

IN THE SEYCHELLES COURT OF APPEAL

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

Criminal Appeal SCA 07 & 08/2019 (Appeal from Supreme Court Decision CR 72/2017)

Osama Brandon Casime

1st Appellant

Hifa Noura Casime

2nd Appellant

Versus

The Republic

Respondent

Heard: 04 August 2020

Counsel: Mr. Clifford Andre, for the Appellants

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

Delivered: 21 August 2020

JUDGMENT

Prof. Lillian Tibatemwa-Ekirikubinza, JA

1. This is an appeal against the decision of the Supreme Court. The appeal is only against the sentences that were imposed. The 1st appellant-Osama Casime was charged with the following 2 counts:
 - (i) Conspiracy to commit the offence of importation of a controlled drug contrary to Sections 16 and 5 of the Misuse of Drugs Act 2016.
 - (ii) Importation of a controlled drug into Seychelles weighing 141.2 grams containing pure heroine (diamorphine) of 69.19 grams contrary to Section 5 of the Misuse of Drugs Act 2016.

2. The 2nd appellant-Hifa Casime was charged with:
- (i) Conspiracy to commit the offence of importation of a controlled drug contrary to Sections 16 and 5 of the Misuse of Drugs Act (MODA) 2016.
 - (ii) Aiding and abetting Osama Casime to import a controlled drug weighing 141.2 grams containing pure heroine of 69.19 grams by requesting Vanita Georges to have the heroine imported in her name and hiding the drug inside a notebook.
3. The 1st and 2nd appellants were indicted and brought to trial. At first, both Osama and Hifa pleaded not guilty. Half way the trial, they pleaded guilty. The trial Judge (Govinden J) inquired from the appellants as to whether they understood the repercussions of changing their plea to which they responded in the affirmative. Consequently, the Judge convicted and sentenced the appellants on their plea of guilty.
- On Count 1 (conspiracy to import a controlled drug), Osama Casime was sentenced to 10 years of imprisonment while Hifa Casime was sentenced to 5 years imprisonment.
- On Count 2 (importation of a controlled drug), Osama Casime was sentenced to 10 years imprisonment.
- On Count 3 (aiding and abetting), Hifa Casime was sentenced to 5 years imprisonment. The sentences were to run concurrently.
- In total, Osama Casime was sentenced to serve a term of 20 years imprisonment while Hifa Casime was to serve 10 years.
4. Dissatisfied with the above sentences, both Osama and Hifa appealed to the Court of Appeal on the following grounds:

1. The learned Judge erred in law and fact in concluding that this case is one of an aggravated nature when MODA indicates otherwise.
2. The learned Judge erred in law and fact in coming to a finding that the 2nd appellant understood the advice given to her when her understanding was that her lawyer had negotiated a plea bargain with the Attorney General whereby she would get a lesser charge against her and that the 1st appellant would get the charge which he was indeed charged with.
3. The learned Judge erred in law and fact in coming to a finding that the recommendation of probation services was to be taken into consideration with respect to the 2nd appellant.
4. The sentences are manifestly excessive considering the principle of sentencing and that the appellants had pleaded guilty to the offence after they thought their lawyer had negotiated a plea bargain for them and that certain charges were to be dropped and not considered by the Court.

Appellants' prayers:

5. Both appellants prayed that the sentences be set aside and be accordingly be made to reflect the circumstances of the case and similar precedents.

Ground 1:

Appellant's submissions:

6. The appellants argued that there were no factors which made the case of an aggravating nature. Two aspects were presented to support this argument:-
 - (i) The weight of drugs involved
 - (ii) Absence of an organized criminal group.

