

# IN THE SEYCHELLES COURT OF APPEAL

**[Coram:** A.Fernando (President) , M. Twomey (J.A) , L. Tibatemwa-Ekirikubinza (J.A)]

## **Criminal Appeal SCA 19/2019 (Appeal from Supreme Court Decision CR 74/2017)**

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Mario Meme	1st Appellant
Perry Nassib	2nd Appellant

Versus

The Republic	Respondent
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Heard: 04 August 2020

Counsel: Mr. Clifford Andre for the Appellants

Mr. Joji John (Assistant Principal State Counsel in the  
Attorney General's chambers) for the Respondent

Delivered: 21 August 2020

### **JUDGMENT**

#### **Prof. Tibatemwa-Ekirikubinza, JA**

1. This is an appeal against the decision of the Supreme Court. The Prosecution led evidence incriminating the 1<sup>st</sup> and 2<sup>nd</sup> appellants on the following three counts.

#### **Count 1:**

2. An act intended to cause grievous harm contrary to **Section 219 (a)** and **Section 381** of the **Penal Code Act**.

The particulars of the offence under this count were that on 18<sup>th</sup> April 2017 at about

13.45 hours Mario Meme (the 1<sup>st</sup> appellant) and Perry Nassib (the 2<sup>nd</sup> appellant) conspired with one another with an intention to do grievous harm to Sandro Moses entered on to his property with a machete and cut his left arm. The appellants also bruised the arm of Lorenzo.

**Count 2:**

3. Criminal trespass with an intention to commit grievous harm contrary to **Section 294** of the **Penal Code Act**.

The particulars of this offence were that Mario Meme and Perry Nassib conspired together and unlawfully entered on to the property of Sandro Moses. While on the said property, Mario and Nassib committed unlawful acts.

**Count 3:**

4. An act aiding and abetting another to commit an offence contrary to Section 22 (b) of the **Penal Code Act**.

The 1<sup>st</sup> and 2<sup>nd</sup> appellants were indicted and brought to trial on the above charges. In defence, the 2<sup>nd</sup> appellant stated that he committed the offences in self-defence. The 1<sup>st</sup> appellant on the other hand exercised his right to silence. Having evaluated the evidence of the Prosecution and the defence, the trial Judge convicted both appellants on Counts 1 and 3. The trial Judge acquitted the appellants on Count 2 because the essential ingredient of intention was not proved.

5. Consequently, each of the appellants was sentenced as follows:
  - (a) On Count 1, a term of 18 months imprisonment and a fine of SR 10,000/= payable within 6 months after release from prison and SR 5,000/= as compensation to each of the victims.
  - (b) On Count 3, a term of 18 months imprisonment.

Both terms of imprisonment were to run concurrently.

6. Dissatisfied with decision of the trial Judge, the appellants lodged an appeal in this Court. The Notice of Appeal which was lodged contained six (6) grounds against both the convictions and sentences. However, at the hearing counsel for the appellants informed Court that grounds 1-5 which essentially contested the convictions were dropped. Counsel informed Court that the appellants had completed serving their prison sentence and therefore no need to appeal against the conviction. This left only ground 6 for resolution by the Court.

7. Ground 6 stated as follows:

*The sentence is manifestly excessive considering the principle of sentencing and that the appellants are first offenders and that there were non-permanent injuries to the victims.*

#### **Appellants' submissions**

8. Counsel argued that imposing a prison term as well as a fine was harsh and excessive in the circumstances of this case. Counsel submitted that the fact that the appellants' sentences were spent, the fine and compensation ought to be removed. That maintaining the fine as well as compensation would be double punishment.

9. **Respondent's reply**

The respondent did not object to the withdrawal of grounds 1-5 which were challenging the conviction. In respect to ground 6, the respondent's counsel left it to the Court to exercise its discretion on whether or not to maintain the fine imposed by the trial Judge.

10. **Consideration by the Court**

The punishment specifically attached to **Section 219 (a)** of the **Penal Code Act** under which the appellants were convicted is life imprisonment as the maximum sentence.

