IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY, MALAYSIA
[CRIMINAL APPLICATION NO: WA – 44 – 142 – 06/2019]

In the matter of section 56(1) and section 61(2) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [*Act 613*];

And

In the matter of section 25 of the Courts of Judicature Act 1964 [*Act 91*].

BETWEEN

PUBLIC PROSECUTOR ... APPLICANT

AND

JAKEL TRADING
(COMPANY NO: JM0056657) ... RESPONDENT

JUDGMENT

Introduction

[1] This is an application by the Public Prosecutor under section 56(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA) to forfeit the sum of RM628,314.00 and all accrued interest held in the respondent's Maybank Berhad current account No. 001057512189. A freezing order dated 29.06.2018 was issued against the respondent's account and the account was seized on 21.09.2018.

[2] On 04.07.2019, the Court allowed for the notice to be published in the *Gazette*. The notice was published in the *Gazette vide* P.U.(B) 12729/2019. No third party has come forward to stake any claim against the seized property.

Brief background facts

The information

[3] The Malaysian Anti-Corruption Commission ("MACC") received information that the former Prime Minister, Dato' Sri Mohd Najib bin Abdul Razak ("DSNR") had used his position, as the Chairman of the Board of Advisors for 1Malaysia Development Berhad ("1MDB") and as the Minister of Finance, Malaysia, for gratification in the sum of RM3.217 billion. The gratification was remitted into his personal bank accounts at AmPrivate Banking AmBank (M) Berhad.

[4] Based on that information, MACC Superintendent Nur Aida binti Arifin lodged a report with the MACC *vide* Report No. 0203/2018 on 17.05.2018. MACC Superintendent Nur Aida binti Arifin is the investigating officer tasked to investigate the predicate offence under section 23 of the Malaysian Anti-Corruption Commission Act 2009 ("MACC Act 2009"). On 28.05.2018, MACC Headquarters Report No. 0215/18 was lodged to initiate investigations into the offence of money laundering under section 4(1) of the AMLATFPUAA. On 13.06.2019, MACC Superintendent Wong Yee Nee lodged a report with the MACC *vide* Report No. 0208/2019.

MACC Superintendent Wong Yee Nee is the investigating officer tasked for the investigation relating to the forfeiture of property.

1Malaysia Development Berhad ("1MDB")

[5] 1MDB is a sovereign wealth fund. It was rebranded pursuant to a take-over of the Terengganu Investment Authority ("TIA") through shares transfer from the Terengganu State Government to the Ministry of Finance. On 04.09.2009 TIA was officially rebranded as 1MDB and owned by the Federal Government through the Minister of Finance (Incorporated) ("MoF Inc."). 1MDB came directly under the purview of DSNR as the Minister of Finance. Additionally, DSNR was also the Chairman of the Board of Advisors for 1MDB. As the Minister of Finance and the Chairman of the Board of Advisors, DSNR had full and absolute powers to make decisions pertaining to all matters relating to 1MDB including investments and business ventures. These powers override decisions which may be made by the Board of Directors and senior managements of 1MDB.

Investments and business ventures

[6] Under the direction of DSNR, 1MDB entered into various business ventures as follows:

(a) 1MDB-Petrosaudi Limited ("1MDB-Petrosaudi") in a joint venture with PetroSaudi International Limited of the Saudi Arabia. 1MDB-Petrosaudi in turn entered into a joint venture with Petrosaudi Holding (Cayman) Limited ("Petrosaudi Cayman"),

(b) a joint venture with Aabar Investment PJS ("Aabar"),

(c) the acquisition of power producers, Tanjong Energy Holdings Sdn Bhd ("Tanjong Energy") and Mastika Lagenda Sdn Bhd. ("Mastika Lagenda").

The investments and business ventures of 1MDB resulted in the following events:

A. The 1MDB-Petrosaudi in a joint venture with PetroSaudi International Limited of the Saudi Arabia

[7] Pursuant to the approval of the Board of 1MDB and the Central Bank of Malaysia, the sum of USD1 billion was to be paid into the account of 1MDB-Petrosaudi at JP Morgan (Suisse) SA. However, the following events had transpired:

(a) on 30.09.2009 1MDB only transferred USD300 million into the account of 1MDB-Petrosaudi at JP Morgan (Suisse) SA and the balance sum of USD700 million was instead transferred into the account one Good Star Limited ("Good Star") at the RBS Coutts Bank Limited, Switzerland. Good Star is owned by one Low Taek Jho ("Jho Low") and he is also the authorized signatory for Good Star's account at RBS Coutts Bank Limited, Switzerland,

(b) on 16.05.2011 DSNR and 1MDB approved an additional loan of RM1 billion (equivalent to USD330 million) to 1MDB-Petrosaudi through the subscription of "Murabaha Notes" in exchange of a 40% equity for 1MDB in 1MDB-Petrosaudi,

(c) between 20.05.2011 and 25.10.2011, a total of USD330 million in 4 transactions was transferred to Good Star's account at RBS Coutts Bank Limited,

(d) between 18.02.2011 and 10.06.2011, the sums of USD12.5 million and USD12 million were transferred from Good Star's account to the joint account of Prince Faisal bin Turki Al-Saud and Prince Saud bin Abdulaziz Al-Saud at the Riyad Bank, Riyadh, Saudi Arabia ("Riyad Bank Account"),

(e) on 24.02.2011 the sum of USD10 million (equivalent to RM30,449,929.97) was transferred from the Riyad Bank Account into the account of DSNR at AmPrivate Banking Account No. 2112022009694 ("First Account"),

(f) on 14.06.2011 the sum of USD10 million (equivalent to RM30,179,909.46) was transferred from the Riyad Bank Account into the First Account.

B. The joint venture with Aabar

[8] The joint venture with Aabar was named Abu Dhabi Malaysia Investment Company (ADMIC). Pursuant to the joint venture agreement, each party are required to make a capital injection of USD3 billion into ADMIC. For this purpose, 1MDB incorporated 1MDB Global Investment Limited ("1MDB GIL") to issue international bonds for USD3 billion with a letter of support from the Government of Malaysia.

[9] Issuance of the bonds were arranged by Goldman Sachs International ("Goldman Sachs"). 1MDB GIL opened an account at the BSI Bank in Lugano, Switzerland ("BSI Bank") and later, 1MDB issued the international bonds for USD3 billion.

However, after issuance of the bonds there was no capital injection into ADMIC made by Aabar. The joint venture too did not kick-off and was not operational.

