



## IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 1710/02017

In the matter between:

**ANTI-CORRUPTION COMMISSION**

**APPLICANT**

And

**CHIEF BENJAMIN AGHALIEAKU ARINZ  
TONNY MADIDANE DLAMINI  
JABULANI MAKHUNDU VILAKATI  
CYNTHIA UZOAMALA  
CHIGOZIE DOMINIC IKONKWO  
AGHALIEAKU AIRWAYS (PTY) LTD  
NEDBANK SWAZILAND (PTY) LTD**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT  
5<sup>TH</sup> RESPONDENT  
6<sup>TH</sup> RESPONDENT  
7<sup>TH</sup> RESPONDENT**

Neutral Citation : Anti-Corruption Commission vs Chief Benjamin  
Aghalieaku Arinze and 6 Others (1710/17) [2018] SZHC  
89 (08 MAY 2018)

Coram : MABUZA – PJ

Heard : 27 MARCH 2018

Delivered : 08 MAY 2018

## SUMMARY

**Civil Procedure - The application herein is for a restraint order in respect of the sum of E295,708.93 belonging to the 6<sup>th</sup> Respondent in terms of section 45 (1) and (2) of the Money Laundering and Financing of Terrorism (Prevention) Act No. 5 of 2016 (the Act) pending the finalization of investigations and a possible application for forfeiture of the said money in terms of section 57 of the Act - The restraint order effectively means that none of the Respondents can dispose or deal in any way with the money for the time being.**

## **RULING**

### **MABUZA -PJ**

[1] This is an application for confirmation of a *rule nisi* that I granted on the 8<sup>th</sup> November 2017 in favour of the Applicant. The application was made *ex parte* and on an urgent basis before me for the following orders:

- a. **That the rules of the above Honourable Court in respect of the manner of service, form and time limits be dispensed with consequently condoning the Applicant for non-compliance with the said rules of the court and that this matter be heard as one of urgency and be heard on an *ex parte* basis.**

- b. That *rule nisi* do hereby issue returnable on the 17<sup>th</sup> day of November 2017 calling upon the Respondents to show cause why an order in the terms set out hereunder should not be made final.**
- c. Restraining the 7<sup>th</sup> Respondent from releasing to anyone the amount of E295,708.93 in the bank's custody held under account number 11990004074 in the name of Aghalieaku Airways (Pty) Ltd pending finalization of investigations by the Applicant on possible charges of money laundering and/or an application for forfeiture in terms of Section 57 of The Money Laundering and Financing of Terrorism (Prevention) Act No. 5 of 2016.**
- d. Restraining the 7<sup>th</sup> Respondent or any of the Respondents from disposing or otherwise dealing with the amount of E295,708.93 in the custody of the said bank except in such a manner that may be specified in an order of this Honourable Court.**
- e. Issuance of an order by this Honourable Court that the amount of E295,708.93 be kept with the 7<sup>th</sup> Respondent for a period of six (6) months following the hour of this Honourable Court's order.**
- f. Directing that prayers (c), (d) and (e) operate with immediate and interim effect pending the return date of this application.**
- g. Further and/or alternative relief.**

[2] The Applicant seeks to have the *rule nisi* confirmed but the 1<sup>st</sup> to 6<sup>th</sup> Respondents (the Respondents) oppose the confirmation of the rule. They have also attacked the application having been brought *ex parte* and in camera.

[3] The Applicant effectively seeks a preservation order of the assets (money) belonging to the 6<sup>th</sup> Respondent, pending an application for a possible forfeiture order in terms of Section 57 of The Money Laundering and Financing of Terrorism (Prevention) Act 5/2016 (the Act).

[4] The 6<sup>th</sup> Respondent opened a bank account with the 7<sup>th</sup> Respondent on the 9<sup>th</sup> June 2016. The following deposits were made into the account:

“

Date	Depositor's Name	Branch	Amount
23/06/2016	Maharaj	Matsapha	E140,000.00
23/06/2016	Tonny Dlamini	Matsapha	E161,500.00
23/06/2016	Tonny Dlamini	Matsapha	E170,000.00
24/06/2016	Tonny Dlamini	Manzini	E132,510.00
27/06/2016	Tonny Dlamini	Manzini	E 17,500.00
07/07/2016	Tonny Dlamini	Manzini	E 3,000.00
		<b>Total</b>	<b>E624,510.00</b>

”