11. However, **Section 25** of the **Penal Code Act** provides for a variety of punishments which “may be inflicted by a court” and among other kinds of punishments specifically mentions fines, payment of compensation and “any other punishment provided by this Code or by any other law or Act.”
12. Furthermore, **Section 26 (2)** of the **Penal Code Act** provides that a person liable to imprisonment may be sentenced to pay a fine in addition to the term of imprisonment.  
(My emphasis)
13. Further still, **Section 30** of the **Penal Code Act** provides that:  
  

**“Any person who is convicted of an offence may be adjudged to make compensation to any person injured by his offence. Any such compensation may be either in addition to or in substitution for any other punishment.”**

  
(My emphasis)
14. It is clear from the above provisions of the law that imprisonment, a fine and compensation are all stand-alone punishments which can be imposed by a court. It is also clear that court can exercise its discretion to give a combination of these types of punishment.
15. Since the central argument of the appellants concerns the severity of the sentences imposed by a trial court, it is necessary to point out from the beginning the principles that guide appellate courts when considering whether to interfere with a sentence given by a lower court.
16. It is a trite principle of law that sentencing is a discretion of the trial court. And thus an appellate court will not interfere with a sentence passed by the trial court merely premised on its opinion that it would have come to a different sentence. However, it is also a renowned legal principle that judicial

discretion must be exercised judiciously. And it follows that an appellate court can interfere with the sentencing discretion of the trial court if it acted contrary to the law or on a wrong principle of law or overlooked a material factor or where the said sentence is manifestly harsh and excessive. (See: **Cedras vs. Republic**<sup>1</sup>).

17. It is also imperative to recall what this Court earlier held in **Randy Florine vs. Republic**<sup>2</sup> that *harsh and excessive is not a ground of appeal but an area of the law in which the trial court reigns supreme. Harsh and excessive cannot be implied without elaborative specificity. It is not reason to disturb the sentence imposed by the trial Court.* This principle was restated in **Cedras vs. Republic (supra)** as follows:

*“... to merely aver that a sentence is harsh and excessive does not amount to a ground of appeal in as much just like application of facts in an area where the trial Judge reigns supreme except where his appreciation of facts may prove to be perverse.” (My emphasis)*

18. Therefore, the appellant has to specify in what way the sentence imposed is harsh and excessive.
19. In the present case, the appellants’ counsel argued that the net effect of combining the fine and compensation with the term of imprisonment made the sentence harsh and excessive.
20. The offence for which the appellants were convicted carries a possible life imprisonment sentence. It is clear from the provisions of the law I reproduced above that a trial court has the discretion to order a fine and or compensation in addition to a term of imprisonment. I am in agreement with counsel for the respondent that a term

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<sup>1</sup> Cr. App SCA 38 of 2014.

<sup>2</sup> SCA 7 of 2009.

of 18 months imprisonment is such a tiny fraction of life imprisonment that it cannot be considered harsh and excessive even when it is combined with the fine and compensation. On this premise, the trial Judge cannot be said to have acted contrary to the law or on a wrong principle of law. It cannot be said that the Trial Judge exercised his discretion injudiciously.

21. Counsel submitted further that since by the time of hearing the appeal the appellants had already served the prison term, court should consider revising the sentence by discharging the appellants from the part of the sentence requiring them to pay a fine as well as compensation to the victims of the assault.
22. I note that **Section 151(1) (b)** of the **Criminal Procedure Code** is to the affect that a court can impose a fine or a sentence of a fine when passing judgment and order the whole or any part of the fine to be applied to the payment of compensation to a person who has suffered loss or injury caused by the offence.
23. The idea behind directing a convict to pay compensation is to afford immediate relief so as to alleviate the complainant's grievance. Compensation is aimed at reconciling the victim with the offence. It is an acknowledgment or recognition of the pain suffered by the victim at a personal level. It is in effect a "civil" remedy tacked on to the end of a criminal trial for the benefit of the victim.
24. It is on record through the medical evidence adduced that two victims (Sandro Moses and Lorenzo) were severely injured by the appellants' actions. It is therefore proper that they be compensated as ordered by the trial court.
25. On the other hand, money paid as fines belongs to the State. A fine stands at par with imprisonment and can be said to be truly punitive or retributive.
26. Based on the fact that this Court was not able to hear the appeal before the prison sentence of the appellants was spent, I am inclined to revise the sentence as follows:

1. The order for compensation to each of the victims in the sum of SR 5,000/= is upheld.
2. Each appellant is discharged from the Order of paying a fine of SR 10,000/= payable by each of the appellants within 6 months after release from prison.

**Prof. Lillian Tibatemwa-Ekirikubinza, JA**

**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