[10] Pursuant to the issuance of the bonds, 1MDB GIL received the total of USD2,721,000,000.00 in its account at the BSI Bank. None of this money was used for the purposes of the approved joint venture. Instead, 1MDB GIL made a number of transactions for investment purposes to Cistenique Investment Fund, Enterprise Emerging Market Fund, Devonshire Capitol Growth Fund, Tanore Finance Corporation ("Tanore"), and Granton Property Holding Limited.

[11] Between 22.03.2013 and 10.04.2013, DSNR received transfers from Tanore for the total sum of RM2,081,476,926.00 in the First Account through 9 transactions.

C. The acquisition of two power producers, Tanjong Energy Holdings Sdn Bhd. and Mastika Lagenda Sdn Bhd.

[12] The acquisition of Tanjong Energy for RM10.6 billion was approved by DSNR. It was done through a special purpose vehicle ("SPV"), 1MDB Energy Limited ("1MEL"). 1MEL is a wholly owned subsidiary of 1MDB. After factoring in the debts, Tanjong Energy was eventually acquired at RM8.5 billion. In order to finance the acquisition and its completion, the Board of Directors of 1MDB proposed for a fund-raising exercise and appointed Goldman Sachs as the bookrunner and arranger.

[13] Goldman Sachs proposed for the acquisition to be financed through —

(a) a bridging loan of RM6.17 billion jointly facilitated by Maybank Berhad and RHB Bank Berhad, and

(b) the issuance of USD bonds for USD1.75 billion through 1MDB Labuan with a coupon rate of 5.99% per annum redeemable in the year 2022.

[14] According to the offering circular for the bonds, the net proceeds after deducting the fees of Goldman Sachs, commission and expenses, shall be partly used to finance the acquisition of Tanjong Energy and partly for general corporate purposes of 1MEL. The USD bonds are jointly guaranteed by 1MDB and International Petroleum Investment Company PJSC ("IPIC") to enable 1MDB to obtain a higher credit rating and take advantage of a more lucrative coupon rate for the bonds. For the purposes of the joint guarantee, an Inter-Guarantor Agreement dated 21.05.2012 was signed whereby the MoF Inc. agreed to guarantee the repayment to IPIC of any amounts payable under the bonds.

[15] DSNR approved the acquisition of Mastika Lagenda for RM2.75 billion. It was done through another SPV, 1MDB Energy (Langat) Limited ("1MELL"). 1MELL is a wholly owned subsidiary of 1MDB. 1MDB entered into an agreement to acquire the power asset of Genting Sanyen Power Sdn Bhd at RM2.75 billion and pursuant to the Private Placement Memorandum, 1MDB will issue guaranteed notes in the sum of USD1.75 billion by private placement with Goldman Sachs. The coupon rate for the guaranteed notes was 5.75% per annum redeemable in the year 2022. The net proceeds from the guaranteed notes after deducting the fees of Goldman Sachs, commission and expenses, shall be partly used to finance the acquisition of Mastika Lagenda and partly for general corporate purposes.

[16] For the acquisition of these two power producers, 1MDB through 1MEL and 1MELL has issued bonds to the tune of USD3.5 billion. From these business ventures, the following transactions had taken place:

(a) on 22.05.2012, the sum of USD576,943,490.00 was transferred from the account of 1MEL at Falcon Private Bank Limited, Hong Kong ("Falcon Bank") to the account of Aabar Investment PJS Limited ("Aabar BVI") at BSI AG, Lugano, Switzerland ("BSI Bank"),

(b) on 19.10.2012, the sum of USD790,354,855.00 was transferred from the account of 1MELL at Falcon Bank to Aabar BVI's account at BSI Bank,

(c) between 25.05.2012 and 14.12.2012 Aabar BVI transferred the total sum of USD637 million from its BSI Bank to the account of Blackstone Asia Real Estate Partners at the Standard Chartered Bank, Singapore under the name of one Tan Kim Loong ("Blackstone Standard Chartered Account"),

(d) on 31.10.2012, DSNR received from Blackstone Standard Chartered Account the sum of USD5 million (equivalent to RM15,149,963.64) in the First Account,

(e) on 20.11.2012, DSNR received from Blackstone Standard Chartered Account the sum of USD25 million (equivalent to RM60,599,963.64) in the First Account.

Loans from Deutsche Bank AG

[17] In the year 2014, 1MDB planned to carry out an initial public offering ("IPO") of 1MDB Energy Group in Bursa Malaysia. The object was to redeem the 49% equity of Aabar ("Aabar Options") in each 1MEL and 1MELL during the acquisition phase of the two power producers. The redemption exercise is known as a buy back option and was made through 1MDB Energy Holdings Limited ("1MEHL"), a subsidiary of 1MDB. For this purpose, DSNR and the Board of Directors of 1MDB agreed to terminate the Aabar Options and the bridge loan facility made by 1MDB Energy Holdings Limited from

Deutsche Bank AG amounting to not more than USD300,000,000.00 so that the IPO could proceed as planned.

[18] On 28.05.2014, 1MEHL made a loan of USD250 million from Deutsche Bank AG and eventually received USD239,939,970.00. That money was remitted into the account of 1MDB Energy Holdings Limited at Falcon bank. On 01.09.2014, 1MEHL made another loan of USD975,000,000.00 from Deutsche Bank AG to repay the earlier USD250 million loan and to cover the shortfall in payment for the termination of the Aabar Options. After receiving the money from 1MEHL, Aabar made a number of money transfers to Affinity Equity International Partners Limited and Vista Equity International Partners Limited.

[19] Between June and December 2014, DSNR received the total sum of RM49,930,985.70 in his account at AmPrivate Banking Account No. 2112022011880 ("Second Account").

The money received by DSNR in his account

[20] Chronologically, DSNR received the following monies in his account:

(a) USD10 million (equivalent to RM30,449,929.97) in the First Account on 24.02.2011,

(b) USD10 million (equivalent to RM30,179,909.46) in the First Account on 14.06.2011,

(c) USD5 million (equivalent to RM15,149,963.64) in the First Account on 31.10.2012,

(d) USD25 million (equivalent to RM60,599,963.64) in the First Account on 20.11.2012,

(e) the total of RM2,081,476,926.00 in the First Account between 22.03.2013 and 10.04.2013, and

(f) the total of RM49,930,985.70 in the Second Account between June and December 2014.

[21] Investigations by MACC Superintendent Wong Yee Nee shows —

(a) that the following transactions took place from the First Account to the Second Account (Exhibit “WYN – 8”):

(i) RM150,000,000.00 on 27.08.2013, and

(ii) RM12,436,711.87 on 30.08.2013.

