

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) , A.Fernando (J.A) , J. Msoffe (J.A) **]**

Criminal Appeal SCA 14/2013

(Appeal from Supreme Court Decision CR 60/2007)

Roland Felicie

Appellant

Versus

The Republic

Respondent

Heard: 11 April 2016

Counsel: Mr. F. Elizabeth for the Appellant

Mr. J. Chinnasamy for the Respondent

Delivered: 22 April 2016

JUDGMENT

A. Fernando (J.A)

1. The Appellant has appealed against the sentence of 8 years imprisonment imposed on him after his conviction for trafficking in 53.9 grams of Cannabis.
2. The Appellant had been charged as per the particulars of offence on the basis of the rebuttable presumption of having possessed the said cannabis for the purpose

of trafficking under the Misuse of Drugs Act. According to the judgment the Appellant had not sought to rebut the presumption of trafficking.

3. The minimum mandatory term of imprisonment for the purpose of trafficking is 8 years, which is the sentence that had been imposed on the Appellant.
4. In the Notice of Appeal dated 11th January 2016 filed on behalf of the Appellant, by Attorney –at-Law, Mrs. A. Amesbury against sentence, Counsel has raised the following grounds of appeal:
 - (i) The sentence of 8 years of imprisonment is harsh and excessive in all the circumstances of the case.
 - (ii) The Appellant on the 5th April 2016, would have served three years of the eight year sentence, and there exists special circumstances as he is dying from cancer, for the court to apply its discretion as it did in *Ponoo VS The Republic* SCA 38/10.
5. Counsel by way of relief has sought from the Seychelles Court of Appeal:
“Allowing the appeal, reversing the decision of the Learned Judge and consequently awarding the quantum of the damages sought in the plaint.”
(verbatim from the Notice of Appeal, underlining by us).

At the very outset we wish to warn Counsel who filed the Notice of Appeal that she should have taken more care in reading the documents before filing them before this Court. She should have known better that the appeal is against a sentence in a criminal case and not one in respect of a refusal to award damages.

6. At the hearing before us the Appellant was represented by Mr. F. Elizabeth, as Attorney –at-Law, Mrs. A. Amesbury was unwell.
7. All the judgments referred to by the Counsel for the Appellant in her Skeleton Heads of Argument in support of her argument that the sentence of 8 years of imprisonment is harsh and excessive in all the circumstances of the case have been in cases of ‘possession’ of controlled drugs, where there is no mandatory sentence applicable and therefore irrelevant.
8. The statement, Counsel had made in her Notice of Appeal with a supporting Medical Report to the effect that the Appellant “is dying from cancer” was not a

matter placed before the Sentencing Court and thus not considered by the Sentencing Court. Thus it cannot be a ground upon which the sentence imposed can be challenged. It is only a ground for clemency to be considered by the President under article 60 of the Constitution.

9. This Court is not in a position to go into an inquiry as to whether the Appellant, as claimed by Counsel for the Appellant, “is dying from cancer” and grant any relief to the Appellant on that basis, despite being very sympathetic towards his situation. This is a fit case for Counsel for the Appellant to take up with the President under article 60 of the Constitution.
10. We do not find that the mandatory sentence imposed on the Appellant is otherwise harsh and excessive on the basis of the principle enunciated in the Ponoo case.
11. We therefore have no option than to dismiss this appeal.

A.Fernando (J.A)

I concur:.

F. MacGregor (PCA)

I concur:.

J. Msoffe (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 22 April 2016