THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P.231 of 2020
Claim No. UWO 002-2019

IN THE MATTER OF THE CIVIL ASSET RECOVERY AND MANAGEMENT AND UNEXPLAINED WEALTH ACT NO. 8 OF 2019

AND

IN THE MATTER OF DAVID NEERANJAN
KENDRA NEERANJAN
Persons investigated with a specified offence (as defined in the Proceeds of Crime Act Chapter 11:27) under the Second Schedule

Between

SUPERINTENDENT OF POLICE (AG) WENDELL LUCAS

Appellant/Applicant

And

DAVID NEERANJAN

KENDRA NEERANJAN

Respondents/Defendants

Civil Appeal No P.232 of 2020
Claim No. UWO 001-2019

IN THE MATTER OF AN EX PARTE APPLICATION BY RICHARD TAYLOR ASSISTANT SUPERINTENDENT OF POLICE (AG) FOR A PRELIMINARY UNEXPLAINED WEALTH ORDER PURSUANT TO SECTION 58 (1) OF THE CIVIL ASSET RECOVERY AND MANAGEMENT AND UNEXPLAINED WEALTH ACT NO. 8 OF 2019

Between

RICHARD TAYLOR ASSISTANT SUPERINTENDENT OF POLICE (AG)

Appellant/Applicant

AND

NATALIE NATASHA SPRING

CATHERINE ISSABELLA SPRING

ESTATE OF SHELDON SPRING

Respondents/Defendants

PANEL:

A. Mendonça, J.A.

M. Mohammed, J.A.

M. Wilson, J.A.

Date of delivery: January 31, 2023

APPEARANCES:

Mr. Fyard Hosein S.C., Mr. Gilbert Peterson, S.C., Mr. Ravi Rajcoomar and Ms. Amirah Rahaman instructed by Mr. Netram Kowlessar, Ms. Kristal Madhosingh and Ms. Tiffany Ali for the Appellants.

Mr. Jagdeo Singh and Mr. Kiel Taklalsingh instructed by Ms. Karina Singh for the Neeranjan Respondents.

Mr. Gary Hannays and Mr. Navindra Ramnanan appeared on behalf of the Spring Respondents.

JUDGMENT

Delivered by: Mendonça, Mohammed & Wilson, JJA

INTRODUCTION

1. These appeals involve the interpretation and scope of some provisions of the **Civil Asset Recovery and Management and Unexplained Wealth Act No. 8 of 2019** (the **UW Act**).

2. Trinidad and Tobago is not situated alone in attempting to combat prolific criminality and its wide ranging repercussions affiliated with drug-trafficking, serious organised crime and money laundering. Some of these problems have been exacerbated because of the close geographical proximity of Trinidad and Tobago to the coast of South America, with a separating distance of only seven miles from the coast of Venezuela at its closest point. Trinidad and Tobago has become a well-known transhipment point in international drug smuggling routes.

3. Criminal activities can be lucrative and persons engaged in such activities are predominantly motivated by the desire to acquire and consolidate wealth and power. To deter such criminality, there are strategies adopted the world over which are geared toward ensuring that criminals are not only convicted but are also dispossessed of assets acquired through their criminal activities. These mechanisms, legislative and institutional, are aimed at removing the profit from the crime by creating the offence of money laundering, establishing predicate offences to money laundering, providing for the confiscation and forfeiture of the proceeds of crime and preventing unjust enrichment from such proceeds.

4. In Trinidad and Tobago, the **UW Act** is one such mechanism. The **UW Act** creates a civil asset forfeiture regime which is geared toward preventing unjust enrichment. The

foundational jurisprudential framework of the **UW Act** is that it allows the investigator to take account of the monetary value of illegally obtained assets, wherever they may have gone and in whoever's possession they end up, regardless of whether that person has committed the specified offence. When examined as a whole, the **UW Act** implicitly recognises the reality that the essence of money laundering is that the benefit is likely to be far removed from the commission of the offence and sometimes from the person who committed the offence.

5. In this case, the appellants, Acting Superintendent Wendell Lucas (Ag. Supt. Lucas) and Assistant Superintendent Richard Taylor (Ag. Asst. Supt. Taylor), pursuant to **section 58 of the UW Act** applied ex parte to the court for Preliminary Unexplained Wealth Orders (PUWOs) against Natalie Spring, Catherine Spring and the Estate of Sheldon Spring and against David and Kendra Neeranjan respectively.

6. On December 10, 2019, the court granted the application against Natalie Spring and the Estate of Sheldon Spring (the Spring Respondents), pursuant to **section 61 of the UW Act**. On December 9, 2019, the court granted the application against David and Kendra Neeranjan (the Neeranjan Respondents), pursuant to **section 61 of the UW Act**.

7. The Spring and Neeranjan Respondents subsequently applied to the court to set aside the PUWOs which it made against them. On August 21, 2020, the court, pursuant to **section 63 of the UW Act**, granted the applications and revoked the orders.

8. The judge delivered separate judgments in the application of the Spring Respondents and in the application of the Neeranjan Respondents. The appeals of the Appellants were however consolidated. In this consolidated appeal, the Appellants are seeking to overturn the revocation orders made by the court below. If successful, they ask that this Court reinstate the PUWOs and remit the matters to the High Court for further hearing. The

Appellants are also seeking clarification from this Court on certain issues surrounding applications for PUWOs.

BACKGROUND

The Spring Respondents

9. Natalie Spring and Sheldon Spring were married. Sheldon Spring was murdered on January 12, 2018. On January 20, 2020, the court appointed Natalie Spring as Administrator Ad Litem of the Estate of Sheldon Spring. Catherine Spring is the mother of Sheldon Spring.

10. On December 5, 2019, Ag. Asst. Supt. Taylor, by ex parte application, applied for a PUWO in respect of properties identified during the course of an investigation into specified offences. In his affidavit which accompanied the application, Ag. Asst. Supt. Taylor deposed that he had reasonable suspicion that the total wealth of the Spring Respondents exceeds the value of their lawfully obtained wealth. He further stated that having seen the certified copies of the Deeds of Conveyance in the names of the Spring Respondents, it was clear that the value of the properties exceeds the value of their lawfully obtained wealth and that they are either owned or under the effective control of the Spring Respondents. Ag. Asst. Supt. Taylor in his affidavit confirmed the contents of the affidavit of Police Sgt. Marcelle which was filed on December 5, 2019.

11. In his affidavit, Sgt. Marcelle deposed that the total wealth of the Spring Respondents is TT$12,859,617.50 which comprises, inter alia, the following:

    (i) Seized cash in the sum of TT$95,329.00;
    (ii) 15 acres of land at Mamoral valued at TT$596,297.50;

(iii) Land at Cunupia valued at TT$955,000.00;

(iv) Property located at Lamont Street, Enterprise valued at TT$1,430,000.00;

(v) A two storey dwelling house located at Samaroo Trace, off Welcome Road, Cunupia with an Olympic sized swimming pool valued at TT$3,193,000.00;

(vi) A steel structure in Cunupia valued at TT$780,000.00; and

(vii) Property located in Amaroosingh Street, Longdenville, Chaguanas valued at TT$5,810,000.00, in the name of Catherine Spring.

12. Sgt. Marcelle stated in his affidavit that in October 2015, the police executed a search warrant at Natalie's home at 51 Lamont Street in Enterprise, in the presence of both her and Sheldon. During a search of the premises, 182 grams of marijuana, 210 grams of cocaine and the sum of TT$95,320.00 were discovered. On October 26, 2015, both Natalie and Sheldon were charged with possession of cocaine for the purpose of trafficking and possession of marijuana.

13. Sgt. Marcelle conducted investigations which revealed the following:

(i) As at December 31, 2015 Sheldon shared a joint account with Natalie which had a balance of TT$7,008.23;

(ii) Natalie had accounts with three financial institutions during the period 2010 to 2015 where the sums of TT$4,179,713.00 and US$22,798.41 were credited to the accounts while the sums of TT$3,116,437.00 and US$16,799.46 were withdrawn;

(iii) Natalie's "Know Your Customer" source of income declaration at the Unit Trust Corporation declared her primary source of income as Neicey's Niceness Mini Mart. Her secondary source of income was derived from apartment rentals;

(iv) Neither Natalie nor Sheldon had filed income taxes for the relevant period 2000 to 2015, nor had they filed health surcharge and PAYE returns for the period 2010 to 2019. No information exists in the BIR database for Neicey's Niceness Mini Mart. No records exist in the NIB database for Sheldon. Natalie had a NIS number but over the period 2009-2015, no contributions were made by her or on her behalf;

(v) Though Natalie is the registered owner of Neicey's Niceness Mini Mart which was registered on November 9, 2010 at Lamont Street Extension in Longdenville, there is no evidence to show that it was operational during the period 2010-2015. Natalie also stated in an interview with the police in October 2015 that her business had been closed for the past 7 years, which meant that it was closed during the period 2010-2015 and from the year 2008;

(vi) No activity relating to the alleged business was conducted at the address of Neicey's Niceness Mini Mart during 2010-2015 but several narcotics charges emanated from that address;

(vii) Several key suppliers and distributors confirmed that neither Natalie nor Neicey's Niceness Mini Mart was their customer;

(viii) Natalie indicated that she was a housewife maintained by Sheldon but there was no evidence to suggest that Sheldon was engaged in any legitimate form of employment;

(ix) During the period 2010-2015, millions of dollars was placed into accounts controlled by Natalie with Neicey's Niceness Mini Mart declared to be the source of income;

(x) An account was opened for Neicey's Niceness Mini Mart at First Citizens Bank from which cheques were drawn to purchase properties and items related to the subject properties; and

(xi) On January 7, 2015, the Trinidad and Tobago Electricity Commission was paid the sum of TT$100,181.74 with a cheque provided by Neicey's

Niceness Mini Mart for the supply of electricity at the Amaroosingh Street property.

14. Sgt. Marcelle deposed in his affidavit that Sheldon was faced with seventeen charges during the period 1995 to 2017 and was convicted on three occasions. Two of the convictions were for possession of cocaine for the purpose of trafficking. The other was for possession of cocaine simpliciter. Natalie was faced with ten charges during the period 2005 to 2015 and was convicted on two occasions. One of the convictions was for the possession of cocaine for the purpose of trafficking. Six of those charges are pending.

