



**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN, MALAYSIA
[PERMOHONAN JENAYAH NO. WA-44-189-12/2017]**

Dalam Perkara Seksyen 56 dan
Seksyen 61 Akta Pencegahan
Pengubahan Haram, Pencegahan
Pembiayaan Keganasan dan Hasil
Daripada Aktiviti Haram 2001 [*Akta
613*]

Dan

Dalam Perkara Seksyen 25 Akta
Mahkamah Kehakiman 1964 [*Akta
91*]

ANTARA

PENDAKWA RAYA

... PEMOHON

DAN

- 1. VENUS EMPIRE ENTERPRISE
(No. Pendaftaran Perniagaan OO2498873-A)**
- 2. RIZQI RAYYAN SUPPLY
(No. Pendaftaran Perniagaan TR0143083-P)**
- 3. FXT GLOBAL RESOURCES
(No. Pendaftaran Perniagaan OO2467022-U)**
- 4. MUHAMMAD FIRDAUS BIN MD SHAM
(No. K/P: 860629-23-6003)**
- 5. ZARIPAH BINTI ZANUDIN
(No. K/P: 830904-06-6022)**



CRIMINAL LAW: *Anti-Money Laundering, Anti-Terrorism Financing And Proceeds Of Unlawful Activities Act 2001 - Section 61 - Vehicle seized was subject matter of a hire purchase agreement - Bank being owner of vehicle filed third party application to claim for return of vehicle - Bona fide third parties - Hirer allegedly involved in an illegal deposit taking activity - Whether bank was privy and knowledge of hirer's involvement in illegal activity - Whether bank was privy to and had knowledge of hirer's involvement in illegal activity - Whether bank has legitimate legal interest in vehicle - Whether vehicle ought to be returned to bank*

CRIMINAL LAW: *Anti-Money Laundering, Anti-Terrorism Financing And Proceeds Of Unlawful Activities Act 2001 ('AMALTF') - Section 61 - Third party claims over monies paid into a bank account intended to be an investment sum - Bona fide third parties - Claimants were victims of a scam perpetrated by others - Claimants were induced to invest their monies by fraudulent claims made by others - Whether concept of wilful blindness applied - Whether claimants have legitimate legal interest in money - Whether requirements under 61(4)(a) & (b) AMALTF fulfilled*

[Applicant's application in Case No. WA-44-189-12/2017 dismissed. Maybank Islamic Berhad's application in Case No. WA-44-148-09/2018 allowed. Applicant's application in Case No. WA-44-126-08/2018 allowed.]

Legislation referred to:

Anti-Money Laundering, Anti-Terrorism Financing And Proceeds Of Unlawful Activities Act 2001, ss. 56(1) (4), 61(4)(a) (b) (e)

Rules of Court 2012, O. 1A, O. 2 r. 1



FOUNDATIONS

A) INTRODUCTION

[1] This is an application by the Applicant under s. 56(1) of the Anti-Money Laundering, Anti-Terrorism Financing And Proceeds Of Unlawful Activities Act 2001 (“AMLATFA”) vide Enclosure 1 for the forfeiture of certain properties, namely: -

- 1.1 monies amounting to RM8.972.16 together with any accrued amount in current account no. 26431700003823 in the name of Venus Empire Enterprise (Company Registration No. 002498873-A) at RHB Islamic Bank Berhad, Kuala Lumpur Branch seized on 13.3.2017;
- 1.2 monies amounting to RM158.84 together with any accrued amount in current account no. 556141013943 belonging to Rizqi Rayyan Supply (Company Registration No. TR0143083-P) at MayBank Islamic Berhad, Bandar Pusat Jengka Branch, Pahang seized on 13.3.2017;
- 1.3 monies amounting to RM495.08 together with any accrued amount in current account no. 105130018207 belonging to Rizqi Rayyan Supply (Company Registration No. TR0143083-P) at Affin Islamic Bank Berhad, Bandar Pusat Jengka Branch, Pahang seized on 13.3.2017;
- 1.4 monies amounting to RM4,007.16 together with any accrued amount in current account no. 514897065947 belonging to FXT Global Resources ((Company Registration No. 002467022-U) at Maybank Islamic Berhad, Mont Kiara Branch, Kuala Lumpur seized on 13.3.2017;



