IN THE SUPREME COURT OF SEYCHELLES

EMELDA LARUE

Appellant

VS.

THE REPUBLIC **Respondent**

Criminal Appeal No. 4 of 2007

Mr. Georges for the Appellant
Ms. Micock for the Respondent

JUDGMENT

Gaswaga, J.-

Emelda Larue hereinafter referred to as the appellant was on the 20th April 2007 charged before the Magistrate's court with the offence of exceeding speed limit contrary to Regulation 76 (i) as read with Regulation 80 (k) of the Road Transport Regulations and punishable under section 24 (2) of the Road Transport Act, Cap 206 (as amended by SI 9 of 2002).

The particulars of offence alleged that Emelda Larue an office Manager with Hunt Deltel residing at Anse Forbans, Mahe on the 25th January, 2007 along the Providence highway, Mahe drove motor vehicle bearing registration number S 1727 on the public road at a speed of 91 kilometers per hour which exceeds the speed limit of 80 kilometers per hour permitted in that

area. The appellant pleaded guilty to the charge and was sentenced by the court below to ***"a fine of Sr. 3,000.00 or three months imprisonment in default."*** It is this sentence that the appellant is appealing against on the following ground:

"That the fine of Sr. 3,000.00 imposed is manifestly harsh and excessive in the circumstances of the case."

First of all, it has long been settled that an appellate court will interfere with the sentence of a lower court only;

(i) if the sentence passed is wrong in law and in principle, that is, not provided by law,

(ii) is manifestly harsh and excessive, and

(iii) is inadequate.

See Dingwall vs. Rep. 1966 S.L.R 205, and Mervin Benoit vs. Rep. Crim. Appeal No. 2 of 2004.

It was submitted by Mr. Georges that exceeding speed by 11 kilometer from 80 kilometers per hour to 91 kilometers per hour is not in the category of the worst offences of its type. That the appellant was driving on the highway which is a dual carriage way and that she was overtaking a car that was traveling slowly. It was then that she exceeded the speed limit but for only that period of time she was overtaking and not for any lengthy period. Mr. George also contends that had the appellant driven beyond 100 or 120 kilometer per hour then it would have been a serious and not a minor offence. That since the weather was not bad and no body was put at risk as the act of speeding did not result into any accident the court should have meted out a sentence of fine in the region of Sr. 1,000.00 and a default

period of one week.

The learned State counsel, Ms. Micock agreed with Mr. Georges on the facts as stated on the record and further submitted that the sentence herein was just a portion of the maximum sentence prescribed by law. That the sentence was proper in law and should therefore be maintained since the Senior Magistrate followed the right procedure and also considered all the relevant factors.

The sentence prescribed by the law for this offence is **a maximum of Sr. 10,000.00 or two years imprisonment or both.** This punishment is for the criminal act of over speeding and therefore the speed by which the driver exceeded the limit is irrelevant. However, a number of mitigating factors enables the Court to impose a shorter period or lesser sentence on a subjective basis. The record clearly shows that before imposing the sentence the learned Senior Magistrate took into account all the extenuating factors as presented by the appellant as well as the circumstances of the case. He therefore considered the appellant as a first offender who had pleaded guilty and prayed for leniency. In these circumstances I cannot say that the said sentence was wrong in principle or in law.

It is imperative to point out that in offences of this nature the court should as much as possible look into the circumstances of the case, the manner in which it was committed, the damage or injury caused, if any and other related factors that may point to its gravity or level of seriousness before reaching the sentence. The prosecution should endeavour to bring such information to the attention of the court. For instance, whether the road surface was wet or not at the material time and whether it was at a sharp or blind bend or plain stretch of the road where on-coming traffic or other road users could be clearly seen a distance away. The visibility, nature and level of traffic at the time as well as size of the road seem to be other factors for

consideration. Was the vehicle moving at a very high speed or being driven in a careless and or dangerous manner thereby posing or causing fear and danger to its occupants (in this case the appellant and her daughter) and other road users? In the Seychelles (Mahe island) where the maximum speed limit is set at 80 kilometers per hour anybody driving above this limit commits an offence whether his driving poses or causes a danger or not to other road users and is therefore entirely open to the whole sentence. In the present case the appellant was overtaking one slow moving vehicle on the highway. She stated that she was rushing to take her daughter to school. No accident was caused.

