

**IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY**

CR 68 of 2017

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**IN THE MATTER OF SECTION 19(D) OF THE MONEY
LAUNDERING AND PROCEEDS OF CRIME ACT 2000**

BETWEEN: FINEASI HAFOKA - Applicant

AND: POLICE - Respondent

BEFORE THE HON. JUSTICE CATO

JUDGMENT

Mr Tu'ūtafaiva for the Applicant

Mr Aho for the Respondent

[1] The Applicant seeks a ruling that his notice of appeal (received by the Court) on 12th July 2017 which was the 30th day from the 12th June 2017 is in time to satisfy the provisions of section 18 G(5) of the Money Laundering and Proceeds of Crime Act and consequently the money seized by police from the Applicant's premises on the 27th May 2017 should not be automatically forfeit to the Crown.

[2] Mr 'Aho for the Respondent contends that the notice of appeal was received out of time and the money was forfeit under section 18 G(5) of the Act namely that it fell outside the period

of thirty days from he submitted the seizure notice dated the 8th June 2017 that was given by police to the applicant pursuant to section 19 (C) of the Act and allows police to retain the proceeds of the seizure for 72 hours.

[3] Under section 19 an authorized officer may seize cash if he has reasonable grounds to believe it is recoverable cash, or intended by any person for use in unlawful conduct or it is undeclared cash intended for use in unlawful conduct. An authorized officer may also seize the cash if satisfied of any of the above or for purposes of the investigation, and if so, that seizure for a period lasts for 72 hours.. Here the amount of the cash was in excess of \$11,000 and the deponent police officer swore in his application under section 19D for an extension of the seizure beyond 72 hours that the Applicant had told him that the money was the proceeds of crime namely drug dealing. A small amount of cannabis had been located in the same room as the money and was the subject of a charge of possession of illicit drugs which has yet to be resolved in the Magistrate's Court. The deponent stated that he had not served any notice of seizure until the 8th June 2017 because he had been unaware of the provisions of the Act. In fact there is no formal requirement under the Act for a notice to be served to support an initial 72 hours seizure so long as the requirements justifying seizure have been met. It is only when police wish to extend the seizure for a three month period that is beyond the initial 72 hours given under section 19D(1) that a formal order of court is required under section 19D(2). There is no challenge here to the basis for the police seizing the money.

[3] Police as they were required to do to extend the seizure beyond 72 hours made application to this Court on the 9th June 2017 for an extension of the period for a further three months under section 19D(2)(a) and (3) as I have said and this was granted by

the Court on the 12th June, 2017. There is a power under section 19D (2)(b) to further extend an order of three months to one of a year from the date of the first order.

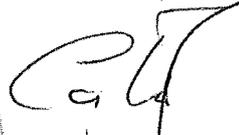
[4] I consider that Mr Tu'utafaiva is correct when he says that time runs from the date upon which the applicant obtained the extension of three months from the Court which was on the 12th June 2017, and not from the time the police served the 72 hour informal seizure notice on the applicant on the 8th June 2014. That would seem to be the natural meaning section 19BG (5) which refers to cash seized under sections 19C and 19D and not cash seized by a disjunctive operation of the sections. I consider that section 19 G is intended to run from the time formal notice of an order extending time beyond the 72 hours period by operation of section 19D is given to an affected person. The police's initial power to seize, as I have said, is no more than an interim power that is given to them to decide whether they want to invoke formal court process to extend the seizure initially for three months and then a year. It does not require the police as I have said to issue any formal notice on seizure although it is no doubt, as a matter of record, a good thing that they do so as to avoid any later arguments concerning the value of any cash taken. My view is strengthened by section 19G (5) expressly states that an order under subsection 19 D (2) shall provide for notice to be given to any persons affected by it. In my view, the statutory scheme of notice and objection envisages that when the Court makes an order that lengthens the seizure period and also places a person affected under threat of automatic forfeiture if an appeal is not commenced within a thirty days period, the person or persons affected are required to be given notice and the time limit for an appeal to be filed under section 19G(5) operates from that point. In this case, that period commenced on the 12th June, 2017 when this Court issued an order under section 19D (2) and not the 8th June 2017 when police issued an

informal seizure notice; the money it being taken into police custody after the search on the 27th May 2017. The Notice of Appeal filed on the 12th July 2017 meets the 30 day requirement for filing taken from the 12th June, 2017.

- [5] Accordingly my ruling is that the Applicant is correct and the notice of appeal is not out of time.

DATED: 10 AUGUST 2017




C. B. Cato
JUDGE