15. Sgt. Marcelle stated that both Sheldon and Natalie were charged with specified offences and that the charges against Natalie are still pending.

16. In light of the investigations which revealed that the Spring Respondents amassed wealth amounting to TT$12,859,617.50, Sgt. Marcelle concluded the following:

    (i) That their total wealth is more than $500,000.00;
    (ii) That their total wealth exceeds the value of their lawfully obtained wealth; and
    (iii) That the various real and personal property identified are under the effective control of Natalie, either in her own right or as part of Sheldon's Estate.

17. Sgt. Marcelle stated that he had reasonable cause to suspect that the Spring Respondents' unlawfully obtained wealth was as a result of the commission of specified offences, namely drug trafficking and money laundering, as a result of his investigations which were concluded in 2017.

The Neeranjan Respondents

18. David and Kendra Neeranjan are married. On December 5, 2019, Ag. Supt. Lucas, by ex parte application, applied for a PUWO in respect of property identified during the course of an investigation into a specified offence.

19. In his affidavit filed on December 9, 2019, Ag. Supt. Lucas deposed that he had reasonable suspicion that the total wealth of the Neeranjan Respondents exceeds the value of their lawfully obtained wealth. He stated that property is owned by them and is under their effective control and that it was obtained through the commission of a specified offence.

20. Ag. Supt. Lucas in his affidavit confirmed the contents of the affidavit of Police Sergeant Seecharan (Sgt. Seecharan). In Sgt. Seecharan's affidavit, the following Deeds of Conveyance were attached:

    (i) Deed of gift in 2014, number DE201400995272D001, in respect of a dwelling house and land located at Santa Monica Trace (West), El Carmen in St Helena. By the deed of gift David transferred the property to Kendra in consideration of his natural love and affection for her

    (ii) Prior to the Deed of Gift, there was an Agreement for Sale in 2009 between David and Jogie Baboolal for the purchase of the parcel of land for the price of TT$80,000.00. The sum of TT$8,000.00 was paid as a deposit and the balance of TT$72,000.00 was agreed to be paid by monthly instalments of TT$2,000.00 with effect from January 7, 2010. The Neeranjan Respondents subsequently constructed a dwelling house on the parcel of land at a cost of TT$2,400,000.00.

21. Sgt. Seecharan conducted investigations into the personal and financial circumstances of the Neeranjan Respondents. His investigations included, *inter alia*, the source and

derivation of the sums of TT$132,880.00 and US$20.00 which were found and seized from their home upon executing a search warrant on January 29, 2015 obtained pursuant to **section 38 of the Proceeds of Crime Act Chapter 11:27 (POCA)**. David was arrested and charged on January 29, 2015 for possession of 2.1 kilograms of cocaine for the purpose of trafficking.

22. Sgt. Seecharan further deposed that while on bail for the offence for which he was arrested and charged on January 29, 2015, David was again arrested and charged on April 15, 2015 with the offence of possession of 3.18 kilograms of cocaine for the purpose of trafficking.

23. Sgt. Seecharan also arrested and charged the Neeranjan Respondents for the offence of money laundering on June 22, 2016 as a result of the transfer of criminal property, namely the dwelling house situate at Santa Monica Trace (West), El Carmen in St Helena, which is the same property that is the subject of the deed of gift and agreement referred to above.

24. On March 21, 2018, while on bail for the previous charges, David was again charged for the offence of possession of cocaine for the purpose of trafficking for which he was found guilty on June 24, 2019.

25. According to Sgt. Seecharan, the house occupied one and a half lots of the parcel of land. It is a painted two storey house with a steel roof, outfitted with aluminium and glass windows with moulding around each window. The property is surrounded by a solid white brick wall and secured by a large steel gate.

26. Sgt. Seecharan in his affidavit deposed that the total wealth of the Neeranjan Respondents is over TT$500,000.00 and comprises:

    (i) Land valued at TT$450,000.00;

(ii) Building valued at TT$1,750,000.00;

(iii) A motor vehicle valued at TT$80,000.00; and

(iv) Cash seized in the amount of TT$132,966.62.

27. Sgt. Seecharan's investigations also revealed that:

(i) David Neeranjan was employed as a sanitation worker at a fortnightly salary of TT$2,240.00;

(ii) Kendra Neeranjan is a Director of the company Quality Tyre Services Ltd., located at Spring Village in Valsayn on rented premises at the cost of TT$1,500.00 per month;

(iii) The agreement to purchase the said Santa Monica property records a down payment of TT$8,000.00 with monthly payments until completion of full payment. The balance of TT$72,000.00 was paid off in December 2011;

(iv) Banking and financial information received as a result of a Production Order established that no banking facilities were used in the purchase or construction of the dwelling house located on the Santa Monica property;

(v) A quantity surveyor's report estimated the cost of construction of the house at TT$2,400,000.00 and a Valuation Report under the hand of a valuer attached to the Ministry of Finance, Valuation Division, estimated the value of the property (house and land) at TT$2,200,000.00;

(vi) The estimated cost of building the house cannot be explained by virtue of the income of the Neeranjan Respondents;

(vii) By transferring the property from David to Kendra, the Neeranjan Respondents had engaged in a transaction which involved criminal property, contrary to **section 45(1) of the POCA**; and

(viii) The property and motor vehicle were realisable property.

28. In light of his investigations, Sgt. Seecharan concluded that:

(i) The total wealth of the Neeranjan Respondents is TT$2,412,966.62, which is in excess of their lawfully obtained wealth of TT$770,158.10; and

(ii) The subject property is owned by or under the effective control of the Neeranjan Respondents and was obtained through the commission of the offences of drug trafficking and money laundering.

THE LEGISLATION

29. It is convenient at this stage to set out some of the statutory provisions that are relevant to this appeal as that may serve to better understand the findings of the judge and the submissions of the parties.

30. **Section 4(1) of the UW Act** provides that,

> *Upon the coming into force of this Act, this Act shall apply to all recoverable property, irrespective of whether or not the criminal conduct relative to the recoverable property occurred before or after the coming into force of this Act.*

31. **Sections 65(1), (2) and (3) of the UW Act** provide,

> *65. (1) Where the High Court has made a Preliminary Unexplained Wealth Order, which has not been revoked, in relation to a respondent and on the basis of the affidavit and documents submitted and evidence provided, is satisfied that—*
>
> *(a) on a balance of probabilities that any part of the wealth of the respondent was not lawfully obtained or held;*

(b) the total wealth of the respondent is over five hundred thousand dollars; or

(c) particular property is held by, and subject to the effective control of the respondents,

it may make an Unexplained Wealth Order.

(2) It does not matter for the purposes of subsection (1)(b)—

(a) whether or not there are other persons who also hold the property; or

(b) whether the property was obtained by the respondent before or after the coming into force of this Act.

(3) Where the High Court makes an order under this section, the order shall specify that the respondent is liable to pay into the Seized Assets Fund an amount being the "unexplained wealth amount" of the respondent, equal to the amount that the High Court is satisfied does not represent the lawfully acquired property of the respondent.

…

32. **Sections 58, 61(1) and 63 of the UW Act** are as follows,

58. (1) Where the Chairman of the Board of Inland Revenue, the Comptroller of Customs and Excise or the Commissioner of Police or such other person delegated by him not below the rank of Assistant Superintendent (hereinafter referred to as "the applicant") during the course of an investigation for a specified offence reasonably suspects that—

(a) the total wealth of the respondent exceeds the value of his lawfully obtained wealth;

(b) the total wealth of the respondent is over five hundred thousand dollars;

(c) the property is owned by the respondent or is under his effective control; and

(d) the property was obtained through the commission of a specified offence,

he may apply to the High Court in writing for an order ("in this Part hereinafter referred to as a Preliminary Unexplained Wealth Order"), requiring the respondent to file a declaration and answer questions as required in relation to his assets.

(2) An application under subsection (1) shall be accompanied by an affidavit stating—

(a) the identity of the respondent;

(b) the grounds by which the applicant reasonably suspects that the total wealth of the respondent exceeds the value of his lawfully obtained wealth; and

(c) the grounds by which the applicant reasonably suspects that any property is owned by the respondent or is under his effective control.

(3) An application under subsection (1) may be made ex parte.

61. (1) Where the High Court is satisfied that there are reasonable grounds to suspect that the total wealth of the respondent exceeds the value of his wealth that was lawfully obtained, it may make a Preliminary Unexplained Wealth Order, requiring the respondent to file a declaration and appear before the

High Court to answer questions relative to his assets for the High Court to decide whether to make an Unexplained Wealth Order.

63. Where an application has been made to revoke a Preliminary Unexplained Wealth Order, the High Court shall revoke the order if it is satisfied that there are no grounds on which the order could be maintained.

33. **Section 3 of the UW Act** provides that "*specified offence"* has the meaning assigned to it by **section 2 of the POCA**. **Section 2 of the POCA** provides that,

"specified offence" means—

(a) an offence in any of the categories set out in the Second Schedule for which the constituent elements are more specifically provided for in any written law or under the common law and which is punishable upon conviction with a fine of not less than five thousand dollars or to imprisonment for not less than twelve months; or

b) any act committed outside of Trinidad and Tobago, which would constitute an offence referred to in paragraph (a) if committed in Trinidad and Tobago"

34. With respect to what constitutes the offence of money laundering, **section 45(1) of the POCA** provides,

45. (1) A person who knows or has reasonable grounds to suspect that property is criminal property and who—

(a) engages directly or indirectly, in a transaction that involves that criminal property; or

(b) receives, possesses, conceals, disposes of, disguises, transfers, brings into, or sends out of Trinidad and Tobago, that criminal property; or

(c) converts, transfers or removes from Trinidad and Tobago that criminal property,

commits an offence of money laundering.

THE JUDGE'S FINDINGS

The Spring Respondents

35. In her judgment delivered on September 7, 2020 in relation to the Spring Respondents, the judge made the following findings in respect of their application to revoke the PUWO:

(a) Before the applicant can apply for a PUWO, there must have been an investigation of the respondents for a specified offence. During the course of that investigation, the applicant must have formed reasonable suspicion about the four matters set out in **section 58(1) (a) to (d) of the UW Act**. This requirement for reasonable suspicion of the matters in paragraphs (a) to (d), only became law on June 14, 2019, when the **UW Act** was proclaimed. Since the investigation of the Respondents was said to have taken place before June 14, 2019, it was not possible for the investigator to have formed a reasonable suspicion of the threshold requirements required to satisfy **section 58(1)(a) to (d)**.

