings.

² See fol. 280 of the proceedings.

11. The Prosecution submitted that according to law the freezing order can only be varied “*for particular circumstances*” (Article 5(3) of the Money Laundering Act) and there were no particular circumstances in this case which justified the variation of the order. Otherwise, in terms of Article 5(2) of the same Act the order remains in force “*b) remain in force until the final determination of the proceedings, and in the case of a conviction until the sentence has been executed.*”
12. In their reply, the injured parties objected to the request because the amount frozen does not cover the amount due by the defendant to them if she is found guilty of the charges preferred against her. They claim that she owns the amount of €3,600 to the spouses Francalanza, and the amount of €4,500 to Carmel Bezzina.
13. First of all the Court points out that the purpose of the freezing order is not to compensate the injured party, if the defendant is found guilty of the charges preferred against her. In terms of Article 23B(1) of the Criminal Code, the purpose of the freezing order is that in case of a conviction:

“... .. the court shall order, in addition to any punishment to which the person convicted of a relevant offence may be sentenced order the forfeiture in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said article 121D... ..”

In other words, the amount of the illicit gain made by the convicted person is taken from the money frozen, and forfeited in favour of the Government, as a punishment in addition to the punishment which is to be meted out for the offences committed by the convicted person.

14. From the evidence of Dr Ismael Buttigieg on behalf of the Assets Recovery Bureau and the document submitted by him, it results that until the 31st. March 2022, the Bureau had frozen the amount of €9,156.78, which is the balance from the salary which the defendant

receives.³ Moreover, the Bureau had also in its possession a vehicle pertaining to the defendant which was valued by a surveyor as being worth €3,200.

15. In his evidence, Inspector Godwin Scerri confirmed that according to the prosecution, the defendant owned the amount of €4,500 to Carmel Bezzina and the amount of €3,600 to the spouses Francalanza.⁴
16. Therefore, if for the sake of argument only, the defendant is found guilty, the total illicit gain allegedly made by her is of €8,100, and hence this Court can only order the amount of €8,100 from all her frozen assets, to be forfeited in favour of the Government in terms of Article 23B(1) of the Criminal Code. On the other hand, from the evidence submitted the Assets Recovery Bureau already had in its possession frozen assets of the defendant to the amount of €12,3256, which is much more than the amount which this Court can order to be forfeited in favour of the Government in case of conviction.
17. In the oral submissions, the advocate from the Office of the Attorney General submitted that the Money Laundering Act does not contemplate the capping of the freezing order in such circumstances and according to this Act, the freezing of all assets of the defendant had to continue until the proceedings become *res judicata*.
18. The Court is aware that decrees on whether there can be a capping on freezing orders is conflicting, with some decrees stating that it is not legally possible,⁵ whilst others state that it is legally possible in certain circumstances.⁶
19. It is true that the law does not expressly provide that there can be a variation in the freezing order where the amount of illicit gain allegedly made by the defendant has already been frozen. On the other hand, when interpreting laws, one has to take into consideration the *ratio legis* – in this case, that the assets of the defendant are frozen so that in case of conviction there will be enough assets frozen to enable forfeiture of an

³ See fol. 366 of the proceedings.

⁴ See fol 377 et seq. of the proceedings.

⁵ See **Ir-Repubblika ta' Malta vs Progress Press Company Limited et** delivered on the 10th March 2022 by this Court presided by Magistrate Natasha Galea Sciberras.

⁶ **Il-Pulizija vs Edward Caruana** delivered on the 2nd November 2020, **Ir-Repubblika ta' Malta vs Vincent Buhagiar and Ir-Repubblika ta' Malta vs Brian Tonna et** both delivered on the 18th January 2002 by this Court, presided by Magistrate Donatalla Frendo Dimech.

amount equivalent to the gain illicitly made by the convicted person. It makes no legal or logical sense to freeze assets, when the assets already frozen are more than the amount which can be forfeited in the eventuality of a conviction. Moreover, laws have also to be interpreted in a reasonable manner.

