**IN THE COURT OF APPEAL OF SEYCHELLES**

**Reportable**
[2024]
(3 May 2024)
SCA CR 08/2023 and
SCA CR MA 04/2024
(Appeal from CR 64/2018)

**JEAN-CHRISTOPHE PAYET** **Appellant**

*(rep. by Basil Hoareau)*

and

**THE REPUBLIC** **Respondent**
*(rep. by Ms. Ria Alcindor)*

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| **Neutral Citation:** | *Payet v R (*SCA CR 08/2023 and SCA CR MA 04/2024 [2024] (Arising in CR 64/2018) (3 May 2024) |
| **Before:** | Twomey-Woods, Robinson, Andre, JJA |
| **Summary:** | breach of Rules of the Seychelles Court of Appeal, good cause for condonation of delay - appeal of conviction - conspiracy to import drugs- necessity of participation of co-conspirator in offence- |
| **Heard:** | 15 April 2024 |
| **Delivered:** | 3 May 2024 |

**ORDER**
The appeal is dismissed. The conviction and, consequently, the sentence are upheld.

**JUDGMENT**

**DR. M. TWOMEY-WOODS JA**

**(Robinson and Andre JJA concurring)**

**Background**

[1]. The appellant, Mr. Jean-Christophe Payet, a twenty-four-year-old man of Quincy Village Mahe, was charged with conspiracy to import controlled drugs, namely 579.48 grams of a controlled drug, having a total average content of 300.56 grams of diamorphine (heroin). The particulars of the offence specified that Mr. Payet had agreed with a Nigerian national,

Mr Ifeani Uzor of Port Glaud, Mahe, "on or around the months preceding October 2018" to pursue a course of conduct amounting to the importation of the drugs."

[2]. Two other charges relating to trafficking were dismissed against both Mr. Uzor and Mr. Payet for being either duplicitous or not particularised sufficiently. They were, however, both convicted for conspiracy to import the drugs and sentenced to a term of 9 years imprisonment. Mr. Uzor initially appealed his conviction and sentence but later withdrew the same.

[3]. Mr. Payet, dissatisfied with the decision of the learned trial judge Vidot, has appealed against his conviction.

[4]. Before I set out the grounds of appeal and their consideration by this Court, I must examine a procedural matter of substantial importance in this case.

**Breach of procedural rules of the Court of Appeal**

[5]. New rules of the Court of Appeal came into effect on 13 January 2024. In those rules, strict mandatory time limitations are set for the filing of the notice of appeal and the main heads of argument in appeal cases. Specifically, once an appellant has filed his heads of argument, the respondent has, pursuant to Rule 24(2), two weeks to file its arguments. In the present appeal, the Attorney General and Appellant's counsel, Mr. Hoareau, were served with the 'record of appeal' on 21 February 2024. Mr. Hoareau duly filed his heads of argument within the one-month period as prescribed in Rule 24 (1) on 21 March 2024. The Attorney General necessarily had to file main heads of argument within two weeks of receipt of Mr. Hoareau's heads of argument, that is, by 4 April 2024. This was not done.

[6]. On 15 April 2024, the day the appeal was set to be heard, Ms. Alcindor, State Counsel, filed a notice of motion asking the court to condone the delay in filing the heads of argument. It must be noted that these heads of arguments are also in breach of Rule 24(f) as they are contained in a scant 3-page summary, with none of the authorities relied on attached.

[7]. Ms. Alcindor supported her motion with an affidavit in which she depones in relevant part:

*"3. That I was outside the jurisdiction from the 15th of March through to the 21st March 2024 for training purposes and subsequently went into annual leave from the 22nd of March through to the 2nd of April 2024. Upon receipt of the heads of skeleton, I had to go through the records of the proceedings, in between attending to regular matters in the Supreme Court, dealing with the other workload in the office, thus resulting and with the close of the judiciary related to the alleged gas leak the respondent's heads of argument only now being filed…*

*4. That the delay happened in the circumstances stated above and it was not intentional on my part. This appeal is crucial in ensuring that justice is maintained in this case, especially in regard to the nature of the case. Hence it is prayed that the delay in filing the heads of argument may be condoned in the interests of justice and respondent's heads of argument may be accepted in the matter and the respondent be heard in this appeal."* (sic).

