

SUPREME COURT OF SEYCHELLES

Reportable
CR 12/2022

In the matter between:

THE REPUBLIC
(Represented by Mrs Gulmette Leste)

Prosecution

Versus

ANN WANJIRU MWAI
(Represented by Mr Khalyann Karunakaran)

1st Accused

And

MARCUS FRED
(Represented by Mr Clifford Andre)

2nd Accused

And

MICHEAL FRED
(Represented by Mr Clifford Andre)

3rd Accused

Neutral Citation: *Rep vs Mwai & Ors* (CO 12/2022) (04 February 2026)

Before: Adeline J

Summary: Sentencing on conviction of the 1st Accused on a guilty plea – 1 count of Importation of a Controlled Drug – 498.76 grams of cocaine.

Heard: Submissions of counsel for the 1st Accused in plea in mitigation

Delivered: 4th February 2026

SENTENCE

Adeline, J

FACTUAL AND PROCEDURAL BACKGROUND

- [1] In an indictment filed into court on the 9th March 2022, the 1st Accused, Ann Wanjiru Mwai, a Kenyan national, now a convict, was indicted before this court of a single count of Importation of a Controlled Drug contrary to and punishable under Section 5 of the Misuse of Drugs Act, 2016 read with the Second Schedule referred thereto in the said Act (Count 1).

The particulars of the offence in the indictment reads as follows;

“In that Ms Ann Wanjiru Mwai, self-employed Kenyan national, holder of passport BL 057445 on the 23rd February 2022 of Seychelles International Airport, imported into Seychelles a controlled drug, namely, 498.76 grams of cocaine with an average purity of 59%”.

- [2] In the same indictment, the 2nd accused, one Marcus Jackson Fred was indicted of one count of Trafficking in a controlled Drug contrary to and punishable under Section 7 of the Misuse of Drugs Act, 2016 as specified in the second schedule referred thereto in the said Act.

The particulars of the offence in the indictment reads;

“In that Mr Marcus Jackson Fred, a 35 year old of Aux Cap, on the 24th February 2022, at Intendance was found trafficking in a controlled drug, namely, cocaine with a total net weight of 498.76 grams with an average percentage purity of 59% by way of selling, brokering, supplying, transporting, sending, delivering or distributing the said controlled drug. (Count 2)”.

- [3] In the same indictment, the 3rd Accused, one Micheal Emmanuel Fred was indicted of one count of Trafficking in a controlled Drug contrary to and punishable under Section 7 of the Misuse of Drugs Act, 2016 as specified in the Second Schedule referred thereto in the said Act.

The particulars of the offence in the indictment reads;

“In that Mr Micheal Emmanuel Fred, a 19 year old of Aux Cap on the 24th February 2022, at Intendance, was found trafficking in a controlled drug namely cocaine with a total net

weight of 498.76 grams with an average percentage purity of 59% by way of selling, brokering, supplying, transporting, sending, delivering or distributing the said controlled drugs. (Count 3)''.

- [4] On the 3rd of May 2022, the 1st, 2nd and 3rd accused, all pleaded not guilty to the indictment against them and the case proceeded to a full blown trial. At the close of the Prosecution's case on the 8th July 2025, learned counsel for the 1st accused and learned counsel for the 2nd and 3rd accused made a submission of no case to answer on behalf of their client.
- [5] In a ruling of this court dated 25th October 2025, delivered on the same day, this court found, that a *prima facie* case against the 1st accused for Importation of a Controlled Drug (Count 1) had been made out. The trial against her continued as she was called upon to make her defence of the indictment against her.
- [6] Conversely, the court found, that no prima facie evidence was put before it by the prosecution that warranted the 2nd and 3rd accused to be put to their defence of the indictment against them. Therefore, the indictment against them was dismissed and they were both forthwith acquitted.
- [7] In the course of the 1st accused awaiting for the date fixed for continuation of the trial, the court was put on notice by learned counsel for the 1st accused, that there is a change of circumstances, in that, the 1st accused wishes to change her not guilty plea to a guilty plea. On the 26th November 2025, the charge was read a fresh to the 1st accused who pleaded guilty and was accordingly convicted on her guilty plea, of one count of Importation of a Controlled drug (Count 1) after she admitted the facts of the case against her as narrated by the prosecution.
- [8] To assist learned defence counsel for the 1st accused now a convict with plea in mitigation, on request by learned counsel for the 1st accused, a Social Services Enquiry Report, ("the Report") was commissioned, which Report, dated 5th December 2025 copy was made readily available to the court as well as to the parties to this case.