- [5] The three large deposits made by Tony Dlamini on the 23<sup>rd</sup> June 2016 into the 6<sup>th</sup> Respondent's account, **raised a strong suspicion of money laundering.**
- [6] Shortly thereafter the 1<sup>st</sup> and 2<sup>nd</sup> Respondent instructed the 7<sup>th</sup> Respondent to transfer the sum of US\$ 40,000.00 (an equivalent of E520,000.00) to a bank account held in Panama held by a Russian company called Daestro Group Corporation.
- [7] The 7<sup>th</sup> Respondent applied for approval of the transaction by the Central Bank of Swaziland (CBS). The CBS in turn made enquiries about the source and origin of the money sought to be transferred to Panama. The application is in terms of the Foreign Exchange Regulations to authorize transfers of money outside the Common Monetary Area (CMA) region of which the Republic of Panama is one such country that is outside the CMA region.
- [8] Before the 7<sup>th</sup> Respondent could respond to the inquiry by the Central Bank a cash withdrawal of E250,000.00 (Two hundred and fifty thousand Emalangi) from the 6<sup>th</sup> Respondents bank account was made which had

the effect of reducing the bank balance such that the initial instruction to transfer US\$ 40,000.00 to Panama could no longer be made.

[9] **This activity on the account raised suspicion of money laundering.** The CBS referred the matter to the Applicant for further investigations.

[10] On the 29<sup>th</sup> September 2016 the Applicant wrote to the directors of the 6<sup>th</sup> Respondent enquiring about the source and origin of the money that had been deposited to the 6<sup>th</sup> Respondents bank account.

[11] The 1<sup>st</sup> Respondent in an affidavit dated 30<sup>th</sup> September 2016 stated that the funds that were deposited into the account of the 6<sup>th</sup> Respondent were from his personal account which he had with the First National Bank (FNB) in South Africa and from Mr. Tony Dlamini who is a director of the company.

[12] However, this explanation contradicts the explanation provided in the deposit slips wherein the depositor stated that source of the money were Eric Mgcini Construction, the latter registered in the Republic of South Africa; and Empire Enterprises/Cargo Services and fuel sales.

[13] The 1<sup>st</sup> Respondent was unable to provide supporting documents accompanying his explanation notwithstanding a request from the Applicant dated 28<sup>th</sup> November 2016 which reads in part as follows:

**“2. After having perused the information provided to us, you are further requested to provide an affidavit with the following information:**

- **Source documents supporting the contents of your affidavit paragraphs 7, 11, 13, 15.**
- **What were the funds that were sourced from Tonny Madidane Dlamini? Was it a loan or a capital for the business?**
- **In paragraph 10 of your affidavit you are alleging that you were advised by your bankers who specifically advised you?**
- **How was the cash brought into the country? Please provide supporting documents to support how the funds were brought into the country.**
- **What is the significance of Lendelani Mxolisi Handsome Mngomezulu? Where can this person be found? (Provide contact details).**
- **What is the significance of the document written Aghalieaku Entertainment Centre of the Republic of South Africa?**
- **You are further requested to provide us with the work permits of the non-Swazi Directors of Aghalieaku Airways (Pty) Ltd”.**

[14] The lack of response to the letter from the Applicant dated 28<sup>th</sup> November 2016 raised suspicions of money laundering.

[15] In summary this is what the Applicant says:

**“This application is based on suspicions of Money Laundering raised by the manner in which the said total cash deposits of E624,510.00 were made, the contradictory explanations given by the First Respondent and the depositors of the funds on the source and origin thereof as well as the failure to provide supporting documents of the explanations given”.**

[16] The Applicant continues -

**“I therefore submit that there are reasonable grounds for believing that the said funds were being utilized as an instrumentality to commit the offence of Money Laundering and/or proceeds of crime and/or were being laundered”.**

[17] In his affidavit dated 30<sup>th</sup> September 2016 filed with the Applicant the 1<sup>st</sup> Respondent stated that the source of the money deposited by Tony Dlamini into the 6<sup>th</sup> Respondent’s bank account were from his personal account which he had with the First National Bank, South Africa and from Mr. Tony Dlamini who is also a director of the company (6<sup>th</sup> Respondent).



[18] And that the reason that the money was paid in cash into the account of the 6<sup>th</sup> Respondent was because the company needed to pay a Dasterro Group Corporation in Latvia which was leasing an aircraft to the 6<sup>th</sup> Respondent. This company was incorporated in Panama.