(b) In relation to Unexplained Wealth Orders (UWOs), the **UW Act** is only retrospective where a court makes such an order under **section 65**. In

order for the court to be satisfied that the total wealth of the respondent is over five hundred thousand dollars, it does not matter whether the property "was obtained by the respondent before or after the coming into force of the **Act**". The pre-requisite for an application under **section 58 (1)** in the case of the Spring Respondents did not exist and therefore the application ought not to have been made.

(c) **Section 4(1)** has an element of retrospectivity, however, that section does not apply to **Part V of the UW Act** which deals with UWOs. The term "recoverable property" is not used in **Part V** and is not relevant to that Part. Orders in relation to recoverable property are dealt with under **Part IV of the UW Act**. The relevant orders are Property Restriction Orders and Civil Asset Forfeiture Orders. These are orders *in rem (***See sections 6(1) and 6(2) of the UW Act)**. A UWO is an order *in personam*. It does not attach to property. It is a civil debt due by the respondent to the State (**See section 67 of the Act**).

(d) The offence of "possession of cocaine for trafficking" is a specified offence for the purpose of an application under **section 58 of the UW Act**.

(e) Proceedings under **Part V of the UW Act** for the making of UWOs are essentially civil proceedings. This can be seen particularly from the provisions of **section 67**. The Act is titled the **Civil Asset Recovery and Management and Unexplained Wealth Act, 2019**. **Section 6(2)** refers to a Civil Asset Forfeiture Order. Under **section 58 (1)** the application is made to the High Court. It does not go on to specify any particular Division of the High Court. When such an application is filed, it would be for the Registrar of the Supreme Court to determine the relevant forms to be used and how the matters are ultimately assigned to the judicial officers. The fact that

this matter was assigned to a judge sitting in the Criminal Division of the High Court does not prevent the application of the Civil Proceedings Rules.

(f) The combined effect of **section 58(1)** and **section 67(4)** is that an application for a PUWO can only be made if the respondent is alive. However, in accordance with **section 67(4)**, a UWO can be made after the death of the respondent. In this case, Sheldon Spring died before the application for the PUWO was made and as a result there was no valid application before the court in relation to him. It follows therefore that an application for a PUWO under **section 58 (1)** cannot be brought against the estate of a deceased person.

The Neeranjan Respondents

36. In relation to the Neeranjan Respondents, the judge in her judgment made the following findings in relation to their application to revoke the PUWO. They are not dissimilar to the findings in respect of the Spring Respondents.

(a) Before the Applicant can apply for a PUWO there must have been an investigation of the Respondents for a specified offence. During that investigation the Applicant must have formed a reasonable suspicion about the four matters at **section 58 (1) (a) to (d) of the UW Act**. Since the **UW Act** only became law on June 14, 2019 and the investigation of these Respondents took place in or before 2018, it is not possible for the Applicant to have formed a reasonable suspicion about the four matters. Simply put, as the investigations were completed in 2018, the applicant cannot have a reasonable suspicion about something that did not exist until 2019.

(b) The **UW Act** only has retrospective effect where the court makes an order for

a UWO under section 65. The **UW Act** has no retrospective effect in relation to a PUWO.

(c) Section 4(1) of the **UW Act** has an element of retrospectivity. That section however refers to "recoverable property". That term is not used in **Part V of the UW Act** which deals with PUWOs. The section therefore is not applicable to this case.

(d) In any event, the Applicant does not state the specified offence during the course of the investigation of which he formed the reasonable suspicion. Nor does the Applicant state the specified offence through whose commission the property was obtained.

The Appellants' Submissions

37. Counsel for the Appellants, Mr. Hosein S.C., submitted that by its express terms, **section 4(1) of the UW Act** makes it clear that upon the coming into force of the **UW Act**, it shall apply to all recoverable property, irrespective of whether or not the criminal conduct relative to the recoverable property occurred before or after the coming into force of the **UW Act**. This section applies to both PUWOs and UWOs. He submitted that this provision makes it clear beyond doubt that the application was properly brought against the Respondents.

38. He submitted that the **UW Act** further provides in **section 65(2)(b)** that it does not matter for the purposes of the granting of a UWO whether the property was obtained by the respondent before or after the coming into force of the **UW Act**. He submitted that this express provision reinforces the provisions of **section 4(1).** He submitted that even without the general statement in **section 4(1),** on a plain reading of **section 65(2)(b)**

alone, it is clear that it does not matter whether the criminal conduct relative to the recoverable property occurred before the coming into force of the **UW Act**. In order to obtain a UWO, the applicant must first obtain a PUWO. If this first order is not revoked, then provision is made for an application for a UWO.

39. Mr. Hosein submitted that it would be manifestly absurd to suggest that a PUWO could be lawfully obtained against a person only in respect of recoverable property to which the criminal conduct relative to that property occurred after the coming into force of the **UW Act** but that a UWO could be obtained in respect of recoverable property whether that property was obtained before or after the coming into force of the **UW Act**. He relied on the decisions of the Courts in Ireland which have interpreted similar provisions in their Proceeds of Crime Act 1996 and held that those provisions allowed for consideration to be given to acquisitions of property before the commencement of the Act to establish and raise the presumption of unexplained wealth: See **Murphy v GM, PB, PC Ltd, GH and Gilligan v Criminal Assets Bureau and Ors.**[1]

40. Mr. Hosein submitted that his interpretation is supported by the principles established in authorities which considered similar legislation in other jurisdictions, such as the Bahamas Tracing and Forfeiture of Proceeds of Drug Trafficking Act, Seychelles Proceeds of Crime Act and the Indian Prevention of Corruption Act: See **Hackl v Financial Intelligence Unit and Another**[2] and **Commissioner of Police v Woods (Bursel)**[3].

41. Mr. Hosein submitted that an application for a PUWO only requires reasonable suspicion, which is a much lower threshold than reasonable belief. In support of this submission, he relied on the decision in **National Crime Agency v Hussain and Ors.**[4]. He also referred to the decision in **Asset Recovery Agency (Ex-parte) (Jamaica)**[5] where the court, in explaining the meaning of "*reasonable grounds for believing*" as used in the Jamaican

[1] [2001] 4 IR 113.
[2] [2011] 2 LRC 59.
[3] (1990) 54 WIR 1.
[4] [2020] EWHC 432.
[5] [2015] UKPC 1.

Proceeds of Crime Act, said that the test is whether there exists grounds for believing something and the reasonableness of those grounds as opposed to the requirement that the primary fact be proved. He submitted that this is the same test which applies to the requirement of reasonable suspicion in **sections 58 and 61 of the UW Act.** Therefore, all that is required of an applicant is reasonable grounds for suspecting that the person under investigation has benefitted from his criminal conduct.

42. Mr. Hosein further submitted that all that is required to establish reasonable grounds for suspicion is material on which it is sufficient to induce the state of suspicion in a reasonable person. It is not necessary for the material which establishes the reasonable grounds for suspicion to be limited to admissible evidence: See **Re Application Under s20A of the Proceeds of Crime Act 2000 (Cth) Ex Parte Commissioner of the Australian Federal Police**[6]. He submitted that in fact, the authorised police officer and the High Court in considering the application and determining whether there is reasonable suspicion may even take into consideration hearsay evidence.

43. Mr. Hosein further submitted that the applicant's suspicion does not have to be based on direct proof as the courts have recognised that this may prove to be difficult: **Murphy v GM, PB, PC Ltd, GH and Gilligan v Criminal Assets Bureau and Ors**[7].

44. Mr. Hosein contended that the **UW Act** requires reasonable suspicion at the time of making the application for a PUWO. He referred to **section 58(1)** which provides that the reasonable suspicion must arise '*during the course of an investigation for a specified offence*'. He submitted that there is no legislative prescription of the timing of such an investigation and that **sections 4(1) and 65(2)(b) of the UW Act** suggest that the investigations can take account of matters before the commencement of the **Act**. He submitted that investigations into such recoverable property may predate the **UW Act** and when a historical analysis is done after the coming into force of the **UW Act**, the facts

[6] [2017] WASC 114.
[7] Murphy (n. 1).

derived from those investigations may form the basis of reasonable suspicion of unexplained wealth. The reasonable suspicion must arise at the time of the application. He submitted that this is how the UWO regime operates in jurisdictions with similar laws, such as Ireland and Australia, and is how the **UW Act** is intended to operate in order for the remedy to be a useful one. He placed reliance on the decisions in **New South Wales Crime Commission v Elskaf**[8], **DPP (Victoria) v Kakis**[9], **Criminal Assets Bureaux v O'Brien & Anor.**[10] and **New South Wales Crime Commission v Ayik**[11].

45. Mr. Hosein submitted that a criminal investigation comprises different stages, including the data collection stage and the analysis stage. These stages, he submitted, can take considerable time and it cannot be that a reasonable suspicion threshold in **section 58(1)** can be reached at some time during data collection or analysis, which thereafter evaporates. He argued that the defining factor is that there must be reasonable suspicion at the time of the making of the application. It does not matter whether the reasonable suspicion might have arisen before or after or for a prolonged period. Investigations which pre-dated the **UW Act** are quite likely to continue after the coming into force of the **UW Act** and an applicant for a PUWO is perfectly entitled to form reasonable suspicion from investigations which took place before the coming into force of the **UW Act**.

46. Mr. Hosein submitted that the information set out in the Appellants' affidavits and the accompanying documents, which included information as to the historical investigations which were conducted over a period of time, were sufficient to induce the state of suspicion in a reasonable person that the Spring and Neeranjan Respondents' total wealth exceeded their lawfully obtained wealth.

[8] [2017] NSWSC 681.
[9] [2020] VCC 1373.
[10] [2010] IWHC 12.
[11] [2016] NSWSC 1183.

