

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC ...
CO6/2022

In the matter between:

THE REPUBLIC
(rep. by Ms. Shireen Denis)

Prosecution

and

MOHAMEDI KHALIDI MIKIDADI
(rep. Mr. Elvis Chetty)

Accused

Neutral Citation: *Republic vs Mohamedi Khalidi Mikidadi (CO6/2022) SCSC*
(10 May 2022)

Before: B. Adeline, J

Summary: Importation of a controlled drug, 285.02 grams of pure cocaine

Heard on: 10 May 2022

Delivered: 19th May 2022

FINAL ORDER

Accused charged with a single count of Importation of a Controlled Drug -285.02 grams of pure Cocaine. Accused pleaded guilty at first reasonable opportunity. Accused is sentenced to serve a term of imprisonment of 9 years. Time which the accused, now convict, has spent on remand shall be deducted from the 9 years prison sentence.

SENTENCE

[1] The accused, one Mohamedi, Khalidi, Mikidadi a 51 year old Tanzanian national, was charged before this court with a single count of Importation of a Controlled Drug

contrary to Section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 of the Act reads with the Second Schedule of the same Act. The Particulars of the Offence as per the formal charge sheet pertaining to CB41/01/22 ANB dated 14th February 2022 filed in court, read as follows:

“Mohamedi Khalidi Mikidadi, a 51 year old Tanzanian national holding passport No TAE43074, on the 28th January 2022 imported into Seychelles a controlled drug weighing a total net weight of 361.12 grams with cocaine content of 285.02 grams, contained in 25 cylindrical shaped pellets in contravention of the Misuse of Drugs Act, 2016 on board the flight coming from Doha by causing the said controlled drug to be imported into Seychelles by swallowing the said 25 cylindrical shaped pellets”.

[2] On the 10th May 2022, the accused pleaded guilty to the charge at the first available reasonable opportunity, and was accordingly convicted before this court for a single count of importation of a controlled drug, cocaine, after he had admitted the facts narrated by the prosecution that led to his arrest and the eventual indictment for the offence.

[3] The facts pertaining the arrest and indictment of the accused, are that, on the 28th January 2022, the accused, Mohamedi Kalidi Mikidadi, a 51 year old Tanzanian national and holder of passport number TAE430794, arrived in Seychelles at the Seychelles International Airport on a QR flight from Doha. There, he was called upon for a “line check” by Immigration Officers, and in answer to questions put to him in interview, he stated, that he has come to Seychelles for a four day holiday and that he would be staying at Villa De Rose, Beau Vallon during his holiday in Seychelles. He had in his possession USD2000 although he had said that he had USD200. The accused carried with him one piece of luggage and a black back pack. A search was carried out in them, but nothing illegal was found. He was granted a four day visitors permit.

[4] The accused was then taken for a body scan by Anti Narcotic Bureau Officers (“ANB”) where foreign bodies were detected inside his body. When asked whether he had swallowed any illegal or illicit substances, at first, he answered “no”, but then he indicated, that he was ready and willing to co-operate with ANB Officers in their

investigation of possible offences. Authorization was sought from the Commissioner of Police to carry out a controlled delivery operation, which authorization was duly granted.

[5] The accused, who had told ANB officers that they would collect the controlled drugs once excreted upon his arrival at his hotel accommodation, was escorted by ANB officers to his booked holiday apartment, Villa De Rose, Beau Vallon. After he had checked in, ANB Officers conducted a thorough search of him and seized his telephone as well as the cash and other items. With the help of a Swahili translator, the accused confessed that he has ingested a total of 25 cylindrical shaped pellets of a controlled drug. He informed ANB officers, that the pellets, once excreted, are to be collected by someone at his hotel accommodation after that person had identified him upon his arrival at the airport.