(b) that the following transactions took place from the Second Account to DSNR’s current account at AmIslamic Bank Berhad Account No. 2112022011898 (“Third Account”) (Exhibit “WYN – 9”):

(i) RM25,000,000.00 on 27.08.2013,

(ii) RM20,000,000.00 on 23.01.2014,

(iii) RM10,000,000.00 on 17.03.2014,

(iv) RM10,000,000.00 on 26.03.2014,

(v) RM2,000,000.00 on 19.05.2014,

(vi) RM1,000,000.00 on 23.06.2014,

(vii) RM10,000,000.00 on 08.07.2014,

(viii) RM1,000,000.00 on 23.07.2014,

(ix) RM5,000,000.00 on 23.10.2014,

(x) RM5,000,000.00 on 13.11.2014,

(xi) RM3,000,000.00 on 04.12.2014, and

(xii) RM6,000,000.00 on 11.12.2014.

(c) that the following transactions took place from the Second Account to DSNR’s current account at AmIslamic Bank Berhad Account No. 2112022011906 (“Fourth Account”) (Exhibit “WYN – 10”):

(i) RM75,000,000.00 on 27.08.2013,

(ii) RM20,000,000.00 on 23.01.2014,

(iii) RM10,000,000.00 on 19.05.2014,

(iv) RM2,000,000.00 on 23.06.2014,

(v) RM2,000,000.00 on 23.07.2014,

(vi) RM10,000,000.00 on 08.07.2014,

(vii) RM15,000,000.00 on 23.10.2014,

(viii) RM5,000,000.00 on 24.11.2014,

(ix) RM3,300,000.00 on 13.01.2015,

(x) RM1,000,000.00 on 15.01.2015,

(xi) RM10,000,000.00 on 10.02.2015, and

(xii) RM1,500,000.00 on 05.02.2015.

The money received by the respondent in its account

[22] The respondent carries on the business as traders and suppliers of carpets, clothing, safety equipment and instruments, curtains and textiles, sports equipment and apparels, gifts and souvenirs, cosmetics, stationeries, teaching aid equipment and general commission agent at its main address. The respondent also carries out the business as fabric manufacturers at its branch address. Investigations by the I.O. AMLATFPUAA reveals that the respondent received the total sum of RM628,314.00 in its Maybank Berhad current account No. 001057512189 as follows:

(a) AmIslamic Bank Berhad cheque No. 562736 dated 27.07.2011 for the sum of RM180,000.00 issued from the First Account of DSNR,

(b) AmIslamic Bank Berhad cheque No. 571502 dated 08.09.2011 for the sum of RM180,000.00 issued from the First Account of DSNR, and

(c) AmIslamic Bank Berhad cheque No. 000052 dated 27.08.2013 for the sum of RM268,314.00 issued from the Fourth Account of DSNR.

Subject matter of the application

[23] The Public Prosecutor seeks for an order to forfeit the sum of RM628,314.00 and all of its accruals in the respondent's Maybank Berhad current account No. 001057512189 of the Jalan Genuang branch at Segamat, Johor. The Public Prosecutor also applies for a notice under section 61(2) of the AMLATFPUAA to be published in the *Gazette* to call on any third parties claiming to have an interest in the money to appear before this Court on the specified date to show cause as to why the money should not be forfeited.

The affidavits

[24] The affidavits filed for and against the application are as follows:

(a) "Afidavit Sokongan" affirmed on 18.06.2019 by Allan Suman Pillai (Enclosure 2) for and on behalf of the applicant;

(b) "Afidavit" affirmed on 18.06.2019 by Nur Aida binti Arifin (Enclosure 3) for and on behalf of the applicant;

(c) "Afidavit" affirmed on 18.06.2019 by Woon Yee Nee (Enclosure 6) for and on behalf of the applicant;

(d) "Afidavit Jawapan Responden" affirmed on 04.09.2019 by Mohamed Nizam bin Mohamed Jakel (Enclosure 13), for and on behalf of the respondent;

(e) "Afidavit Tambahan Responden" affirmed on 12.09.2019 by Mohamed Nizam bin Mohamed Jakel (Enclosure 14), for and on behalf of the respondent; and

(f) "Afidavit Balasan" affirmed on 27.09.2019 by Woon Yee Nee (Enclosure 16) for and on behalf of the applicant.

Brief deliberations

Contention of the applicant

[25] The learned DPP contends that the total sum of RM628,314.00 in the respondent's Maybank Berhad current account No.

001057512189 is the subject matter or evidence relating to commission of the offence of money laundering under section 4(1)*(a)* of the AMLATFPUAA. The investigations carried out by the MACC revealed that the respondent received that money from 3 cheques drawn from the respective accounts of DSNR, namely from the First Account and the Fourth Account. The fact that the money received in the respondent's account were from DSNR's accounts is not disputed by the respondent. Neither did the respondent dispute that it received the money from DSNR.

[26] There is also evidence to show that an offence under section 23 of the MACC Act 2009 has been committed and that the money received by the respondent and seized by the applicant originated from unlawful activities related to that offence. DSNR too has in fact been charged for that offence. Be that as it may, whether or not DSNR is convicted of that offence is not relevant to the present application because section 56A of the AMLATFPUAA does not affect the court's powers to issue an order of forfeiture.

[27] As such, the applicant has succeeded, on the balance of probabilities, in proving that an offence under section 4(1)*(a)* of the AMLATFPUAA has been committed by DSNR and the money seized from the respondent's account is part of the proceeds of that unlawful activities.

[28] In its affidavit, the respondent avers that the sum of RM628,314.00 has been totally spent. However, this is a bare statement of fact which should not be considered by this Court as there is no clear evidence to show the fact that it was expended. There are no details, receipts or invoices appended to show that expenses.

[29] It is the applicant's position that how much is the amount of the respondent's account balance or the total sum of the money in the respondent's account is not material. It is still categorized as proceeds from an unlawful activity and thus became the subject matter or evidence relating to the commission of the offence of money laundering as subparagraphs *(a)*(i) and (ii) in the definition of "proceeds from unlawful activity" in section 3 of the AMLATFPUAA encompass the money which has been obtained, either wholly or partly, from the unlawful activity (subparagraph *(a)*(i)) or from a disposal or other dealings with that property (subparagraph *(a)*(ii)). As such, irrespective of whether or not the respondent has completely spent the money it received from DSNR, the respondent is still bound to return it and have it forfeited by this Court.

[30] The respondent has failed to show how it could have amassed that much money in its account or even spent that much if not due to the money it received from the proceeds of the unlawful activity related to the offence under section 23 of the MACC Act 2009 and section 4(1)*(a)* of the AMLATFPUAA.

[31] According to the respondent, that at the time it received the payments, it had no knowledge and had no reason to harbour any suspicion that the money is the evidence or subject matter of any criminal offence. It is the applicant's submissions that an objective inference may be made by this Court that based on the circumstances of the case, the respondent should reasonably suspect that the money is part of the proceeds of an unlawful activity. But the respondent failed to properly take steps to make inquiries.