20. Moreover, in the judgement **Angelo Fenech pro et noe vs Carmelo Callus**, which was a case of defamation, decided on the 4th February 1994, the Court of Appeal held as follows:

“Il-posizzjoni tbiddlet fl-1987 ghaliex bl-Att XIV ta’ dik is-sena, illum Kap. 319, partijiet sostanzjali tal-Konvenzjoni Ewropea tad-Drittijiet Umani saru parti mill-Ordinament Malti u allura illum dawn il-Qrati mhux biss iridu jiehd u in konsiderazzjoni dak li hemm f’dawn l-artikoli tal-Konvenzjoni li gew inkorporati izda wkoll il-gurisprudenza tal-Qorti Ewropea tad-Drittijiet Umani ghaliex minn dik is-sena – 1987 – kull min ihossu aggravat mis-sentenzi ta’ dawn il-Qrati ghar-rigward tad-Drittijiet Umani u libertajiet fundamentali recepitati f’dik il-ligi, ghandu access ghal dik il-Qorti Ewropea tad-Drittijiet Umani.” (emphasis of that Court).

21. According to the case-law of the European Court of Human Rights, in order for a freezing order not to violate the right of property of an accused, it must be in accordance with the law, pursue a legitimate aim, and there is a reasonably relationship of proportionality between the means employed and the aim sought to be realized by the freezing order. In the case **Dzemic v Croatia** decided on the 17th May 2016, the European Court held that a freezing order effecting a property which was worth nearly nine (9) times more than the illicit gain made by the person accused. The facts of **Dzemic case** are roughly similar to the facts of this case. The European Court held as follows:

“1. The Supreme Court thereby allowed the impugned situation to persist for more than two and a half years without ever addressing the applicant’s specific arguments of disproportion between the value of the seized property and the alleged unlawfully obtained pecuniary gain. In this connection the Court finds it important to note that the overall seized property was not alleged to be a result of crime or traceable to the crime. The seizure at issue was rather applied as a provisional measure on the applicant’s

overall property aimed at securing enforcement of a possible confiscation order imposed at the outcome of the criminal proceedings.

2. In these circumstances, the Court notes that the impugned seizure of the applicant's real property in the context of the criminal proceedings at issue, although in principle legitimate and justified, was imposed and kept in force without an assessment of whether the value of the seized property corresponded to the possible confiscation claim. The Court therefore finds that the application of such a measure was not adequate to demonstrate that a requirement of "fair balance" inherent in the second paragraph of Article 1 of Protocol No. 1 was satisfied."

22. The same conclusion was reached by the European Court in the case **Sharazova vs Malta** decided on the 3rd March 2022, where a breach of the right of property of the suspected person (in this case the applicant was not facing criminal proceedings in Malta) was found because *"nowhere does it appear from the documents available to the Court that the value of the property subject to the freezing order – the entirety of her property in Malta – was equal to the pecuniary gain allegedly obtained through any alleged predicate offence (offences of which she may or may not have been suspected). Nor that all her belongings had been suspected of being laundered money, offence of which she had been suspected."*
23. In the light of the above dicta of the European Court and the fact that in this case the amount of illicit gain allegedly made by the defendant has been determined, and the fact that the value of the frozen assets of the defendant held by the Assets Recovery Bureau exceed the amount of the illicit gain allegedly made her, the Court cannot see how it can be argued that the freezing order should continue in respect of all her salary, without there being a breach of the *"fair balance" which must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.*⁷ Consequently, a variation of the freezing order is justified in the circumstances of this case.

⁷ See **Dzenic vs Croatia** #67.

Conclusion

24. For these reasons, the Court accedes to the request of the defendant in her application of the 24th January 2022 and varies the freezing order issued against her on the 5th October 2020 in the sense that the salary she is receiving from AKFX Financial Services Limited is excluded from the effects of the freezing order with effect from to-day.
25. The Court orders that this decree is communicated to the Director of the Assets Recovery Bureau to take all the necessary measures according to law to abide by this decree, including the publications required by law.

Magistrate

Doreen Pickard
Deputy Registrar