[6] On the 29th January 2022, at around 0923 hours, at his hotel accommodation and in the presence of ANB officers, the accused excreted from his body 3 cylindrical shaped pellets which were suspected to be controlled drugs. The same were seized by ANB officers, who also cautioned the accused and informed him of his constitutional rights. The accused then excreted another 15 cylindrical shaped pellets followed by another 4 cylindrical shaped pellets and 3 cylindrical shaped pellets, adding up to a total of 25 cylindrical shaped pellets, all of which were seized by ANB officers and later sent for forensic analysis in the Police forensic laboratory. The forensic laboratory analysis result confirmed, that the suspected controlled drugs having a total weight of 361.12 grams were actually cocaine with a content of 258.02 grams.

[7] Because there were no contacts made and nobody showed up to collect the controlled drugs, on the 31st January 2022, the controlled delivery operations were called off. On the same day, the accused was taken to the Seychelles Hospital for a final body scan. No more foreign bodies were detected inside his body. The accused was then taken to the ANB station to complete other formalities.

[8] To decide on the right and appropriate sentence that will do justice to this case, I have given due consideration to the punitive objective of sentencing in the light of the following factors, balance against each other, notably:-

- (i) the circumstances of the accused now a convict.

- (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, and
- (iv) the relevant sentencing legislation, guidelines and case law.

[9] The case of Lawrence & Anor v The Republic [1990] SLR 47, remind me, that, amongst other things, sentencing must also be directed at addressing the traditional purpose of punishment which has been said to be deterrence, prevention, retribution and rehabilitation. I will add to the list the word denunciation. Given the seriousness of the offence committed by the accused, these terms have to be put in the right perspective. That is to say, (i) deterrence in the sense that the sentence being contemplated should dissuade the convict as well as others who may be tempted to commit similar offence, from committing such offence. Retribution in the sense, that the convict ought to suffer the punishment which he rightly deserves, and denunciation in the sense that this is achieved by the imposition of a sentence, the severity of which makes a statement, that the offence in question is not to be tolerated by the society we live in.

The circumstances of the accused (now a convict).

[10] In his submission in the plea mitigation, learned counsel submitted, that the right sentence to be imposed must be one based on the consideration, that his client, who is a first time offender, has pleaded guilty at the first available opportunity, and in doing so, he has not wasted the court's precious time. Learned counsel also submitted, that his client is remorseful for the offence he has committed, both towards the state and the public at large. He stated, that his client who is a family man, has co-operated fully with all the authorities, and for these reasons, the court should exercise leniency in considering the right sentence that will do justice in this case, taking also into account, the amount of drugs in question, and the sentencing precedents and guidelines.

The nature of the offence including the gravity and extent thereof.

[11] The offence of which the accused has been convicted is very serious. He has been convicted for importing into this country the drug, cocaine, which is a class 'A' drug, with a purity of 285.02 grams. What saves the convict from a possible longer term of imprisonment is the quantity of the drug imported, which based on the sentencing guidelines is not too much on the high side.

The interest of the community.

[12] No sentence, not even a life sentence where a convict deserves to be sentenced to a term of life imprisonment for importation of a Class A drugs, can repair the damage which drugs have caused to this country over the last few decades. The suffering which many local families have endured and continued to endure, has been enormous given the huge impact which illicit drugs have had on our small community. Had these drugs gone undetected, they would have inflicted more misery and suffering on our youths at their detriment, while a few would have enriched themselves with the proceeds of this illegal trade.

[13] In Rep v Micoock and Anor SCSC 322 (4th April 2017) the court had this to say:-

“the youth of Seychelles is being poisoned by drugs seemingly readily available brought by scrupulous persons. They have no regard for the overwhelming consequences of their acts. Their greed at the expense of the effects of their trade, including a lost youth and work force, the toll on Seychelles and the tax payers to treat and rehabilitate drugs abusers, the cost of education programmes for the prevention of drugs abuse, and efforts to intercept and prevent the trafficking and importation of drugs and prevent abuse is lost on them. They are oblivious to the pain and havoc they wreck on individual families and the community.”