- 1.5 a Honda City 1.5L I-VTEC bearing registration no. NCT5512 belonging to Syahrin Naim Bin Suhaimi (No. K/P: 870818-10-5191) located at the Enforcement Division of the Road Transport Department Malaysia, Putrajaya seized on 29.3.2017;
- 1.6 a Toyota Velfire DBA-AGH30W(A) bearing registration no. WD8822A belonging to Zaripah Binti Zanudin (No. K/P: 830904-06-6022) located at the Enforcement Division of the Road Transport Department Malaysia, Putrajaya seized on 29.3.2017;
- 1.7 a Mercedes Benz A250 BL-CY Engineering By AMG bearing registration no. WA6897X belonging to Yap Kim Hin (No. K/P: 651101-10-6453) at the Enforcement Division of the Road Transport Department Malaysia, Putrajaya; dan
- 1.8 a Banker's Cheque, CIMB Bank, KLCC branch, Kuala Lumpur serial no. 101954 dated 19.09.2017 in the sum of RM2,200,000.00 issued by Yayasan Usaha Ventures Malaysia (Society Registration No. PPM-003-10-14082013) in the name of the Ketua Setiausaha Kementerian Dalam Negeri seized on 3.10.2017 and deposited in forfeiture and seizure account with receipt (Kew. 38E) no. 00001417000027 dated 13.10.2017

B) BACKGROUND FACTS

- [2] After this application was filed, the First to the Fourth Respondent as well as the Sixth and Eight Respondent had never attended the case management for this application.



- [3] The Fifth Respondent attended case management on 6.3.2018 and informed the Court that she did not intend to respond to the cause papers filed by the Applicant.
- [4] The Sixth Respondent through their solicitor informed the Court on 30.10.2018 that they had no objections to this application.
- [5] Hence, the Applicant applied for a forfeiture of property in respect of the First to the Fourth Respondent, the Sixth Respondent and the Eight Respondent viz. properties listed in paragraphs 1.1, 1.2, 1.3, 1.4 and 1.8 in Enclosure 1.
- [6] The High Court on 30.10.2018 accordingly had allowed the application of the Applicant for forfeiture under s. 56(1) of the AMLATFA in respect of the properties against the First, Second, Third, Fourth and Eighth Respondent.
- [7] Although the Fifth and Sixth Respondent did not object to the Applicant's application, there were Third Party claims filed in respect of the property. These two Third Party claims were registered as separate cases and given separate case numbers.
- [8] What is left before this court therefore, is to determine the application in respect of the Seventh Respondent and the two Third Party claims which were as follows:
- i) The Seventh Respondent in Case No. WA-44-189-12/2017 which claim was in respect of a motor vehicle Honda City 1.5L I-VTEC having registration no. NCT5512 in the name of the Seventh Respondent, Syahrin Naim Bin Suhaimi, which was seized on 29.3.2017.
 - ii) Maybank Islamic Berhad in Case No. WA-44-148-09/2018 in respect of motor vehicle Toyota Velfire DBA-AGH30W(A) having registration no. WS8822A in the



name of the Fifth Respondent, Zaripah Binti Zanudin, which was seized on 29.3.2017.

- iii) Sudesh Ratnarajah & 78 others in Case No. WA-44-126-08/2018 in respect of CIMB Banker's Cheque KLCC Branch, Kuala Lumpur no. 101954 dated 19.9.2017 in the sum of RM2,200,000.00 issued by Yayasan Usaha Ventures Malaysia (Business Registration No. PPM-003-10-14082013) in the name of the Ketua Setiausaha Kementerian Dalam Negeri seized on 3.10.2017 and deposited in forfeiture and seizure account with receipt no. (Kew 38E) 00001417000027 dated 13.10.2017 for the sum of RM1,112,700.00 out of the sum of RM2,200,000.00 seized.

- [9] All the above cases namely, WA-44-189-12/2017, WA-44-148-09/2018 and WA-44-126-08/2018 respectively were heard together without objection.

