

JERSEY / JUDGMENT

# The Attorney General v Ian Joseph Ellis

Source: jerseylaw.je · Research copy typeset by Esheria. Not court-issued or certified.

Hearing (Civil) - Forfeiture of assets [2019]JRC094 Royal Court (Samedi) 23 May 2019 Before : J. A. Clyde-Smith, Commissioner, sitting alone Between The Attorney General Applicant And Ian Joseph Ellis Respondent IN THE MATTER OF A REPRESENTATION OF HER MAJESTY'S ATTORNEY GENERAL AND IN THE MATTER OF THE FORFEITURE OF ASSETS (CIVIL PROCEEDINGS) LAW 2018 AND IN THE MATTER OF IAN JOSEPH ELLIS Advocate M. T. Jowitt for the Applicant. Advocate P. G. Nicholls for the Respondent.

## judgment

the COMMISSIONER: 1. I sat on Wednesday 22nd May, to give directions in this matter, which is the first occasion in which a notice of Forfeiture of Tainted Property under Part 3 of the Forfeiture of Assets (Civil Proceedings) (Jersey) Law 2018 ("The Law") has been contested. 2. The Representation of the Attorney General is dated 3rd December, 2018, and it identifies an account with Standard Chartered Bank, Jersey branch in the name of the Respondent with a balance of £33,804.52. 3. Appended to the Representation is the information upon which the Attorney General bases his application, namely a summary of the facts and the relevant supporting documentation. 4. The Respondent lives in Cyprus, having retired there from Scotland, and leave to serve the Respondent out of the jurisdiction has been granted. The Respondent was notified in the Representation that the hearing would take place on the 1st February, 2019 at 14:30. 5. Article 11 of The Law is in the following terms: "11 Forfeiture of tainted property: summary procedure

- (1) If the person on whom a notice under Article 10(4)(d)(i) is served (the "respondent") fails to attend the hearing as required by the notice, the Attorney General may apply forthwith for a forfeiture order, and the Court may make such an order, without further notice to the respondent.
- (2) If the respondent appears (whether in person or by a legal representative) at the hearing, the respondent may –
  - (a) at the hearing, satisfy the Court that the property is not tainted property; or
  - (b) request that the question of whether or not the property is tainted property be determined at such later date as the Court may order.

- (3) If the respondent makes a request under paragraph (2)(b), the respondent must provide an affidavit in answer to the notice within the period of 21 days beginning with the date on which the matter is placed on the list, satisfying the Court that the property is not tainted property.
- (4) Unless the respondent satisfies the Court that the property is not tainted property, the Court shall, upon the application of the Attorney General, make a forfeiture order in relation to the property specified in the notice or any part of it.
- (5) Property which is forfeited pursuant to a forfeiture order under this Article shall be paid into the Criminal Offences Confiscations Fund established under Article 24 of the Proceeds of Crime (Jersey) Law 1999.” 6. On the 1st February, 2019, pursuant to Article 11(2)(b) the Respondent asked for the matter to be dealt with at a later date and in accordance with Article 11(3) filed his affidavit in answer to the notice. Counsel attended a date fix on the 14th March, 2019, and the afternoon of the 4th June at 14:30 was fixed for the final hearing of this matter. 7. On the 3rd May, 2019, the Attorney General issued a summons for directions which was fixed to take place on 22nd May in which the following directions were sought:-
- “1. The Respondent be ordered to attend the full hearing on 4 June 2019;
  2. All further evidence to be served by 24 May 2019;
  3. The Court make such orders as it sees fit;
  4. There shall be liberty to apply.” 8. On the 19th May, 2019, (a Sunday) the Attorney General issued an amended summons in these terms: “1. The hearing on 4 June 2019 be vacated.
  2. The Respondent be convened to attend Court for the determination of this matter and be cross- examined on his affidavit.
  3. The Attorney General to serve further evidence on which he relies by 5pm on 5 June 2019 .
  4. The Respondent to file any supplemental evidence on affidavit by 5pm on 19 June 2019.
  5. Any request by any party for further information about the other party's case shall be made by 5pm on 26 June 2019.
  6. Any response to any request for further information shall be provided by 5pm on 3 July 2019.
  7. The Attorney General and the Respondent shall exchange skeleton arguments on the law and merits by 5pm on 10 July 2019.
  8. The estimated length of the hearing shall be one day and the parties to attend on the Bailiff's judicial secretary within two days of this hearing to fix a date for the final hearing.
  9. Liberty to apply.” 9. Advocate Nicholls objects strongly to the case being adjourned and to its further complication by way of these additional directions. If the case is adjourned it would seem that it would not be able to heard until at least September of this year.