The Spring Respondents' Submissions

47. Counsel for the Spring Respondents, Mr. Ramnanan, submitted that **Part V of the UW Act** does not operate retroactively in the absence of clear and unambiguous provisions that this was intended. He submitted that in this regard, the investigations in relation to the specified offence must have commenced subsequent to the coming into force of the **UW Act** on April 23, 2019. He contended that it is impermissible for the applicant to rely on offences committed prior to the commencement of the **UW Act** or investigations into offences which commenced and/or subsisted prior to the commencement of the **UW Act** to form reasonable suspicion.

48. Mr. Ramnanan submitted that assuming that the UWO or PUWO under **Part V of the UW Act** can fall within the definition of criminal property (which he does not accept), then **section 4(1)** applies retroactively to determine what property may be considered as distinct from the process and requirements under which a UWO can be granted.

49. Mr. Ramnanan contended that **section 4(1) of the UW Act** is not applicable to PUWOs since recoverable property, which is criminal property, is unrelated to a PUWO. Criminal property as defined in the **Act** represents the property itself which constitutes a benefit to a person from criminal conduct either directly or indirectly. A UWO does not make any orders in relation to the property itself but is an order for a monetary sum equivalent to the value of the property which, in the court's view, is unlawfully gained. He noted that the terms "criminal property" and "recoverable property" as defined in the **UW Act** were not used in **Part V of the UW Act** as have been used in other parts of the **UW Act** relating to civil asset forfeiture. He submitted that the UWO is not an order in *rem* but an order in *personam* and takes effect as a civil debt against the respondent.

50. Mr. Ramnanan accepted that the Appellant does not have to prove on a balance of probabilities that the **section 58(1)** requirements have been satisfied but argued that there must be an objective basis for the reasonable belief and/or suspicion. He submitted

that the role of the judge in this regard cannot be underestimated and placed reliance on the decision in **Asset Recovery Agency (Ex-parte) (Jamaica)**[12]**.**

51. Mr. Ramnanan submitted that the police cannot bring applications before the court for a PUWO simply on the basis of suspicion without providing an objective basis on the circumstances under which such suspicion is based. He relied on the decisions in **Asset Recovery Agency (Ex-parte) Jamaica** and **National Crime Agency v Hussain and Ors.**[13] in support of this submission.

52. Mr. Ramnanan submitted that in order to satisfy **section 58(1)(d),** it must first be satisfied that the respondent has actually committed a specified offence, which means that a conviction must first be recorded, followed by the reasonable suspicion on the part of the applicant that the property in the respondent's possession was acquired through the commission of the offence.

53. Mr. Ramnanan submitted that the affidavits filed on behalf of the Appellant were manifestly and substantially defective and the contents therein failed to rise to the required level necessary to discharge the requirements of **section 58(1).** He further submitted that the specified offence relied upon by the Appellant related to the 2015 charges and the evidence in support of the application did not demonstrate any grounds to suspect that the subject properties were derived from the commission of the relevant offences. He submitted that the properties identified by the Appellant cannot be linked to the specified offences since the acquisition of those properties pre-dated the 2015 charges.

54. Mr. Ramnanan contended that the Appellant has not demonstrated by virtue of cogent evidence that reasonable suspicion of the matters set out in **section 58(1)(a) to (d**) was acquired in the course of an investigation for a specified offence. He submitted that the

[12] Asset Recovery Agency (n. 5).
[13] Hussain (n. 4).

only investigation that was referred to in the affidavit of Sgt. Marcelle was an investigation to determine the origin of the Spring Respondents' wealth. The Appellant was only able to satisfy himself of the matters contained in **section 58(1) (a) to (d)** upon completion of the investigations in 2017, which was well after any investigation into the Spring Respondents for the commission of any specified offences had been completed.

55. Mr Ramnanan further submitted that the UW Act does not apply to the third respondent (the Estate of Sheldon Spring) since Sheldon Spring is deceased having died on January 12, 2018 before the commencement of these proceedings.

The Neeranjan Respondents' Submissions

56. The Neeranjan Respondents made it clear that they did not intend to challenge the constitutionality of the **UW Act** in these proceedings but they reserved the right to do so in other proceedings.

57. They submitted that there is a presumption against legislation having a retrospective effect. A statute therefore should not be construed so as to have a retrospective operation except where the language of the statute required such a construction and clear words are required for that purpose. It followed that **section 4 (1) of the UW Act** should not be construed as having a retrospective effect in relation to PUWOs. That section referred to "recoverable property" which is not a term used in relation to PUWOs. The section therefore does not apply to property acquired or offences committed before the coming into effect of the **UW Act** for the purposes of a PUWO.

58. Moreover, the investigations in relation to the Neeranjan Respondents were conducted prior to the **UW Act** taking effect. The mental element of the applicant in relation to the specified offences under **section 58 of the UW Act** would exist only in respect of existing law at the time. It was therefore impossible to construe those investigations and the

mental element of the applicant as providing reasonable suspicion that during those investigations the Neeranjan Respondents had acquired unexplained wealth in satisfaction of the requirement of **section 58 of the UW Act**.

59. It was further submitted that the Appellant has failed to condescend to particulars or provide sufficient evidence that there exists reasonable suspicion in relation any of the matters in **section 58 (1) (a) to (d) of the UW Act**. The applicant has failed to produce any direct evidence in support of the application for the PUWO.

60. In particular it was also submitted that a PUWO cannot be made purely on the basis that there is no identifiable lawful income. The Appellant must also establish that the property in question was acquired through the commission of a specified offence. There must therefore be some nexus between the specified offence and the acquisition of the property. No such nexus arises on the evidence in relation to the Neeranjan Respondents.

61. The affidavits of the Appellant are also deficient in the following respects and as a consequence cannot support reasonable suspicion of the **section 58 (1)** factors, namely;

    (a) The valuation of the subject property refers to the market value at the time of the valuation as opposed to the date the property was acquired and that cannot be used to determine the unexplained wealth of the Neeranjan Respondents.

    (b) In any event the valuation is plagued with deficiencies and no weight should be attached to it as, inter alia, there was no actual or proper inspection of the property.

    (c) The affidavit of Sgt. Seecharan filed by the Appellant in support of the application for the PUWO had annexed to it documents from third parties

such as a letter stating the salary of David without context or the means by which they were obtained and without any verification of their contents.

(d) In relation to Kendra, the clear evidence is that the subject property was transferred to her by David by way of a deed of gift in consideration of the natural love and affection he has for her. That is the only evidence of her wealth and it is incapable of establishing a reasonable suspicion that the total wealth of Kendra exceeds the value of her lawfully obtained wealth as is required by **section 58 (1) (a)**.

(e) As the property was transferred by deed of gift to Kendra, the evidence does not establish that it was obtained through the commission of a specified offence.

(f) The property was transferred to Kendra by David. There is no evidence to show that David retains care and control of it especially as at the time of the application for the PUWO he was incarcerated. Further, there is no evidence to show that the total wealth of David exceeds $500,000.00 or that his total wealth exceeds the value of his lawfully obtained wealth.

(g) There has been no reconciliation, verification or proper analysis by the Appellant of material pieces of evidence disclosed by the Neeranjan Respondents as to the origin of their wealth and that is fatal to the Appellant's application.

THE LAW, ANALYSIS AND CONCLUSION

The legal fiction upon which Civil Asset Forfeiture is based

62. Civil asset forfeiture rests on the legal fiction that the property and not the owner has committed the offence. This concept has certain repercussions in the discussion on the issue of retrospectivity since it carries with it the established legal fiction that the property ***continues*** to remain soiled. In the decision in **Hackl v Financial Intelligence Unit and Another[14],** Egonda-Ntende CJ, in giving the decision of the court, said at paragraphs 166-167,

> *"[166] Article 19(4) of the Constitution is applicable to criminal and not civil proceedings. Thus it is not applicable to the POCA.* ***The property or proceeds derived from a criminal conduct remain continuously 'soiled' even though attempts may be made at laundering the same. The Act seeks not to punish the offender of the criminal conduct but to ensure that such soiled or tainted benefits derived from such criminal conduct are subject to scrutiny and forfeiture if necessary. Therefore although the criminal conduct may have been committed prior to the coming into effect of this piece of legislation, the proceeds and property, namely the benefits derived from such criminal conduct, continue to remain soiled or tainted as it will always remain benefits from criminal conduct and thereby be subject to forfeiture, even if the legislation regarding forfeiture of such property has been enacted subsequent to the criminal conduct being committed. The emphasis should be not on the 'criminal conduct' but the 'benefits' derived from such criminal conduct which would always remain soiled or tainted and would be subject to forfeiture****.*

[14] Hackl (n. 2).

[167] ***In Prophet v National Director of Public Prosecutions [2006] ZACC 17 the South African Constitutional Court held:***

> ***'Civil forfeiture provides a unique remedy used as a measure to combat organised crime. It rests on the legal fiction that the property and not the owner has contravened the law. It does not require a conviction or even a criminal charge against the owner. This kind of forfeiture is in theory seen as remedial and not punitive.'"*** [emphasis added]

63. The **UW Act** cannot be evaluated in isolation. It constitutes part of interconnected legislation of which the **POCA** is integral. While the **UW Act** pursues wealth with no need for a conviction, the **POCA** regime is conviction based and pursues the person who has committed the specified offence and the benefit obtained from the commission of the offence. The offender is liable to be convicted of the specified offence and the benefit taken away post-conviction through the process of seizure, forfeiture or confiscation.

64. This connection between the **POCA** and the **UW Act** is manifest, on the face of it, in a variety of ways. In the first instance, **section 3 of the UW Act** provides that the term "specified offence", has the meaning assigned to it by **section 2 of the POCA**. The correlation also emerges from **section 65(8) of the UW Act,** which provides, inter alia, for the value of any property forfeited from a respondent under a Forfeiture Order made pursuant to the **POCA** to be deducted from a UWO made in relation to that respondent.