THE PROBATION ENQUIRY REPORT

- [9] The highlights of the Report are that, *inter alia*, the 1st accused/convict Ann Wanjiru Mwai, is a 39 year old and daughter of one Gladys Wanjiru and Charles Mwai. The accused/convict has a 17 year old daughter fathered by one Benjamin Mungo who is not currently involved in their daughter's life. Her daughter lives with her maternal grandmother. As regards to her education, the accused/convict, attended the Nakura School in Nairobi until the eight grade. In terms of employment history, her first job was as a care taker, helping to care for the elderly in her community where she worked for two years. Thereafter, she did odd casual jobs like waitress for example.
- [10] It is also reported, that the accused/convict's sister, one Maria Njambi, had a say in this whole affairs. Her view about her sister, is that she is a good, generous and hard working person who grew up the hard way after their mother and father separated due to domestic violence because her mother was the only one raising them. Because the accused/convict was the eldest of the siblings, she had the most significant role to play to keep the family going, and that included, working hard to provide the family with financial support to meet the family needs. Their mother, who is unemployed, does odd jobs to provide for the family. The absence of the accused/convict from home for the past years, has meant that the family has faced considerable difficulties to survive, having two younger siblings and the accused/convict's daughter to cater and care for. The accused/convict's sister, Maria, and her brother have had to play a more active role in order to support their family. As far as Maria knows, the accused/convict has never been involved in any illegal activities previously. She reckons, that the absence of the accused/convict from the family home environment has posed significant challenges for everyone at home.

SUBMISSIONS OF COUNSEL IN PLEA IN MITIGATION

- [11] In plea in mitigation, learned defence counsel began by reminding the court that the prosecution of the accused in this case started in 2022, and that comes February this year, it would be four years since the accused has been on remand in police custody. Learned counsel added, that for the court to determine the sentence that would be appropriate in the circumstances of this case, it ought to take into consideration the whole facts and circumstances that the offence was committed as well as the personal and family

circumstances of the accused as reported in the Probation Enquiry Report, rather than just the fact that the accused has pleaded guilty. Learned counsel submitted, that based in the Probation Enquiry Report about the personal and family circumstances of the accused, it is clear that the accused is not a person who is associated with or is part of a criminal network, or organised group that is engaged in activities to do with importation or trafficking in controlled drugs.

- [12] It was the submission of leaned counsel, that the time which the accused/convict has spent on remand in police custody is almost the sentence which the court should impose on her if she was to be found guilty after trial, given the sentencing pattern or trend which learned counsel urged the court to follow. Learned counsel stated, that the well known case of Ponoo (no citation given) provides the court with guidelines and the principles to be applied when meting out the appropriate sentence in a given case. Learned counsel added, that by pleaded guilty the accused/convict has saved the court considerable amount of time and resources although it did not happen at the first available opportunity. Learned counsel submitted, that from the time the accused was apprehended at the Seychelles International Airport upon her arrival in this country on the 23rd February 2022, she co-operated with officers of the Drugs Enforcement Agency throughout which should earn her some credits. In closing, learned counsel stated, that he recognises the seriousness of the offence of which the accused/convict has been convicted, adding, that the imposition of a severe sentence will serve no purpose nonetheless.

THE APPLICABLE LAW FOR SENTENCE

- [13] The maximum penalty which this court can impose on the accused/convict in the instant case for a single count of Importation of a Controlled Drug, Cocaine, is prescribed under Section 5 of the Misuse of Drugs Act, 2016 read with the Second Schedule of the Act. Section 5 of Part II of the Misuse of Drugs Act, 2016 is couched in the following terms;

“A person who imports or export a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the second schedule”.

[14] The maximum penalty prescribed in the Second Schedule of the Misuse of Drugs Act, 2016 is a term of life imprisonment and a maximum fine of Seychelles Rupees one million.

[15] I take cognizance of Section 26 of the Penal Code which reads;

“Imprisonment

26 (1) A person liable to imprisonment for life or any other period may be sentenced for a shorter term.

(2) A person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment”.

[16] In meting out the appropriate sentence that will do justice to this case, I have had regard to Section 47 (1) under Part VI of the Misuse of Drugs Act, 2016 that reads as follows;

“47 (1) In sentencing a person convicted of an offence under Part II of this Act, whether upon a guilty plea or following a trial, the court shall have regard to;

(a) The objectives of the Act

(b) The degree of control to which the relevant control drug is subject, and

(c) The general objectives of transparency and proportionality in sentencing”.

[17] I have also had regard to Section 48 (1) of the Misuse of Drugs Act, 2016 to establish whether there are aggravating factors that must be taken into account to support a more severe sentence. Section 48 (1) reads;

“48.(1) Aggravating factors (factors that support a more serious sentence) for offences under this Act include.

(a) The presence and degree of a commercial element in the offending, particularly where controlled drugs have been imported into Seychelles.

(b) The involvement in the offence of an organised criminal group to which the offender belongs.

