IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] SCCA 33 (25 August 2023)

SCA CR 03/2023

(Appeal from CO 77/2021)

In the matter between

Eric Leon **Appellant**

(rep. by Mr. Basil Hoareau)

and

The Republic **Respondent**

(rep. by Mrs. Nissa Thompson)

Neutral Citation:	*Leon v R* (SCA CR 03/2023) [2023] SCCA 33 (Arising in CO 77/2021) (25 August 2023)
Before:	Fernando President, Twomey-Woods, Tibatemwa, JA
Summary:	Appeal against sentence imposed on conviction for money laundering and conspiracy to commit money laundering.
Heard:	7th August 2023
Delivered:	25th August 2023

ORDER

Appeal dismissed. Fine imposed by the Supreme Court corrected to read as SCR 380,000 (three hundred and eighty thousand) and the default sentence for the non-payment of the fine to read as 9 years and 6 months. For every SR 10,000.00 paid the default sentence shall be reduced by 3 months.

JUDGMENT

FERNANDO, PRESIDENT

1. The Appellant has appealed against that part of the sentence imposing a fine on him, on his pleading guilty to 18 counts of money laundering under the Anti-Money Laundering Act, 2006, 19 counts of money laundering under the Anti-Money Laundering and Countering the Finance of Terrorism Act, 2020 and 1 count of conspiracy to commit money laundering, under the Anti-Money Laundering Act, 2006. The sentence has been recorded at paragraph 15 of the Sentencing Order as follows:

   "Sentence on Counts 3 to 40

   A term of four years' imprisonment on each of the counts 3 to 40. I make order that the terms of imprisonment run concurrently.

   In addition, I impose a fine of SCR 10,000 (ten thousand) on each of the counts 3 to 40. In the event the fine is not paid a default term of three months' imprisonment on each count is imposed. The default terms of three months' imprisonment to run consecutively for each count and consecutive to the term of four years.

   In total for all counts the 1st accused will have to pay a sum SCR 370,000 (three hundred and seventy thousand) failure to pay this total sum would result in a term of 9 years 3 months' imprisonment to run consecutive to the 4-year term of imprisonment." (verbatim)

2. I note that the learned Sentencing Judge had in calculating the total fine mistakenly missed out one count and it should in view of his order that a fine of SCR 10,000 shall be imposed on each of the counts; namely 38 counts, should read as SCR 380,000 (three hundred and eighty thousand) and not 370,000 (three hundred and seventy thousand) as stated above and the default sentence for the non-payment of the fine should read as 9 years and 6 months and not 9 years and 3 months. In my view the payment of the fine of SR 10,000.00 in respect any one of the counts shall reduce the default sentence by 3 months.

3. Both under the Anti-Money Laundering Act, 2006 and the Anti-Money Laundering and Countering the Finance of Terrorism Act, 2020; a person is liable on conviction

for money laundering, to imprisonment for a term not exceeding 15 years or to a fine not exceeding SCR 5,000,000 (five million) or both.

4. The Appellant has raised the following grounds of appeal against that part of the sentence relating to the fine and prayed that the fine imposed be quashed.

(i) "the total fine of SR 370,000 is manifestly excessive as it is outside the sentencing range of similar offences and outside the broad range of penalties appropriate to the case;

(ii) the sentence is not justified in law and/or is wrong in principle since there was no evidence before the trial court that the Appellant had made substantial profit from the offences, particularly as the effect of the fine will make it inevitable that the Appellant will serve an additional period of nine years in custody, in default of payment of the fine, after the Appellant would have served the total sentence of 4 years' imprisonment.

(iii) the sentence is not justified in law and/or is wrong in principle, since in imposing the fine the trial judge failed to make allowance for the time spent on remand by the Appellant; and

(iv) the sentence is not justified in law and/or is wrong in principle in that the learned trial judge failed to consider that the fine would place an undue financial burden on the Appellant on his release." (verbatim)

5. According to the charges to which he has pleaded guilty, the Appellant had, by way of money laundering removed from Seychelles, a total sum of US dollars 56,073.49 and paid into the accounts of several persons in Oman, during a period of 9 months, namely, 13 May 2020 to 22 February 2021. In 5 instances sums of money have been transferred through JPL X Creole Spirit, Quincy Street (4 instances), and JPL X C Eden Plaza, Victoria (once), and in the other 32 instances through Mahe Exchange LTD, Victoria. According to the particulars in the charges, I find that sums of money have been sent to about 5 persons in Oman and in order to avoid detection, their names have been differently stated. In relation to the charge of conspiracy to commit money laundering the Appellant along with two others had agreed to possess and acquire cash of USD 7,500. Also the Appellant had procured Clovis Raheriniaina to do 6 of the transactions and 2 transactions had been done by the Appellant by using the national identity card of one Brenda Veronique Sedgwick.