Needless to state that once on the road every driver must conduct their affairs in such a way that the speed limit is never exceeded even when overtaking other vehicles on a clear dual carriage way. We should be reminded that by the time the National Assembly enacted this law it must have brought into purview all the numerous pertinent factors; social, economic and technical aspects inclusive, before setting such speed limit in that area. It was observed by Sauzier, J in a related case of **R vs. Lepere, (1971) S. L. R. 112,** a revision in the Magistrates' Court case No. 1315 of 1970 that *"when there is an excess of speed by a vehicle over the limit which has been fixed by the legislature, such excess is a circumstance which may be relied upon by the court to form the view that the vehicle was being driven at a speed that was dangerous. The legislature would not have imposed the speed limit unless it was necessary for the protection of the road users. There could be circumstances in which an excess of speed over the speed limit imposed by the legislature would not constitute dangerous driving, if, for example, it appeared that at the particular time the road was entirely or relatively free from traffic or pedestrians and that traffic or*

pedestrians would not reasonably be expected to be on the road at the time."
See also <u>R vs. Mousmie (1973) S. L. R No. 3 p. 183.</u>

Mr. George also complained that the default sentence of three months was over the top as no court would contemplate imprisoning an offender for such period for such offence. That in the Magistrate's mind this was an offence serious enough to attract a three months jail term. He contends that this was wholly an erroneous approach.

I have perused the relevant law on the subject. Our law however does not offer guidance with regard to the period of imprisonment where a default sentence is ordered. Some Commonwealth countries have however curved out parameters within which the courts can operate to harmonize sentences and maintain some uniformity to avoid disparity in sentences meted out for similar or related offences. For instance **<u>section 180 of the Magistrates Court Act, Cap 16 of Uganda</u>** that deals with the imposition and payment of fines reads in part as follows:

> *"**Section 180:***
>
> ***a)…***
>
> ***b)…***
>
> ***c)…***
>
> ***d)** The period of imprisonment ordered by the court in respect of the nonpayment of any sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum <u>shall be such term as in the opinion of the court will satisfy the justice of the case</u>, but shall not exceed in any case the maximum fixed by the following scale –*

Amount	Maximum period

Not exceeding shs. 2, 000	7 days
Exceeding shs. 2, 000 but not exceeding shs. 10, 000	1 month
Exceeding shs. 10, 000 but not exceeding shs. 40, 000	6 weeks
Exceeding shs. 40, 000 but not exceeding shs. 100, 000	3 months
Exceeding shs. 100, 000	12 months

In the absence of such provision in the Seychelles this matter is therefore left to the good sense of judgment of the sentencer to fix a reasonable jail term in default of paying the fine imposed depending on among other factors the nature of offence, personal circumstances of accused and most important of all the amount of fine imposed. In my view the said period should be commensurate to the fine imposed of course bearing in mind the prison conditions and the various effects on the family and life and activities of the offender if he were to be incarcerated. The court should however approach this task with caution. The term imposed must not be excessive but one that will serve and satisfy the justice of the case and not one that would amount to no sentence at all. This would otherwise defeat the spirit and the very purpose of the enacted legislation, thwart the aspirations of the people by way of failing to detter or cure the mischief and or regulate the intended activities. Although most, if not all of the offenders in traffic cases end up paying the fines imposed, I wish to stress that nothing should ever be taken for granted even where a very minimal fine is imposed and the convict appears to be a person with sufficient means. It is further opined that the court, faced with such a situation, should pose for a moment and ask it self one question: considering all the above factors what would be the most suitable or appropriate custodial sentence in case there was no option of a

fine or, in case the convict failed to pay the imposed fine? The list of factors to consider is indeed endless but I feel this will offer some guidance. So, in the present case and following the above approach, would the Magistrate have been minded to impose a three months (default) sentence if there was no option for a fine or in case the convict failed to pay the fine?

Taking into account all the material facts, the prescribed sentence, the guilty plea tendered and the surrounding circumstances including the personal circumstances of the appellant, I am of the opinion that the sentence passed was excessive. Accordingly, the appeal is allowed. I set aside the sentence herein and substitute it with that of a fine of Sr. 2,000.00 in default the convict shall serve thirty (30) days in prison.

ORDER

Since the appellant had already paid into Court the Sr. 3, 000/- fine it is hereby ordered that Sr.1, 000/- should be refunded to her.

D. GASWAGA

JUDGE

Dated this 29th day of May, 2008.