

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

VALLIPURAM MURALI (Accused)

Criminal Side No. 36 of 2007

The Attorney General Mr. Fernando assisted by Mr. Camille for the Republic
Mr. Hoareau and Mrs. Antao for the Accused

RULING

Gaswaga, J

After the accused had taken the plea on the 5th November, 2007 the counsel were called upon to fix dates on which the case is to be heard. The charges herein are: Fraudulent appropriation of Company property by an officer, Money Laundering and Corrupt practices. Before the same Court there is yet another file (CR. No. 36/07) with similar or related charges against the same accused. The hearing of CR. No. 30/07 is fixed for the 28th January, 2008 to the 1st February, 2008. The gist of the ruling is to fix dates on which this case shall be heard, the prosecution and defence having disagreed and therefore failed to settle for any of the dates proposed.

It should be stressed from the onset that the best position is that where the diaries of all the parties involved in a case and or their counsel are reconciled with the Court diary to find a suitable and convenient date for the trial. A number of factors may be considered by the Court before settling for the given dates. For instance the number and prevailing

circumstances of the parties and their counsel. It may not be easy to agree on dates and time in a case with many defendants represented by different counsel especially if each one's circumstances and particularly availability of convenient dates is to be put into account. The nature of the case, the number and type of witnesses to be called as well as the exhibits involved are some of the other factors. The Court will be asking itself questions all through the exercise whether it is a case of an urgent nature, whether the witnesses are experts or not and with busy schedules or not? Are the witnesses coming from within the jurisdiction of the Court or from abroad and, at what cost and convenience can their attendance be secured? Is the accused enlarged on bail or remanded in custody and, whether there is adequate time left for preparation of the case before trial etc...

The Attorney General submitted that the case could be heard for five consecutive days starting from the 4th to the 8th February, 2008, thus immediately after the trial of the accused in CR. No.30/07, in the preceding week. That three of the prosecution witnesses are to come from abroad to testify in the present case and CR. No. 30/07. He also stated that there was no law that stops a Court from imposing dates on counsel and further that he was prepared to abide by the Court ruling even if dates other than those suggested by him are imposed.

Mr. Hoareau urged the Court not to adopt a culture of imposing dates on counsel who represent other clients, at the material time, equally charged with serious offences like trafficking in narcotics and still remanded in prison. He stated that the 6th and 8th of February, 2008 were not convenient dates for him since he is already taken up in two drug trafficking cases where the accused persons involved are remanded in prison. Whereas the 7th, 8th and 11th of February, 2008 were convenient to Mrs. Antao, the 4th and 5th of the same month were not. However, the 11th, 14th and 16th February, 2008 were suggested by both defence counsel as being appropriate. Unfortunately the dates

did not find favour with the Attorney General who contended that if these dates are endorsed then the prosecution witnesses from Dubai, Singapore and Maldives will have to stay in Seychelles for a total period of three weeks, with one week in between doing nothing, and at the expense of the state yet they have other engagements in their respective countries. While acknowledging the predicament of the prosecution with regard to their witnesses Mr. Hoareau argued that the rights of an accused should be placed above the convenience of witnesses. That the convenience of witnesses should not even be taken into account at all. With due respect to the learned counsel, a Court of law sitting and properly guided to administer substantive justice cannot disregard or ignore queries brought by or on behalf of any person before it, whether summoned by itself or not and, whether on behalf of the prosecution or defence. Suffice it to emphasize that the importance of witnesses in a case is to assist the Court establish the truth and reach a just decision which could either be against or in favour of the accused.

A person is free to engage the services of one or more counsel who should however be ready, willing, able and available to represent him at all material times. For purposes of convenience, consistency and organization it would be advisable that the team of legal practitioners for **each** accused should first agree on a common position regarding the next course of action then speak with one voice even when it comes to fixing dates which must be acceptable to all of them. Needless to emphasize that failure by any of the team's counsel to attend Court, for one reason or another, cannot be interpreted as a denial of the right to counsel of the accused's choice stipulated under Article 19(2) (d). It cannot also be said that the accused has not been given adequate time to prepare his defence (Article 19(2) (c)). The issue herein was regarding 'convenient dates' to all parties and not the 'time' when the trial should be conducted. Indeed the defence was prepared to endorse dates proposed by the prosecution had it not been for the other cases that they had fixed earlier on. This is a clear indication that by that time they would have sufficiently prepared their defence.

It is true, as the learned Attorney General stated, that an accused should be tried within a reasonable time. However, 'reasonability' here should be viewed in light of the prevailing circumstances of each case. I have considered all the submissions on the record and also perused the Court diary. I noted that the counsel are indeed engaged on some of the days during the week of 4th – 8th February, 2008. The Court's schedule too is tight so much so that any displacement or postponement of these cases would cause a lot of inconvenience to the Court, the parties and their counsel as well as the witnesses. A further perusal of the record reveals that charges in the present case are similar and or related to those of CR. No. 30/07. Though the particulars are different the charges are against the same accused person while the evidence is to be adduced by the same three witnesses to be flown in from abroad. The same counsel will be appearing before the same Judge. In such a situation and from a practical point of view it is only prudent that CR. No. 36/07 is heard immediately after CR No. 30/07 thus from 4th to 8th February, 2008.

All the counsel involved should make the necessary arrangements with regard to the other cases and engagements well in time to prepare for this one to take off during that time.

I so order.

D. GASWAGA

JUDGE

Dated this 23rd day of November, 2007.