[14] These words, encapsulate the seriousness of the offence of which the accused has been convicted when considered in a wider perspective, and therefore, the sentence to be imposed should reflect public abhorrence to offences of this nature which calls for

tougher sentences. I am, however, reminded of the case of Rep v Rasie 1975 (4) SA 855 A, in which case the court stated the following:

“punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances.”

[15] Locals and foreigners alike, should not allow themselves to be misled into the mistaken belief that, this country, known to be a small jurisdiction, is a soft target for the illegal drugs trade. To the contrary, they must always bear in mind that the moment they venture into the illegal drugs trade in this country, they effectively step on a minefield at their own peril, with potentially disastrous long term consequences.

[16] Having said that, members of the general public should also not be mistaken into believing, that the court would simply pluck out of the air a sentence to satisfy public sentiments over the drugs issue, without thoroughly consider all the relevant factors to come to a just and fair sentence. The question of imposing a sentence is a matter of discretion to be exercised by the court in consideration of the aggravating and mitigating factors in the individual cases. The approach, is that a reasonable proportion has to be maintained between the seriousness of the offence or the crime, and the punishment.

The relevant sentencing legislation, guidelines and case law.

[17] The maximum penalty which this court can impose on an accused convicted of a single count of importation of a Class 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 reads:

“a person who imports or exports a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule.”

The maximum penalty specified in the Second Schedule of the Misuse of Drugs Act, 2016 is a term of life imprisonment and a fine of up to Seychelles Rupees, one million.

[18] It is, perhaps, worth mentioning, that the minimum mandatory sentences under the Misuse of Drugs Act, 2016 (“MODA”) Act 5 of 16, have been done away with and

replaced by indicative minimum sentences prescribed for offences which are aggravated in nature. For example, Section 7(4) of MODA refers to aggravated factors depending on the weight in a trafficking offence of over 250 grams of a controlled drug. Furthermore, in respect of the instant case, regards should also be made to Section 48 of MODA which considers the degree of commercial element as an aggravating factor. As such, the indicative minimum sentence as required under Section 47(5) of MODA has to be given due regard. Clearly, therefore, the offence of which the accused has been charged and convicted, is aggravated in nature as the quantity of the purity of the controlled drug he imported into this country is over 250 grams, and as per the sentencing guidelines, the appropriate sentence should be within the range of 12 to 15 years imprisonment.

- [19] Taking into consideration learned counsel's submission in plea mitigation as a whole, it is conceded, that a guilty plea taken at the first available reasonable opportunity, warrants a reduction in sentencing because of the benefits it brings about as correctly elaborated by learned defence counsel in his submission. In this respect, in my considered opinion, in the meting out the appropriate sentence, the court needs to conduct a balancing exercise between the mitigating and the aggravating factors in this case.
- [20] I have taken a myriad of competing factors into account in deciding the appropriate sentence that will do justice in this case. I have, in doing so, taken into account the salient aspects of learned defence counsel's submission in plea mitigation which are in favour of the accused, now a convict, and have given him the credit he deserves.
- [21] I have also had sight of the relevant case law to familiarize myself with the pattern of sentencing in cases of this nature in the light of the recommended sentences. In the case of the Republic v Jakari Suki, SCSC 142 SL 34/2018, the accused was convicted for 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 in respect of the importation of heroin and 8 years on count two in respect of the importation of cocaine, which sentences took effect concurrently, which sentences were upheld by the Court of Appeal.

[22] I therefore sentence the convict to serve a term of imprisonment of 9 years for the single count of importation of a controlled drugs, cocaine. The time which the convict has spent on remand shall be deducted from his 9 years term of imprisonment. Given that the accused, now a convict who has been sentenced to serve a long term of imprisonment for the offence committed in contravention of the provisions of the Misuse of Drugs Act 2016, with aggravated nature, Section 30 (2) (5) of the Prison Act, Cap 180, shall be invoked, in that, he shall not be entitled to remission for good behaviour.

[23] The accused, now a convict who has been sentenced, is informed that he has thirty (30) days from today to appeal against this sentence.

Signed, dated and delivered at Ile du Port on 19th May 2022

Adeline, J