65. Administratively, the interconnectivity is further crystallised. In **section 14(1)(c) of the UW Act,** one of the functions of the Civil Asset Recovery and Management Agency is to maximise the realisable value of criminal property vested in it under a Civil Asset Forfeiture Order, or seized or forfeited by the State under any written law, for payment of same into the Seized Assets Fund created under the **POCA**. Further, under **sections 58B and 58C of the POCA,** the Civil Asset Recovery and Management Agency is specifically

responsible, on behalf of the State, for the management and where applicable, the sale of all real and personal property forfeited under the **POCA.**

66. Lastly and most distinctly, the **POCA, at section 45,** creates the specified offence of money laundering and its constituent elements. **Section 45 (3) of the POCA** provides that where a person is charged with the offence of money laundering and the court is satisfied that the property in his possession or under his control was not acquired from income derived from a legitimate source, it shall be presumed, unless the contrary is proven, that the property is criminal property. It is pellucid that these provisions of the **POCA** provide guidance as to the framework and scope of an investigation into money laundering. Also emerging from a contextual consideration of these provisions of the **POCA** is that inextricably linked to an investigation into money laundering, is an investigation into illegally obtained wealth.

GENERAL OBSERVATIONS IN RELATION TO A PUWO

67. An application for a PUWO is made under **section 58 of the UW Act**. **Section 58 (1)** sets out the persons who may make the application. There is no issue in this appeal that the applications for the PUWO were made by persons authorized by **section 58 (1)** to do so.

68. **Section 58(1)** requires that the applicant must have reasonable suspicion of the matters set out in (a) to (d) of that section; namely (a) that the total wealth of the respondent exceeds the value of his lawfully obtained wealth; (b) that the total wealth of the respondent is over $500,000; (c) the property is owned by the respondent or is under his effective control and (d) the property was obtained through the commission of a specified offence. It is to be noted that whereas **sections 58 (1) (a)** and **(b)** refer to the wealth of the respondent, sections **58 (1) (c)** and **(d)** refer to property. There is no ambiguity in that. Quite simply, the wealth of the respondent would be made up of the property that constitutes his wealth. Property is defined in the **UW Act** to mean assets of any kind

whether tangible or intangible, moveable or immovable, listed assets and includes cash (see section 3 of the Act). Therefore, what sections **58 (1) (c)** and **(d)** require is a reasonable suspicion that the relevant property that comprises the wealth of the respondent is either owned or under his effective control and that it was obtained through the commission of a specified offence.

69. A reasonable suspicion of the existence of the matters at **section 58 (1) (a) to (d)** has both subjective and objective elements. That implies that the applicant must subjectively suspect those matters to exist and there must be reasonable grounds for that suspicion. An applicant for a PUWO must therefore set out in the affidavit in support of the application for the PUWO that he suspects those matters to exist and the grounds on which that suspicion is based. The Court of course will decide whether the grounds for the suspicion held by the applicant are reasonable.

70. It is also important to emphasise that "reasonable suspicion" is not the same as prima facie proof of the matters at **section 58 (1) (a) to (d)** or even as high a threshold as "reasonable belief". Reasonable suspicion is a low threshold. It is not necessary to prove that the suspected fact is true. Indeed the suspicion may ultimately turn out to be incorrect. Another aspect of reasonable suspicion that is worthy of emphasis is that in deciding whether there is reasonable suspicion, the court may receive evidence of matters that would not ordinarily be admissible in cases where it is necessary to establish a prima facie case. Direct evidence is not necessary and hearsay evidence is admissible. These points are made in the following which we accept as good law.

71. At paragraph 32 of the decision in **National Crime Agency v Hussain and Ors.**[15], Murray J, in delivering the judgment of the court, referred to paragraph 229 of the decision in **A v Secretary of State for the Home Department (No 2)**[16] where it was stated that,

[15] Hussain (n. 4).
[16] [2005] 1 WLR 414.

"32. … ***Belief and suspicion are not the same, though both are less than knowledge. Belief is a state of mind by which the person thinks that X is the case. Suspicion is a statement of mind by which the person in question thinks that X may be the case.***" [emphasis added]

72. Murray J continued at paragraphs 38-40,

38. The terms "reasonable suspicion" and "obtaining property", in relation to the Income Requirement, require a bit more explanation. ***Ms Jeavons submitted in the NCA's skeleton argument for the UWO Application that "reasonable suspicion" is a "state of conjecture or surmise where proof is lacking", relying on the following passages from the judgment of the Privy Council, delivered by Lord Devlin, in the Privy Council case of Hussien v Chong Fook Kam [1970] AC942, 948B, 948H and 949B—C:***

> ***"Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: _I suspect but I cannot prove._ Suspicion arises at or near the starting-point of an investigation of which the obtaining the prima facie proof is the end. When such proof has been obtained, the police case is complete . . .***
>
> ***"Their Lordships have not found any English authority in which reasonable suspicion has been equated with prima facie proof."***
>
> ***"There is another distinction between reasonable suspicion and prima facie proof. Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all . . . Suspicion can take into account also matters which, though admissible, could not form part of a prima facie case. Thus the***

fact that the accused has given a false alibi does not obviate the need for prima facie proof of his presence at the scene of the crime; it will become of considerable importance in the trial when such proof as there is being weighed perhaps against a second alibi; it would undoubtedly be a very suspicious circumstance."

39. ***Ms Jeavons submitted that the fact of the NCA's suspicion is a subjective question.The court's assessment of whether there is "reasonable cause" for this suspicion is, again, objective. It is not necessary to prove that the suspected fact is, in fact, true. Indeed, it may ultimately prove to be incorrect. The proper question, Ms Jeavons submitted, is whether the NCA's suspicion, viewed objectively and in the round, is one which a reasonable person could hold.***

40. ***I accept and agree with these submissions of Ms Jeavons as to the proper interpretation of the words "reasonable suspicion" in relation to the Income Requirement.*** [emphasis added]

73. We think it necessary to note that though the threshold test of reasonable suspicion in law is a low one it should not be misinterpreted to convey the impression that anything less than a scrupulously conducted investigation is required. Investigating officers should ensure that the substantiating affidavits contain appropriately fulsome material and that the strands of the investigation which have led to the formation of a "reasonable suspicion" have been very clearly articulated.

74. **Section 58 (1) (d)** requires that the applicant establish a reasonable suspicion that the property was obtained through the commission of a specified offence. A question which has arisen on the submissions before the court is whether it is necessary for the applicant to show that the specified offence was committed by the respondent. In that regard it is

crucial to note that unlike section **58(1)(a) to (c)**, the wording of **section 58(1)(d)** does not include the term ***"by the respondent"***. In our view, the language of **section 58(1)(d)** is clear and explicit. At **page 64 of Craies on Statute Law (5th Ed.)**, the author stated, *"If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver.*" Further, where the legislature includes certain language in one section of a statute but omits it in another, the general presumption is that it acted intentionally in the disparate inclusion or exclusion.

75. In consideration of the above, we are of the view that **section 58(1) (d)** does not require the applicant to show that the property was obtained through the commission of a specified offence **by the respondent**, far more, that there has actually been a conviction for same. The **UW Act** regime is non-conviction based and is not concerned to establish criminal guilt by the respondent. It is focused on whether property has been legitimately acquired rather than on the offender. In addition, it reflects the reality that the nature of the offence of money laundering can result in illegally obtained property and/or wealth being far removed from the actual person who is the subject of the investigation into a specified offence.

76. Where the court is satisfied that there are reasonable grounds for the suspicion of the factors at **section 58 (1) (a) to (d)**, it may make a PUWO. The PUWO requires the respondent to file a declaration and answer questions as required in relation to his assets. That was the substance of the PUWOs made by the judge on the Appellants' applications for the PUWOs.

77. The applicant may apply to the court for a UWO. **Section 65 of the UW Act** provides that where a PUWO has not been revoked, the Court, on the basis of affidavits and documents submitted and evidence provided, may make a UWO if satisfied on a balance of probabilities that any part of the wealth of the respondent was not lawfully obtained or

held; the total wealth of the respondent is over $500,000; or particular property is owned by and subject to the effective control of the respondent. On an application for a UWO the burden of proving the wealth of the respondent is lawfully acquired lies on the respondent.

78. We think it is clear from the UW Act that a UWO may not be made unless a PUWO is first made. The PUWO is a preliminary step to the obtaining of the UWO. **Section 61(1) of the UW Act** provides, inter alia, that the respondent to a PUWO is required to appear before the High Court for that court to decide "whether to make an Unexplained Wealth Order". Where the Court makes a UWO, the order shall specify that the respondent is liable to pay into the Seized Assets Fund an amount being the "unexplained wealth amount" of the respondent equal to the amount that the Court is satisfied does not represent the lawfully acquired property of the respondent.

79. As happened here, the respondent may apply to the court to revoke the PUWO. The Court may revoke the PUWO if it is satisfied that there are no grounds on which the PUWO could be maintained. In revoking the PUWOs in these matters, a primary finding of the judge was that the UW Act had no retrospective effect in relation to the making of a PUWO and so investigations conducted before the UW Act came into effect and offences before then could not be taken into account. If the judge was correct to so find, then there would indeed be no ground on which the PUWO could be maintained. It is to that question we now turn.

The Issue of Retrospectivity

Section 4(1) of the UW Act – Three Aspects of Retrospectivity

80. In order to glean the proper scope of **section 4(1) of the UW Act**, it cannot be looked at in isolation because this would lead to a misaligned and misleadingly narrow application.

Rather, it is necessary to **read the definitions** found within the **UW Act into** the provisions of **section 4(1).**

81. "Criminal conduct" is defined in **section 3(1) of the UW Act** as *conduct which,*

> *(a) constitutes a specified offence; or*
> *(b) if it occurs in a country outside of Trinidad and Tobago—*
> *(i) would constitute an offence in that country; and*
> *(ii) if committed in Trinidad and Tobago would constitute a specified offence.*

82. "Criminal property", as defined in **section 3(1) the UW Act,** refers to property,

> *(a) which constitutes a benefit to a person from criminal conduct or represents such benefit, in whole or in part whether directly or indirectly including economic gains and funds or property converted or transformed into other property; and*
> *(b) which the alleged offender knows or suspects constitutes or represents a benefit and for which it is immaterial who carried out the conduct or who benefitted from the conduct*

83. **Section 3(1) of the UW Act,** also defines "recoverable property" as criminal property, terrorist property or an instrumentality of crime.

84. By virtue of the foregoing definitions, **section 4(1) of the UW Act** therefore **in effect** provides that,

> Upon the coming into force of this Act, this Act shall apply to all property,

(a) which constitutes a benefit to a person from criminal conduct or represents such benefit, in whole or in part whether directly or indirectly including economic gains and funds or property converted or transformed into other property; and

(b) which the alleged offender knows or suspects constitutes or represents a benefit and for which it is immaterial who carried out the conduct or who benefitted from the conduct,

irrespective of whether or not the conduct which constitutes a specified offence relative to the said property occurred before or after the coming into force of this Act.