7. On the first aspect, counsel submitted that the weight of 141.2 grams of the imported drug did not exceed the threshold weight of 250 grams prescribed in the MODA. Counsel argued that had the weight of the drugs in question exceeded 250 grams, this would have made the offence aggravated.
8. In regard to the second aspect, counsel argued that no organized criminal gang was involved in the trafficking of drugs. In counsel's view, the facts of the present case did not fit into the definition of an organized criminal group in the **MODA. Section 2** of the **MODA** defines "organized criminal group" as a "*structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more acts which constitutes criminal conduct as specified in paragraphs (a) to (d) of Section 3 (9) of the Anti-Money Laundering Act, 2006.*"
9. According to counsel, there was conspiracy to traffick drugs between two people that is Osama Casime and Hifa Casime. The third person (Vanita Georges) was only used as a mule to avail her post office number through which the drugs would be delivered. She did not have knowledge that her post box number was to be used for trafficking of prohibited drugs. As such, the existence of a third person was missing to constitute an organized criminal group as defined in the Act. It was therefore argued by counsel that since the element of organized group was missing, the case could not be said to be of an aggravated nature.
10. In relation to the foregoing argument, counsel also submitted that MODA does not define what the phrase 'existing period of time' means. Counsel posed questions as to whether period of time meant one day, two months or years. He therefore invited Court to interpret the phrase in considering this argument.
11. Furthermore, Counsel argued that since there were no aggravating factors, the appellants were entitled to remission of their sentences.

Respondent's reply

12. On the other hand, the respondent argued that the facts and circumstances of the case

clearly established that there are aggravated circumstances in accordance with **Section 48 (1)** of the **MODA, 2016**. Having referred to the above Section, the respondent contended that the factors in the present case which made it of an aggravated nature were:

- (a) The amount of controlled drugs involved;
- (b) Presence of a commercial element;
- (c) Previous conviction of the 1st appellant for importation of a class “B” drug.

Therefore, the trial Judge was right in his conclusion that the case was aggravated in nature.

13. In regard to whether *the Prisons Act, in terms of the provisions relating to remission are applicable to the Misuse of Drugs Act 2016, it having come into force after the amendment to the Prisons Act*, Counsel submitted that it was applicable. Thus, the appellants were not entitled to remission because of the aggravating factors.

Ground 2

Appellant’s submissions

14. Counsel submitted that whereas the 2nd appellant had engaged their lawyer to negotiate for a plea bargain for herself and the 1st appellant, the lawyer did not do so. That by the time the trial commenced, the appellants proceeded with the knowledge that they would plead guilty in return for a less charge as had been agreed with their lawyer. To their disappointment this did not turn out to be the case. The appellants therefore contended that the trial Judge should have considered the plea of guilt as a credit on the appellants’ side during sentencing.

Respondent’s reply

15. The respondent’s counsel submitted that the trial Judge before taking down the plea of the appellants warned and cautioned them about the consequences of pleading guilty to the said charges. Therefore, the Judge complied with all the requirements under the law before he went ahead to convict and sentence the appellants on their

plea of guilt.

16. As to the argument that the plea of guilty should have gone to the credit of the appellants as a mitigating factor, counsel submitted that the said plea was not given at the earliest instance. That the appellants had in the first place pleaded not guilty and only changed the plea half way through the trial.

Ground 3

Appellants' submissions

17. Counsel argued that whereas the Probation services had recommended the 2nd appellant to serve a community sentence, the trial Judge instead imposed a custodial sentence. That the trial Judge should have also considered the fact that the 2nd appellant was a first time offender and desisted from imposing the mandatory sentence. Counsel referred to similar cases involving importation of a controlled drug under class "A" in which the accused persons were sentenced to a lesser term of imprisonment. That in these cases, the accused pleaded guilty and a Probation Services report availed to guide Court when imposing a sentence. The cases referred to are:

- (i) **R vs. Marcos Venicius Da Silva Reis [SCSC 37/2019]**. In this case the accused was sentenced to six years imprisonment without remission.
- (ii) **R vs. Francis Ernesta & 3 Ors [SCSC 22/2016]**. The accused in this case was sentenced to nine years imprisonment. Two of the accused were sentenced to 4 years imprisonment because they were of a young age and first time offenders.
- (iii) **R vs. Emerenthia Holder [SCSC 46/2018]** in which Court considered the minimal role played by the accused in the importation transaction and was sentenced to 5 years imprisonment.