C) ANALYSIS AND FINDINGS

[10] This application is made under s. 56(1) AMLATFA which reads as follows:

s. 56(1) Subject to section 61, where in respect of any property seized under this Act there is no prosecution or conviction for an offence under subsection 4(1) or a terrorism financing offence, the Public Prosecutor may, before the expiration of twelve months from the date of the seizure, or where there is a freezing order, twelve months from the date of the freezing, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property is—

(a) the subject-matter or evidence relating to the commission of such offence;

(b) terrorist property;

(c) the proceeds of an unlawful activity; or

(d) the instrumentalities of an offence.

(2) The judge to whom an application is made under subsection (1) shall make an order for the forfeiture of the property if he is satisfied—

(a) that the property is— Act A1467.

(i) the subject-matter or evidence relating to the commission of an offence under subsection 4(1) or a terrorism financing offence;

(ii) terrorist property;



Gazette calling upon any third party who claims to have any interest in the property to attend before the court on the date specified in the notice to show cause as to why the property shall not be forfeited.

- (3) A third party's lack of good faith may be inferred, by the court or an enforcement agency, from the objective circumstances of the case.*
- (4) The court or enforcement agency shall return the property to the claimant when it is satisfied that—*
 - (a) the claimant has a legitimate legal interest in the property;*
 - (b) no participation, collusion or involvement with respect to the offence under subsection 4(1) or Part IVA, or a terrorism financing offence which is the object of the proceedings can be imputed to the claimant;*
 - (c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, or if he had knowledge, did not freely consent to its illegal use;*
 - (d) the claimant did not acquire any right in the property from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent forfeiture of the property; and*



(e) *the claimant did all that could reasonably be expected to prevent the illegal use of the property.*

[12] By virtue of s. 56(4), the standard of proof upon the Applicant is the standard of proof required in civil proceedings, namely, on a balance of probabilities.

[13] The Applicant's case is that the investigations conducted by the investigation officer of the predicate offence and the investigation officer of the case under the AMLATFA show that the properties which constitute the subject matter of the application against the Seventh Respondent and the two third party claims were acquired as a result of proceeds of an illegal deposit taking activity known as the Venus FX Scheme.

i) Case No. WA-44-189-12/2017 in respect of the Seventh Respondent, Syahrin Naim Bin Suhaimi.

[14] The chronology of events disclose that the Honda City 1.5L I-VTEC, registration no. NCT5512 ("Honda City") was purchased by Seventh Respondent through a Hire-Purchase Agreement dated 28.12.2012 from Malayan Banking Berhad ("Maybank").

[15] The Seventh Respondent on 23.11.2015, with the intention of selling the said Honda City handed it over to a used car agent by the name of Mr. Tan wherein he signed an "Undertaking Letter" dated 23.11.2015 with Smart Era Motors.

[16] After sometime, the Seventh Respondent contacted the said Mr. Tan and Smart Era Motors regarding the latter's failure to pay the monthly instalments and to effect a transfer of ownership of the Honda City, but was always given excuses by them.



- [17] On or around the month of April 2016, the Seventh Respondent could no longer get in touch with the said Mr. Tan and Smart Era Motors.
- [18] The Seventh Respondent subsequently discovered that the said company was no longer in operation.
- [19] As a result, the Seventh Respondent lodged police reports on 4.4.2016, 18.4.2016 and 23.6.2016 respectively.
- [20] The Seventh Respondent made several efforts in order to resolve the problem including contacting Maybank, JPJ, SSM and the Consumers Tribunal of Malaysia.
- [21] Unfortunately, he did not make any headway since these authorities required instructions from the police in order to take action.
- [22] On or about the month of May 2017, the Seventh Respondent received a notice of seizure of the Honda City dated 29.3.2017 from the police.
- [23] As a result, the Seventh Respondent attempted to persuade Maybank to suspend the payment of the monthly instalments but was unsuccessful.
- [24] The Seventh Respondent then had to continue the payment of instalments to Maybank in order to avoid his name from being black listed by Bank Negara.
- [25] The facts as gathered from the affidavit of Inspector Navindran a/l Chandra of the Royal Malaysian Police Force disclose that subsequent to the Seventh Respondent handing over the Honda City to Mr. Tan and Smart Era Motors, a person named Mohd Sukri bin Abd Rahim (“Sukri”) who is the husband of the Fifth

Respondent, Zaripah Binti Zanudin in Case No. WA-44-189-12/2017, entered into an agreement with one Marina Binti Ibrahim in respect of the sale of the said Honda City.

