IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO13/2018

[2018] SCSC 867

THE REPUBLIC

versus

ABISON DE GIORGIO
Accused

Heard:	24 September 2018
Counsel:	Mr. George Thachett, Assistant Principal State Counsel for the Republic Mrs. Alexia Amesbury Attorney at Law for the Accused
Delivered:	1 October 2018

RULING

Burhan J

[1] The accused has been charged with the following offences:

Count 1

Corruptly solicits property for oneself on account of anything already done or to be afterwards done in the discharge of the duties of his office, contrary to and punishable under Section 91 (a) of the Penal Code (Cap 158).

Count 2 (in the alternative to Count 1)

Corruptly solicit or attempt to obtain gratification for oneself as reward for having done or forborne to do, anything in relation to any matter, actually or proposed, with which a public body is concerned, contrary to Section 23 (1) read with Section 23(5) of the Anti-Corruption Act, 2016 (Act 2 of 2016) and punishable under Section 44 of the said Act.

Count 3

Causing any person to receive any writing with intent to extort or gain anything from any persons and knowing the contents of the writing, demanding anything from the person without reasonable or probable cause, and containing threats of any detriment of any kind to be cause to the person, by another person, if the demand is not complied with, contrary to and punishable under Section 284 of the Penal Code (Cap 158).

Count 4

Omitting an information from an electronic device with intent to obstructing an officer in the investigation of any offence, contrary to Section 38 (1) (c) of the Anti-Corruption Act, 2016 (Act 2 of 2016) read with Section 38(2) of the said Act and punishable under Section 44 of the said Act.

Count 5

Disclosing without the written consent of or on behalf of the Anti-Corruption Commission, otherwise than in the course of that person's duties, to any unauthorised person, the contents of a document or information, which document or information relates to or has come to the knowledge of the person in the course of that person's duties under the Anti-Corruption Act, 2016 (Act 2 of 2016) and punishable under Section 14 (2) of the said Act.

[2] At the close of the prosecution case, Learned Counsel for the accused, Mrs. Amesbury, made submissions that the accused Abison De Giorgio had no case to answer. Learned

Counsel for the prosecution Mr George Thachett submitted to the contrary that the accused did have a case to answer.

[3] Prior to considering the submissions made by both parties, it would be pertinent at this stage to mention that at the close of the prosecution case, Learned Counsel for prosecution withdrew Count 4 against the accused and thus the accused is accordingly acquitted on Count 4. It would also be relevant at this juncture to set out the law pertaining to a no case to answer application.

[4] In the case of ***R v Stiven 1971 SLR No 9 at pg 137***, it was held what court has to consider at the stage a no case to answer application is made is whether;

a) there is no evidence to prove the essential elements of the offence charged.
b) whether the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict

[5] Archbold in Criminal Pleadings Evidence and Practice 2008 edition 4-293, sets out the principle in a no case to answer application.

"A submission of no case should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict."

[6] In ***David Sopha & Anor v Republic SCA 2/1991*** the Seychelles Court of Appeal held:

"In considering a submission of no case to answer, the judge must decide whether the evidence, taken at its highest, could lead to a properly directed jury convicting the accused. If so, the case should be allowed to go to the jury."

[7] The main grounds relied on by Learned Counsel for the accused are that:

a) The prosecution has failed to bring any evidence or even establish on a prima facie basis that the accused an employee of the Anti-Corruption Commission of Seychelles (ACCS), corruptly solicited property for himself, by disclosing and offering to disclose documents

and information relating to investigations being conducted by the ACCS against one Dolor Ernesta.

b) Count 2 cannot stand and should be struck off for duplicity.

c) Count 3 cannot stand as it is not possible to frame charges against the accused both under the ACCS Act and the Penal Code.

d) The last witness called by the prosecution was a disaster and there is no evidence to connect Mr. Dolor Ernesta to the accused.

e) The accused Abison had been targeted by an impartial investigation when there were many other potential suspects who were also handling the relevant investigation and documents referred to in the case.

[8] When one considers the evidence in this case, the evidence of Mr. Dolor Ernesta in general indicates that he received two letters and two telephone calls. The letters he received contained documents in respect of an ongoing investigation against him. He received two calls from a person with a latino accent pertaining to the said letters. The letters received by Mr. Ernesta and the telephone records of the calls made to him were produced by the prosecution. Mr. Ernesta states that money was being solicited from him in the letters and phone calls received, in return for information and documentation in regard to investigations being conducted against him by two authorities. The evidence of witness Doffay from the Cable and Wireless indicates that the calls received by Mr. Ernesta emanated from the phone booth at the Cable and Wireless Kiosk at the Seychelles International around 1.55 pm on the 15th January 2018 and the other call was made from the Fish Tail restaurant on the 11th January 2018. The prosecution produced the CCTV footage and video showing the accused at the airport and in the vicinity and moving in the direction of the Kiosk on the said date. Phannia Doarasamy who was on duty at the Cable and Wireless Kiosk on the said date and time, identified the accused as the person who had come and taken a call from the Kiosk at the said time.

[9] Further in order to negative the accused's contention that he was targeted in an impartial investigation and other possible co-worker suspects overlooked, the prosecution called several co- workers including Maureen Young and the CEO of ACCS May De Silva and the investigating officer Mr. Zialor who all categorically denied the suggestion made by

Learned Counsel for the accused in this regard. The fact that the accused was part of an investigation team from the ACCS investigating Mr. Dolor Ernesta is not denied.

[10] Although all these witnesses were subject to lengthy cross examination, it cannot be said that prosecution evidence has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict. It also cannot be said at this stage that there is no evidence to prove the essential elements of the offences charged. Court would be in a better position to determine the material nature of the discrepancies referred to by Learned Counsel after the case is concluded.

[11] In regard to the contention of the accused that Count 2 should be struck off for duplicity, this Court observes that Count 2 is in the alternative and contains only a single offence, it cannot therefore be struck off for duplicity. Further when one considers the Seychelles Court of Appeal case of **Naddy Dubois & Ors v the Republic [2017] SCCA 6,** it was held at paragraph 17, *"If several offences had been committed in the course of an incident the prosecution is at liberty to charge the offender with all such offences and for a Court to convict such offender with a multiplicity of offences. However where the same act constitutes separate offences under different laws a Court should not impose multiple terms of imprisonment on the offender for the same act."* Again in paragraph 21 in the said case, it was held, *"We do not fault the learned Trial Judge for having convicted the Appellants under counts 4, 5 and 6, but are of the view that in sentencing he could have chosen to stay passing sentence either on the counts under the NDEA Act or the Penal Code and left them on file. However the fact that he had decided to pass concurrent sentences in respect of these counts shows that he entertained such intention and thereby we hold no prejudice had been caused to the Appellants."*

[12] Therefore for all the aforementioned reasons, this Court is satisfied that a prima facie case in respect of Counts 1, 2, 3 and 5 exist against the accused in this case and that there is no merit in the contention of defence counsel that the accused in this case has no case to answer. For the aforementioned reasons this Court is of the view that the accused does have a case to answer in respect of the existing charges.

[13] Therefore this court proceeds to call for a defence from the accused in respect of Counts 1, 2, 3 and 5.

Signed, dated and delivered at Ile du Port on 1 October 2018

M Burhan
Judge of the Supreme Court