6. In noting the sentences specified in the Anti-Money Laundering Act, 2006 and the Anti-Money Laundering and Countering the Finance of Terrorism Act, 2020, for money laundering, referred to at paragraph 3 above, the Appellant had been sentenced in respect of each of the counts to a prison term of less than 1/3rd of the maximum prison term specified for one count, and 1/500 of the fine that could have been imposed for each of the counts. What is of significance in this case, is that according to Appellant's own calculation in his submissions in mitigation before the Trial Court, a total sum of US dollars 56,037.49 (erratum-should be US dollars 56,073.49 as stated at paragraph 5 above) had been removed from Seychelles, which is equivalent to about SR 812,543.06 (erratum-should be SR 813,065.60 in view of USD mentioned at paragraph 5 above). Thus the fine imposed is almost less than half the amount of the equivalent in Seychelles rupees of US dollars that had been siphoned off illegally from the country.

7. The Appellant has in order to place emphasis on the fact that the fine is excessive, totalled up the fines imposed in respect of the 37 counts. What he has conveniently not addressed is that it is only SR 10,000.00 that had been imposed on each of the charges levelled against him. Is it the Appellant's position that he is penniless to pay the amount imposed by way of a fine in respect of any one charge? The payment of SR 120,000.00, which would be in respect of 12 counts would bring down the default sentence by 3 years.

8. The learned Sentencing Judge in passing sentence had taken into consideration that the Appellant is 56 years of age, has two children, and had "pleaded guilty without wasting the time of Court and even before trial commenced". I agree with the Sentencing Judge's statement:

"It should be borne in mind that Money Laundering is a serious financial crime. It has a detrimental effect on every society internationally as it attempts to make every criminal activity a legal one. Once cleansed the money is used for investment purposes, the flow of such funds results in the prices of assets to increase unrealistically. This has a detrimental effect on the economy of a country. It is the view of this Court that failure to take suitable deterrent action would result in money laundering thriving and therefore and encouragement for the connected illegal activities to continue and flourish. This in turn, brings about a threat to the stability of countries and has a serious social impact as well in a country like Seychelles. Basically, Money Laundering gives support and assistance and encouragement to criminal

conduct. It assists criminal activity by helping criminals retain or gain the benefit from criminal conduct. …" (verbatim)

9. As was held in the case of **R V Monfries 2 Crim App Reports 3** the criminality in laundering is the assistance, support and encouragement it provides criminal conduct and regard should be given to the extent of launderer's knowledge. This was not one single offence committed by the Appellant, but 38 separate offences committed over a period of 9 months, through three money exchangers and in 6 instances procuring another to commit the offences and in two instances using the national identity card of another. All these should necessarily have a bearing on the gravity of the offences committed and the sentences imposed by the Sentencing Court. Counsel for the Appellant has tried to rely heavily on the two cases against Gabriel, where the moneys involved was more than the instant case. The case of Gabriel in **CO 55/2020** was a solitary transaction involving two counts, one of money laundering and the other failing to report a suspicious transaction, where the money involved was Seychelles rupees and the money was not removed from Seychelles. In the other case of Gabriel, **CR 32/2021**, the offence of money laundering was in respect of a piece of land and the house therein, where again the money involved was Seychelles rupees. In the instant case as per the charge to which the Appellant had pleaded guilty and as stated by the Appellant's Counsel in mitigation of sentence before the learned Sentencing Judge, the money was removed from Seychelles. I agree with the learned Sentencing Judge's statement, that in Gabriel "the accused acted recklessly and only in respect of one transaction and in respect of a property worth 3 million rupees. In this instant case, the accused (Appellant) had knowingly and deliberately, on several occasions, continued to launder money…" I take note of the fact that the Appellant was a former police officer and thus knew what he was doing. Counsel for the Appellant in mitigation of sentence before the Sentencing Judge had said: "My Lord, true, in this case your Lordship may come to a finding that the accused (Appellant) knew that the money which was being dealt with was proceeds of crime, whereas, in Gabriel's case, it was not, it was recklessness."