- [26] According to investigations carried out by Inspector Navindran, Sukri alleged that he paid the sum of RM12,000.00 for the Honda City to one Dato' Akmal along with monthly instalments of RM1,000.00 to Maybank commencing around April or May 2016.
- [27] The investigations by Inspector Navindran also revealed that the said sums paid by Sukri were derived from the proceeds of the Forex Scheme involving Venus FX.
- [28] I do not find from the sequence of events and the circumstances, that the Seventh Respondent was privy to or had any knowledge of the events that transpired involving the said Sukri, Marina Binti Ibrahim or Dato' Akmal.
- [29] I also find that Seventh Respondent's police reports dated 4.4.2016, 18.4.2016 and 23.6.2016 respectively were made before the events involving Sukri, Marina Binti Ibrahim or Dato' Akmal transpired and contrary to the assertion of Inspector Navindran, before the Seventh Respondent received the notice of seizure of the Honda City dated 29.3.2017.
- [30] I find therefore, that the Seventh Respondent's police reports were not afterthoughts as alleged. I also find that he has a legitimate interest in the said Honda City. In respect of the factual inaccuracies reflected in the letter of undertaking, I find that although Seventh Respondent may have been naive and ignorant of matters involving the sale of a motor vehicle, there is nothing from which a fraudulent intent on his part can be concluded or inferred.



[31] In the premises, I find that the Applicant had not proved its case on

a balance of probabilities and I dismiss the Applicants application in Enclosure 1 in Case No. WA-44-189-12/2017 against the Seventh Respondent.

ii) **Case No. WA-44-148-09/2018 in respect of motor vehicle Toyota Vellfire DBA-AGH 30W(A) having registration no. WD8822A (“Toyota Vellfire”).**

[32] The factual matrix show that through a Hire-Purchase Agreement dated 1.7.2016 under the Syariah Principle of “Al-Ijarah Thumma Al-Bai” (“AITAB”) entered into by Maybank Islamic Berhad as owner and Zaripah Binti Zanudin, who is the Fifth Respondent in Case No. WA-44-189-12/2017, the Toyota Vellfire was hired out to the latter.

[33] The Toyota Vellfire was seized pursuant to an order dated 29.3.2017.

[34] Maybank Islamic Berhad filed an application vide Case No. WA-44-148-09/2018 to claim the Toyota Vellfire pursuant to s. 61 AMLATFA.

[35] It is evident from the AITAB agreement referred to above, that Maybank Islamic Berhad has a legitimate interest in the property concerned within the meaning of s. 61(4)(a) AMLATFA.

[36] There is also no evidence to suggest that Maybank Islamic Berhad was privy to or had any knowledge of the fact that the Fifth Respondent in Case No. WA-44-189-12/2017 or one Mohd Sukri Bin Abd Rahim had any involvement in the Venus FX Scheme.



[37] I therefore find that Maybank Islamic Berhad had also fulfilled the requirements in s. 61(4)(b) to (e) AMLATFA.

[38] In the premises, I allow the application by Maybank Islamic Berhad.

iii) Case No. WA-44-126-08/2018 involving Sudesh Ratnarajah & 78 others (“hereinafter “the applicants”)

[39] I have considered the Preliminary Objection raised by the Public Prosecutor in respect of the procedure involving the change of solicitors and I only wish to note that such technicalities ought not to stand in the way of doing substantial justice. See Order 1A and Order 2 rule 1 of the Rules of Court 2012. I also find that there was no impediment for the claimant in bringing a representative action on behalf of the other applicants.

[40] As has been oft quoted in times past, procedure should be the handmaid and not the mistress, of justice.

[41] Accordingly, I find no merit in the Preliminary objections raised by the Public Prosecutor.

[42] As far as the merits of the application is concerned, the facts of the case reveal that Venus FX is a company registered in New Zealand which provides a trading platform that specialises in foreign exchange. The applicant and the Class of Persons (78 others) are members or affiliates of the Venus FX Scheme (“the scheme”).