[8] The averments of the affidavit must be read in the context of established and consistent jurisprudence on what constitutes "good cause" for condoning delay.

[9] In *Commissioner of Police & Anor v Antonio Sullivan & Ors* (SCA 26 of 2015) [2018] SCCA 2 (10 May 2018) this court referred to the English case of *Norwich and Peterborough Building Society v Steed* CA ([1991] 2 AER 880, in which Lord Guest stated that the matters the court should take into account in deciding whether to grant an extension of time are the following: 1. the length of the delay; 2. the reasons for the delay; 3. the chances of the appeal succeeding if the application is granted; and 4. the degree of prejudice to the respondent. Granted that the matters above in the *Norwich and Peterborough Society* case concerned an appellant, it is my view that they are still helpful in guiding this court as to when to exercise its discretion to condone the delay on the part of a respondent.

[10] In the case of *Grootboom v NPA* 2014 (1) BCLR 65 (CC), the Constitutional Court of South Africa was tasked with deciding an appeal concerning an application for the condonation in the Labour Court for the late delivery of a Statement of Claim. Sass AJ stated:

*"It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-*

*compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default."*

[11] Similarly, *in Aglae v Attorney General (2011) SLR 44,* this Court ruled an appeal abandoned for the breach of procedural time limits and relied on the case of *Ratnam v Cumarasamy and Another [1964] 3 All ER 933* for the proposition that:

> *"The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the Court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right of extension of time which would defeat the purpose of the rules which provide a timetable for the conduct of litigation."*

[12] Specifically, with regard to Rule 24, in *Auguste v Singh Construction* (Commercial Case 71 of 2022) [2022] SCCA 69 (16 December 2022), this Court stated:

> *"[10]. There is now settled jurisprudence on this point – most recently in the cases of Commissioner of Police & Anor v Antonio Sullivan & Ors (SCA 26 of 2015) [2018] SCCA 2 (10 May 2018) and Laurette & Ors v Savy & Ors (SCA 13 of 2019) [2019] SCCA 36 (21 October 2019)".*
>
> *...*
>
> *[12] We cannot overemphasise the importance of rules of procedure. There is an apparent necessity for courts to adopt a tough stance on time limits. Parties are entitled to certainty and clarity in court proceedings and the taxpayer to a system that is cost-effective as possible.*

[13] Lately, in *Chang Sing Chung v Kim Koon and Ors* (SCA MA 38 of 2023) [2023] SCCA 48 (25 August 2023), this Court again held:

> *[22]Rule 24 […] obliges an appellant to file heads of argument within a specified time period … There are certainly cases such as the one we are dealing with, where what has been flouted is 24(a) … and appeals have been dismissed. So, flouting 24(a) has consequences.*

[14] In *Grootboom* the court found that the applicant had made a case for condonation as he had shown good cause for the delay. These included the facts that:

*"[16] …the Statement of Claim was delivered late due to his financial position resulting from his retrenchment which in turn adversely impacted on his financial ability to seek and afford legal advice and services, including that of counsel. The delay was exacerbated by him contracting COVID-19 at the time when his Statement of Claim was due, delays in obtaining a case number as well as his computer hard drive crashing on or about 15 January 2021.*

*[17] He has been unemployed since his retrenchment on 30 August 2020. He support[ed] his wife and three daughters financially. His wife is unemployed and both of them are battling to find alternative employment for her. His daughters are still in school and/or university which on its own carries a substantial financial obligation. In addition, he has regular household expenses for which he is responsible on a monthly basis...*

*[18] He had to inter alia cash in policies and borrow money from friends and family to be able to afford monthly expenses. He was forced to put his family home on the market in an attempt to save costs and not default on his existing and ongoing financial commitments. The sale of the property unfortunately took longer than he had anticipated.*
*…*
*[20] He [also]did not qualify for Legal Aid South Africa …"*

[15] Bearing in mind these examples and those given by Lord Guest in *Norwich and Peterborough Society,* which is by no means an exhaustive list of circumstances in which delay may be condoned, I am not convinced that going on training or on holiday can ever constitute good cause, let alone sufficient cause. Nor can a claim that Counsel was too busy with other cases or too busy to read through court transcripts to fashion heads of arguments.