[19] And that the cheque of E250,000.00 (Two hundred and fifty thousand Emalangeni) was cashed to meet the local operational expenses for the company. These included payment to The Swaziland Aviation Authority for the various licences and permits issued to the company, payment for business premises at the King Mswati III International Airport, payment to the Swaziland National Provident Fund for accommodation of company employees at Liqhaga Flats, payment to the Royal Swaziland Sugar Corporation for accommodation for the Pilots and other recurring expenditures including salaries for employees and the acquisition of office furniture and fittings and office equipment”.

[20] He further stated that since he was the president of other companies in Nigeria funds were sourced from those companies such as Global Star Communications Limited on a loan basis. And that he ran a number of

businesses in Nigeria and had used funds from those businesses to fund the local business.

[21] He did not depose to any affidavit in respect of the present application before me.

[22] Mr. Tony Dlamini furnished to the Applicant an affidavit dated 8<sup>th</sup> February 2017. In it he says that he has no source of income except the little money .... he was given by the 1<sup>st</sup> Respondent as a salary.

[23] He says that a contract was entered into between Dasterro Group Corporation and the 1<sup>st</sup> Respondent for the lease of an Aircraft IL76TD 17.5 Tone. The plane was going to be leased at a sum equivalent to US\$ 60,000.00. The plane was expected to land in Swaziland by the end of June 2016 after the payment of the agreed amount.

[24] He says that the CEO Anusha Maharaj and the 1<sup>st</sup> Respondent called him from South Africa and informed him that they had already deposited money into his account at FNB for the lease of the plane. He says that he was worried about their actions and he told the 1<sup>st</sup> Respondent that they should

have contacted him in person. He stated that he requested proof of the source of the funds. Even though they agreed to provide proof they never furnished him with proof.

[25] He stated that the deposits into his account were made in cash. And that after the large deposits into his account, he would withdraw the money and hand it over to Anusha Maharaj. The total amount deposited into his account was above E400,000.00 (Four hundred thousand Emalangeni).

[26] He said that he recalls that once after he had withdrawn a large amount of money and handed it over to Anusha he was ordered to accompany her to deposit the money into the 6<sup>th</sup> Respondent's account while she deposited another amount. He says that a confusion arose inside the bank because he required proof of the source of the funds. Anusha showed him information on her cell that he should write that the source of the funds were from Eric Mgcini Construction on the deposit slip.

[27] He states that information written on all the deposit slips made by him and Anusha into the business account of the 1<sup>st</sup> Respondent was dictated to him by Anusha.

[28] Mr. Dlamini deposed to (another) confirmatory affidavit on the 22 November 2017 filed with this Court. I shall advert to it later in this ruling.

[29] An answering affidavit to this application (before me) was filed on behalf of the 6<sup>th</sup> Respondent. Anusha Maharaj deposed to it. She is the CEO of the 6<sup>th</sup> Respondent and is based in South Africa.

[30] Her explanation for the source of the money is that:

**“19.3 The 1<sup>st</sup> Respondent, through his Nigerian companies provided funds to the family of Chinedu Michael Onwuatuelo (Michael) and Michael repaid the 1<sup>st</sup> Respondent by making funds available to him in South Africa. These are the funds that 1<sup>st</sup> Respondent loaned to the 6<sup>th</sup> Respondent.**

**19.4 That since they were trying to meet the deadline for paying for the aircraft, Michael withdrew the money, gave it to me in cash. I tried to have it deposited in 6<sup>th</sup> Respondent’s Nedbank account in South Africa but I was advised that it was not possible to do so. The funds were then deposited into the 2<sup>nd</sup> Respondent’s FNB account in South Africa.**

**19.5 The funds were destined for 6<sup>th</sup> Respondent account in Swaziland so that payments could be done including payment for the aircraft. The FNB advised that it would take a minimum of 3 days to transfer the**

**money by EFT to Nedbank. We then opted to withdraw the cash and deposit same over the counter at Nedbank.**

**19.6 In order to avoid the lengthy and circuitous explanation I declared in the deposit slip at the bank that the funds were from a company called Mgcini Construction, a company owned by an associate of mine. I am the one who made this declaration and not any of the Directors of the 6<sup>th</sup> Respondent.**

**I take responsibility for this lapse”.**

[31] In respect of the withdrawal of E250,000.00 (Two hundred and fifty thousand Emalangen) she says that as the CBS was taking long to process their application for the transfer of US\$ 40,000.00, the E250,000.00 was withdrawn and applied to the operational expenses of the 6<sup>th</sup> Respondent. The intention was that once the issues withholding or hindering the transfer were resolved then the funds would be deposited into the account in order to meet the instruction amount to the CBS. She denied that the funds were proceeds of unlawful activities or were intended to be laundered.

