

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

1. GARRY PAYET

JEAN PAUL QUILINDO

Criminal Side No. 67 of 2007

.....
Mr. Esparon together with

Mr Durup for the Republic

Mrs. Amesbury for the 1st Accused

Mr. Elizabeth for the 2nd Accused

Both accused persons - present

9 Members of Jury - present

RULING

Gaswaga, J

This is a ruling on a **voir dire** held to establish whether one of the three statements made by Garry Payet (A1) dated 4th

November 2007 was given voluntarily. Mrs Amesbury, his counsel, objected to the admission of the statement on three different grounds namely

- (i) That the statement was obtained by oppression

That it was taken in violation of the Judge's Rules and,

That it was obtained in violation of the accused's constitutional rights, thus Art. 18 (3) & (4).

It remains incumbent upon the prosecution to adduce evidence and prove beyond a reasonable doubt that the impugned statement was indeed made voluntarily and further that it is admissible in court. **See Leon vs. Rep. 2 SCAR page 188.** Accordingly the prosecution had led evidence of two police officers; Inspector Francis Songoire (Pw1) who recorded the statement from 19:56 hours to 22:40 hours and, Inspector Philip Cecile (Pw2) who was present all this time and witnessed the statement. The accused (A1) was the only defence witness.

It is beyond the region of dispute, as Inspector Songoire admitted in cross-examination and was found by this Court to be very sincere and truthful, that he administered only one caution instead of two - the second one supposed to have come at the time when the accused started to incriminate himself. In addition, it came to light that some of the accused's constitutional rights were not explained to the dot but this was not fatal in the circumstances to render the ensuing proceedings in particular the statement, a nullity. The accused had been sufficiently put on his guard with the caution and besides, it was on his own volition that he asked to speak to Inspector Philip Cecile about his involved in the case.

Although the accused alleged a myriad of omissions and accusations by the police during, before and after the recording of the statement, this Court is very doubtful of his

version of the story. It was grossly exaggerated for any court to believe. I have not seen any evidence of the alleged oppression or threats. It is indeed true that one Denis Marie was assaulted while in police custody but its not known when this happened and there is no connection at all to this case. I am convinced that neither Denis Marie nor any other person was assaulted shortly before or during the accused's writing of the statement, and therefore the alleged adverse mental effect was a concoction and an afterthought in a bid to try and get rid of the confession.

Conversely, there is evidence showing that the accused was not only cautioned but also explained his right to remain silent, and the right to counsel to which he answered that he would be making a statement and tell the truth but did not need the services of a lawyer. This is even confirmed by his own answers in cross-examination where he admits fifty percent (50%) of the confession statement to be true. He

volunteered this statement which apparently agrees with some other independent evidence already on record with regards to the manner and sequence in which the events on that day and night unfolded. Otherwise one would wonder how the accused who now claims to have been forced to incriminate Jean Paul Quilindo (A2) and or himself would do it so accurately. Moreover, A2 was arrested two days later, the said arrest stemming from A1's own statement. I should stress that before this the police knew nothing about Quilindo.

Further, A1 did not only contradict himself in his evidence and cross-examination on various aspects but also told falsehoods. This Court is convinced that save for the irregularities pointed out and which I find not to be of grave consequence, the statement in question was properly recorded, read back to the accused, corrected twice as per his instructions and signed by the accused, Inspect Songoire

and Inspector Philip Cecile who witnessed it from the beginning to end. However, on the breach of some of the Judge's Rules my ruling of 12th June 2009 in **R. vs. Ketrina Simeon Cr. Side No. 42 of 2007** provides the answer. I stated:

*“although the Judge's Rules are **not rules of law, and non-observance thereof may not necessarily lead to exclusion of a confession,** the rules are however very important for all police officers as they are to be used as guiding beacons during the investigation of crimes or interrogation of suspects”.*

This being so, I hereby reject the testimony of the accused and the submissions of both defence counsel. The prosecution has **proved beyond a reasonable doubt** that the statement was **voluntarily** made and **is admissible** as

an exhibit in this Court.

However, in light of Mr Elizabeth's submission, it is hereby ordered that the statement be edited by both the prosecution and defence counsel since it is both inculpatory as well as exculpatory - the exculpatory part being the portion that incriminates the co-accused (A2).

SHOULD the bar fail to execute the editing, which I find to be one of the most appropriate solutions in the circumstances of this case then the court will step in with further orders.

I so order.

D. GASWAGA

JUDGE

Dated this 6th day of July 2009