[16] It is for these reasons that I applied Rule 24 (1) (j) and did not permit Ms. Alcindor to be heard. The appeal proceeded solely with this Court's consideration of Mr. Payet's grounds of appeal and arguments.

**Grounds of appeal**

[17]. He has filed two grounds of appeal namely:

1. *The learned trial judge erred in law and on the evidence in convicting the Appellant of the offence of conspiracy to import diamorphine contrary to the Misuse of Drugs Act, in that the course of conduct to be pursued by the conspiracy, namely the importation*

*of the diamorphine, was not to be carried by the appellant or by Ifeanyi Jeremiah Uzor, the other party to the conspiracy.*

2. *The learned trial judge erred in law and on the evidence in convicting the Appellant of the offence of conspiracy to import diamorphine contrary to the Misuse of Drugs Act, as the conduct to be pursued, and if pursued as per the conspiracy, namely the importation of the diamorphine, did not necessarily amount to or involve the commission of the actual offence of importation under the Misuse of Drugs Act, by the appellant or Ifeanyi Jeremiah Uzor, the other party to the conspiracy.*

[18]. I propose to treat both grounds together as they are issue-related. It must be emphasised that they relate to a very narrow matter concerning the elements of the offence of conspiracy under the Misuse of Drugs Act.

**Conspiracy to import heroin.**

[19]. Before I embark on a fact-finding mission in respect of the evidence relied on by the learned trial judge to convict Mr. Payet, and its link to the charge, I must clarify the significance of the grounds relied on by Mr. Payet. What I understand his learned Counsel, Mr. Hoareau, to be stating from the grounds is that if ever there was an agreement or a conspiracy between Mr. Payet and Mr. Uzor, it was not about them both or either of them importing the drugs. He submits that as the charge reads, it implies that the importation would be done by either of them and not by the third parties (Mrs. Kabunda and/or 'Michael'). In other words, the conspiracy between Mr. Payet and Mr. Uzor, if there was one, did not relate to the importation of drugs by other persons.

**The law**

[20]. In order to understand the submissions made by Mr. Hoareau on these grounds, it is important to reproduce the relevant statutory provisions on which the charge is based as well as the count itself:

*Count 1*

*Statement of Offence*

*Agreeing with another person or persons that a course of conduct shall be pursued and pursued amounting to the importation of controlled drugs by one or more of the parties to the agreement contrary to section 16 (a) read with section 5 of the Misuse of Drugs Act, 2016, further read with section 22 (a) 7 (c) of the Penal Code and punishable under section 5 read with section 48 (1) a] and 9b) and the Second Schedule of the Misuse of Drugs Act 20016.*

*Particulars of offence*

*Ifeanyi Jeremiah Uzor, 35-year-old Nigerian national, Food & Beverage attendant c/o Ephelia Resort, Port Glaud and Jean-Christophe Payet, 24-year-old self-employed of Quincy Village on or around the months preceding October 2018, agreed with each other that a course of conduct shall be pursued and pursued amounting to the importation of controlled drugs by one or more of the parties to the agreement namely diamorphine (heroin) having a net weight of 579.48 grams and a total average heroin content of 300.56 grams.*

[21]. The learned trial judge and all parties agreed that sections 22 (a) and (c) of the Penal Code, mentioned in the Statement of Offence defining a party's culpability for a joint offence, are irrelevant to the present case and amount to surplusage. I agree.

[22]. With regard to the offence with which, Mr. Payet was charged, section 16 of the Misuse of Drugs Act (MODA) provides in relevant part:

> *16. A person who agrees with another person or persons that a course of conduct shall be pursued which, if pursued, will necessarily amount to or involve the commission of an offence under this Act by one or more of the parties to the agreement… commits an offence and is liable to the punishment provided for the offence…(emphasis added).*

[23]. Additionally, section 5 of MODA provides:

*5. A person who imports or exports a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule.*

[24]. The issue raised by Mr. Hoareau in this appeal also concerns the definition of the word *import* as used in section 5 of MODA. MODA itself does not define import. However, section 22 of the Interpretation and General Provisions Act defines import as follows:

*22. … "import" means to bring, or cause to be brought, into Seychelles;…*

**The facts**

[25]. The following facts are not in dispute: Christine Kabunda arrived in Seychelles on 19 October 2019 with a quantity of drugs ingested and/or inserted in her body compartments. The drugs had been given to her by a Nigerian man who also told her that they would be collected from her by another Nigerian man in Seychelles. She was arrested at the guesthouse she was occupying on 21 October 2019 by the police on a tip-off and brought to the hospital for a surgical intervention in respect of the drugs inserted into her body. The fifty-eight bullet-shaped sachets subsequently expelled from her body contained a total average heroin content of 300.56 grams. She agreed to cooperate with the police in a controlled delivery of a decoy package to Mr. Uzor. Mr. Uzor contacted Mrs. Kabunda arranging to meet with her at her guesthouse. He arrived there on 23 October 2019 in a vehicle driven by James Gonzalves and another passenger, Darren Rosalie.

[26]. They were arrested, as they tried to get away and they subsequently informed the police that the drugs seized were to be delivered to Giulio Suzette and Jean-Christophe Payet. At Mr. Payet's residence, a search was carried out in the presence of Mr. Suzette, but in the absence of Mr. Payet. Weighing scales on a table near a bed were seized. Mr. Uzor's residence was also searched, and substantial amounts of cash in various denominations, together with jewellery, were seized. He was charged in a separate case in relation to these items and pleaded guilty.

[27]. Mr. Payet contested much of the other evidence, some of which is not relevant in terms of the issues raised in the present appeal. Of relevance is the fact that Mr. Gonsalves, a driver, turned state evidence and testified that on the day in question, he was asked to do a trip by

"Mr. Big Man" aka Mr. Payet. He had done several other trips before for him. Similarly, Darren Rosalie, who also arrested in the car on the day in question also turned state evidence and testified that the car used on the day of the incident belonged to Mr. Payet. He was acquainted with Mr Uzor, whom he had previously met through Mr. Payet near the cathedral at a meeting. There, they handed over cash to Mr. Uzor, who arranged for Mr. Roselie to pick him up from Port Glaud. Mr. Roselie subsequently accompanied Mr. Gonzalves to collect Mr. Uzor to drive him to Mr Payet's residence at Quincy Village after collecting the drugs from "a fat lady with dark skin" (Mrs. Kabunda).

[28]. Phone logs produced established that Mr. Uzor, Mr. Payet, and Mr. Gonzagues texted and called each other on days prior to and on the day of the incident.

[29]. Mr. Payet elected not to give evidence, as is his constitutional right. Mr. Uzor elected to give evidence and confirmed that he had put a Nigerian man named Michael in touch with Mr. Payet for a drug consignment to be imported into Seychelles. He was aware of the arrangements between Michael and Mr. Payet that a woman would bring in the drugs. He collected around SR 60,000 and also foreign exchange from Mr. Payet to send to Michael. He accompanied Mr. Gonzagues and Mr. Roselie to collect the drugs from the woman. He invited the woman into the car, and it was at this stage that the police pounced, and they were all arrested. The police took him to Mr. Payet's house but he was nowhere to be found. Mr. Uzor denied that he was involved in the agreement to import drugs. His defence is to the effect that he had only put Mr. Payet in touch with Michael.

**Submissions**

[30]. I propose to relate Mr. Hoareau's submissions in their entirety as they are comprehensive and easy to follow.

[31]. He submits that it was imperative in terms of the charge and the particulars of offence for the prosecution to prove beyond a reasonable doubt that the agreement between Mr. Payet and Mr. Uzor was one whereby the proposed course of conduct to be pursued would necessarily amount to or involve the importation of drugs by Mr. Uzor and Mr. Payet or by either of them. This, he submits, was not done. What the prosecution proved was that

there was a conspiracy between Mr. Payet and Mr. Uzor whereby the commission of the offence, that is the importation of the diamorphine was to be carried out by a person who was not party to the conspiracy. The ultimate proof of that is the fact that the importation of the diamorphine into Seychelles was carried out by Mrs. Kabunda who was not a party to the conspiracy. Moreover, the testimony of Mrs. Kabunda firmly established that she was not a party to the conspiracy between Mr. Payette and Mr. Uzor. Mrs. Kabunda's uncontroverted testimony is that she thought she was carrying medicine for the hospital.

