

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

ABDI ALI AND OTHERS

Criminal Side No. 14 of 2010

Mr. Lloyd for the Republic

Mr. Elizabeth for the Accused

RULING

Burhan J

On the 24th of September 2010 when learned counsel for the prosecution moved to mark the translations of the contents of document P13 and P18 already marked as exhibits, learned counsel for the accused objected on the grounds that,

- a) A copy of the translation had not been served on him at the beginning of the case and had it been served, he

would have known the contents of exhibit P13 and P18 and would therefore have cross examined witness Nicolas Pendriez (legal officer of ship FNS Nivose) on these documents when it was produced through him.

The evidence intended to be translated was irrelevant.

The evidence contained in the translation was prejudicial to all the accused.

Learned counsel for the prosecution contended that he was not the counsel handling the case at the stage documents were served and he was unaware that the document had not been served on counsel for the accused but stated, since it being brought to his notice, a copy of all the translations had been served on the counsel for the accused, a fact admitted by learned counsel for the accused. He further submitted that if learned counsel felt the evidence was irrelevant there was no necessity for him to object for same and further contended that all evidence led against the accused by the prosecution could be considered to be prejudicial as the prosecution was attempting to prove a charge against the accused persons. He also informed court that it would not be possible to recall witness Nicolas Pendriez the legal officer of the French warship “ FNS Nivose.”

Firstly it should be noted that documents P13 and P18 have already been marked and produced by the prosecution in the absence of any objection by learned counsel for the accused and therefore already forms part of the record and evidence in this

case and therefore cannot be shut out at this stage. Learned counsel should have raised his objection at the time P13 and P18 were being produced that he had not received a copy of the translation as he was aware at that stage that the documents were in a foreign language (Somali). In the absence of such an objection, it appears learned counsel for the prosecution proceeded assuming that the said translation had been given to counsel, as for all purposes all documents had already been served on the counsel for the accused on an earlier date. Had learned counsel brought it to the notice of court at that stage that he did not have a copy of the translation, steps would have been taken by court to have the translation given to counsel and an adjournment granted if an adjournment was requested by defence counsel, to prepare himself further for cross examination of the witness concerned.

Learned counsel cannot now take up the position that he did not object at that stage as he expected the documents to remain in a language the court would not understand. Quite obviously having produced such evidence, the prosecution would have sought at some stage to have these two documents translated into the language of the court, in order for the documents marked to be of evidential value. Therefore learned counsel for the defence contention that he expected the documentary evidence produced in court to remain in a language the court would not understand is unacceptable.

For the aforementioned reasons this court cannot at this stage prevent the prosecution from translating into the language of court evidence already introduced in the case. Therefore the application to produce the translations of already introduced documentary evidence is granted.

Learned counsel has also objected to the fact that the translation the prosecution intends to produce is not the original translation but a translation which was prepared during the past few days by the prosecution. The main purpose of the prosecution in translating the existing documentary evidence contained in P13 and P18 is not to introduce new evidence but to translate already existing evidence. Learned counsel has now been furnished with

a copy of the original translation and the more recent translation made by the witness deponing in court. The accuracy, discrepancies or prejudice if any caused to the accused by these translations could be highlighted during the cross examination of the witness as both translations have now been made available to counsel for the defence. This court further holds, the fact that witness Nicolas Pendriez cannot be recalled is not a ground to prevent P13 and P18 from being translated into the language of the court. The weight or evidential value that must be attached to these documents produced as evidence is to be determined at the conclusion of this case. Further the determination in the reference made to the Constitutional Court in ***The Republic v Bernard Georges Constitutional Court Case No. 2 of 1998*** was made on facts different to the facts in this instant case. Unlike the Bernard Georges case, the prosecution has not refused to hand over any documents to the accused but had thought that the said documents were in the possession of learned counsel for the accused, until it was somewhat belatedly brought to the notice of the prosecution counsel that it was not served.

For the aforementioned reasons the objections of learned counsel for the defence are overruled.

M.N. BURHAN

JUDGE

Dated this 27th day of September 2010.