[32] The learned DPP submits that, considering the objective circumstances of the present application, the respondent is not a purchaser in good faith for valuable consideration in respect of the money seized in its account as envisaged by section 56(2)*(b)* of the AMLATFPUAA. In order for the respondent to claim the money, it has to satisfy all the conjunctive conditions under paragraphs *(a)* to *(e)* of section 61(4) of the AMLATFPUAA. It is submitted by the learned DPP that the application of section 61(4) of the AMLATFPUAA is not only restricted to third parties but applies to all interested parties who wishes to stake a claim on the seized property. In that case, the respondent too is not excepted from the application of this provision if it intends to claim back the money seized from its account.

[33] The learned DPP further submits that the respondent's Maybank Berhad current account is an instrumentality of an offence as defined under section 3 of the AMLATFPUAA. As such, since there are evidence to show that the sum of RM628,314.00 was remitted into the respondent's account and that the respondent was still maintaining that bank account which is an instrumentality of an offence, this Court ought to make an order to forfeit the said sum of RM628,314.00 as the condition under section 56(2)*(a)* of the AMLATFPUAA has been satisfied. The issue of whether the impugned money has been totally spent should not be given undue consideration.

[34] The learned DPP also urges this Court to issue a pecuniary penalty order against the respondent as a means to replace the money which the respondent claims to have been totally spent. Section 59(2) of the AMLATFPUAA empowers the court to assess the value of the benefits derived by the respondent out of the proceeds of the unlawful activities as a pecuniary penalty and this Court should make that order against the respondent.

Contention of the respondent

[35] In opposing the application, the learned counsel contends that the money in the respondent's Maybank Berhad current account, which was the subject of a freezing order dated 25.06.2018 which was seized pursuant to the order for seizure dated 21.09.2018, are payments which was made to the respondent in relation to a *bona fide* sale and purchase for valuable consideration. It is the submission of the learned counsel that the applicant has failed to establish all the necessary requirements pursuant to section 56(2) of the AMLATFPUAA for an order to forfeit the money.

[36] The learned counsel contends that the circumstances relating to the fact that the respondent is a purchaser in good faith or valuable consideration are evident in the following situation:

(a) that the respondent had already supplied the goods purchased, whatever the reasons they were purchaser for, and

(b) that the respondent received payments for the goods in its ordinary course of business as a merchant and the respondent ought not be deprived of lawful payments made for a *bona fide* sale and purchase of goods.

[37] In its affidavits, the respondent has put forward the relevant evidence to show the transactions for the sum of RM628,314.00 which has been seized in the respondent’s Maybank Berhad current account. The transactions were lawful and normal business transactions in the ordinary course of the respondent’s business. There is no basis to suppose that the respondent should in any manner be suspicious of them. As shown in the respondent’s additional affidavit, it is normal for the respondent to record sales of such a volume in its business. As such, there is no basis for the applicant to conclude that the respondent should be suspicious or doubtful of them in this case.

[38] The payments for the goods sold and delivered by the respondent were made by cheques deposited directly into the respondent’s Maybank Berhad current account. As such, the respondent was unaware of the drawer of the cheques until such times when the respondent’s representatives were called in for investigations. The learned counsel contends that it is wholly baseless for the applicant to make allegations against the respondent in the way that it did in the present application merely by reason of the respondent having received payments from its client for goods it sold and delivered.

[39] The payments were received in the respondent's Maybank Berhad current account between the year 2011 and 2013. At the material time, there was practically no reasons for the respondent to have any suspicions against DSNR or to have any doubts as to whether the payments were part of the proceeds of any unlawful activity since the case against DSNR only came to light in the middle of the year 2015. Furthermore, the respondent is not a reporting institution which made it mandatory to report payments received to the Central Bank of Malaysia or to investigate the source of such payments. Even the drawee bank did not raise any concern in respect of those payments deposited into the respondent's Maybank Berhad current account which may have alerted the respondent or cause the respondent to be doubtful of the source of the money for the payments.

[40] The issue of whether DSNR had in fact used his position in 1MDB for personal gain has yet to be tried and decided by the court. As such, the legal status of the seized property has yet to be determined whereas the applicant merely make unsupported averments in its affidavits to suggest that the money sought to be forfeited in the respondent's Maybank Berhad current account are proceeds from an unlawful activity. The learned counsel submits that on the balance of probabilities, these unsupported averments are insufficient in the circumstances to establish the applicant's case and that this Court should not allow the application based on them.

[41] The learned counsel submits that the present application is clearly premature. It is absolutely necessary for the trial against DSNR to be fully disposed off before this Court could make any order to forfeit the money alleged to be part of the proceeds of the unlawful activity relating to the case against DSNR. The concern in the case against DSNR is not whether DSNR is guilty of the offence charged but what is pertinent is the legal status of the property.

[42] The applicant too has failed to establish the predicate offence in the present application. Based on the exhibits appended in the affidavit of the I.O. Predicate, there is a clear gap in what the applicant alleges to be the trail or nexus of the alleged proceeds from the unlawful activity and the respondent's Maybank Berhad current account. From the affidavit of the I.O. Predicate, there was no documentary evidence to show —

(a) the alleged transfer of the sum of USD700 million from 1MDB to the account of Good Star Limited at Coutts Bank Limited, Switzerland,

(b) the alleged transfer of the sums of USD12.5 million and USD12 million from the account of Good Star Limited to the respective accounts of Prince Faisal and Prince Saud in the Riyad Bank, Saudi Arabia,

(c) that DSNR had in fact received two transfers of USD10 million each from Prince Faisal and Prince Saud respectively,

(d) the transactions allegedly originating from the account of 1MEL to the account of Aabar Investment and subsequently to the account of Blackstone Asia Real Estate Partners,

(e) the alleged investment by 1MDB GIL and the alleged subsequent transfers to either the account of Tanore Corporation or Granton Holdings Limited,

(f) the alleged respective transfers of USD620 million and USD61 million from the account of Tanore to the account of DSNR, and

(g) the alleged transactions originating from the account of 1MEHL to Aabar Investments PJS Limited and subsequently to the respective accounts of Affinity Equity International Partners Limited and Vista Equity International Partners Limited.

[43] It is thus baseless for the applicant to claim that these funds which were allegedly transferred from the various accounts to the respective accounts of DSNR are proceeds of the unlawful activity. It is incumbent on the applicant to first establish the money trail to show the chain of transactions leading to the funds being ultimately transferred into the respective accounts of DSNR. The applicant has failed to do this and thus it cannot be said that the money in the respective accounts of DSNR are proceeds from the unlawful activity.

