IN THE SEYCHELLES COURT OF APPEAL

[Coram: A.Fernando (President) , M. Twomey (J.A), F. Robinson (J.A)**]**

Criminal Appeal SCA 01/2020

(Appeal from Supreme Court Decision CR 68/2019)

Nurdin Kamba — Appellant

Versus

The Republic — Respondent

Heard: 04 August 2020

Counsel: Mr. C. Andre for the Appellant

Mr. A. Subramaniam for the Respondent

Delivered: 21 August 2020

JUDGMENT

F. Robinson (J.A)

1. The learned Judge convicted the appellant, who is a twenty-nine year old Tanzanian national, on his own plea of guilt, for the offence of importation of 627.45 grams of a controlled drug, namely cocaine which had an average cocaine content of 317.49 grams. The learned Judge sentenced the appellant to a period of 6 years imprisonment, on the 17 January 2020. The learned Judge also made an order for the time the appellant had spent in custody to be taken into account. According to the Sentence Order, the appellant is not entitled to remission due to the aggravated circumstances of the case.

2. According to the facts of the case, on the 10 November 2019, at about 9 30 p:m., the appellant arrived in Seychelles onboard the Air Seychelles flight HM060, from Johannesburg, South Africa. The appellant, who swallowed the controlled drugs, carried them to Seychelles, where he intended to excrete them after his arrival and after that

arrange for their collection in Seychelles. The appellant excreted thirty-eight *"cylindrical packets made up of clear tapes"*, which were seized by the Anti-Narcotics Bureau (ANB) of the Police Force of Seychelles.

3. The learned Judge, in his Sentencing Order, considered that the offence is an aggravated offence as the quantity of controlled drugs found in the appellant's possession, at the time of importation, were more than 250 grams. The learned Judge also took into consideration that the controlled drugs imported into Seychelles, by the appellant, were not for his consumption, but for sinister purposes, which, according to him, further aggravated the offence.

4. The learned Judge considered the following as mitigating factors and gave the appellant a discount for them —

- that he pleaded guilty at the earliest opportunity;
- that he was a first offender;
- that he was remorseful for his actions; and
- that he fully co-operated with officers of the Anti-Narcotics Bureau of the Police Force of Seychelles in respect of the controlled delivery, and that the reason for the principal offender not being arrested was not attributed to the appellant, but was attributed to the officers of the ANB of the Police Force, who aborted the controlled delivery.

5. The Sentencing Guidelines under the Misuse of Drugs Act 5 of 2016, recommend a sentence of 12 to 15 years for this type of offence. I see no reason to reduce the sentence, which is below the recommended sentence according to the Sentencing Guidelines mentioned in this paragraph. Counsel for the appellant cited some authorities to show that there was a disparity between the sentences imposed in the other cases, with this case. I

state that those authorities cited by Counsel have no bearing on this case, when taking into consideration the facts and circumstances of the said cases, with this case.

6. Taking into consideration the quantity of drugs involved and the fact that it was a class 'A' drugs, I am of the view that the sentence of 6 years imposed on the Appellant was certainly not manifestly harsh and excessive and wrong in principle.

7. The appeal on sentence is dismissed.

F. Robinson (J.A)

I concur:. **…….** A.Fernando (President)

I concur:. **…….** M. Twomey (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 21 August 2020