10. Turning to The Law: (i) Article 26 provides that these are civil proceedings: “26 Nature of proceedings, and rules of court
  - (1) Proceedings under –
    - (a) Parts 2 to 4 of this Law... are civil proceedings and any issue in such proceedings shall be determined on the balance of probabilities.
    - (2) The power to make Rules of Court under the Royal Court (Jersey) Law 1948 shall include a power to make Rules for the purposes of this Law and proceedings under this Law.” No rules of Court have been made under that provision. (ii) Article 29(4) protects the Attorney General from any liability as to adverse costs assuming good faith: “29 Limitation of liability of Attorney General ...
  - (4) The Attorney General shall not be liable in costs for any proceedings under this Law, except where it is shown that the proceedings were commenced, or (having been lawfully commenced) were continued, in bad faith.” (iii) Articles 10 and 11 are both headed “Summary procedure” namely a procedure conducted with less formality for the speedy disposal of the matter.
11. Under the Royal Court Rule 1/6 the overriding objective of the court is to deal with each case justly and at proportionate cost, saving expense and having regard to the amount of money involved.
12. Advocate Nicholls fairly points out that even if his client succeeds in persuading the Court that this is not tainted property the costs of his Representation and of his attending here from Cyprus will absorb the greater part of the monies in the account with no prospect of his costs being recovered. Under Article 30 of The Law he can only claim compensation where the Attorney General can be shown to have acted in bad faith.
13. I have no doubt that the Court has power to give the kind of directions that Crown Advocate Jowitt has put forward both under Rule 6/37 of the Royal Court Rules 2004 and under the Court’s inherent jurisdiction (see *Halabi v Wilson and HMRC* [2018] JCA 114 at paragraph 37). The issue it seems to me is whether I should do so in this case, and I have concluded that I should not, taking into account the summary nature of the proceedings and the overriding objectives. The clear intention of the legislature was that a person finding his or her account subject to notification in this way is entitled to have the matter dealt with speedily and proportionately and whilst more complex cases involving greater sums may well justify a more lengthy procedure, that is not the case here.
14. Turning to the directions sought I therefore rule that:- (i) The hearing of the 4th June, 2019, shall not be vacated; it is confirmed as the final hearing of this case. It starts, of course, at 14:30; (ii) There’s no precedent that I am aware of in civil proceedings for ordering a Respondent to attend personally and I decline to do so. It will be a matter for the Respondent whether or not he attends, and if he does not, then this may well affect the weight which the Court gives to his affidavit. In terms of cross-examination, of either the

Respondent or of the deponent of the affidavit filed on behalf of the Attorney General, it will be a matter for the Court whether or not to grant leave, and time constraints may well be a material factor in this respect. (iii) The Attorney General says he has further evidence to serve and I will give him leave to do so by close of business on Tuesday 28th May, 2019. His skeleton argument and authorities should be filed at the same time. The Respondent has leave to respond to that by filing further evidence by close of business on the 31st May, 2019, when the Respondents skeleton argument and authorities should also be filed, and the Attorney General will file an agreed bundle by close of business on the 3rd June, 2019, by midday. Authorities Forfeiture of Assets (Civil Proceedings) (Jersey) Law 2018. Royal Court Rules 2004. Halabi v Wilson and HMRC [2018] JCA 114.

---

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      <https://www.jerseylaw.je/judgments/unreported/Pages/%5B2019%5DJRC094.aspx>

**CASE PAGE**      <https://chat.esheria.ai/case-law/jersey/the-attorney-general-v-ian-joseph-ellis-2019>

Prepared on 23 October 2026 · Esheria