Respondent's reply

18. The respondent argued that this Court has in several cases held that the probation

report is not necessarily required while imposing sentences. Counsel did not specifically refer Court to any of the said decisions. Counsel however argued that in the present case the trial Judge carefully considered the recommendation of the Probation Services and did not impose the prescribed mandatory sentences.

Ground 4

Appellant's submissions

19. Counsel referred to the cases of:

- (i) **R vs. Christ Kanjere and Jean Claude Wellington** CO 35/2018 SCSC where the accused persons were sentenced to 2years imprisonment with remission;
- (iv) **R vs. Marcos Veniclus** CB 473/2019 SCSC in which the accused was convicted on his plea of guilty to the charge of importation of 545.04 grams of cocaine. Consequently, the court sentenced the convict to a term of 6 years imprisonment without remission because of the aggravated nature of the case;
- (iii) **R vs. Francis Ernesta & 3 Ors** in which the accused persons were given lenient sentences of 9 and 4 years imprisonment for the offences of importation and conspiracy to import controlled drugs.
- (iv) At the hearing, counsel submitted another decision of **Francesco Nibourette**. Counsel argued that in this case importation of drugs was done through the DHL courier services. However, the court did not consider this arrangement as an aggravating factor.

20. Counsel argued that similar lenient sentences should have been imposed on the appellants.

Respondent's reply

21. On the other hand the respondent argued that the precedents cited by the appellants'

counsel cannot be applied in each and every case. That the cited cases are distinguishable on the basis of the nature of offences with which the convicts were charged. Counsel submitted that precedents involving the offence of drug trafficking could not be applied to the present case which involved importation.

That therefore this Court need not vary the sentences given to the appellants on the premise of precedents cited.

Consideration by Court

22. The central issues of the appeal before Court are:

- (i) Whether or not the sentences imposed on the appellants are manifestly harsh and excessive.
- (ii) Whether or not the appellants' sentences are subject to benefit from remission.

23. I will start with the issue (i) on sentencing.

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 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**¹).

24. It is also imperative to recall what this Court earlier held in **Randy Florine vs. Republic**² 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*

¹ Cr. App SCA 38 of 2014.

² SCA 7 of 2009.

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)

25. Therefore, the appellant has to specify in what way the sentence imposed is harsh and excessive. In the present case, the appellant specifically argued that the sentences imposed were:

- (i) outside the sentencing range of similar offences as well as the sentencing guidelines prescribed in the **Misuse of Drugs Act (MODA)** 2016 and that
- (ii) the trial court failed to take into consideration the mitigating factors that the appellants pleaded guilty and that the report from the Probation Services recommended a community sentence for the 2nd appellant.

26. In order to resolve each specific argument, it is necessary to look at the record of proceedings which culminated in the sentences appealed against.

27. I will begin with the argument regarding factors pleaded in mitigation.

In mitigation, the 1st appellant submitted that he had pleaded guilty and not wasted court’s time. The 2nd appellant submitted in mitigation that she was a first offender and had pleaded guilty to the charges thereby not wasting the court’s time.

28. Having heard the appellant’s submissions on mitigation of the sentences, the trial court stated that:

“.....”

29. In exercising discretion to arrive at a sentence, the Judge should balance the mitigating

factors with the aggravating factors and then consider the cumulative effect thereof. It may be that in the opinion of the judge, the aggravating factors outweigh the mitigating factors even to the extent that the would be mitigating factors have little or no effect on the sentence. In such circumstances, the factors cited in mitigation will necessarily recede into the background. It is only if the mitigating factors carry sufficient weight to tip the scale in favour of the accused that a lenient sentence would be given.

