

IN THE SEYCHELLES COURT OF APPEAL

Between:

Mr. Ilias Durdunis electing
legal domicile in the Chambers
of Philippe Boulle,
Attorney-at-Law of
212 Victoria House,
Victoria, Mahe, Seychelles Appellant



and

The Republic Respondent

Criminal Appeal No. 12 of 1993

Mr. P. Boulle for the appellant

Mr. De Liverra for the respondent

(Goburdhun P, Silungwe, Ayoola JJ.A.)

Ruling of the Court delivered on 24th March 1994

This ruling relates to a preliminary objection raised by counsel on behalf of the Attorney-General to the appeal of the appellant, Mr. Ilias Durdunis (hereinafter referred to as Durdunis) on the ground that:- "Mr. Ilias Durdunis the Appellant abovenamed has no Locus standi to Appeal against the order whereby an order of forfeiture was made in respect of the vessel "MALO."

Durdunis was charged along with two others with the offences of importing into Seychelles, arms of war without permit, contrary to the Firearms and Ammunitions Act 1973 and importing into Seychelles munitions of war without a permit contrary to the same Act. The Supreme Court (Allecar Ag. C.J. as he then was) upon a trial of the accused persons, acquitted and discharged Durdunis who was the second accused

at the trial and one Vassilios Karatzias who was the third accused. One Sebastian Murangira who was the first accused was found guilty on both counts, convicted and sentenced to one year imprisonment on 10th December 1993. On the same day, on an application which had been made by prosecuting counsel prior to sentence but subsequent to conviction, the Supreme Court made forfeiture order in respect of the vessel Malo and the arms and ammunition pursuant, respectively, ~~pursuant~~ to section 151 of the Criminal Procedure Code (Cap. 45) and section 34(1) of the Firearms and Ammunition Act, 1973. The appeal by Durdunis which is now objected to by the Attorney-General is from the orders of forfeiture.

Mr. De Liverra, State Counsel, for the Attorney General argued that since Durdunis had been acquitted and there was no material whatsoever to show that he has an interest in the vessel or its cargo, he cannot exercise a right of appeal. Mr. Boulle, learned counsel for Durdunis argued that Durdunis has appealed pursuant to a right of appeal conferred by Article 120(2) of the Constitution of the Republic of Seychelles, 1993 (the Constitution). The exercise of a right of appeal by Durdunis, it is argued, is founded on the interest which a person who has been in the proceedings and is aggrieved by its results has. Although it has been argued that Durdunis' interest is affected by the order of forfeiture; it was rightly conceded by learned counsel for Durdunis that there was nothing in the records to show what proprietary interest he has in the vessel and, or, the arms and ammunitions ordered to be forfeited.

By the provisions of section 329 of the Criminal Procedure Code (Cap.45) liberty to appeal from the Supreme Court to the Court of Appeal in criminal proceedings is given to "any person convicted on a trial held by the Supreme Court." However, Article 120(2) of the Constitution has provided thus:

"Except as this Constitution or an Act otherwise provides, there shall be a right of appeal to the Court of Appeal

from a judgment, direction, decision, declaration, decree, writ or order of the Supreme Court."

Giving a liberal interpretation to this provision of the Constitution as we must do pursuant to para. 8 of Sch.2 of the Constitution, the conclusion seems inescapable that the wider right of liberty to appeal granted by Article 120(2) cannot by implication be circumscribed by the provisions of the Criminal Procedure Code, and of section 329 thereof in particular. Exclusion of the right of appeal is permitted by the Constitution but such exclusion must be by express statutory provision.

Although we must feel driven to the conclusion that Article 120(2) of the Constitution, in general terms, gives a right of appeal to this Court from a judgment, direction, decision, declaration, decree, writ or order of the Supreme Court, it is manifest that that article does not state, and no other article of the Constitution states, who is to exercise that right. When the law gives a right of appeal against a judicial decision without stating at whose instance such right can be invoked, it is inconceivable that such right would be available to anybody who cares to exercise it regardless of whether he is a person aggrieved by the judgment, order, or decision appealed from; or, put another way, regardless of whether he has any interest that can be affected by the decision sought to be appealed from. We feel no hesitation in holding, therefore, that standing is essential to the right to invoke the appellate jurisdiction of this Court to exercise its power to hear and determine appeals from a judgment, direction, decision or order of the Supreme Court.

In applying the provisions of a Constitution which must be interpreted to give them their fair and liberal meaning and which shall be treated as speaking from time to time, it will be imprudent to define for all times the classes of


person who would be classified as "aggrieved persons" or to determine by a rigid a priori principle the nature of interest that would give a person standing to invoke the appellate jurisdiction of this Court. What would be prudent is to determine each case on its facts, the general principle having been established that a person who seeks to invoke the appellate jurisdiction of this court must have a locus standi.


In the present case Durdunis has been tried and acquitted and stands no risk of suffering any punishment as a result of or in consequence of the judgment of conviction of the first accused. He thus has no interest in the proceedings which survived his acquittal in regard to the liability to punishment which the trial entailed. In regard to the forfeiture order, as rightly conceded by his Counsel, there is no evidence on record or before us that he has any interest that can be affected by the forfeiture order. In the circumstances we fail to see what locus standi Durdunis has to invoke the appellate jurisdiction of this Court.


A considerable body of case law has grown on the question of the nature and character of interests that give a person locus standi to initiate proceedings, whether original or appellate, before the courts. However, we have refrained from discussing any of them since the question in this case is not as to the sufficiency of the interest of the appellant to appeal, or whether upon any reasonable conception of the facts, he could be regarded as a person aggrieved. However broadly we may wish to conceive the expression "person aggrieved", we fail to see, on the facts disclosed, how the appellant falls into that category or on the record what interest the appellant whose services on the vessel had already come to an end has that could be affected by the order of forfeiture.

For these reasons we uphold the preliminary

objection. We strike out the appeal filed by Mr. Ilias Durdunis.


..... H. Goburdhun P


..... A.M. Silungwe J.A.


..... E.O. Ayoola J.A.