[32] Mr. Chinedu Michael Onwuatuelo filed a confirmatory affidavit to that of the CEO wherein he states that he confirms the allegation concerning him. He attests to that he is a Nigerian businessman currently residing and carrying on business in the Republic of South Africa.

[33] He states that he has known the 1<sup>st</sup> Respondent for a long time both in Nigeria and South Africa. That the 1<sup>st</sup> Respondent commutes between Nigeria and South Africa, which he cannot do oftentimes he asks the 1<sup>st</sup> Respondent to pay some money to his family in Nigeria and he repays him in South Africa.

[34] That during May or June 2017, the 1<sup>st</sup> Respondent asked him to repay money that he had paid to his family in Nigeria. This money amounted to E265,000.00 (Two hundred and sixty five thousand Emalangeni). The 1<sup>st</sup> Respondent told him that he needed to transfer the money to Swaziland in order to make an urgent payment to a Latvian Company from whom he was leasing an aircraft.

[35] The 1<sup>st</sup> Respondent asked for Onwuatuelo to advance to him a further sum of E140,000.00 (One hundred and forty thousand Emalangeni) as he needed R4,000.000,00 (Four Million Rands). He gave the money to Anusha in cash.

[36] As stated earlier, Tony Dlamini also filed a confirmatory affidavit wherein he states that he confirms all that Anusha has said relating to him. He confirms that she is the CEO of the 6<sup>th</sup> Respondent. And that he met Mr. Onwuatuelo who confirmed to him that he was the one that advanced the sum of E400,000.00 (Four hundred thousand Emalangeni) to the 1<sup>st</sup> Respondent.

[37] This is what Tony says:

5. **I confirm that the 6<sup>th</sup> Respondent needed start-up capital urgently. The 1<sup>st</sup> Respondent as the President made available the initial sum of E400,000,00 (Four hundred thousand Emalangeni). This was to be a loan to be repaid from 6<sup>th</sup> Respondent's income.**
  
6. **I confirm that since banking procedures are such that it is not possible to deposit money in South Africa into a Nedbank account held in Swaziland, we resolved to have the money deposited into my personal account with the First National Bank.**
  
7. **In Swaziland, we needed to move the funds from my personal account into the company account with Nedbank. We were advised that it would take about 3 days to move the funds by EFT yet we needed to make urgent payment for the Aircraft in Latvia.**
  - 7.1 **We were further advised that it would be quicker to withdraw the funds from my FNB account and deposit same into the company account at Nedbank. The is what we did.**

**7.2 As soon as the funds were deposited into the company account, we gave instructions to the 7<sup>th</sup> Respondent to transfer some to Latvia for payment of the Aircraft.**

**8. I state that the funds were not proceeds from criminal activity and the intention was not to commit an offence but legitimate business enterprise**

[38] Elsewhere he says:

**9. In respect of paragraph 14.6 of the founding affidavit, I wish to state that, in advertence, I left column reserved for stating source of funds blank. I believe it is the bank tellers who completed same for me after recognizing that the information was missing.**

### **The legal framework (the Act)**

[39] Section 45 of the Act provides as follows:

#### **“Restraint of Property**

**45 (1) Where a law enforcement officer investigating an unlawful activity, a money laundering offence or a financing of terrorism offence has reasonable grounds to believe that any money or property whether located inside or outside of Swaziland, relating to an unlawful activity, a money laundering offence or a financing of terrorism offence is held or is under the control of any person, the relevant law enforcement agency may apply to a Court in accordance with subsection (2) for a restraint order prohibiting the person from disposing or otherwise dealing with that property except in such manner as may be specified in the order.**



**(2) An application under subsection (1) may be made ex parte, and shall be in writing and be accompanied by an affidavit in support of the application.**

**(3) The hearing of an application made under subsection (1) may be held in camera.”**

[40] Section 45 (2) authorizes the Applicant to come to Court *ex parte* to obtain the restraint order. Equally section 45 (3) enables the *ex parte* application to be made in camera.

### **Reasonable grounds**

[41] Are there reasonable grounds to believe the money belonging to the 6<sup>th</sup> Respondent and banked with the 7<sup>th</sup> Respondent (located in Swaziland) relates to an unlawful activity or a money laundering offence?