[32]. For this proposition, Mr. Hoareau has relied on English authorities and commentary interpreting section 1 of the Criminal Law Act 1977 which is similarly worded to section 16 of MODA.

[33]. He relies specifically on the following passage from Blackstone's Criminal Practice:[1]

> *"To be the subject of a conspiracy, the course of conduct proposed must be something that will be done by one or more of the parties to the agreement. An agreement to procure the commission of a murder by a third party (e.g., to hire a 'hit man') is not a conspiracy to commit murder even though anyone hiring such an assassin would become a secondary party to murder if the job is done."*

[34]. He has also relied on Halsbury's Laws of England and has made reference to the following passage, which is a comment on section 1 of the English Criminal Law Act.

> *59. Statutory conspiracy if a person agrees with any other person or persons that a course of conduct is to be pursued which, if the agreement is carried out in accordance with their intentions, either (1) will necessarily amount to, or involve the commission of, any offence or offences by one or more of the parties to the agreement: or (2) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible, he is guilty of conspiracy to commit the offence or offences in question."*

[35]. He has also referred to the case of *Regina v Kenning and others*[2] in which the Court of Appeal of England observed that:

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2 [2009] QB 221.

*19. The authors of Smith and Hogan's Criminal Law 11th Edition 2005 argue at page 367 that the course of conduct ought to include the intended conduct of a person not a party to the agreement. They conclude, however at page 369 to 370 that as a matter of construction an agreement to aid and abet an offence cannot constitute a statutory conspiracy. The relevant passage reads:*

*"D1 and D2, knowing that E intends to commit a burglary, agree to leave a ladder in a place where it will assist him to do so. E is not a party to that agreement. If he uses the ladder and commits burglary, D1 and D2 will be guilty of aiding and abetting him to do so. Are they guilty of conspiracy to commit burglary? Conspiracy requires an agreement that will involve 'a course of conduct amounting to or involving the commission of an offence'. If the course of conduct is placing the ladder, it seems clear that they are not guilty. Placing the ladder is not an offence, even an attempt to aid in a bet burglary, … However, it is argued above that 'course of conduct' should be interpreted to include the consequences intended to follow from the conduct agreed upon, including the action of a person not a party to the agreement - for example, V, who takes a poisoned tea left by D and E and drinks it. So it might be argued, consistently with that, that the course of conduct ought to include E's use of the ladder in committing burglary. If that should be accepted, the next question would be whether the burglary is 'the commission of any offence by one or more parties to the agreement'. E is not a party to the agreement, so the question becomes, do the words commission of any offence include participation in the offence as a secondary party? Since all the parties to a conspiracy to commit an offence will be guilty of that offence if it is committed, but section 1(1) contemplates that it may be committed by only one of them it is clear that 'commission' means commissioned by a principal in the first degree. It is submitted therefore that an agreement to aid and abet is not conspiracy under the Act."*

[36]. It is Mr. Hoareau's submission that the position outlined above was accepted by this Court in the case of *Celestine v R.*[3] Specifically, this Court stated:

*"[16] The central feature of a conspiracy is that the parties agree on a course of conduct that will necessarily amount to or involve the commission of an offence by one or more of the conspirators.*

*[17] Thus, a mere association of two or more persons will not constitute a criminal conspiracy. The main elements of conspiracy are a specific intent, an agreement*

[3] SCA 08/2013.

*with another person to engage in a crime to be performed, and the commission of an overt act by one of the conspirators in furtherance of the conspiracy."*

[37]. Mr. Hoareau further submitted that in terms of Article 19 (2) of the Constitution, an accused person has a right to be informed of the offence with which he is charged. This is supplemented by section 111 of the Criminal Procedure Code, which is to the effect that the charge must contain a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

[38]. It is his submission that a plain reading of the statement of offence and particulars suggests that Mr. Uzor or Mr. Payet brought the drugs into Seychelles. The fact that the evidence adduced was of another person, Mrs. Kabunda importing the drugs into Seychelles he submits, does not give notice to the accused person of the nature of evidence and offence he will be faced with at trial in compliance with the provisions of the Constitution and the Criminal Procedure Code as set out above.

