

JERSEY / JUDGMENT

AG -v- Windward Trading Limited

[2016] JRC 048A (24 February 2016)

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JUDGMENT

THE commissioner: 1. The defendant company has pleaded guilty to four counts of money laundering offences involving a total of £2,599,050 and US\$2,971,743 respectively acquired or possessed by the defendant company between 29 th July, 1999, and th October, 2001. The defendant company received and held the proceeds of criminal conduct perpetrated by its controlling mind and beneficial owner, Samuel Gichuru. The company knowingly enabled Gichuru to obtain substantial bribes paid to him while he held public office in Kenya. The company played a vital role without which corruption on a grand scale is impossible: money laundering. 2. Gichuru was the chief executive of Kenya's power utility, the Kenya Power & Lighting Company ("KPLC") from November 1984 until February 2003. He accepted bribes from foreign businesses that contracted with that company during his term of office and hid them in Jersey. 3. The defendant company is now administered by Zedra Trust Company (Jersey) Limited, which acquired the trust company business of Barclays Wealth in January of this year, and it currently provides the two corporate directors. Barclays assumed the administration of the defendant company in May 2007, when it acquired the trust company business of the in-house trust company of Deloitte, namely Walbrook Trustees (Jersey) Limited, which in May 2002 had filed a suspicious transaction report and from which point the affairs of the defendant company were effectively frozen. 4. The guilty pleas have been made on the following terms which had been accepted by the Attorney General and I set those out as follows: (i) the former directors filed a suspicious activities report in March 2002 and the current directors have been cognisant of the fact that they potentially held the proceeds of crime in the company since they took office in 2011. Since that time, the current directors have done nothing other than act lawfully in relation to the company and the asset it holds. (ii) The wrongdoing on the Indictment took place between 1999 and 2001, at least 9 years before the current directors assumed office in 2011. (iii) The current directors do not have any role whatsoever in the offences alleged in the Indictment; (iv) no criminality or wrongdoing of any kind is alleged against the current directors; (v) the only role for the current directors was to determine whether the evidence of the past actions of the defendant company was sufficient to enable the current directors to take the decision that the defendant company should plead guilty; and finally (vi) in entering a guilty plea, it is accepted by the Attorney General that the current directors have not committed or had any part to play in any

wrongdoing themselves and no wrongdoing is alleged against them. 5. The Attorney General applies for a Confiscation Order under Article 3(1) of the Proceeds of Crime (Jersey) Law 1999 and in support has filed a statement. That statement and the underlying figures have been considered carefully by the defendant company's legal advisors and Advocate Passmore informs us that there is nothing which he needs to draw to our attention. The defendant company rests on the wisdom of the Court as to any orders it might wish to make. 6. Having considered the evidence before us the Court is satisfied:- (i) That the defendant company has benefitted from criminal conduct in the sums of £3,911,227 and US\$4,288,538 respectively; and (ii) That the sums recoverable from the defendant company are £3,281,897.40 and US\$540,330.69 respectively. 7. We make Confiscation Orders in those recoverable sums which equate to the monies held by the Viscount under the current saisie judiciaire . 8. Ordinarily the Attorney General would move for a substantive fine to reflect the seriousness of the defendant company's offending but the Confiscation Order that we have just made strips the defendant company of all of its known assets and accordingly no further penalty is sought. 9. The confiscated assets will be transferred to the Criminal Offences Confiscation Fund with a view to their repatriation to Kenya, the victim of the offending. Authorities Proceeds of Crime (Jersey) Law 1999. Page Last Updated: 29 Mar 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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