30. In the persuasive authority of **Sowedi Serinyina vs Uganda**³ the Uganda Supreme Court held that although sentencing is a matter of discretion for the sentencing court, the fact that the judge was alive to what the accused submitted in mitigation must be evident on record. It is only then that the accused will be sure that the judge addressed his or her mind to the cited mitigating factors but nonetheless came to the conclusion that the aggravating factors overshadowed the would be mitigating factors.

31. In the matter before us the Trial Judge was indeed alive to the mitigating factors and before pronouncing the sentences went on to state thus:

I now have to balance the mitigating circumstances ... with the aggravated circumstances in this case. Having done so I do not think that the indicative minimum sentence would serve justice in this matter.

32. The factors presented in mitigation have already been reproduced above. The aggravating factors referred to by the judge were the presence of a commercial element, previous conviction of the 1st appellant and an organized criminal group. These factors are derived from **Section 48 (1)** of the **MODA, 2016** which provides as follows:

“Aggravating factors (factor that supports a more serious sentence) for offences under the Act include-

³ Criminal Appeal NO.1 of 2017.

- (a) the presence and degree of commercial element in the offending particularly where controlled drugs have been imported into Seychelles;
- (b) the involvement in the offence of an organized criminal group to which the offender belongs;
- (c)
- (d)
- (e)
- (f)
- (g)
- (h) Prior convictions (subject to the Rehabilitation of Offenders Act), particularly for similar offences, whether foreign or domestic, or prior formal cautions under this Act.

33. Furthermore, **Section 48 (2)** of the **MODA** provides that:

“Where one or more of the aggravating factors identified in subsection 1 is present to a significant extent, the court shall treat the offence as aggravated in nature.”

The above mentioned factors in **Section 48 (1) (a), (b) and (h)** are what the Court considered to be aggravating factors.

34. The appellants’ counsel contested the existence of an organized criminal group. According to **Section 2** of MODA 2016, in order to constitute an organized criminal group, the following ingredients should exist:

- (i) a structured group of three (3) or more persons,
- (ii) existing for a period of time and
- (iii) acting in concert with the aim of committing one or more acts which constitutes criminal conduct.

35. However, in the matter before Court, as argued by counsel for the appellants, the

would-be 3rd person (Vanita Georges) purported to have been part of the group was used as a mule. She did not have the common intention to commit the crimes with which the appellants were charged. Therefore, since one of the ingredients in the definition provided for ‘organized criminal group’ does not exist, it cannot be said that the factor mentioned in **Section 48 (1) (b) (supra)** was proved against the offenders. Thus, the trial Judge erred in considering the factor mentioned in Section 48 (1) (b) as one of the factors that made the case to be of an aggravated nature.

36. The above notwithstanding the offence we are dealing with is aggravated in nature because according to **Section 48 (2) (supra)** the existence of one factor is enough to make the case aggravated in nature. In this particular case, there was presence of a commercial element and therefore the appellants can be said to have committed an offence “aggravated in nature”. Furthermore, in regard to the 1st appellant, his previous conviction for importation of a class “B” drug also made the offence we are dealing with aggravated in nature.
37. I note that in the present case, it is on record the trial court was alive to the factors pleaded in mitigation but the presence of the aforementioned aggravating factors outweighed the mitigating factors.
38. It is therefore clear that the trial Judge exercised her discretion judiciously in sentencing the appellants. I see no reason to fault the trial court on this aspect.
39. Arising from the above, I hold that the trial Judge did not err in law and in fact in concluding that the case had aggravating factors.

Grounds 1 and 2 therefore fail.

40. Before departing from this point, I would like to address the argument in ground 3 raised by counsel for the appellants that the trial Judge came to the finding that the recommendation for a community (non-custodial) sentence by the Probation Services was to be taken into consideration but the punishment given to her was a custodial sentence.

41. It is clear that the recommendations from the Probation Services do not have a binding effect on the sentencing discretion of a trial Judge. They are only recommendations and stand on the same platform as any other mitigating factor. The trial Judge can take cognizance of the recommendations made by the Probation Services but not adopt them in light of factors that the Judge considers outweigh such recommendations.

