

IN THE SUPREME COURT OF SEYCHELLES

REPUBLIC
VS
YAO ZHENG WU

Criminal side no: 69 of
2008

Mr. Esparon for the Republic
Mr. Bonte for the Accused

JUDGMENT

Burhan, J

Learned counsel for the accused has taken up a preliminary objection stating that the Republic was debarred from filing a criminal prosecution against the accused Mr Yao Zheng Wu.

The main ground urged by learned counsel was that the Republic through the representatives of the Seychelles Fishing Authority had prior to filing this case had a formal meeting with the accused whereby it was agreed that the accused would admit the commission of the offence and that the offence would be compounded it terms of conditions (i) to (vi) contained in the minutes of the discussions held on the 30th of April 2008.

The conditions referred to being:

- i Confiscation of the catch
- ii Confiscation of all equipment
- iii Revocation of the FIA certificate
- iv Payment of the cost of the operation at SR 20,920
- vi Payment of the fine of SR 10,000

Learned counsel further contended that as the accused had abided by the conditions set down by the Seychelles Fishing Authority the matter stood compounded and therefore the Republic could not prosecute the accused for the same offence a second time and to do so would be against the principles of equity and fairness and would amount to an abuse of the process.

Learned counsel for the prosecution submitted that although the compounding agreement is a statutory contract since it is an “out of court settlement” the provisions of the Civil Code as to the contractual agreements will apply. Since the accused has expressly stated he did not agree to certain terms by stating he was appealing from them, such conduct namely conditional acceptance, amounted to a counter offer and thus the accused had not accepted the offer made by the Minister and thus there was no contractual agreement between the parties in regard to compounding the offence and thus the accused could be charged.

Section 26 (1) of the Fisheries Act Cap 82 reads as follows;

- (1) The Minister may, if he is satisfied that an offence has

been committed under his Act and if the person admits the commission of the offence and agrees in writing to its being dealt with under this section

- (a) compound the offence by accepting the sum of money not exceeding the maximum fine specified for the offence;

order the release of any vessel or other article seized in connection with the offence on payment of a sum of money not exceeding the value of the vessel or other article.

- (2) Any sum of the money received under this section shall be dealt with as though it were a fine imposed by the court.

It is therefore apparent that the statute empowers the Minister to compound the said offence. It follows the compounding agreement is based on a statutory provision and the mere fact that the procedure occurs out of court does not in anyway change its nature namely that the compounding of the offence is based on a statutory provision contained in the Fisheries Act. For this reason learned prosecution counsel's submission that as it is an "out of court settlement" the provisions of the Civil Code apply and therefore the provisions of the Fisheries Act do not apply cannot be accepted. Therefore his contention that there was only a conditional acceptance by the accused which amounts to a counter offer and thus the agreement is not binding is unacceptable. Had the agreement been a private agreement between the parties

the situation would be different.

The accused has also by letter dated 30th April 2008 admitted as required by section 26 (1) of the Fisheries Act, the commission of the offence of employing non-Seychellois and breaching the provisions of the Fisheries Incentive Act of 2005 and has agreed for the compounding of the said offence.

Furthermore the facts before this court as admitted by counsel for the prosecution is that the appeal of the accused in respect of,

- ii Confiscation of the catch
- iii Revocation of the Sea Cucumber Licence, and
- iv Revocation of the FIA certificate

has been turned down and therefore conditions ii iii and iv are for all purposes in force. The accused has paid the fines imposed totalling SR 30,920.00 in full.

Considering the facts before court all the necessary ingredients for compounding an offence as mentioned in section 26 (1) and 26 (1) (a) and (b) have been complied with. It follows that as all conditions pertaining to the compounding of an offence in terms of section 26 of the Fisheries Act have been complied with and the offence therefore stands compounded.

When one peruses the charge sheet in this case it is clear the accused is being charged for the same offence which has already been compounded.

Section 26 (3) reads as follows;

“In any proceedings brought against any person for an offence against this Act, it shall be a good defence if the person proves that the offence has been compounded under this section.”

For the aforementioned reasons as court is satisfied that the offence has been compounded the preliminary objection of the accused is upheld and the accused is discharged.

M. BURHAN
JUDGE

Dated this 11th day of March 2010