

**SUPREME / CONSTITUTIONAL COURT OF SEYCHELLES**

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**Reportable**

CM115/2023

In the matter between:

**THE REPUBLIC**

*(rep. by Mrs Lansinglu)*

and

**WAHID BALOCHIZI**

*(rep. by Mr Clifford Andre)*

**1<sup>st</sup> Accused**

**MOLA BALOCHIZAI**

*(rep. by Mr Clifford Andre)*

**2<sup>nd</sup> Accused**

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**Neutral Citation:** The Republic v Balochizi & Or (CM115/2023) [2023] 28 November 2023.

**Before:** Govinden CJ,

**Heard:** 28<sup>th</sup> November 2023

**Delivered:** 28<sup>th</sup> November 2023

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**RULING**

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**GOVINDEN CJ**

[1] Section 153 of the Criminal Procedure Code provides that in addition to any forfeiture specifically provided by this Court or any other Law the corpus delicti when it is the property of the offender and all things produced by the offence or which may have been used or were intended to be used for committing the offence, shall on conviction of the offender become forfeited to the Republic.

[2] In this case the 1<sup>st</sup> and 2<sup>nd</sup> accused were on the 25<sup>th</sup> of September 2023 convicted by this Court on their own guilty pleas and also on which day they admitted to the facts of the case

for the offences of Importation of a controlled, drug namely 622.60 kilogram of heroin and Importation of a controlled drug, namely 388.65 kilograms of methamphetamine.

- [3] They also admitted that these controlled drugs were being imported into Seychelles on board the Dhow “Alhafiz”, which was displaying no flag and that at the material time they were crew members of the said vessel. Namely that the 1<sup>st</sup> accused was a Captain and the 2<sup>nd</sup> accused was the engineer.
- [4] The Prosecution has in an Application dated the 29<sup>th</sup> of September this year applied for the forfeiture of the vessel “Alhafiz” on the basis that it was used for committing the offences.
- [5] I note that in its reply to the Application the 1<sup>st</sup> Accused disputed the offences and said that the vessel was in international waters when it was apprehended and arrested. This is clearly contrary to his plea of guilt to both offences and the unequivocal admission of the facts relating to the commission of the offences during the course of sentencing by both accuseds. I therefore finds that this is, at this stage is a mere concoction and a change of mind, that is totally irrelevant to the matter in issue today. Moreover, at the time of the pleas they were defended by Counsel who was properly instructed by them. On the proceedings when the Court asked Learned Counsel whether the facts of the case were agreed by the accused the following transpired on record.

Court - Are the facts admitted by your clients?

Counsel Answer –Yes, we agree.

Court – Both of them?

Counsel Answer – Yes, Sir

- [6] Having considered the provisions of Section 153 of the Criminal Procedure Code at length and its entirety and the facts and circumstances of this case. I find that the vessel “Alhafiz” was a property used for the commission of the offences of which the 1<sup>st</sup> and 2<sup>nd</sup> Accused were convicted and sentenced.

- [7] Moreover, the amount of controlled drugs, the nature of the controlled drugs. The extent of the involvement of all the crew, the failure to display the flag by “Alhafiz” proves to this Court that this should have been done with a tacit complicity or at least knowledge and awareness of the owner of the vessel.
- [8] Accordingly, I accede to the Application of the Republic and I forfeit the vessel “Alhafiz” to the Republic of Seychelles together with its gears and equipment in accordance to the provision of Section 153 of the Criminal Procedure Code.

Signed, dated and delivered at Ile du Port on 28<sup>th</sup> November 2023

A handwritten signature in blue ink, consisting of a stylized 'G' followed by a series of loops and a final flourish, positioned above a horizontal line.

Govinden CJ