Therefore, Ground 3 lacks merit.

42. I now turn to address the appellant's second limb of the argument that the sentences imposed were outside the sentencing range for similar offences.
43. Guarding against unjustifiable sentencing disparity is one of the ways in which Judges avoid the injudicious exercise of their discretion. And I opine that the requirement for consistency in sentencing is one of the underpinning principles of equality before the law enshrined in **Article 27** of the **Constitution**. It is for this reason that I would consider reference to prior decided cases on sentence a useful aid or tool to assist a court in determining an appropriate sentence. In the final analysis however each case must be decided on its own merits since no two cases are the same.
44. The question however is: by what means is this consistency achieved? In the persuasive authority of **Hili vs. The Queen**,⁴ the High Court of Australia stated that consistency is not demonstrated by and does not require numerical equivalence rather consistency is obtained in the application of the relevant legal principles. (Emphasis mine)
45. In stating the above, the majority of the Justices agreed with Simpson J's observations made on sentencing patterns in **Director of Public Prosecutions vs. De La Rosa**⁵. He observed as follows:

“Sentencing patterns are, of course, of considerable significance in that they result from the application of the accumulated experience and wisdom of first

⁴ (2010) HCA 242.

⁵ [2010] NSW 194 at pages 303-305.

instance judges and of appellate courts But the range of sentences that have been imposed in the past does not fix the boundaries within which future judges must, or even ought, to sentence ... They are no more than historical statements of what has happened in the past. They can, and should, provide guidance to sentencing judges and to appellate courts and stand as a yardstick against which to examine a proposed sentence. When considering past sentences, it is only by examination of the whole of the circumstances that have given rise to the sentence that ‘unifying principles’ may be discerned.”

46. From the foregoing it is clear that consistency of sentences does not mean arithmetic exactness. It cannot therefore be argued that a particular sentence is necessarily wrong merely because it is disparate from previous sentences.
47. Since consistency is derived from legal principles as well as statutory provisions, reference will be made to the MODA, 2016 as well as the Sentencing Guidelines.
48. Under the MODA 2016, the offence of importation of class ‘A’ drugs such as heroin and cocaine carry a maximum sentence of life imprisonment and a fine of SCR 1,000,000. The minimum sentence being 20 years imprisonment.
49. The MODA 2016 also gives guidelines that courts should follow in sentencing a person convicted of an offence of importation of class ‘A’ drugs. **Section 47 of MODA 2016** particularly provides as follows:

“(1) In sentencing a person convicted of an offence under Part II of this Act, whether upon a guilty plea or following trial, the court shall have regard to-

(a)-----

(b) the degree of control to which the relevant controlled drug is subject and

(c) the general objectives of transparency and proportionality in sentencing.

(2)-----

(3)-----

(4)-----

(5) in sentencing a person convicted of an offence under this Act in circumstances where the offence is aggravated in nature, the court shall have due regard to the indicative minimum sentence for aggravated offences of that kind. (My emphasis)

50. The 2nd schedule of MODA provides for punishment of importation of controlled substances into Seychelles as follows:
51. For importation of class ‘A’ drugs (such as heroin and cocaine), the maximum sentence is life imprisonment or a fine of SCR 1,000,000. The minimum sentence for the aggravated offence of importation of class ‘A’ drugs is 20 years imprisonment.
52. The appellants in the present case imported into Seychelles controlled drugs with hope of benefitting commercially from the transaction. This according to **Section 48 (1) and (2)** (supra) made the offence of an aggravated nature.
53. In a recent decision, **Rashid Liwasa vs. Republic**⁶, this Court reviewed a number of cases in which sentences of convicts found guilty of trafficking and importing controlled drugs were appealed. I need not repeat those cases here in this judgment. However, it is necessary to restate the principles developed in that case in resolving the issue at hand. The brief background of the case is that, Rashid Liwasa (appellant), a Kenyan national was convicted of the offence of importation of 683.7 grams which contained 287.1 grams of pure heroin. He was found guilty, convicted and sentenced to life imprisonment. Liwasa appealed against the conviction as well as the sentence. The ground of appeal against sentence was to the effect that the sentence of Life imprisonment offended the principle of proportionality of sentencing, and that it was harsh and excessive.
54. Having reviewed a number of cases in which sentences following a conviction of importation of drugs were imposed, the Court of Appeal held as follows:

⁶ Cr. App SCA No. 2 of 2016.