[44] The learned counsel argues that the sum of RM628,314.00 sought to be forfeited from the respondent's Maybank Berhad current account is neither wholly nor partly consist of money which originated from the respective accounts of DSNR. The statement of accounts appended by the respondent in its additional affidavit shows that between the dates after the last payment was credited into the respondent's Maybank Berhad current account and the date when the account was frozen, the respondent's account balance showed a low of RM1,225.44 as at February 2015 and even recorded an overdrawn in the sum of minus (–) RM702,848 in April 2015. Therefore, the respondent’s account balance could not in any manner be said to be partly from payments made by DSNR, let alone as wholly from it.

Analysis and findings

[45] Section 56 of the AMLATFPUAA deals with forfeiture of property in cases where there is no prosecution or conviction for a money laundering offence or a terrorism financing offence. Under subsection (1), an application for the forfeiture of properties seized under the Act may be made by the Public Prosecutor before the expiration of 12 months from the date of the seizure. The application is subject to section 61 of the Act and in that regard, the requirement under section 61(2), namely for a notice to be published in the *Gazette* calling for any third party who claims to have an interest in the property to show cause why the property should not be forfeited, must first be satisfied. (See: *PP lwn. Taiko Fertiliser & Yang Lain* [2019] 4 CLJ 480 CA; [2019] MLJU 88; [2019] MLRAU 36).

[46] An application for forfeiture may be made by the Public Prosecutor only in respect of properties falling within any of the categories specified in paragraphs *(a)* to *(d)* of section 56(1) of the AMLATFPUAA. It is thus pertinent to firstly consider whether the application complies with the requirements of section 56(1) of the AMLATFPUAA.

Whether there is a prosecution or conviction for an offence under subsection 4(1) or a terrorism financing offence

[47] The fact that there is no prosecution or conviction under section 4(1) of the AMLATFPUAA or of a terrorism financing offence in respect of the seized properties is not in dispute. In his affidavit (Enclosure 2) at paragraph 8, the learned DPP too confirmed that the

Public Prosecutor decided not to proceed with any prosecution under section 4(1) of the AMLATFPUAA. In this regard, I find that this condition under section 56(1) of the Act has been fulfilled.

Publication of third party notice in the Gazette

[48] Section 61(2) of the AMLATFPUAA makes it mandatory for the notice to be published in the *Gazette* before an application for forfeiture under section 56(1) may be made. The position of the law in this regard is reiterated in *PP lwn. Taiko Fertiliser & Yang Lain* (*supra*) and this Court is bound to loyally follow that decision on the basis of the doctrine of *stare decisis*. (See: *The Co-operative Central Bank Ltd v. Feyen Development Sdn Bhd* [1997] 3 CLJ 365 FC; [1997] 2 MLJ 829; [1997] 1 MLRA 318; [1997] 4 AMR 3784, *Arab-Malaysian Credit Bhd v. Dominance Resources Sdn Bhd & Anor* [2001] 2 CLJ 268; [2001] MLJU 67; [2001] MLRH 92).

[49] On 04.07.2019 this Court allowed for the third party notice to be published in the *Gazette*. The third party notice was accordingly published the *Gazette vide* P.U.(B) 12729/2019. With its publication in the *Gazette*, I find that this requirement has thus been fulfilled. After publication of the notice to third party in the *Gazette*, there are no claims for the property made by any third party.

Whether the application is made within the period fixed by section 56(1) of the AMLATFPUAA

[50] An application for an order of forfeiture may be made within 12 months from the date of seizure or where there is a freezing order, within 12 months from the date of the freezing. (See: Section 56(1) of the AMLATFPUAA). In the present application, the applicant issued a freezing order dated 29.06.2018 against the respondent's Maybank

Berhad current account whereas the application was filed on 19.06.2019. The application is thus made before expiry of the period of 12 months from the date of the freezing order. To this end, I find that the application has been made within the prescribed period under section 56(1) of the AMLATFPUAA.

Burden of proof

[51] The standard of proof is one which is required in civil proceedings, namely on the balance of probabilities. Sections 56(4) and 70(1) of the AMLATFPUAA deals with standard of proof. Section 56(4) is applicable in the determination of whether the seized property is the subject matter or evidence of the offence of money laundering whereas section 70(1) is applicable in the determination of any question of fact in any proceedings under the AMLATFPUAA. (See: *PP v. Awalluddin Sham Bokhari* [2018] 1 CLJ 305 FC; [2018] 2 MLJ 401; [2018] 1 MLRA 357; [2017] 8 AMR 533). The same standard of proof however does not apply in a prosecution for an offence under the Act (See: Section 70(2) of the AMLATFPUAA).

[52] In deciding whether or not the applicant succeeded in proving its case on the balance of probabilities, this Court will consider how likely are certain facts which form the basis for the applicant’s application. If after weighing the evidence the Court believes that such facts point to probabilities which by reasonable conclusion supports the applicant’s contention and are probable in light of the circumstances of the case in its entirety, the applicant is said to have succeeded in establishing its case on the balance of probabilities. On the other hand, if the facts as led by the evidence offered by the applicant in its affidavit give rise to a set of inferences from which the degree of probabilities in favour of the application and the respondent's case are equal, the applicant, who bears the burden to prove its case on the balance of probabilities, must fail.

Whether the applicant has satisfied the necessary conditions for the property to be forfeited

[53] In considering an application under section 56(1) of the Act, it is the duty of this Court under subsection (2) to be satisfied that the seized property falls under any of the disjunctive categories provided for under sub-paragraphs (i) to (iv) of section 56(2)*(a)* and that there is no purchaser in good faith for valuable consideration in respect of the properties pursuant to section 56(2)*(b)* of the Act. In considering this question, I shall approach the analysis by addressing the following issues, chronologically:

(a) the predicate offence,

(b) the money laundering offence and whether the seized property is the subject matter or evidence relating to the commission of the offence of money laundering, and

(c) whether there is any purchaser in good faith for valuable consideration in respect of the seized property.

(a) The predicate offence

[54] It is the applicant's case that the constituent predicate offence for the money laundering offence is the offence of using office or position for gratification under section 23(1) of the MACC Act 2009. It has been held that a necessary component of the offence of money laundering is a predicate offence. (See: *PP v. Kuala Dimensi Sdn Bhd & Ors* [2019] 3 CLJ 650 CA; [2018] 6 MLJ 37; [2019] 6 MLRA 637; [2018] 5 AMR 789).

Section 23(1) of the MACC Act 2009 provides as follows:

> "**Offence of using office or position for gratification 23.** (1) Any officer of a public body who uses his office or position for any gratification, whether for himself, his relative or associate, commits an offence.".

