

# **IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**VS.**

**PHILLIP MORGAN (Accused)**

Criminal Side No. 69 of 2007

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Mr. Esparon for the Republic

Mrs. Antao for the Accused

## **RULING**

**Gaswaga, J**

This is an application for admissibility of a pre-trial statement said to have been made by the accused to the police a day after his arrest on the 14<sup>th</sup> November, 2007. It was submitted by the defence that the said statement was not made at all by the accused. Mrs. Antao further contended that the accused was only asked to sign an empty (blank) sheet of paper in various places. And since the accused, being a man of low education, cannot write nor read it is submitted that the statement be rejected as it stands repudiated by him-. The accused however testified that WPC Marys Souffe after asking and recording his particulars continued to write “a lot of things” on a paper which he was then later on invited to sign. Indeed the accused pointed out to the Court his signatures on the statement in issue.

In the case of a repudiated statement the question of fact whether the statement was or was not made by an accused person is one to be decided by the judge and that question must be determined after the holding of a trial within a trial. Therefore, when voluntariness is not in issue at all but a statement alleged to have been made by the accused is challenged in whole or in part on the ground that the accused did not make it then the Court, before admitting the statement in evidence, is obliged to hear such evidence as the prosecution may wish to produce to satisfy itself that a prima facie case is made out that the impugned statement was in fact made.

I have given careful consideration to all the evidence before me. Of course in a case of this nature where one is faced with a statement tantamount to a confession or incriminating or inculpatory in nature there is a high possibility of the author trying to exculpate himself. On the whole I am satisfied beyond a reasonable doubt that a prima facie case has been made out to the effect that the impugned statement was in fact made. There is ample evidence from the testimonies of WPC Marys Souffe and PC Jules Robinson to support this version. The minor inconsistencies pointed out by the defence counsel during the whole exercise of recording this statement could not vitiate the said statement as they did not go to the root of the matter. PC Jules Robinson corrected himself in re-examination that it was a human error for him to have written a wrong date below his signature after witnessing the recording of the statement by WPC Marys Souffe.

Accordingly, the statement should be admitted.

**D. GASWAGA**

**JUDGE**

Dated this 29<sup>th</sup> day of April, 2008.