

THE HIGH COURT

1997 No. 4783P

IN THE MATTER OF AN APPLICATION PURSUANT TO THE
PROCEEDS OF CRIME ACT, 1996

BETWEEN

M F M

PLAINTIFF

AND
B M AND K M

DEFENDANTS

Judgment of Finnegan P. delivered on the 3rd day of November 2006.

1. As will be clear from the Record Number these proceedings commenced in 1997. The reliefs sought in the proceedings were Orders pursuant to section 2 and 3 of the Proceeds of Crime Act 1996. An Order pursuant to section 2 was made on the 25th April 1997: that Order also provides as follows –

“And it is further ordered pursuant to Order 10 Rule 2 of the Rules of the Superior Courts that the Plenary Summons issued herein and all subsequent pleadings be served on the first named Defendant by serving true copies thereof on the second named Defendant.”

2. The Plaintiff's motion for an Order pursuant to section 3 of the Act came before the Court on the 12th May 1997 and on that day the Court made an Order pursuant to section 3 but limited as to time until after the 9th June 1997. By that Order the Court also deemed service of the Notice of Motion seeking relief pursuant to section 3 on the Defendants good and sufficient. On the 9th June 1997 the section 3 Order was continued without limitation as to its duration.

3. The Defendants bring this Notice of Motion seeking the following reliefs –

1. An Order pursuant to section 3(3) of The Proceeds of Crime Act 1996 discharging and/or varying the section 3 Order made herein.
2. Further or alternatively an Order pursuant to the inherent jurisdiction of the Court discharging or varying the section 3 Order made herein.

4. The Motion is grounded on the Affidavit of the Defendants' solicitor. In that Affidavit he deposes that there was no appearance by or on behalf of the first named Defendant on either the 12th May or the 9th June 1997. At the time the first named Defendant was overseas. However he does not say that the first named Defendant was unaware of the proceedings or when he first became aware of the proceedings. I am told nothing of the first named Defendant's merits: see *Maier v Dixon 1995 1 ILRM 218*. In these circumstances I am satisfied that an application to interfere with the section 3 Order under the Court's inherent jurisdiction cannot succeed.

5. The next circumstance relied upon in support of the application is this. These proceedings proceeded upon the basis that the section 3 Order was an interlocutory order in the sense in which that is ordinarily understood and not as has been held by the Supreme Court a final Order. I do not see that such misapprehension, if indeed it existed, confers upon this Court power to review or re-open proceedings which had concluded before it. The Court has jurisdiction to revisit a section 3 Order pursuant to the provisions of section 3(3) of the Act and also on proceedings under section 4 of the Act. Apart from the jurisdictions conferred by these provisions I am satisfied that the Court is functus officio in relation to the Order made under section 3. This is likewise the position with regard to a further argument – the section 3 Order ought not to have been made as, it is submitted, the Proceeds of Crime Act 1996 cannot operate in relation to assets situate abroad.

6. Having regard to the foregoing it is necessary to have regard to section 3(3) of the 1996 Act and to determine whether the issues raised can be considered by the Court. Section 3(3) provides as follows –

“Where an Interlocutory Order is in force, the Court, on application to it on that behalf at any time by the respondent or any other person claiming ownership of any of the property concerned, may, if it is shown to the satisfaction of the Court that the property or a specified part of it is property to which (1) of subsection (1) applies, or that the Order causes any other injustice, discharge or, as may be appropriate, vary the Order.”

7. The effect of section 3(3) is that notwithstanding the interlocutory order being a final Order it may be re-opened before the Court if it is shown to the Court

(1) that the property affected or a specified part of it does not constitute directly or indirectly, proceeds of crime and was not acquired in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime.

or

(2) that the Order causes any other injustice.

8. The Defendants do not suggest that the property the subject matter of this application is not the proceeds of crime. The Defendants argue that the manner in which the Order was obtained constitutes an injustice. I am satisfied that even if this is so section 3(3) would have no application. There is a proviso in section 3(1) that the Court should not make an Order under section 3 if it is satisfied that there would be a serious risk of injustice. Section 3(3) applies where the Order having been made causes an injustice. The intention of the provision is to allow the Court to intervene by discharging or varying a section 3 Order where the Order although properly obtained is for some reason causing an injustice for example by a change in circumstances. It is not directed to the circumstances in which the Order was made but to the circumstances which apply at the time of the application and in which circumstances the Order is operating. An application can be made at any time and indeed from time to time. I do not read the provision as enabling a respondent to challenge the basis upon which a section 3 Order was made time after time until a disposal Order is made.

9. Accordingly I am satisfied that the Court has no power to make the Order sought pursuant to section 3(3) of the Act. Equally I am satisfied that the Court has no inherent jurisdiction to interfere with the Order made on the grounds advanced by the Defendants.

10. I refuse the Defendants the reliefs which they seek on the Notice of Motion.