85. **Section 58(1) of the UW Act**, in broad terms, deals with the calculation of the ***benefit*** obtained by a person through the commission of a specified offence relative to property owned or controlled by that person. This is in essence "criminal property" which is captured within "recoverable property".

86. It follows that **section 4(1) of the UW Act** applies to **section 58 of that Act**. The term *"course of an investigation for a specified offence"* refers to the course of an investigation into a specified offence which was committed before or after the coming into effect of the **Act**. On a proper analysis, **section 4(1)** is not disabled in its application to **section 58** because of the absence of the term "recoverable property" from **Part V**. If the specified offence is committed before the coming into effect of the **Act**, then the *"course of an investigation for a specified offence"* would naturally include investigations conducted before the coming into effect of the **Act**.

87. In the second instance, **section 4(1) of the UW Act** is augmented by **section 65(2)(b) of that Act** which, in respect of unexplained wealth orders, provides an additional element of retrospectivity in relation to the calculation of the respondent's total wealth by reference to his property. **Section 65(2)(b)** provides that in assessing whether the total

wealth of the respondent is over $500,000.00, it does not matter whether the property was obtained by the respondent before or after the coming into force of the **Act**.

88. The judge was of the view that **section 65** had no application to the PUWO but only applied where the Court makes a UWO. We do not agree. A UWO cannot be obtained until a PUWO is first obtained. The determination of the respondents' total wealth is relevant to a PUWO as well as to the UWO. **Section 65 (2)**, which refers to the making of a UWO, provides that for the purpose of determining the total wealth of the respondent, it does not matter whether the property was obtained by the respondent before or after the coming into force of the UW Act. It is illogical to suppose that for the purposes of a UWO the court may take into account property acquired before the coming into force of the UW Act but cannot do so in relation to a PUWO. The clear intention is that such property may be taken into account in the making of a PUWO as well. That is a further indication of the intention of Parliament that the **UW Act** in relation to a PUWO should have retrospective effect.

89. The third aspect of retrospectivity becomes apparent through a contextual analysis of the offence of money laundering, which is a specified offence, and its constituent elements.

90. Literature on the offence of money laundering describe it as a three-stage process, consisting of placement, layering and integration[17]. During the first stage of placement, illegitimate funds are placed in the banking system through financial institutions, casinos, shops, exchange bureaus, or other legitimate businesses that are known to handle large amounts of cash without raising suspicions. In this regard, it is self-evident that cash-intensive businesses are at a significantly higher risk for misuse. "Layering" involves the separation of illicit proceeds from its source by transactions designed to disguise the illegitimate origin of the proceeds. The final stage of integration occurs when the money

[17] Dr. Waleed Alhosani, *"Anti-Money Laundering – A Comparative and Critical Analysis of the UK and UAE's Financial Intelligence Units"* (MacMillan Publishers Ltd. London 2016) at page 3; Dennis Cox, *"Handbook of Anti Money Laundering"* (John Wiley & Sons Ltd. 2014) at page 15.

launderer endeavours to render the appearance of legitimacy to illicitly obtained wealth through the re-entry of the funds in the economy in what appear to be normal business and/or personal transactions such as the purchase of property.

91. Moreover, under the **POCA**, where a person knows or has reasonable grounds to suspect that property constitutes a benefit to a person from the commission of a criminal offence and that person engages directly or indirectly in a transaction which involves that property, that person commits the offence of money laundering.

92. For these reasons, we are of the view that the judge erred in concluding that section **58(1)(a) to (d) of the UW Act** had no retrospective effect. The judge consequently erred in concluding that since the investigation of the Spring and the Neeranjan Respondents occurred before June 14, 2019, it was not possible for the investigator to have formed a reasonable suspicion of the threshold requirements necessary to satisfy **section 58(1)(a) to (d).** The nub of the judge's error lay in attributing significance to the absence of the term "recoverable property" from **Part V**. The judge in this regard failed to construe **Part V** within the context of the **UW Act** read as a whole. The **UW Act** allows for historic investigations predating it to be factored into consideration. Before the proclamation of the **Act**, an investigating officer might have had reasonable suspicion of the matters adverted to in **section 58(1)(a) to (d)** but there would have been no legislative scheme that could have been employed to conduct an investigation. Reasonable suspicion is not however static. By the very nature of the natural ebb and flow of the investigative process, once it is formed, it is capable of perpetuation. Now with the availability of the UW Act, what is crucial is, that at the time of the application for the PUWO the applicant suspects the existence of the matters at **section 58 (1) (a) to (d)** and has reasonable grounds for that suspicion.

The conclusions in respect of the Spring Respondents

93. Applying this analysis to the application in respect of the Spring Respondents, Ag. Asst. Supt. Taylor is entitled to rely on investigations conducted and information gathered therefrom before the commencement of the UW Act to found a reasonable suspicion of the matters at section 58 (1) (a) to (d) of the UW Act to obtain the PUWO against the Spring Respondents.

94. In the affidavit of Sgt. Marcelle (the contents of which were confirmed by the Ag. Asst. Supt. Taylor), it was stated at paragraph 6 that he conducted a thorough investigation into Sheldon and Natalie Spring during the period 2015 to 2017 and looked as far back as the period 2010 to 2015 to support a forfeiture application. He stated that he obtained several detention orders and subsequently made a forfeiture application. The relevance of this evidence goes toward demonstrating, in a broad sense, the nexus between his investigation into dangerous drugs and the proceeds of crime and his suspicion in the context of the present application. Implicit in the affidavit of Sgt. Marcelle is that his investigation into the Spring Respondents unearthed information which suggested that they were engaging in transactions which involved proceeds from drug trafficking. Under **section 45 of the POCA**, this is in essence an investigation into money laundering. This is apparent in several ways.

95. In the first instance, Sgt. Marcelle explicitly states at paragraph 32 of his affidavit that after conducting an investigation into the Spring Respondents, he concluded that the properties which were owned by them or were under their effective control were obtained through the commission of the specified offences of drug trafficking and **money laundering.** He asserted that the investigation into the Mini Mart revealed that it was not operational and that money, for which there was no apparent economic origin, was generated from its existence. Proceeds thereafter were introduced into the financial system and these proceeds were used in part to fund the purchase of certain properties.

Further, it is apparent from the evidence of Sgt. Marcelle that the scope of his investigation into money laundering encompassed an investigation into whether any of the properties in the possession or control of the Spring Respondents were acquired from income derived from a legitimate source. This line of investigation naturally arises within the context of **section 45(3) of the POCA,** as these properties, in the absence of evidence to the contrary, may be presumed to be criminal property.

96. The specified offence underpinning the application in respect of the Spring Respondents, therefore includes money laundering. The significance of this is evident when one considers that under the **POCA**, the offence of money laundering has an inextricable retrospective effect.

97. **Under Part II of the POCA - Money Laundering, sections 43(1) and 43(2)(c)** provide,

> ***43. (1)*** *In this Part— "criminal conduct" means conduct which—*
>
> *(a) constitutes an offence in Trinidad and Tobago; or*
> *(b) occurs outside of Trinidad and Tobago and would constitute an offence if it occurred in Trinidad and Tobago; and*
>
> *"criminal property" means property which constitutes the benefit to a person from criminal conduct or represents such a benefit in whole or in part whether directly or indirectly.*
>
> ***43 (2)*** *For the purpose of the definition of criminal property under subsection 1, it is immaterial,*
>
> *(a)…*
> *(b) …*
> *(c) whether the criminal conduct occurred before or after the date of commencement of the Miscellaneous Provisions (Proceeds of Crime, Anti-terrorism and Financial Intelligence Unit of Trinidad and Tobago) Act, 2014.*

98. The offence of money laundering involves knowingly dealing with criminal property in any way whatsoever and on an application of **section 43(2)(c) of the POCA**, the offence carries with it its own retrospective implications for investigation. It is apodictic that investigations into money laundering may necessitate a retrospective review of property to determine whether it is criminal property.

Whether a PUWO could have been made in respect of the Estate of Sheldon Spring

99. A question arose on the submissions of the Spring Respondents as to whether a PUWO could properly have been made in respect of the Estate of Sheldon Spring, he having died before the **UW Act** became law.

100. There is no provision in the **UW Act** that addresses that issue. The section that comes the closest is **section 67(4)** which provides,

> *If an Unexplained Wealth Order is made after the death of the respondent, the Order is exercisable against the estate of the respondent.*

101. It is clear that that section on its plain wording refers to where a UWO is made after the death of the respondent. It does not refer to a case where the respondent dies before the application for the PUWO is made or for that matter before the UW Act became law. This section therefore is, in our judgment, of no relevance to this issue.

102. However, we have held that the **UW Act** is retrospective in its application. It applies to all property which constitutes a benefit to a person from criminal conduct or represents such benefit and for which it is immaterial who carried out the conduct. Further, **the UW Act** applies irrespective of whether or not the conduct which constitutes the specific offence relative to the said property occurred before or after the coming into force of the **UW Act** or whether the property was obtained before or after coming into force of the **UW Act.**

103. **Section 58 of the UW Act** permits an applicant to apply for and obtain a PUWO where, in broad terms, he reasonably suspects the total wealth of the respondent exceeds the value of his lawfully obtained wealth and it has been obtained through the commission of a specified offence notwithstanding the conduct which constitutes that offence may have occurred before the **UW Act**. Where the respondent is deceased and property at the time of the application for the PUWO resides in his estate we can see no obstacle to the application for the PUWO being made in relation to the estate of the deceased.

104. The estate of the deceased is however not a legal entity and there must be a person recognised in law against whom steps may be taken in accordance with **section 58 of the UW Act**. Where the deceased has left a will that has been admitted to probate, or where he died intestate and letters of administration have been granted, the proper respondent would be the executor of the will or the administrator of the estate as the case may be. Where there is no will that has been admitted to probate or letters of administration have not been granted, an application must be made to the court for an appointment of a person to represent the estate of the deceased (see CPR rule 21.7). Until someone has been appointed to represent the deceased's estate, the applicant may take no step in the proceedings apart from applying for an order to have a representative appointed (see CPR rule 21.7(4)).