“From a perusal of the above-cited judgments as well as the sentence of the Appellant in the instant case it reveals that before passing sentence the learned trial judge took into consideration various mitigating factors including that the Appellant is a first time offender and that he is a family man. Such factors were likewise taken into consideration in all the other cases aforementioned and yet none received a life sentence. From an analysis of cases abovementioned, the trend seems to fall within a range of 10 - 14 years imprisonment.”

55. Following the above reasoning, the Court of Appeal reduced Liwasa’s life imprisonment sentence to 14 years imprisonment.

56. Counsel for the appellant also referred Court to past decisions in which the offenders were given lenient sentences for importation into the Republic prohibited drugs. I have already highlighted these cases in the earlier part of the judgment. However, for clarity I will reproduce them below:

(a) **Republic vs. Christ Kanjere and Jean - Claude Wellington Adeline (supra)** where Jean-Claude Wellington Adeline pleaded guilty to aiding and abetting the importation of 763.6g of Cannabis (herbal materials) and was sentenced to 2 years imprisonment with remission.

(b) **Republic vs. Marcos Venicius Da Silva Reis (supra):** wherein the accused was charged with importation of 1946.6g of controlled substances which contained 545.04g of pure cocaine and was sentenced to six (6) years imprisonment.

(c) **Republic vs. Francise Ernesta & 3 others (supra)** where the accused were charged with conspiracy to commit trafficking in 746.9g heroin and conspiracy to import 746.9g heroin and sentenced to 4 years for 2 of the accused and 9 years for the other 2 accused.

(d) **Republic vs. Emerenthia Holder (supra)** Twomey CJ sentenced the accused to a term of 5 years imprisonment for the importation of 986.4 grams of heroin which

contained 404 grams of pure heroin.

57. I note that the weight and class of drugs involved in the above mentioned cases differ from those in the present case. Whereas in **Republic vs. Christ Kanjere (supra)** the drug in question was categorised as a class “B” drug, the drug involved in the present case is categorised as class “A”. Relatedly, the offence with which the accused was convicted of in the aforementioned case was a less serious offence compared to the offence of conspiracy and importation the 1st appellant (Osama Casime) was convicted of. In **R vs. Marcos Venicius Da Silva Reis (supra)** the accused person was convicted on his plea of guilty to the charge of importation of cocaine weighing 545.04 grams and sentenced to 6 years imprisonment without remission. I note that compared to the weight of drugs (viz 114.2grams) involved in the present case, the aforementioned case involved a greater weight but the convict was given a lenient sentence of 6 years. The lenient sentence arose from the mitigating factors of young age, the need for rehabilitation and the fact that this was a first time offender. This was not so in the present case because the 1st appellant has a previous conviction of importation of prohibited drugs. It is clear that the mitigating factors of one case which influence the final sentence always differ from another case.
58. Since the cases the appellants’ counsel referred to are distinguishable, it cannot be said that the range of sentences depicted in those decisions ought to be exactly applied to the present matter. Sentences in and of themselves do not delimit the exercise of discretion and are not binding precedents. The sentencing exercise itself is not merely the imposition of a number in a previous decision presenting similar circumstances. Rather, it is an exercise of discretion in which the sentencing judge must tailor a sentence according to the particular circumstances of case.
59. Therefore since the trial court took into consideration the mitigating factors presented to the credit of the appellants and weighed them against aggravating factors as well as the sentencing range of sentences spelt out by MODA, 2016 and case law, I find that the imposed sentences of 20 years and 10 years imprisonment for the 1st and 2nd

appellants respectively are not outside the prescribed sentencing range and do not infringe the appellants' constitutional right of equality before the law. The sentences are proportional to the offence with which the appellants were convicted.