[55] The ingredients of the offence of using office or position for gratification under section 23(1) of the MACC Act 2009 are as follows:

(a) the accused is officer of a public body; and

(b) the accused uses his office or position for any gratification, whether for himself, his relative or associate.

[56] In determining whether an offence under 23(1) of the MACC Act 2009 has been committed, two rebuttable presumptions are applicable. Firstly, is the presumption of use office or position for gratification under section 23(2) and secondly, is the presumption under section 50(1) that the gratification received has been corruptly received. In order for the rebuttable presumptions to apply, the necessary conditions for the application of the rebuttable presumptions must be fulfilled. (See: *Siti Aishah Sheikh Abd Kadir v. PP* [2014] 1 CLJ 1058 CA; [2013] 6 MLJ 86; [2014] 1 MLRA 496; [2013] 4 AMR 834).

[57] Section 23(1) of the MACC Act 2009 relates to the gratification offence committed by an officer of a public body. Inevitably, the definitions of "officer of a public body" and "gratification" under section 3 must also be considered.

[58] Despite the absence of any prosecution against the respondent for an offence under section 4(1)*(a)* of the AMLATFPUAA, it is necessary to determine the existence of the predicate offence in order to establish the existence of the offence of money laundering and thereafter to determine whether the property seized is the subject matter or evidence relating to the commission of that offence of money laundering. This determination is made on the balance of probabilities.

[59] The fact that at the material time DSNR was an "officer of a public body" as defined under section 3 of the Act is not in dispute. He was the Prime Minister and the Minister of Finance. The affidavits affirmed on behalf of the applicant show that DSNR did receive the "gratification", namely monies in the First Account and Second Account, respectively. Chronologically, the monetary transactions are as follows:

(a) receipt of USD10 million (equivalent to RM30,449,929.97) in the First Account on 24.02.2011 (Exhibit "NAA – 9" in Enclosure 3),

(b) receipt of USD10 million (equivalent to RM30,179,909.46) in the First Account on 14.06.2011 (Exhibit "NAA – 9" in Enclosure 3),

(c) receipt of USD5 million (equivalent to RM15,149,963.64) in the First Account on 31.10.2012 (Exhibit "NAA – 14" in Enclosure 3),

(d) receipt of USD25 million (equivalent to RM60,599,963.64) in the First Account on 20.11.2012 (Exhibit "NAA – 14" in Enclosure 3),

(e) receipt of the total sum of RM2,081,476,926.00 in the First Account between 22.03.2013 and 10.04.2013 (Exhibit "NAA – 17" in Enclosure 3), and

(f) receipt of the total sum of RM49,930,985.70 in the Second Account between June 2014 and December 2014 (Exhibit "NAA – 20" in Enclosure 3).

[60] Thus, the question which remains to be answered in order to attract the application of the rebuttable presumption under section 23(2) of the Act is whether there is any evidence from the affidavits to show that DSNR did make any decision or take any action in relation to the affairs of 1MDB which he has an interest, either directly or indirectly. In order to determine this fact, one needs to consider the affidavit of the I.O. Predicate.

[61] The I.O. Predicate in her affidavit (Enclosure 3) avers that DSNR had a hand in all decisions and actions pertaining to investments and business ventures of 1MDB and that these decisions saw the pilfering of monies in a number of transactions which made their way into DSNR's First Account and Second Account. The applicant takes the position that this was made possible since Article 117 and Article 68 of the Memorandum and Articles of Association of 1MDB (Exhibit "NAA – 2" in Enclosure 3) provides for the absolute exercise of powers by DSNR as the Prime Minister (then).

[62] In considering the evidence, I find that the material interest DSNR had in the decisions made and actions taken in the investments and business ventures of 1MDB came to light in the following instances:

(a) the 1MDB-Petrosaudi joint venture entered into on the instructions of DSNR on 26.09.2009 saw the following monetary transactions ultimately took place:

(i) the receipt of USD10 million (equivalent to RM30,449,929.97) in the First Account on 24.02.2011 (Exhibit "NAA – 9" in Enclosure 3), and

(ii) the receipt of USD10 million (equivalent to RM30,179,909.46) in the First Account on 14.06.2011 (Exhibit "NAA – 9" in Enclosure 3),

(b) the acquisition of Tanjong Energy which was approved by DSNR *vide* two resolutions both dated 09.02.2012 and Mastika Lagenda *vide* two resolutions both dated 10.08.2012 had resulted in the following monetary transactions:

(i) the receipt of USD5 million (equivalent to RM15,149,963.64) in the First Account on 31.10.2012 (Exhibit "NAA – 14" in Enclosure 3), and

(ii) the receipt of USD25 million (equivalent to RM60,599,963.64) in the First Account on 20.11.2012 (Exhibit "NAA – 14" in Enclosure 3),

(c) the Abu Dhabi Malaysia Investment Company (ADMIC) joint venture which was approved by the Board of Directors of 1MDB *vide* the directors' circular resolution dated 25.02.2013 and DSNR *vide* a resolution in his capacity as the holder of all special rights redeemable preference shares of 1MDB landed the following monies in DSNR's account:

(i) the receipt of the total sum of RM2,081,476,926.00 in the First Account between 22.03.2013 and 10.04.2013 (Exhibit "NAA – 17" in Enclosure 3),

(d) the termination of the Aabar Options and the bridge loan facility made by 1MDB Energy Holdings Limited from Deutsche Bank AG pursuant to the planned IPO 1MDB

Energy Group in Bursa Malaysia which was approved by DSNR and the Board of Directors of 1MDB *vide* the directors' circular resolution dated 22.05.2014 brought about the following monetary transaction:

(i) the receipt of the total sum of RM49,930,985.70 in the Second Account between June 2014 and December 2014 (Exhibit "NAA – 20" in Enclosure 3).

[63] In considering this documentary evidence, I am satisfied, on the balance of probabilities, that the applicant has established sufficient facts to show that DSNR had personal and monetary interests in the impugned decisions of 1MDB. These facts satisfy the necessary conditions to invoke the presumption under section 23(2) of the MACC Act 2009 for use of office or position for gratification.

[64] Additionally, the I.O. Predicate also avers in her affidavit that according to her investigations and based on the contemporaneous documentary evidence, she is satisfied that as the then Prime Minister, the Minister of Finance and Chairman of the Board of Advisors for 1MDB, DSNR has committed an offence under section 23(1) of the MACC Act 2009, namely in using his office and position for gratification, that is, the receipt of monies into his First Account and Second Account. The averments made by the I.O. Predicate in her affidavit are premised on sufficient information and relevant documents obtained in the course of her investigation and this Court ought to accord it proper weight. (See: *PP v. Awalluddin Sham Bokhari* (*supra*.)). I thus find that the applicant has succeeded, on the balance of probabilities, to prove the predicate offence under section 23(1) of the MACC Act 2009.