[42] The Central Bank of Swaziland made enquiries from the 7<sup>th</sup> Respondent about the source and origin of the funds to be transferred to Panama. Before the 7<sup>th</sup> Respondent could respond, a cash withdrawal of E250,000.00 was made on the 6<sup>th</sup> Respondent’s account thus reducing the bank balance and the instruction to transfer US Dollars 40,000.00 to Panama could not be met. Suspecting money laundering, the CBS referred the matter to the Applicant

for further investigation per letter dated 11<sup>th</sup> August 2016, the contents thereof are reproduced hereunder:

“The Commissioner  
Anti-Corruption Commission  
P.O. Box 4842  
Mbabane

Dear Sir.

**REFERRAL FOR INVESTIGATION: AGHALIEAKU AIRWAUS (PTY)  
LTD CASE**

**Reference is made to the above captioned subject matter.**

**The Central Bank of Swaziland receive an application from Nedbank to approve remittance of funds to Panama on behalf of their client, Aghalieaku Airways being a deposit towards the lease of plane. As per our procedure, we requested for company registration documents which is prerequisite documentation to enable proper assessment of the application.**

**An analysis of the application revealed the following ‘red flags’.**

- 1. The company account was funded through cash deposited over the counter of E6210 within three days.**
- 2. Cash deposit fees for the transactions totaled E14 452.23 which normal business options for depositing funds like electronic funds transfer.**
- 3. Destination of the funds is Panama City recently published as a suspected destination for illicit flow of funds.**

4. Advance payments in the Exchange Control field are commonly used for illicit flow of funds requiring thorough probing in cases where there is reason to suspect irregularities.

Given the above mentioned anomalies, we found it necessary to immediately conduct a targeted inspection on Nedbank to get better insight of the company's profile. Our findings revealed that:

1. Denominations of cash made were a combination of Rand notes and Emalangi indicating possibility that funds may have been physically brought into the country as opposed to using formal banking systems for remittance.
2. A cash withdrawal of E250,000.00 had been made which did not make sense since that meant the funds left in the account were now insufficient to make the proposed transaction of USD40,000 (Emalangi equivalent E574,000 as at 19 July, 2016).
3. False declaration on a deposit slip by the CEO misrepresenting himself as Tony, one of the company directors.

Based on the above, we have reasonable grounds to suspect that there could be elements of criminal activities on the transaction which may call for your intervention. We hope the above helps clarify the basis for our suspicion or discomfort with the transaction and further assists you in making further investigations.

Enclosed are the documents substantiating our findings.

Yours faithfully,

.....  
**M.V. Sithole**  
**GOVERNOR**

**Encl.**

[43] The Governor of the CBS may not have used the technical term “money laundering” but his import is clear that that was what he meant, when he referred the matter to the Applicant for investigation.

[44] The Applicant requested information and evidence of the source of the money together with supporting documents. Different conflicting stories were given with regard to the source as I have outlined above, raising suspicions of money laundering.

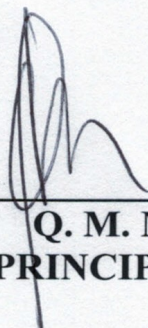
[45] Meer J put it aptly in a similar matter when he stated:

**“When the explanations for the uncommon event are not entirely satisfactory the reasonable grounds for belief and suspicion grow. When after all is said and done the lawful origin of the cash still remains undisclosed, the reasonable grounds are reinforced, and here I refer to 2<sup>nd</sup> Respondent’s unsatisfactory explanation as to whence the money derived. Whilst he refutes Applicant’s allegation that the money is the proceeds of the unlawful activities of the companies of which he is director, by stating that the cash**

was his personal money lawfully earned, he crucially fails to disclose how the money was lawfully earned. There is no reference to statements of income, books of account, or any other source from which the money derived, the obvious and easiest way of putting paid to ungainly speculation about the money. The source of the money still remains undisclosed”.

[46] Likewise in this matter the source of the money still remains undisclosed. There are therefore, reasonable grounds for believing that the money was being laundered and that its source was related to an unlawful activity needing it to be cleaned or washed as the case may be.

[47] For the foregoing reasons and in my view the Applicant established a *prima facie* case for the grant of a restraint order which is hereby confirmed. The six months requested in prayer 1 (e) (hereinabove) is reckoned from the 8/11/2017 to the 8/5/2018.



AT MBABANE  
Crim. Case No.

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**Q. M. MABUZA**  
**PRINCIPAL JUDGE**

For the Applicant : Mr. N. Lukhele

For the Respondents : Mr. Z. Magagula