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**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC  
VS.  
ABDI ALI AND OTHERS**

Criminal Side No. 14 of 2010

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Mr. Lloyd for the Republic  
Mr. Elizabeth for the Accused

**RULING**

**Burhan J**

This is a ruling in respect of a *voire dire* held regarding the admissibility of the statement of the 1<sup>st</sup> accused recorded by the police. Learned counsel for the accused objected to the production of the said statement as an exhibit, on the grounds that the statement was not admissible as it had been,

- a) Recorded in violation of the accused constitutional rights,
- b) Recorded in violation of the provisions contained in the Judges' Rules,
- c) Recorded under oppression.

The main ground urged by learned counsel for the accused, to establish the fact that the constitutional rights of the accused were violated was that the accused

after arrest had not been permitted to obtain a lawyer of his choice. The 1<sup>st</sup> accused giving evidence under oath stated at one stage that he was not informed or told about his right to a lawyer of his choice. He thereafter stated that he was informed by Sergeant Julienne of his right to a lawyer but though he requested for one he was not provided a lawyer. He further stated he could have requested for a lawyer from his country Somalia, as his government would have paid for his services. I find the evidence of the accused on this fact is contradictory and somewhat inconsistent in this respect. When one considers the evidence of the accused it seems he has confused himself in regard to the date he was brought to Seychelles. He categorically states he was brought to Seychelles on 16<sup>th</sup> of March 2010 but admits under cross examination, it was not from records maintained by him that he stated the said date but that he was told at the police academy that the date was the 16th and therefore had come to such a conclusion. Further he admits he was tired and confused and could not remember properly the sequence of events, as many things happened during that short space of time. He stated he was not informed of his right to silence but thereafter under cross examination stated he could not remember whether his rights were read to him. He categorically stated, he was only asked his name and occupation by the officers interviewing him and denied been asked any other information but when

confronted, admitted he was asked his mother's and father's name and that the names entered were correct and given by him. Hence when one considers the evidence given by the 1<sup>st</sup> accused it is apparent his evidence is of a contradictory nature and cannot be relied upon.

When one considers the evidence given by Sgt Julianne and police officer Noella Savy, the evidence that the accused constitutional rights were read over and explained and the necessary caution administered at the time of arrest and at the time the statement was recorded, stand corroborated. Though subject to cross examination no contradictions of a material nature emerged. Both officers stated that if any of the accused had asked for food or water during the time their statements were being recorded it was provided. The accused admits that neither Sergeant Julianne nor police officer Noella Savy had threatened him. He stated that he was questioned and had readily and voluntarily answered the questions.

In the light of the aforementioned facts this court finds it difficult to accept the contention of the 1<sup>st</sup> accused that he was refused food and water during the recording of his statement even though he asked for same. Further even though he states he did not understand what was happening, he admits communication with the officers was through a Somalian interpreter. Sgt Julianne states that the Somalian interpreter had written down what was stated by the accused in the Somali language and

translated it and thereafter it had been typed by officer Noella Savy in English. It cannot be said that this procedure was oppressive, unfair or prejudicial by the accused..

The object of the Judges' Rules in England and in our jurisdiction is to ensure that the questioning and recording of the statement of the accused by the police does not take place in an unfair and prejudicial manner. These Rules do not have the force of law but are a set of administrative directions to the police as decided in the case of ***R v Voisin (1918) 1 K.B.531.***

It is to be noted that the Judges' Rules 1964 of England have been adopted and applied in Seychelles with effect from 1<sup>st</sup> January 1972 by Practice Direction 2 of 1971 superseding the Judges' Rules in force at that time. Rule II and III of the said Rules, sets out the numerous cautions that must be administered to a person, against whom there is evidence which would afford reasonable grounds for suspecting that the person has committed an offence and against a person charged of an offence.

Appendix A, paragraph (e) of the Judges' Rules of England spells out the overriding principle involved namely " That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person,

*that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held by a person in authority, or by oppression".(Emphasis added).*

In the case of ***Ibrahim v R (1914) AC 599***, it was held that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority.

It is pertinent to mention at this stage that the overriding principle of voluntariness as mentioned in the Judges' Rules is also ingrained in the case law of our jurisdiction.

In the case of ***Leon v The Republic 2 SCAR 188***, it was held the onus is on the prosecution, in proving beyond reasonable doubt, that the statement of the accused was voluntary and therefore admissible.

In the present case before this court, learned counsel contended that the statement recorded was in violation of the provisions contained in Rule I of the Judges' Rule and was therefore not voluntary. The main contention of learned counsel for the accused in this regard was that

Sgt Julianne had not satisfied himself by questioning the accused himself, that there was sufficient evidence against the accused and therefore the proper procedure as set out in the aforementioned Rule had not been followed as he had relied on what was told to him by his superior officers. Rule II states "As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence-----." It is clear the evidence referred to hear is not limited to that obtained by questioning the suspect only and would include evidence gathered from his superior officers as well.

Further it should be noted at this stage that failure to observe the Judges' Rules does not necessarily render a confession inadmissible. This principle was emphasized in the case of ***R v Stewart 1970 1 All E.R 689***. Further it was held in ***R v Osbourne 1973 2 WLR 209***, that even where statements have been made without caution or where the rules have been contravened in some way, it is a matter for the trial judge to exercise his own discretion as to whether the statement should be admitted or not after considering the evidence as a whole.

For the aforementioned reasons after considering the evidence led at the *voire dire* as a whole, this court is satisfied beyond reasonable doubt that, the statement has

been voluntarily given by the 1<sup>st</sup> accused and is admissible.

The prosecution is therefore permitted to produce the statement of the 1<sup>st</sup> accused as an exhibit in the case.

**M.N. BURHAN**

**JUDGE**

Dated this 22<sup>nd</sup> day of September 2010.