(b) The offence of money laundering and whether the property seized is the subject matter or evidence relating to the commission of the offence of money laundering

[65] Turning back to the offence of money laundering under section 4(1)*(a)* of the AMLATFPUAA, the offence of money laundering is said to have been committed when the person engages in a transaction that involves the proceeds of an unlawful activity or instrumentalities of an offence. The act may be direct or indirect. The term "proceeds of an unlawful activity" simply means any property within or outside Malaysia which is obtained from any unlawful activity. "Unlawful activity" in turn is defined as any activity which constitutes a serious offence or one which is of such a nature or occurs in such a circumstance that lead to the commission of a serious offence. In the present application, the offence of using office or position for gratification under section 23(1) of the MACC Act 2009 is the "serious offence" which is in contemplation. (See: Section 3 of the AMLATFPUAA).

[66] In determining, on the balance of probabilities, whether the applicant has succeeded in proving that the property seized from the respondent is the subject matter or evidence relating to the commission of the offence of money laundering under section 4(1)*(a)* of the AMLATFPUAA, an analysis of the relationship between the definitions of "unlawful activity", "proceeds of an unlawful activity" and "serious offence" under section 3 of the AMLATFPUAA is inevitable.

[67] The offence of using office or position for gratification under section 23(1) of the MACC Act 2009 falls under the category of "serious offence" as it is specified in the Second Schedule of the Act. Being a serious offence, the offence of using office or position for gratification under section 23(1) of the MACC Act 2009 is an "unlawful activity". Any property which is wholly or partly derived or obtained from the unlawful activity becomes "proceeds of an unlawful activity" and the act of engaging in a transaction which involves the proceeds of an unlawful activity is an offence of money laundering under section 4(1)*(a)* of the AMLATFPUAA.

[68] The I.O. AMLATFPUAA in his affidavit avers that the respondent has received, in his Maybank Berhad current account No. 001057512189, the total sum of RM628,314.00 *vide* the following cheques issued from the accounts of DSNR:

(a) AmIslamic Bank Berhad cheque No. 562736 dated 27.07.2011 for the sum of RM180,000.00 issued from the First Account of DSNR,

(b) AmIslamic Bank Berhad cheque No. 571502 dated 08.09.2011 for the sum of RM180,000.00 issued from the First Account of DSNR, and

(c) AmIslamic Bank Berhad cheque No. 000052 dated 27.08.2013 for the sum of RM268,314.00 issued from the Fourth Account of DSNR.

(all cheques are collectively annexed as Exhibit "WYN – 11" in Enclosure 6). The fact that the respondent did receive the sum of RM628,314.00 in its account was not disputed by the respondent in its affidavit in-reply.

[69] The monies in both DSNR's First Account and Fourth Account from which the cheques for payments to the respondent were issued are proceeds of the offence of using office or position for gratification under section 23(1) of the MACC Act 2009, either wholly or partly. There are ample evidence to show their remittances which are connected with the decisions and actions taken by DSNR pertaining to the investments and business ventures of 1MDB. Both of DSNR's First Account and Fourth Account thus consist of "proceeds of an unlawful activity" as defined under section 3 of the AMLATFPUAA.

[70] All the 3 cheques issued in favour of the respondent for the total sum of RM628,314.00 which originated from DSNR's First Account and Fourth Account were received and remitted into the respondent's Maybank Berhad current account No. 001057512189. To that end, the transactions which involved the proceeds of an unlawful activity has been completed and the offence of money laundering under section 4(1)*(a)* of the AMLATFPUAA is said to have been committed.

[71] But the pertinent question is, when the respondent's account was frozen and eventually seized, did the sum of RM628,314.00 still reside in the respondent's account? The money which may be liable to forfeiture under section 56 of the AMLTAFPUAA must be one which is the subject matter or evidence relating to the commission of the money laundering offence. Not just any money.

[72] The respondent in its additional affidavit at para 5(ii) avers that the applicant could not positively determine whether the sum of RM628,314.00 in its Maybank Berhad current account which is the subject of the applicant's application originated from DSNR's First Account and Fourth Account. Against this specific averment, the applicant at paragraph 10 of its affidavit avers that it has no knowledge about the respondent's account balance. The applicant also avers that the respondent would not be able to have that much money in its bank account if not for the payments it received from the accounts of DSNR.

[73] Not only did the applicant fail to specifically traverse the averment made by the respondent in its additional affidavit about the fact that the sum of RM628,314.00 in the respondent's Maybank Berhad current account does not consist of payments made from

DSNR's accounts, the applicant even claims that it had no knowledge about the transactions exhibited in the respondent's additional affidavit showing transactions from the month of July 2011 to the month of June 2018.

[74] These are relevant dates which encompass the dates the respondent received payments from the accounts of DSNR as well as the dates the respondent received other payments in the course of its ordinary business. I find the fact that the respondent's account was overdrawn in April 2015 made it impossible for respondent's account balance to be partly from payments made by DSNR, let alone wholly from it. In this regard, I find that the applicant has not succeeded to prove, on the balance of probabilities, that the sum of RM628,314.00 in the respondent's Maybank Berhad current account is the subject matter or evidence relating to the commission of the offence of money laundering. In all likelihood, it may be other monies which belonged to the respondent, either in the ordinary course of its business or otherwise, but not definitely those which it received from the cheques made out from DSNR's First Account and Fourth Account.

(a) Whether there is any purchaser in good faith for valuable consideration in respect of the seized property

[75] At the onset, it is pertinent for the purposes of clarity to pause here and reflect that in the present application, there is no claim made by any third parties. Before this Court is the applicant's application to forfeit the sum of RM628,314.00 which was seized in the respondent's Maybank Berhad account and the respondent is merely resisting that application. It follows that it is for this Court to be satisfied that the respondent does not fall within the class of person envisaged by paragraph *(b)* of section 56(2) of the AMLATFPUAA and not for the respondent to prove that it is entitled to it pursuant to the conjunctive conditions under paragraphs *(a)* to *(e)* of section 61(4) as a third party claimant. A distinction has to be drawn between a respondent who is resisting an application under section 56 and a third party making a claim under section 61. The present case is obviously the former.

