IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VERSUS

1. **LEONEL DODIN**

MERVIN ARNEPHY
CHRISTOPHER FREMINOT
HELM SOUNADIN

2. **MARTIN ARRISOL**

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minal Side No 47 of 2008
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Mr. D. Esparon together with
Mr. R. Govinden for the Republic
Mr. B. Hoareau standing in for
Mr. C. Lucas for the 1st Accused
Mr. B. Hoareau for the 2nd, 3rd, and 5th Accused
Mr. B. Georges for the 4th Accused

RULING

Gaswaga, J

When inspector Francois (Pw4) was testifying Mr. Georges raised an objection to the witness being re-examined by Mr. Govinden, the Deputy Attorney General who had all along been appearing together with State Counsel, Mr. Esparon for the Prosecution. The said witness was called to the stand and taken through the entire examination-in-chief by Mr. Esparon. The defence contends that in such circumstances Mr. Esparon should finish off with his witness unless it so turns out that for one reason or another he is prevented from carrying through his exercise.

For example where the examining Counsel is taken ill, withdraws from the case, dies, etc. Mr. Esparon submitted that if two or more Counsel are appearing jointly for a party it is up to them to agree and organize themselves on how to conduct their case. They speak with one voice but may appear alternatingly whenever necessary or called upon to address any issue that may come up before the Court. He cited **Adrian Keane, The Modern Law of Evidence, 4th Edition P. 170.** Which states that "*a witness who has been cross-examined may be re-examined by the party who called him.*" – The essence here is that the party does the examination-in-chief as well as to re-examination but if represented by one or more Counsel any of them would be at liberty to chip in anytime and play any role on behalf of the client. This is not restrictive.

A perusal of the Criminal Procedure Code, Cap 54 reveals that our law is silent on the matter. The Constitution only spells out the right of an accused to be represented by Counsel of his choosing without giving further specifications. In such circumstances Section 4 of the Courts Act, Cap 52 is instructive:

> "The Supreme Court shall be a Superior Court of Record and, in addition to any other jurisdiction conferred by this Act or any other law, *shall have and may exercise the powers, authorities and jurisdiction possessed and exercised by the High Court of Justice in England".*

Further, with regard to evidential matters Section 12 of the Evidence Act, Cap. 74 is relevant and I find it opposite to reproduce it:-

"Except where it is otherwise provided in this Act or by special laws now in force in Seychelles or hereafter enacted, *the English law of evidence for the time being shall prevail*".

My attention has been drawn to paragraph **8-55 of Archbold, 1992 Vol 1** which states that " after the *witness has been sworn or has made the necessary affirmation or declaration Counsel for the party who calls him proceeds to examine him*". But paragraph ***514 of Archbold, 1976 39th Edition*** goes beyond and caters for a situation where examination-in-chief is done by two Counsel. It reads:

"When a witness is under the examination of a junior Counsel, the leading Counsel may interpose, take the witness into his own hands, and finish the examination; but after one Counsel has brought his examination to a close, no other Counsel on the same side can put a question to the witness".

As for re-examination ***Archbold, 1992*** paragraph ***8-246*** thereof states:-

"If any new fact arises out of the cross-examination, *the witness may be examined as to it by the Counsel who first examined him".*

It is now clear that only the leading Counsel can take over the examination of a witness at any point from a junior Counsel. Although a change of Counsel does not prejudice the defence in any way, the above authorities suggest that once a Counsel embarks on the examination of a witness he should complete the whole testimony including the re-examination.

Accordingly, Mr. Georges' objection is upheld.

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D. GASWAGA

JUDGE

Dated this 1st day of October 2008