

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

STEPHEN SCHOLES (ACCUSED)

TERRENCE STEWART (ACCUSED)

Criminal Side No. 46 of 2009

Mr. Esparon for the Republic

Mr. Georges for the Accused

Mr. Elizabeth for the Accused

RULING

Gaswaga, J

This is a ruling on the propriety of charges proffered herein. The three counts in issue are:

Count 1

Statement of offence

Uttering a false document without authority contrary to section 343(b) read with section 23 and punishable under section 343 of the penal code.

Particulars of offence

Stephen Scholes and Terrence Stewart with common intention and with intent to defraud or deceive, knowingly on the 4th September, 2009 at Victoria, Mahe uttered a false document, namely a fraudulent swift customer credit transfer for the sum of 200million Euros, to Barclays Bank.

Count 2

Statement of offence

Uttering a false document contrary to section 339 read with section 23 and punishable under section 335 of the Penal Code.

Particulars of offence

Stephen Scholes and Terrence Stewart with common intention, on the 4th September 2009, at Victoria, Mahe knowingly and fraudulently uttered a false document, namely a fraudulent swift customer credit transfer for the sum of 200million Euros, to Barclays Bank.

Count 3

Statement of offence

Conspiracy to commit a felony contrary to section 381 as read with section 343(b) of the penal code.

Particulars of offence

Stephen Scholes and Terrence Stewart on or about the 4th September, 2009 conspired with one another to defraud or to deceive the Barclays Bank by agreeing to utter a false swift customer credit transfer document for the sum of 200million Euros to Barclays Bank.

When the matter came up for plea on the 29th October, 2009 at 9:00am Mr. Elizabeth submitted that the accused could not answer to defective charges which should instead be quashed for duplicity and the accused set free. He further contended that no amount of amendment could save such an incurably defective charge.

I wish to stress from the outset that the responsibility for the correctness of a charge, it is true, lies on the door-step of a prosecutor or complainant, whichever the case. But since a Judge is the person who will finally decide the case, it is his duty to ensure that charges filed in his Court are correct both in form and content. Briefly, a correct charge must make a definite allegation that a given offence contravening a specified provision of the law has been committed at the time, place and date stated without vagueness, so that the accused will be under no misapprehension as to the accusations made against him.

For any defects detected in the charge, if only in form but sufficiently alleges the offence committed the prosecution could be advised to polish it up. But if the charge is so defective that no amount of correction can save it, such as

where it states facts which do not constitute any offence known to law, the Court will have no alternative except to reject it.

Duplicity of a charge means that the charge is double. It contains two distinct offences in a single count. As pointed out in counts one and two, is the charge herein duplex? I have studied the charges in question and the relevant provisions of the law as cited in the three counts. I note that the statements of offence are not the same as is also the case with the particulars. Although the particulars in count one are almost similar to those of count two, a closer scrutiny of same would clearly reveal that they are distinct offences referred to and differently defined though relating to the same document 'a swift customer credit transfer' as well as date.

It cannot be said that the charge is bad for duplicity and therefore the second objection that the third count is also defective because it stems from defective counts must fail.

Even if the charges were to be found wanting, it is not every defect and irregularity that makes a charge bad in law to the extent of rendering the ensuing proceedings a nullity. Similarly, duplicity *per se* does not render a charge bad in law to justify stopping the proceedings or setting aside the conviction unless a miscarriage of justice has been or will thereby be occasioned. See **Laban Koti .V. R (1962) E. A 439** and **R. vs. Cliff Emanuel & Anor Criminal ide No. 85 of 2003.**

Section 187(1) of the Criminal Procedure Code, Cap 54 states:

"Where it appears to the Court that the charge is defective, the Court may make such order for the amendment of the charge as the Court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice".

Pursuant to this section I hereby order the prosecution to polish up the charge by way of revisiting Count one which should be drafted in light of the provisions of section 343(b). With this minor amendment effected it is further ordered that the charge should then be put to the accused persons for their plea to be taken and recorded.

I so order.

D. GASWAGA

JUDGE

Dated this 30th day of October, 2009