[76] A reading of section 61 of the AMLATFPUAA shows that it deals with claims by *bona fide* third parties. As a respondent, Jakel Trading is not a third party. Other than resisting the application, there is nothing to show that the respondent made any claim for the money in its Maybank Berhad current account which was seized. That is plain and obvious. Thus, the question which must be determined is whether the applicant has succeeded in proving, on the balance of probabilities, that the respondent is not a *bona fide* purchaser for valuable consideration insofar as the sum of RM628,314.00 in its Maybank Berhad current account is concerned.

[77] Having moved the consideration of section 61 of the AMLATFPUAA out of the way, this Court shall now consider whether or not the respondent is a *bona fide* purchaser for valuable consideration. The question of whether a person acted *bona fide* is dependent on the facts and circumstances of each case.

[78] The respondent in its affidavit (Enclosure 13) avers at paragraph 8 that the total sum of RM628,314.00 were paid into its Maybank Berhad current account for goods sold and delivered. These are for the purchases of various shirts and materials made by DSNR and his representatives on 05.07.2011, 19.06.2013 and 19.07.2013, respectively, and that the shirts and materials have been delivered to the Prime Minister's Department on the instructions of DSNR. Exhibit 1 shows the cash bill issued by the respondent and Exhibit 2 shows the invoices. In this regard, I find that the payments received by the respondent correspond with the amount of the invoices for these purchases.

[79] These are specific averments made by the respondent in its affidavit. In response to these averments, the applicant in its affidavit (Enclosure 16) at paragraph 7 avers that by accepting the payments, the respondent had indirectly got itself implicated in transactions involving proceeds of unlawful activities. The applicant also avers that the respondent had reasonable suspicion to believe that the payments are from proceeds of unlawful activities but the respondent, without reasonable cause, chose not to take reasonable steps to determine that fact.

[80] Respectfully, I am unable to agree with that contention. The applicant itself portrays the respondent as a legally registered business entity. It is part of the applicant's own case that the respondent is a business entity which was legally registered on 04.02.1983. It is also part of the applicant's case that the respondent carries on the business as traders and suppliers of carpets, clothing, safety equipment and instruments, curtains and textiles, sports equipment and apparels, gifts and souvenirs, cosmetics, stationeries, teaching aid equipment and general commission agent at its main address. The respondent also carries out the business as fabric manufacturers at its branch address.

[81] The nature of the items sold and delivered by the respondent to DSNR were consistent with the nature of the respondent's business. It is not the applicant's case that the respondent did not sell and deliver those items to DSNR neither did the applicant show that the transactions between the respondent and DSNR were not done in the ordinary course of business of the respondent or whether they were conducted in a suspicious manner. In fact, the propriety of the sale transactions was not disputed by the applicant. The only issue raised by the applicant is the fact that the respondent did not take reasonable steps to determine whether the payments originated from proceeds of unlawful activities.

[82] Now, one must not lose sight of the relevant time line here. The payments were received by the respondent on 05.07.2011, 19.06.2013 and 19.07.2013, respectively, whereas the case against DSNR only made headlines in the year 2015. At the material time when the respondent received the payments, how could the respondent tell that something is rotten in the city of Denmark? How could an order for shirts and garments from a serving Prime Minister arouse the respondent's suspicion to necessitate it to carry out the checks? As a matter of perspective, even the I.O. Predicate herself only got whiff of the alleged wrongdoing by DSNR on 17.05.2018 as evidenced by the MACC Report No. 0203/18 (Exhibit "NAA – 1" in Enclosure 3). In the absence of anything patently suspicious in the purchase transaction, could the respondent be said to have better information about the source of the payments compared with the investigating officer who ordinarily and professionally is relatively more resourceful in that respect? I do not think so.

[83] Based on these reasons, I find that the respondent had sold and delivered the goods in the ordinary course of its business and the payments totalling RM628,314.00 were made for the goods which the respondent sold and delivered. The respondent is a *bona fide* purchaser in good faith for valuable consideration in respect of the sum of RM628,314.00 in its Maybank Berhad current account. In this context, I find that the applicant has failed to prove the condition under paragraph *(b)* of section 56(2) of the AMLTFPUAA.

Whether a pecuniary penalty order should be made against the respondent

[84] The learned DPP argues that the respondent's Maybank Berhad current account is an instrumentality of the offence and that this Court should make an order under section 59(2) of the AMLATFPUAA to impose a pecuniary penalty against the respondent. I find that this was never part of the prayer included in the applicant's application. There was also nothing in the applicant's affidavit which supports this. Thus, I find that the learned DPP has not shown sufficient basis for this Court to make such an order.

Conclusion

[85] After analysing the affidavits of parties together with the relevant exhibits and considering the submissions of the learned DPP and learned counsel, I find that, on the balance of probabilities, the applicant has not succeeded in proving subparagraph (i) of section 56(2)*(a)* and the conjunctive requirement under paragraph *(b)* of section 56(2) of the AMLATFPUAA. In the circumstances, I hereby dismiss prayer (a).

Dated : 17 AUGUST 2020

(AHMAD SHAHRIR MOHD SALLEH)
Judicial Commissioner
High Court
Kuala Lumpur

COUNSEL:

For the applicant - Mahadi Abdul Jumaat, Deputy Public Prosecutor; Malaysian Anti-Corruption Commission

For the respondent - Habizan Rahman Habeeb Rahman & Thevini Sri Krishnamayakam; M/s Rahman Rohaida

Case(s) referred to:

PP lwn. Taiko Fertiliser & Yang Lain [2019] 4 CLJ 480 CA; [2019] MLJU 88; [2019] MLRAU 36

The Co-operative Central Bank Ltd v. Feyen Development Sdn Bhd [1997] 3 CLJ 365 FC; [1997] 2 MLJ 829; [1997] 1 MLRA 318; [1997] 4 AMR 3784

Arab-Malaysian Credit Bhd v. Dominance Resources Sdn Bhd & Anor [2001] 2 CLJ 268; [2001] MLJU 67; [2001] MLRH 92

PP v. Awalluddin Sham Bokhari [2018] 1 CLJ 305 FC; [2018] 2 MLJ 401; [2018] 1 MLRA 357; [2017] 8 AMR 533

PP v. Kuala Dimensi Sdn Bhd & Ors [2019] 3 CLJ 650 CA; [2018] 6 MLJ 37; [2019] 6 MLRA 637; [2018] 5 AMR 789

Siti Aishah Sheikh Abd Kadir v. PP [2014] 1 CLJ 1058 CA; [2013] 6 MLJ 86; [2014] 1 MLRA 496; [2013] 4 AMR 834

Legislation referred to:

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unawful Activities Act 2001, ss. 3, 4(1) (a), 50(1), 56 (1), (2) (a) (b) (4), 56A, 59(2), 61(2) (4), 70(1) (2)

Malaysian Anti-Corruption Commission Act 2009, s. 23 (1) (2)