Ground 4 therefore fails.

60. I now address issue (ii) arising in the appeal- *Whether or not the appellants are entitled to benefit from remission of their sentences.*

Remission is provided for in **Section 30 (1)** of the **Prisons Act** as follows:

“(1) Subject to subsections (2) and (3), a person sentenced, whether by one sentence or by consecutive sentences, to imprisonment for a period exceeding 30 days, ... on the ground of his industry and good conduct while in prison be granted a remission of one third of the period of his imprisonment.

(2) Subsection (1) shall not apply to a prisoner-

(a) serving a sentence of imprisonment for life; or

(b) serving a sentence of imprisonment for an offence of an aggravated nature under the Misuse of Drugs Act, 1990... (My emphasis)

61. Whereas counsel for the appellants submitted that the appellants' sentences were subject to **Section 30 (1)** which provides for remission, the respondent argued that remission was inapplicable in this matter because the drug related offences that the appellants were convicted of were of an aggravated nature.
62. I have already made a finding above that two factors (previous conviction of the 1st appellant and presence of a commercial element) which make the case aggravated in nature.
63. It was submitted by the appellants' counsel that because **Section 30 (2) (supra)** refers to the MODA 1990 and not MODA of 2016, remission applied. I do not agree with

counsel's view for the following reasons:

First, I take note of the fact that the Prisons Act was amended in April 2016, which period was before the coming into operation of the 2016 MODA. The commencement date of MODA 2016 was 20th June 2016. There is no doubt that reference was made to MODA 1990 because it was the law in operation then. The Legislature could not have referred to legislation which had not yet come into force.

Furthermore, in interpreting an Act of Parliament, Court should be guided by the Mischief Rule. A look at the Long title of MODA 2016 clearly indicates that the purpose of the Act was to provide for more effective measures to deal with drug related crime. It would be an absurdity if this Court were to make a finding that the Legislature intended to provide for more lenient sentences in an Act of Parliament aimed at strengthening mechanisms for dealing with the crimes.

Even more important however are several provisions of the Interpretation and General Provisions Act. Section 24 thereof states that: "A reference in an Act to the Constitution, an Act ... is a reference to the Constitution, the Act ... as from time to time amended." And under Section 22 (1) thereof which deals with meaning of words in Acts, it is provided that:

"amend" includes repeal, revoke, cancel, delete and replace, in whole or in part, add to, vary, and the doing of any two or more of any such things simultaneously or in the same Act;

64. The reference to the Misuse of Drugs Act 1990 in the Prisons Act is thus a reference to the Misuse of Drugs Act 2016.
64. Further still we must also be guided by Section 30 (2) (a) of Interpretation and General Provisions Act which is to the effect that: "Where an Act repeals and re-enacts with or without modification, any provisions of a previous written law then, unless the contrary intention appears, any reference, whether express or implied, in any other written law to the provision so repealed shall be construed as a reference to the provision re-enacted."

65. Arising from the above, it must be concluded that **Section 30 (2)** of the **Prisons Act** applies to persons convicted of an aggravated offence under MODA 2016.

Conclusion and orders

66. In conclusion, the conviction and sentences of the 1st and 2nd appellants are upheld with the following modifications:

For Osama Casime:

- (i) On Count 1 (conspiracy to import a controlled drug), 10 years imprisonment.
- (ii) On Count 2 (importation of a controlled drug), 10 years imprisonment.

All the sentences are to run concurrently without remission.

67. For Hifa Casime:

- (i) On Count 1 (conspiracy to import a controlled drug), 5 years imprisonment.
- (ii) On Count 3 (aiding and abetting), 5 years imprisonment.

All the sentences are to run concurrently without remission.

68. We so order.

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