

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

STEPHEN SCHOLES (ACCUSED)

TERRENCE STEWART (ACCUSED)

Criminal Side No. 42 of 2009

Mr. La Bonte for the Republic

Mr. Georges for the Accused

RULING

Gaswaga, J

The accused herein were both detained under section 101 of cap 54 for the maximum period of 28 days after the prosecution had been granted several adjournments for purposes of further investigations and collecting of evidence which, according to the accompanying affidavit was highly technical and from various jurisdictions.

On Friday 2nd October, 2009 the case was adjourned to Monday 5th October, 2009 at 1:45pm for the purpose of the accused persons answering to the charges and fixing of an early trial date since the defendants, who are foreigners and with no permanent residence in Seychelles would want the matter to be expeditiously concluded for them to return to their home country.

By consensus of the parties the Court ordered the prosecution to serve the relevant documents immediately to facilitate counsel for the accused persons in advising and preparing for their plea and defense generally. This afternoon, the prosecution flouted that order and could not even disclose a single document as instructed.

Instead the prosecution turned up with an amended charge and counsel informed Court that his instructions were ***simply to file it but not serve documents on the defense since he had none***. No reason at all was given by the state counsel for not respecting the Court order. He only stated the file (documents) was still with the (Financial Investigations Unit). This is unacceptable to say the least. Condoning such practice would be making a mockery of the justice system. It was clear that the prosecution was using the Court to hold onto one leg of the accused yet, with all the time accorded no evidence was obtained that could raise reasonable suspicion of an offence having been committed. Merely drafting and filing a charge is not enough. It must be supported with not necessarily all but some reasonable amount of evidence

This leaves me wondering how and on what basis the charges were drawn. If at all that evidence (however little) is in the hands of the prosecution (or FIU/police) why not serve it on the defense as ordered by the Court. The days for trial by ambush are long gone. Article 19 of our Constitution speaks of fair trial within a reasonable time. Timely disclosure, especially for a case like this one where the accused persons are foreigners is an integral part of the right to a fair trial. Either an accused person is charged and prosecuted or, if unable to prosecute him for lack of evidence or any other reason is released. By the way, in the latter situation charges may be proffered in future once the evidence is obtained or the predicament is overcome.

Now in this case, if I am to do any justice then I must dismiss the charges herein basing on the above reasons and set free the accused persons. I accordingly do so.

D. GASWAGA

JUDGE

Dated this.....of October, 2009