10. The Appellant has tried to rely on some English cases of sentencing in money-laundering cases. However, Seychelles, as a member of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG), has to abide by our commitments to the Financial Action Task's international AML/CFT standard. We need to make clear that we have a zero tolerance policy for money laundering in our jurisdiction and in line with the requirements of the international AML/CFT standard, we need to impose effective, proportionate and dissuasive sanctions in such cases. We are also not beholden to some English cases for jurisprudence, but

should make up our own minds as to what constitutes as effective, proportionate and dissuasive sentence, taking into account, the facts and circumstances of the case, the manner in which the offence has been committed, our own country context, and noting that such crimes have international repercussions. So it is upon this court to make a judgement call as to what is appropriate, as provided for within our own AML/CFT legislation. Ultimately, we need to be able to ensure the effectiveness of our AML/CFT framework.

11. It is also to be noted that money laundering offences should be treated differently from other forms of financial crimes such as fraud, criminal misappropriation and criminal breach of trust, because such crimes generally have only a local impact while money laundering crimes have a global impact in that it attempts to hide the original source of funds, often those generated as the proceeds of crime, so that the funds can be spent or transferred legitimately, across borders. As correctly stated by the Sentencing Judge thus money laundering has not only local but international ramifications. I am of the view that courts should be guided by the principles of deterrence and reparation in sentencing for money laundering offences. Also sentencing in money laundering crimes should be different from other financial crimes which generally have only a local impact and thus should be with more severity, so as to act as a deterrent to would be offenders. It is for this reason I am of the view that in sentencing for money laundering crimes both imprisonment and fines should be ordered. A fine would bring home the message that an accused cannot enjoy the benefits of his criminal activity as the laundered money will have to be paid back and the imprisonment would deter future would be offenders.

12. I find that there is a growing trend by certain Counsel to appeal, by mixing up the true facts, knowing well that there is no merit in the grounds of appeal raised. This in my view is disrespect for the apex Court in this country. To state that the fine of SR 10,000 in respect of one count of money laundering, is manifestly excessive, for the reasons stated above is a misnomer, bearing in mind that this Court on previous occasions has drawn a distinction between excessive and manifestly excessive sentences, the latter being a possible ground for appeal. The Appellant's argument that there was no evidence that he had made substantial profit from the offences, in the face of the evidence that he had siphoned off illegally from the country US dollars 56,073.49, which is equivalent to about SR 813,065.60 is ludicrous. It is childish for the Appellant to think that he could make this Court believe that what he did, was for charitable purposes or that he was merely acting as a courier service, and that he gained nothing out of these transactions? The Appellant has pleaded guilty to the charge of conspiracy to commit money laundering wherein he along with two others had agreed to possess and acquire cash of USD 7,500. What about the economic loss to the country and the social impact it has, in cleansing black

money? Is it the Appellant's position that only upon proof that he had made a substantial profit from money laundering that a fine should have been imposed in addition to the sentence of imprisonment? The Appellant seems to ignore the sentiments expressed by the learned Sentencing Judge referred at paragraph 8 above, in highlighting the financial burden on him on his release, as raised in ground 4 of appeal.

13. The Appellant had in his Skeleton Heads of Argument tried to place reliance on this Court's judgment in **F Soopramanien & two others VS The Republic SCA CR 18/2022**. In my view that case has no relevance to the facts of this case as that was not one pertaining to money laundering. In that case the appellants had been sentenced to 30 years' imprisonment, together with a fine of SR 500,000.00 to be paid within 14 days of the sentence and in default of the payment of their fines to serve a further 5 years' imprisonment, which shall be concurrent to the 30 years' imprisonment; in respect of two charges under the Misuse of Drugs Act and one under the Trafficking of Persons Act, to which they had pleaded guilty. Further, there was no evidence before the Court as to the financial circumstances of the appellants and as to their means to pay within 14 days of the sentence. In this case it is clear from the charges to which the Appellant had pleaded guilty, he had been dealing with US dollars 56,073.49, which is equivalent to about SR 813,065.60 and as stated earlier it cannot be said that this was for charitable purposes. It will be a dangerous precedent to set, that in cases of money laundering of this nature, accused should only be slapped down with a sentence of imprisonment and not a fine. That will leave the door open to would be offenders of money-laundering, to continue committing such offences, plead guilty when caught, accept a sentence of imprisonment without complaint as in this case, and enjoy the benefits of the offences committed by them on their release or pass it on to others.