105. In this case, the PUWO was made on December 10, 2019. It was made against the "Estate of Sheldon Spring". At that time, no one was appointed to represent the estate. On January 20, 2020, an order was made appointing Natalie as the Administrator Ad Litem to represent the Estate of Sheldon Spring. As the PUWO was made prior to the order appointing the Administrator Ad Litem, it offended CPR rule 21.7(4) that prohibited any steps being taken in the proceedings before the appointment of the representative. In our view, this must be interpreted as preventing any step being taken in relation to the Estate of Sheldon Spring.

106. I do not understand Mr. Ramnanan to take any objection in his submissions to the fact that the PUWO was made before the order appointing the Administrator Ad Litem. This is understandable as no prejudice was caused to the Estate of Sheldon Spring. An application was made by the Administrator Ad Litem to set aside the PUWO and was successfully prosecuted as is evidenced by this appeal. Any such objection would have the appearance of an arid technicality.

107. In any event, failure to comply with a rule does not invalidate any step in the proceedings unless the rule specifically provides or the court so orders and where the rule does not specifically provide the consequence for the failure to comply with the rule, the court has a discretion to make an order to put matters right. CPR Rule 27.1(4) falls into the category where the rules does not provide the consequence for the failure to comply with it (see CPR rule 26.8). If it were necessary to exercise a discretion in that regard, we would order that the PUWO in relation to the Estate of Sheldon Spring be treated as if made after the appointment of the Administrator Ad Litem.

108. The Court was referred by Mr. Ramnanan to the case of **R v Smith**[18] as providing assistance on whether a PUWO could properly be made in relation to the Estate of Sheldon Spring. The case is however of no assistance on the point.

109. The facts in the **Smith** case were that the appellant was convicted of murder and sentenced to life imprisonment. He filed a notice of appeal challenging his conviction but before his appeal could be heard, he died. The question was whether notwithstanding the appeal was now moot, having regard to the death of the appellant, the court still had jurisdiction to hear the appeal. It was held that notwithstanding the death of the appellant the court retained the jurisdiction in the interest of justice to proceed with the appeal.

[18] [2004] 1 S.C.R. 385.

110. That is very different from this case. The **UW Act** provides for the obtaining of a UWO in relation to which a PUWO is a preliminary step. It provides a remedy to recover wealth unlawfully obtained through the commission of a specified offence irrespective of whether the property comprising the wealth was acquired before or after the coming into force of the **UW Act** or whether the conduct constituting the specified offence occurred before or after the **UW Act** came into force. Where the person who owns the wealth has died and it resides in his estate, the wealth can be recovered from his estate. We are not here concerned with an issue that has become moot or academic on the death of the person. The issue remains a live one notwithstanding the death.

111. It was submitted by Mr. Ramnanan that Ag. Asst. Supt. Taylor relied on 2015 charges as the evidence of the commission of a specified offence within the meaning of **section 58(1)(d)**. This, he contended, does not demonstrate any grounds to suspect that the properties listed in the application for the PUWO can be linked to a specified offence since the acquisition of the properties occurred prior to 2015.

112. It is a requirement under **section 58(1)(d)** that in order to obtain a PUWO, there must be reasonable suspicion that, inter alia, the property comprising the wealth of the respondent was obtained through the commission of a specified offence. It is however not correct to say that Ag. Asst. Supt. Taylor has relied on charges made in 2015 as the evidence that the properties listed in the appellant's application were obtained through the commission of a specified offence.

113. According to the affidavit of Sgt. Marcelle, Sheldon had a criminal history. Seventeen charges were laid against him for narcotic offences during the period 1995 to 2017 and he was convicted of three of them, two of which were for the possession of cocaine for the purpose of trafficking.

114. Similarly, in relation to Natalie, according to Sgt. Marcelle, she too has a criminal history with ten charges being laid against her during the period 2005 to 2015. Six of the

charges were for narcotic offences and there was a conviction in 2007 for possession of cocaine for the purpose of trafficking. Natalie in her affidavit in support of the application to set aside the PUWO makes no mention of a conviction in 2007. She refers to 2008 charges that were disposed of in 2011. She makes no mention of the nature of the charges. In the Criminal Record relating to Natalie prepared by the Trinidad and Tobago Police Service there is a reference to a 2008 charge for possession of cocaine for the purpose of trafficking, which as at the date of the record (February 20, 2020) is still pending. There is therefore evidence that Natalie in 2008 was charged for possession of cocaine for the purpose of trafficking that is still pending.

115. Trafficking of narcotics is a specified offence for the purpose of section 58.

116. Of the properties referred to in the appellant's affidavit in support of the application for a PUWO, one was acquired prior to 1998. Of course there is an obligation on the applicant to list the total wealth of the respondent. The other properties were acquired between 2008 and 2012 which is within the period that there is evidence that both Natalie and Sheldon were charged with narcotic offences and certainly, in the case of Sheldon, convicted for possession of cocaine for the purpose of trafficking. As against that evidence, there is no evidence of any lawful wealth of Natalie and/or Sheldon which would serve to explain the acquisition of the properties. This in our judgment is sufficient to support a reasonable suspicion for the purpose of **section 58(1)(d)** that the properties of the Spring Respondents were acquired through the commission of a specified offence.

117. There is in our view ample evidence on the affidavit of Sgt. Marcelle for Ag. Asst. Supt. Taylor to found reasonable suspicion of the factors in **section 58(1)** in relation to the Spring Respondents.

118. In view of the above, the appeal in respect of the PUWO made against the Spring Respondents is allowed and the order of the judge setting aside the PUWO is set aside. The PUWO is reinstated and remitted to the High Court for further hearing.

The conclusions in respect of the Neeranjan Respondents

119. In relation to the Neeranjan Respondents, for the reasons given above, the Ag. Supt. Lucas was entitled to rely on investigations conducted and information gathered therefrom before the commencement of the **UW Act** to found a reasonable suspicion of the matters at section **58(1) (a) to (d) of the UW Act** to obtain the PUWO as against the Neeranjan Respondents. The affidavit of Sgt. Seecharan (the contents of which were confirmed by Ag. Supt. Lucas) sets out the investigations conducted before the coming into force of the **UW Act** and details the information gathered from such investigations for the period 2009 to 2015. In summary, the affidavit of Sgt. Seecharan states that the offences underpinning the application for the PUWO were money laundering and drug trafficking both of which are specified offences within **section 58 of the UW Act** and that from the information detailed in his affidavit he reasonably suspects the existence of the **section 58(1) (a) to (d)** factors. The Neeranjan Respondents, apart from the submissions that the **UW Act** has no retrospective effect, have however raised a number of submissions disputing that the evidence disclosed in the affidavit of Sgt. Seecharan were sufficient to give rise to a reasonable suspicion of any of the factors in **section 58(1) (a) to (d)**. We will now discuss these submissions.

120. A general submission made by the Neeranjan Respondents is that there was no direct evidence in support of the application for the PUWO and that the documents annexed to the affidavit of Sgt. Seecharan were not verified, without context, and there was no statement of the means by which they were obtained. As we mentioned earlier, evidence may be led to establish the reasonable suspicion required under **section 58** that may not be admissible where the requirement is to establish a prima facie case.

Direct evidence is therefore not necessary and hearsay evidence is admissible. All of the documents annexed to the affidavit of Sgt. Seecharan are in our view admissible in relation to the PUWO application and the court is entitled to have regard to them. Specific objection was made to the letter annexed to the affidavit of Sgt. Seecharan which contained information of the salary paid to David by his employer, the Tunapuna/Piarco Regional Corporation, and the length of time he was employed there. It is clear from a consideration of the letter that it purports to be from the Tunapuna/Piarco Regional Corporation where, according to Sgt. Seecharan based on his investigations, David worked. The letter supports that fact, the length of time David has worked there and his salary. We can see no objection to a court placing reliance on that letter in the context of an application for a PUWO. Indeed David has not taken any issue with the facts stated in the letter.

121. The first factor in **section 58(1)** of which the applicant must have reasonable suspicion is that the total wealth of the respondent exceeds the value of his lawfully obtained wealth. Sgt. Seecharan sets out the information from his investigations and concluded that the value of the lawfully obtained wealth during the period under review (2009-2015) was TT$770,158.10 whereas their total wealth was TT$2,412,966.62. This is made up of the house and land in St. Helena, a motor vehicle and cash seized from the home of the Neeranjan Respondents. He further stated that after the Neeranjan Respondents met their expenses (excluding the costs of the construction of their house and the land upon which it was constructed as well as living expenses) they were left with TT$237,588.00. He concluded therefore that they could not maintain their family, acquire the land at St. Helena and construct the house thereon, which according to the evidence would have cost TT$2,400,000.00 to build.

122. Included in the figure of the Neeranjan Respondents' total wealth was the value of the St. Helena property, which according to a valuation obtained by Sgt. Seecharan is TT$1,750,000.00 in respect of the house and TT$450,000.00 being the value of the land

on which it is built. These values are contained in the valuation report prepared by the Ministry of Finance. The report has been criticised by the Neeranjan Respondents. One of the objections is that it refers to the value of the house and land as at February 2016 whereas the land was purchased in 2009 for the price of TT$80,000.00 and the house was built, according to Sgt. Seecharan, between 2011 and 2013. Further, it is only reasonable to assume that the cost of construction would have increased by 2016. The result, it was submitted, is that the valuation does not provide evidence of the value of the house and land at the time they were respectively built and acquired to support a reasonable suspicion that the value of the Neeranjan Respondents' total wealth exceeded the value of their lawfully obtained wealth.

123. It is reasonable to say where the applicant is seeking to establish the value of the property owned by the respondent could not have been built or acquired with his lawfully obtained income over a period of time, the best evidence is to use the value of the property at the time it was acquired or built. That was not done in this case. However, we do not think that it is sufficient to say that the evidence of the value of the property should be given such weight that it cannot be relied upon as supporting reasonable grounds as to the value of the Neeranjan Respondents' wealth.