[39]. Mr. Hoareau further submits that charging with conspiracy under section 381 of the Penal Code would have covered the act of another party outside the conspiracy bringing the drugs into Seychelles.

**Discussion**

[40]. Several questions are raised by Mr. Hoareau's submissions which need to be answered:

*(1) Is a charge of conspiracy under section 16 of MODA different to a charge of conspiracy under section 111 of the Penal Code?*
*(2) Does the offence of conspiracy under either statute have to include an overt act of the crime by one of the co-conspirators?*

[41]. The answer to (1) is a clear yes. It would seem that there is indeed a nuanced difference between the two provisions. Section 381 of the Penal Code focuses on conspiracy to commit any felony, whether within Seychelles or anywhere in the world, provided the act is considered a felony in the location where it is supposed to be committed. The provision emphasises the *mens rea* aspect without explicitly stating the need for an overt act to have

been taken to commit the felony. Liability arises from the meeting of minds of two or more persons to commit the felony.

[42]. Although the *actus reus* is the agreement to commit an unlawful object, the whole concept is heavily dependent on the mental element, namely, on the terms of the agreement and the common belief held by each party to the agreement.

[43]. In contrast, section 16 of MODA (and its predecessor section 28 of the old MODA, 1994) provides that an agreement between parties to pursue a course of conduct that would result in the commission of an offence constitutes the offence of conspiracy. The fact that a course of conduct is specified infers an overt act towards the same.

[44]. The key difference lies in how each section approaches the concept of conspiracy. Section 381 specifically targets agreements to commit felonies and ties liability to the nature of the planned crime. Section 16, on the other hand, is more expansive in addressing agreements that intend to pursue conduct leading to an offence, including scenarios where the offence does not materialise due to external factors.

[45]. Although neither provision *explicitly* requires that a co-conspirator must have participated in an overt act towards the commission of the substantive offence for a conspiracy conviction, the wording of section 16 *implies* an overt act by one of the co-conspirators toward the consummated offence.

[46]. Section 381 of the Seychelles Penal Code is a verbatim section 541 of the Criminal Code of Queensland from where it originates.[4] It provides:

> *541(1) Any person who conspires with another to commit any crime, or to do any act in any part of the world which if done in Queensland would be a crime, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for 7 years; or, if the greatest punishment to which a person*

[4] The Griffith Code of Queensland found its way to Seychelles from East Africa, via Nyasaland via Nigeria – see M. Twomey, 'Model Code or Mongrel Laws: The Strange Antecedents of the Seychelles Penal Code' (2015) 2(2) Journal of Comparative Law 40.

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*convicted of the crime in question is liable is less than imprisonment for 7 years, then to such lesser punishment."*

[47]. In interpreting this provision, the courts in Queensland have consistently emphasised that a criminal conspiracy is an agreement between two or more persons to do an unlawful act and that the essence of the offence of conspiracy is the unlawful agreement.[5] The prosecution must prove that the defendant intended, when he entered into an agreement to play some part in the agreed course of conduct.

[48]. In *R v Rogerson*[6] the court reiterated that a conspiracy to commit an offence is an inchoate offence in the sense that it is complete without the doing of any act save the act of agreeing to commit the offence. While evidence of the acts that follow the agreement may be the only available proof that the agreement was made, it is the agreement and not the evidence of the acts that constitutes the offence.[7]

[49]. Section 381 of the Seychelles Penal Code conspiracy and section 551 Queensland conspiracy is common law conspiracy where the crime of conspiracy, the unlawful act, consists of concluding an agreement to commit a specific crime. In other words, not only must there be the *mens rea* to commit the crime in question, but the *actus reus* must consist of an agreement between at least two persons to do so.