14. The case of **Jakari Abdullah Suki V The Republic Criminal Appeal SCA 10/2019**, cited by the Appellant was one of importation of heroin and cocaine, and different in nature to the instant case. In that case this Court stated, reference to prior decided cases on sentence is a useful aid or tool to assist a court in determining an appropriate sentence and this undoubtedly was to prior decided cases on dangerous drugs. In Suki the Court said that **"***In the final analysis however each case must be decided on its own merits since no two cases are the same*.**"** Thus a reference to any Seychelles cases, if any, on money laundering, involving several transactions, committed in different ways, over a period of 9 months or more, and where the moneys have been repatriated to foreign country and similar to the instant case, may have been a useful aid. The Appellant has failed to cite a single case similar to this case, from Seychelles. In Suki the Court also stated: **"***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.**"**

15. The Singaporean case of **Ho Chen Yu Gareth VS Public Prosecutor [2012] SGHC 19**, cited by the Appellant is of no relevance as it relates to offences of unlicensed moneylending without a licence within the country, and thus different to the instant case of money laundering where the moneys were repatriated from Seychelles to Oman, bringing about a loss of much needed foreign exchange to the Seychelles. I agree that, as stated in the said Singaporean case, which makes reference to a Malaysian case, where a penal law provides by way of punishment for the imposition of either a term of imprisonment or fine or both, courts should avoid combining a term of imprisonment with a fine, but in my view that should be in respect of certain types of offences. In my view in cases of money laundering, fraud, criminal breach of trust and criminal misappropriation involving large amounts of money the general tendency of the courts should be to recover the moneys illegally taken. If not offenders will be encouraged to carry on with their illegal activities knowing that they could enjoy the benefits of their illegal conduct on their release from prison or else someone related to them could benefit from their illegal conduct. I therefore agree with the statement made in the said Singaporean case citing a Hong Kong authority: "*If a term of imprisonment imposed on an accused in default, that is not to be regarded as additional punishment. It is simply the means by which the accused is encouraged to surrender his profits or to pay his debt to society.*"

16. Appellant's attempt in his Skeleton Heads of Argument to place reliance on his pre-sentencing report to show that he has an outstanding loan with the bank and that he is in arrears of the loan to pay for his Hyundai van and that the bank has threatened to seize his van, has no relevance to his appeal to get the fine imposed on him vacated and is totally inappropriate to be argued before this Court. These are matters that the Appellant should have thought of before deciding to get involved in criminal conduct.

17. To argue, as the Appellant has done in his Skeleton Heads of Argument, that the overall sentence of 13 years to which the Appellant may become subject, upon default to pay the fines, is wholly disproportionate to the maximum custodial sentence for such offence is incorrect. In making this statement the Appellant ignores the fact that he could have been sentenced to 15 years in respect of each of the 38 counts he had been charged. The Prosecutor had indeed been magnanimous in amassing all 38 charges in one indictment rather than splitting them into 5 or 6 indictments. The totality principle could not have been argued then.

18. The time spent on remand has certainly been taken into consideration. At paragraph 20 of the judgment the learned Sentencing Judge had said "Time spent in remand to

count against sentence" He had also said that "Accused entitled to remission at the discretion of the Superintendent of Prisons." Thus the 4-year prison sentence which the Appellant has counted in arriving at his total sentence of 13 years, if none of the fines are paid, may even be reduced.

19. None of the known grounds for challenging a sentence of the Trial Court applies to this case. I state that for reasons stated in paragraph 7 above, the sentence imposed on the Appellant is justified. I therefore dismiss all 4 grounds of appeal against the sentence and confirm the sentence referred to at paragraph 2 above and in doing so I correct the mistake the learned Sentencing Judge had made in calculating the fine and the default sentence for non-payment of the fine as stated at paragraph 2 above. I make order that for every SR 10,000.00 paid the default sentence of 3 months shall be reduced by 3 months.

Fernando President

I concur:

Dr. Twomey-Woods, JA

I concur:

Dr. Tibatemwa-Ekirikubinza, JA

Signed, dated and delivered at Ile du Port on 25th August 2023.