124. Putting the value of the land to one side there is evidence of a Quantity Surveyor Report which puts the cost of construction of the house in 2014 at TT$2,400,000.00. This is one year after Sgt. Seecharan's timeline as to when the house was built. While it is reasonable to expect that over time building costs would rise, the quantity surveyor's estimate of the cost of construction as of 2014 is very proximate to the timeline given by Sgt. Seecharan as to when the house was built. It is only one year later and that is too proximate in time in our view to reject the Quantity Surveyor's Report as providing no reliable evidence of the cost of construction at the time the house was built according to Sgt. Seecharan. The same can be said of the Valuation Report which estimates the value of the St. Helena property as at 2016. In our judgment, the Valuation Report and the

Quantity Surveyor's Report can be relied upon to establish on reasonable grounds the value of the house for the purposes of **section 58.**

125. It is also relevant to note that there is no other evidence of the value of the house that would lead to a different conclusion.

126. The Quantity Surveyor's Report and the Valuation Report prepared by the Ministry of Finance were criticised by the Neeranjan Respondents on other bases. It was submitted that there was no access to the property and no actual inspection of it. There was therefore no proper inspection of the foundation of the house and the Quantity Surveyor's Report and the Valuation Report do not qualify as a structural survey which would have identified whether any defects existed. For these reasons, it was argued that the documents hold little weight as evidence of the value of the St. Helena property. We do not agree.

127. The valuer who prepared the Valuation Report on behalf of the Ministry of Finance does state that the foundation of the house has not been inspected. Further, he says areas which are covered, unexposed or inaccessible have not been inspected and that he is unable to report that they are free from defects. The valuer however assumes that the foundation is adequate *"to support a building of its type, size and construction"*. There is no evidence that puts that assumption in issue. Further, the valuer goes on to list a number of features of the house, such as the floors are tiled, the walls and partitions are made of hollow clay blocks rendered and painted, the roof is a "hipped roof of aluminium sheet on a steel frame". None of that has been disputed. He then arrives at the value of the property taking into account *"the characteristics of the subject property and all other relevant factors in particular the current prices paid for comparable properties on the open market"*. There is nothing in the evidence to suggest that that methodology is not appropriate or indeed not standard amongst valuers.

128. The Quantity Surveyor's Report refers to the Valuation Report and two photographs of the St. Helena *property "as providing some details regarding the size of the building and the quality of construction"*. The quantity surveyor then makes certain factual assumptions which have not been disputed to arrive at the cost of construction which is also not disputed.

129. In the circumstances, the challenge to the Quantity Surveyor's Report and the Valuation Report in our view are without merit. They provide evidence of the value of the St. Helena property on which reliance may be placed to establish the value of the house and consequently the property or wealth of the Neeranjan Respondents for the purpose of **section 58**.

130. Of course the value of the total wealth of the respondent is just one aspect of **section 58(1)(a)**, which requires a reasonable suspicion that the total wealth of the respondents exceeds the value of their lawfully obtained wealth. There must also be reasonable grounds to suspect that the value of the total wealth exceeds the value of the respondent's lawfully obtained wealth. The Neeranjan Respondents contend that there were sources of income that were disclosed to the investigating officers but were ignored.

131. In the affidavit of Kendra filed in support of the application of the Neeranjan Respondents to set aside the PUWO, she makes reference to information previously provided by way of affidavits sworn by her and David in relation to an application made by the DPP under the **POCA**. Copies of those affidavits are annexed to Kendra's affidavit. They refer, inter alia, to information concerning their sources of income. The Appellant does not deny having seen these affidavits. However, Sgt. Seecharan in his affidavit makes no specific reference to the said affidavits. The Neeranjan Respondents have submitted that there is no reconciliation by the Appellant of material pieces of evidence as to the origin of their wealth nor any proper analysis of how the Appellant was able to come to a reasonable suspicion that there was unlawfully acquired wealth. It was argued

that the Appellant has failed to conduct any verification of the statements and explanations of the Neeranjan Respondents as to the origin of their income and/or assets and that is fatal to the Appellant's application. They say that the Appellant has selected evidence presented by him in a manner which illustrates an illusion of reasonable grounds to make an application for the PUWO.

132. As we understand the submission, the importance of the two affidavits annexed to the affidavit of Kendra is that they demonstrate that the Neeranjan Respondents have lawful sources of income and if taken into account, the Appellant could not entertain a reasonable suspicion that their total wealth exceeded the value of their lawfully obtained wealth.

133. While Sgt. Seecharan does not refer specifically to the affidavits, he does in his affidavit refer to having conducted *"an analysis of the banking documents received by virtue of production orders served and compared the information with the declared sources of income of both"* the Neeranjan Respondents. He then goes on to identify what he considers to be their lawful income sources which include some of the sources of income referred to in their affidavits. What Sgt. Seecharan's affidavit therefore sets out is what he has discovered to be the Neeranjan Respondents' lawful sources of income. We cannot conclude that he has not taken into account the sources of income mentioned in the affidavits.

134. In any event, if one were to take into account all the sources of income identified in the affidavits, they would not serve to explain how the Neeranjan Respondents were able to construct the house. In other words, one would be left with the reasonable suspicion that the total wealth of the Neeranjan Respondents exceeds the value of their lawfully obtained wealth. But it would be difficult to take into account the sources of income disclosed in the affidavits without more. Many of them refer to income derived from the sale of vehicles but there is no explanation of how they were able to acquire vehicles for resale.

135. The second factor that must be established in **section 58(1)** is that the total wealth of the respondent exceeds $500,000.00. Subject to the finding which we will come to below in relation to David, there is no dispute that the total wealth of the Neeranjan Respondents exceeds $500,000.00.

136. The third factor is that the property is owned by the respondent or under his effective control. Here the focus has to be on the St. Helena property as without that there could be no reasonable suspicion that the total wealth of the Neeranjan Respondents is over $500,000 and a consideration of this third factor would be unnecessary. There is no dispute that Kendra is the owner of the St. Helena property. The property was conveyed to her by David by way of a deed of gift in 2014 for the natural love and affection he has for her. By that deed, David conveyed to Kendra the entirety of his legal and equitable interests in the property. David, as from the date of that deed of gift, is no longer the owner of the property. In those circumstances, for the PUWO to be maintained against David as he is not the owner of the St. Helena property, there must be reasonable grounds to suspect that he is in effective control of the property.

137. David can be in effective control of the St. Helena property even though he does not have any legal or equitable interest in it. There can be several indicators that in theory are capable of supporting a reasonable suspicion that he is in effective control of the property. He might, for example, be in receipt of rents of the property or exercise control as to who occupies or lives on the property. In short, we think he would be taken to be in effective control of the property if he exercises such control as one would expect of the owner of the property. However, for the court to be satisfied that there are reasonable grounds to suspect David is in effective control of the property, there must be some evidence that points to that fact.

138. The only statement in Sgt. Seecharan's affidavit that refers to David being in effective control of the St. Helena property is that he transferred the property to Kendra. But that

takes the matter nowhere. It is necessary for the Appellant to show that notwithstanding the transfer of ownership, David is in effective control of the property. The affidavit contains no such evidence. The Appellant has therefore failed to provide reasonable grounds to satisfy the criteria that David is in effective control of the St. Helena property. Accordingly, the PUWO cannot be maintained against him and was rightfully set aside by the judge.

139. The fourth and final factor in **section 58(1)** that must be satisfied is that the applicant must have reasonable grounds to suspect that the property was obtained through the commission of a specified offence (see **section 58(1)(d)**). It was submitted that as the St. Helena property was conveyed to Kendra by the deed of gift, it was not obtained by the commission of a specified offence. We however see no merit in this submission.

140. **Section 58(1)(d)** does not require that there be a reasonable suspicion that the property was obtained through the commission of a specified offence by the respondent but that it was obtained through the commission of a specified offence. In this matter there is ample evidence to ground a reasonable suspicion that David engaged in drug trafficking and was able to construct the house from proceeds of drug trafficking and acquire the other property comprising the wealth of the Neeranjan Respondents.

141. In any event, there is reason to suspect that the property was obtained through the commission of a specified offence by Kendra. Both Kendra and David were charged with the offence of money laundering under **section 45(1) of the POCA**. According to Sgt. Seecharan the offence was said to have arisen by the transfer of the St. Helena property by David to Kendra. **Section 45(1) of the POCA** provides,

> *45. (1) A person who knows or has reasonable grounds to suspect that property is criminal property and who—*
>
> *(a) engages directly or indirectly, in a transaction that involves that criminal property; or*

(b) receives, possesses, conceals, disposes of, disguises, transfers, brings into, or sends out of Trinidad and Tobago, that criminal property; or

(c) converts, transfers or removes from Trinidad and Tobago that criminal property,

commits an offence of money laundering.

142. That section refers to "criminal property" which is defined in **section 43(1) of the POCA** and means property which constitutes the benefit to persons from criminal conduct or represents such a benefit in whole or in part whether directly or indirectly.

143. There are reasonable grounds to suspect that the St. Helena property is within the definition of "criminal property". Further, there are reasonable grounds to suspect that Kendra is a person who knows or has reasonable grounds to suspect that the property is criminal property and that by engaging in a transaction involving the criminal property, or by receiving it, she has committed the offence of money laundering.

144. This also addresses the submission that as the St. Helena property was lawfully transferred by deed of gift to Kendra, there was no evidence to establish a reasonable suspicion that the value of her total wealth exceeded the value of her lawfully obtained wealth. The fact of the matter is that there are reasonable grounds to suspect that the St. Helena property was unlawfully obtained by the commission of the offence of money laundering, which is a specified offence.

145. In the circumstances, the appeal with respect to the Neeranjan Respondents is allowed in part in that the order of the judge setting aside the PUWO in relation to Kendra is set aside and the PUWO made in relation to Kendra is reinstated and the matter is remitted to the High Court for further hearing.

146. In summary, (1) the appeal in respect of the PUWO made against the Spring Respondents is allowed. The order of the judge setting aside the PUWO is set aside and the PUWO is reinstated and remitted to the High Court for further hearing; and (2) the appeal with respect to the Neeranjan Respondents is allowed in part in that the order of the judge setting aside the PUWO in relation to Kendra is set aside and the PUWO made in relation to Kendra is reinstated and the matter is remitted to the High Court for further hearing.

147. We will hear the parties on costs.

A. Mendonça J.A.

M. Mohammed J.A.

M. Wilson J.A.