[43] Different persons had introduced the applicant and the Class of Persons to the scheme but common representations were made whereby those who deposited between USD100.00 to USD10,000.00 to Venus FX would be entitled to a daily return



on their investment of between 4% to 6% for 80 days and they would be registered as members and would be able to access Venus FX's webpage.

- [44] Members or affiliates of Venus FX are paid a commission for every new member that is recruited under their membership. A member who recruits a new member is referred to as a 'Sponsor' or 'Introducing Member' and the new member would be referred as the downline of the said Sponsor or Introducing Member.
- [45] Around June 2016, the management of Venus FX published an announcement on the webpage informing all members to pay their respective investment sum into the CIMB Bank Account of Yayasan Usaha Ventures Malaysia ("YUVM") in conjunction with Venus FX's direction to standardise their entity.
- [46] Venus also informed its members that YUVM is an authorised foundation under the governance of the Ministry of Finance and is parent company of Venus FX.
- [47] Due to the announcement made by Venus FX, the Applicant and the Class of Persons were induced to pay monies to YUVM's CIMB Bank Account.
- [48] On or around 29.09.2016, some members of Venus FX attended a meeting in Wisma Tun Sambathan, KL and at the said meeting, a member of Venus FX by the name of Sri Kumar a/l Harichandran ("Sri Kumar") informed other members that YUVM is not associated with Venus FX and the monies paid into the CIMB account was a scam.
- [49] Sri Kumar further clarified to the members that YUVM is a society in which, one Dato' Sri Gnanaraja a/l M Gnanasundram ("Dato' Sri Gnanaraja") and one Dato' Geethanjali Gausillia a/p

Kathirvalu (“Dato’ Geethanjali”) are respectively Chairman and Treasurer and that amongst others, the following false representations were made by Dato’ Sri Gnanaraja at a meeting held in Hilton Petaling Jaya on 21.06.2016:

- a) That YUVM is owned by the government;
- b) That Dato’ Sri Gnanaraja is going or able to obtain a banking license under the Financial Services Act 2013 which will be held by YUVM and for Venus FX to be its subsidiary to operate and manage the banking license;
- c) In order to obtain the banking license, a sum of RM50,000,000.00 must be deposited with YUVM;
- d) There will be a Memorandum of Understanding between YUVM, Bank Negara and the Ministry of Finance and the same will be revealed at a press conference;
- e) Dato’ Sri Gnanaraja had urged Venus FX to get its members or any member of the public interested to invest with Venus FX to pay monies up to RM50,000,000.00 directly to YUVM; and
- f) Dato’ Sri Gnanaraja had urged Venus FX to inform the members that Venus FX and YUVM are one and the system is managed by Venus FX.

[50] Unknown to the applicants, the representations were made fraudulently and had caused the sum of RM1,112,700.00 to be paid into the YUVM CIMB Bank Account by the applicant and the Class of Persons.

[51] From the sequence of events I find that the applicant and the other claimants he represents were in fact victims of a scam



perpetrated by others. They were induced into investing by fraudulent claims made by others. Under the circumstances, I find that the concept of wilful blindness has no application here.

[52] The applicant and the other claimants have also adduced sufficient proof that they had in fact banked in the sum of RM1,112,700.00 into CIMB Account No. 8007952063 belonging to YUVM.

[53] I find therefore, that they have fulfilled the requirements set out in s. 61(4)(a) & (b) AMALTFA.

[54] I also agree with Learned Counsel for the applicant that the requirements of paragraphs (c), (d) and (e) do not apply to the applicant and the other claimants in the circumstances of the particular case.

[55] In the premises, I allow the application of the applicant and the other claimants in Case No. WA-44-126-08/2018. The balance amount to be forfeited to the Government of Malaysia.

Dated: 15 JULY 2019

(COLLIN LAWRENCE SEQUERAH)

Judge

High Court of Malaya

Kuala Lumpur

COUNSEL:

*For the applicant - Fadzilah Begum Abd Ghani, Public Prosecutor;
Attorney General's Chambers*



[2019] 1 LNS 908

Legal Network Series

*For the respondent Maybank Islamic Berhad - Zainurufarah Zainol;
M/s Shahinuddin & Ranjit*

*For the 7th respondent - Ravi Nekoo & Parvinder Kaur; M/s Hakem
Arabi & Ass*