- (c) The involvement of the offender in other offences facilitated by or related to commission of the offence.*
- (d) The use of violence or weapons by or on behalf of the offender.*
- (e) The fact that the offender holds public office or a high profile position in the community particularly if the offence is connected with the office or position in question.*
- (f) The targeting, involvement, use or exploitation of children in connection with the offence*
- (g) The fact that the offence was committed in a penal or education institution, social service facility or in other places related to education, sports or social activities or in their immediate vicinity, and*
- (h) Prior convictions (subject to the Rehabilitation of offenders Act), particularly for similar offences whether foreign or domestic or prior formal cautions under this Act.*

[18] Further, I have had regard to Section 49 of the Misuse of Drugs Act, 2016 that reads as follows;

“49. Mitigating factors (factors that support a reduction in sentence) for offences under this Act include;

- (a) The offender’s admission of the truth of the charge through a guilty plea, particularly an early plea.*
- (b) The offender’s acceptance of responsibility for the harm or potential harm associated with his or her offence.*
- (c) Any substantial assistance given by the offender to law enforcement authorities, as an informer or otherwise, in the prevention, investigation or prosecution of any other offence under this Act.*
- (d) The absence of any commercial element in the offence*

(e) *The presence of any element of coercion, for example from a family member or employer.*

(f) *The absence of prior convictions or prior formal cautions under this Act, and*

(g) *The fact that no other person was involved in or directly harmed by the offence”*

[19] Having considered the aggravating factors under Section 48 and the mitigating factors under Section 49 of the Misuse of Drugs Act, 2016 I am bound to give effect to Section 47 (2) of Part II of the Misuse of Drugs Act, 2016, that reads as follows;

“47 (2) Where an aggravating or mitigating factor identified in Section 48 or Section 49 applies to the circumstances of an offence, the court shall expressly identify that factor and give weight to it in considering the appropriate sentence”.

[20] In that regard, in consideration of the whole facts and circumstances of this case, I find the most obvious aggravating factor under Section 48 of the Misuse of Drugs Act 2016 to be *“the presence and degree of a commercial element in the offending, particularly where controlled drug has been imported in Seychelles”*. As to the mitigating factors worthy of consideration, are *“the offender’s admission of the truth of the charge through a guilty plea, particularly, an early guilty plea”*. Although in the instant case, it was not an early guilty plea, *the offender’s acceptance of responsibility for the harm or potential harm associated with her offence, and the absence of prior convictions or prior formal caution under this Act.*

[21] Having made such findings, I am led to consider Section 48 (2) of the Misuse of Drugs Act, 2016 that reads as follows;

“48 (2) Where one or more of the aggravating factors identified in subsection (1) is present to a significant extent, the court shall treat the offence as aggravated in nature”.
(Underlined emphasis is mine)

[22] Further, I am guided by Section 47 (5) of the Misuse of Drugs Act, 2016 that provides for the following;

“47 (5) In Sentencing a person convicted of an offence under this Act in circumstances where the offence is aggravated in nature, the court shall have due regard to the indicative minimum sentence for aggravated offence of this kind”.

- [23] Therefore, based on my interpretation of the different relevant statutory provisions of the Misuse of Drugs Act, 2016 for the purposes of this sentence, it is clear to me, that unlike the previous drugs legislation, the minimum mandatory terms of imprisonment have been done away with and replaced by prescribed indicative minimum sentences for offences of aggravated nature under the Second Schedule of the Act. Hence, whilst the maximum sentence for importation of a Class A drug is life imprisonment and a fine of Seychelles rupees one million, the offence in this case, having been adjudged to be aggravated, carries an indicative minimum sentence of 15 years. The agreed recommended sentence for the amount of drugs with which the accused has been convicted is a sentence of 15 to 20 years of imprisonment for the amounts of 400 grams to 600 grams of Class A drugs.
- [24] In the case of the Republic v Jakari Suki, SCSC 142, CR 34/2018, the accused was convicted of one count of Importation of a Controlled Drug heroin (diamorphine) with a net weight of 942.2 grams of illicit heroin and one count of 244.4 grams of cocaine net weight with purities of 523.7 grams of heroin and 151.4 grams of cocaine. The accused was sentenced to 15 years for count one, importation of heroin and 8 years for count 2, for importation of cocaine, which sentences were upheld by the Court of Appeal.
- [25] In the instant case, the amount of drugs, cocaine imported is 498.76 net weight with an average percentage purity of 59%. Taking into account those facts, in meting out the appropriate sentence, I have bore in mind the punitive objective of sentencing by giving due consideration to the following;
- i. The circumstances of the accused/convict as contained in the Probation Enquiry Report.
 - ii. The nature of the offence including the gravity and extent thereof, at the same time identifying the objective seriousness of the offence.
 - iii. The interest of the community

- iv. The relevant sentencing legislation, guidelines and case law.

HOLDING AND IMPLICATIONS

- [26] All in all, having taken all the relevant matters into consideration, I sentence the accused/convict, Ann Wanjiru Mwai to serve a term of imprisonment of 7 years for the single count of Importation of a Controlled Drug, cocaine.
- [27] In accordance with Article 18(4) of the constitution, the period of time which the accused/convict has spent on remand in police custody shall be deducted from the six years term of imprisonment.
- [28] Given that the accused/convict has been convicted of a serious drug offence in contravention of the provisions of the Misuse of Drugs Act 2016, which offence was aggravated in nature, Section 30 (2) (b) of the Prison Act, Cap 180 shall be invoked, in that, the accused/convict shall not be entitled to remission for good behaviour.
- [29] The accused/convict, is informed, that she has 30 working days as of today to appeal against sentence in this case.

Signed, dated and delivered at Ile du Port 4th February 2026.