[50]. In contrast, the English statutory conspiracy ( section 1(1) of the Criminal Law Act, 1977) and section 16 MODA conspiracy offence requires an overt act by one of the co-conspirators *after* the agreement. This is inferred from the wording in the provision namely "*a course of conduct shall be pursued which, if pursued."*

[51]. In this context, Mr. Hoareau's arguments are well-made and the answer to (2) is that a section 16 MODA conspiracy does require an overt act by a party to the agreement. While this argument would certainly work for a defence for certain types of offences, it does not advance a defence for Mr. Payet in the circumstances of this case. He has relied on the case

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[5] *Aherne v The Queen* (1988) 165 CLR 87, *R v Thomson* (1965)50 Cr App R 1.
[6] (1992) 174 CLR 268 at 279.
[7] *R v Gudgeon* (1995) 133 ALR 379 at 389.

of *Kenning*[8], which is clearly distinguishable from the present case. In *Kenning*, the court dealt with the conspiracy to aid and abet a crime which is quite a distinct issue from the offence of conspiracy to commit a crime. The conspiracy to aid and abet crime underscores the importance of the intended course of conduct and its outcomes in determining whether actions constitute the conspiracy suggesting that mere assistance might not always equate to conspiratorial participation.

[52]. The conspiracy charge in the present appeal relates to the crime of importing controlled drugs. I have already set out the definition of importation in paragraph 24 above, which is the ordinary sense of the word. Case law supports equating *importing* with the notion of 'causing to be brought in'.

[53]. In *Clarisse v Republic,*[9] Sauzier J held that the expression importation meant to bring or cause to be brought into Seychelles and that where a parcel arrives by post from abroad, it constituted importation. Similarly, in *Republic v Dubignon*,[10] Perrera J stated:

> *"In Seychelles, in the absence of any definition, the word "import" must be taken in the broader sense of "to bring" or "cause to be brought" by air or sea." It would suffice therefore that for a substance to be imported that it arrives in Seychelles and is delivered to a point where it will remain in Seychelles. In the present case it was established and not disputed that the substance arrived into Seychelles on board EK707 on 20 March 2015 and remained in Seychelles."*[11]

[54]. Mr Hoareau has endeavoured in his submissions to this Court to give a strained meaning to the world importation as used in the particulars of offence. He submitted that a reading of the particulars of offence indicates "that the importation was meant to be, by either one [or the other of the appeallants] bringing into Seychelles" the drugs. In his view, the particulars of the offence should have stated the words "causing to be imported into Seychelles by another person" to fit the evidence adduced in the present case.

[8] Supra, para
[9] (1982) SLR 75
[10] [1998] SLR 52.
[11] Ibid, at p.

[55]. I cannot agree as the word import, as defined in the statute and authorities, includes ‘causing to be brought in”.

[56]. In the instant case, the evidence adduced showed that Michael (from Nigeria) contacted Mr. Uzor to find someone in Seychelles for the purpose of bringing in drugs to be sold in Seychelles. This led to Mr. Uzor approaching Mr. Payet. I agree with the learned trial judge that it is implausible that Mr. Uzor would not have explained Michael's request in detail to Mr. Payet, and it is equally unlikely that Mr. Payet would not inquire about Michael's intentions. The agreement between the two can also be inferred from the fact that Mr. Uzor freely discussed these matters with Mr. Payet, indicating an ongoing communication between Michael, Mr. Uzor, and Mr. Payet. Their meetings, including at secluded or unusual locations, and the transfer of substantial sums of money from Mr Payet to Michael, as testified by Mr Uzor, further suggest overt acts by either or both of them bring in the drugs.

[57]. Additionally, Mr. Payet’s instructions to Mr. Uzor on the day of the incident, anticipating fewer police due to weather conditions, underscore the existence of a detailed agreement to import drugs. The call logs and the nature of their interactions served as evidence of their specific intent and actions to execute this conspiracy. It does not matter how the drugs were imported – the crucial element is that they caused their importation as the evidence above highlights. The drugs bodily imported into Seychelles by Mrs. Kabunda has a clear nexus with the agreement and the acts of Mr. Uzor and Mr. Payet. The evidence is corroborated by Mrs. Kabunda, Mr. Roselie and Mr. Gonzalves.

[58]. For all these reasons, this appeal fails in its entirety.

**Order**

[59]. The appeal is dismissed. The conviction and, consequently, the sentence are upheld.

Dr. M. Twomey-Woods, JA.

I concur

F. Robinson, JA

I concur

S. Andre, JA

Signed, dated, and delivered at Ile du Port on 3 May 2024.