



[2014] JMSCCiv. 93

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2014 HCV 00181

BETWEEN	THE ASSETS RECOVERY AGENCY	APPLICANT
AND	DAWN SATTERSWAITE	1ST RESPONDENT
AND	ANNMARIE CLEARY	2ND RESPONDENT
AND	TERRENCE ALLEN	3RD RESPONDENT
AND	JANET RAMSAY	4TH RESPONDENT
AND	PAULETTE HIGGINS	5TH RESPONDENT

Douglas Leys QC, Kimone Tennant, instructed by Leysmith, for Dawn Satterswaite.

Symone Mayhew and Caroline Hay for Assets Recovery Agency.

Paul Beswick, Kayode Smith and Clarissa Bryan, instructed by Ballantyne, Beswick, for Terrence Allen.

Heard: March 12 and 31, 2014

APPLICATION FOR VARIATION OF RESTRAINT ORDER ON GROUND THAT SECTION 33 OF THE PROCEEDS OF CRIME ACT IS UNCONSTITUTIONAL

ANDERSON, K., J

[1] This matter came before me by means of an application for court orders, seeking to have an order made by this court and in particular, by Mr. Justice B. Sykes, of this court, varied. The variations sought were essentially, to allow for sums to be made available to Dawn Satterwaite from her restrained funds held in a financial institution or institutions, so as to enable Ms. Satterswaite to be in a position to use those funds in order to meet that which she has claimed are her reasonable living expenses.

Following on said application having been made to this court, by counsel for Ms. Satterswaite and in fact, during the course of the hearing by this court, of the said application, the parties reached agreement as to the sum of money which the Assets Recovery Agency would permit Ms. Satterswaite to have access to, each month, for the purpose of meeting her reasonable living expenses. Agreement having been reached between the parties in that regard, this court will not, in these reasons for ruling, address that aspect of the said application for court orders, any further.

[2] The said application though, has also sought to have the order of Mr. Justice B. Sykes varied, so as to enable Ms. Satterswaite to meet her reasonable legal expenses. It is in that respect that the parties have remained in dispute to date and thus, had advanced oral submissions before me, in support of their respective viewpoints as to whether or not said application for variation, should, in that respect, be granted.

[3] On January 16, 2014, this court had made certain restraint orders in respect of assets such as funds in financial institutions, held in the name of Dawn Satterswaite, who is a practicing attorney-at-law. In particular, it was Mr. Justice B. Morrison of this court, who made those restraint orders. Those orders were later varied to an extent, by Mr. Justice B. Sykes and said variation was made on February 6, 2014. Following on that, Ms. Satterswaite applied to vary Mr. Justice B. Sykes' order and it is that application which came before me for hearing. I denied that application and promised to put reasons, in brief, in writing. In fulfilment of that promise, this is same.

[4] The application to vary that order was premised on the contention put before this court by Ms. Satterwaite's counsel, on her behalf, that section 33 (4) (a) (i) of the Proceeds of Crime Act (hereafter referred to as '(POCA') is unconstitutional and thus, the said restraint order, initially made by Mr. Justice B. Morrison and later varied by Mr. Justice B. Sykes, ought never to have been made in the first place, as they were made in reliance upon an unconstitutional law.

[5] It is the contention of Ms. Satterswaite, through her counsel, that a person's funds or assets cannot be restrained by any court, such that said persons cannot have the use of and/or access to same in order to meet one's reasonable legal expenses, since access to legal advice and assistance is a fundamental right afforded by the Charter of Rights and Freedoms, to anyone charged with a criminal offence, or for that matter, to anyone even only arrested for a criminal offence. Ms. Satterswaite was so arrested and has been so criminally charged. It is to be noted that POCA does allow for restraint orders to be made by the Supreme Court, subject to the exception that such restraint orders may provide for reasonable living and reasonable legal expenses, other than as relate to an offence that falls within subsection (5). Ms. Satterswaite has been charged with an offence that falls under the said subsection (5). As such, this court has no jurisdiction, in circumstances where the Assets Recovery Agency does not agree, to vary such a restraint order as was made, so as to allow for Ms. Satterswaite to have access to funds from her restrained assets, to meet her reasonable legal expenses. The statute, as it now stands, precludes this court from varying same in that regard.

[6] This court does not doubt that such rights exist, as the Charter of Rights and Freedoms is pellucid in that regard. This court though, cannot vary an order made by another judge of this same court, on the ground that the law, forming part and parcel of the statutory laws of Jamaica, upon which the said order was founded, is an unconstitutional law. That is a contention which either would have had to have been argued before the Court of Appeal, on appeal from Mr. Justice B. Sykes' order, if leave to appeal that order were to have been or to be granted, either by this court, or by the Court of Appeal, or alternatively, it should have formed the basis for an application to this court for said statutory provision to be declared by this court as being unconstitutional. No such course of action though, was even so much as initiated before me, with respect to this matter. As such, this court had before it, no basis upon which it could properly have varied Mr. Justice B. Sykes' order. If this court had done so, upon the present application, it would have been functioning in the role of an appellate court, rather than in its only role, which is as a judge of co-ordinate jurisdiction, within this very same court.

[7] Further to that which has been set out above, it should be noted that if section 33 (4) (a) (i) of POCA is unconstitutional, as has been suggested by counsel for Ms. Satterswaite, then the order made by Mr. Justice B. Sykes, as too, the earlier order of Mr. Justice B. Morrison, would both be void *ab initio*, since both of those restraint orders, the former – mentioned of which, being a mere variation of latter-mentioned, would have been based on a law which is itself void. As such, this court could not, in any event in the circumstances, even if it had jurisdiction to vary in the particular circumstances, bearing in mind the ground for variation as was put forward by counsel for Ms. Satterswaite, have granted a variation order. This court would have had to have declared the said order of Mr. Justice B. Sykes void. That is not something which a judge of co-ordinate jurisdiction within this court, has any lawful authority to do. Also, since an order was not sought by the applicant, to declare the order of Mr. Justice Sykes void, this court could only have made such a declaration, if even it had jurisdiction so to do (which it does not), if this court had given permission for such relief to be obtained. This would be so, since that would have meant that no application seeking that particular relief, could have been made by the applicant. No such application for an order to have Mr. Justice B. Sykes' order declared void, was sought by the applicant and of course, no such order was granted to the applicant. In any event though, for reasons already provided in this paragraph, even if such an application for that relief had been permitted by this court, the said application for that order would inevitably have suffered the same fate as this one – in that, it would have been denied. See rule 11.13 of the CPR as regards the consequence of not asking for order in application.

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Hon. K. Anderson, J.