

R v Ise

(2011) SLR 220

M Mulkerrins for the Republic
J Camille for all five accused persons

Sentencing delivered on 30 June 2011 by

GASWAGA J:It has been satisfactorily proved in this case that the five accused [Mohamed Ahmed Ise (A1), Abdullahi Yousuf Hirsi(A2), Ahmed Ali Osman (A3), Adow Ali Osman (A4) and Ahmed Ali Said (A5)] together with five others who escaped on an attack skiff on 18 November 2010, immediately before the arrest of the accused herein, armed with offensive weapons, upon the high seas, violently attacked two French registered motor vessels, namely the *Talenduic* and *Cap Ste Marie* on 17 November 2010. In addition to the first two counts of committing acts of piracy contrary to section 65 of the Penal Code against the said two vessels, all the accused have also been convicted on Count 3 of voluntary participation in the operation of a ship with knowledge of facts making it a pirate ship contrary to section 65(4)(b) of the Penal Code.

In a very spirited plea in mitigation, Mr Joel Camille implored the court to invoke its powers under section 27(1) of the Penal Code which allows it to impose a sentence less than what is prescribed by law. Citing the relatively young ages (19 to 28) of the accused persons, he moved the court for a sentence of not more than five (5) years. He also stated that the accused are mere victims caught up in stressful circumstances that one can imagine in a State without a central government like Somalia. That the accused, as young victims were influenced into this crime by big people in well-established networks of organized crimes, who are used to taking advantage and benefiting from the sweat of the feeble and disadvantaged in this world. That is how they make their money and they will never be arrested. It was also counsel's plea that the court has mercy on the accused who are first offenders.

At this moment the court faces one of its hardest tasks in looking at both sides in light of the law and the evidence and coming up with a suitable sentence. The above factors will be weighed against other societal dictates as well. Like I have always stated, piracy should never be the solution to a people operating in a failed State as it inflicts and continues to inflict pain and suffering onto humanity in different ways, a fact which the accused before me are well aware of.

The practice of the Supreme Court in cases of this nature has been to impose custodial sentences of varying durations depending on among other things - the general circumstances of the case, the prevalence in and impact of the offence on the society and world at large in terms of social, economic, security and maritime trade risk considerations, the physical and emotional effects of the attack on the victims and their families, the injuries inflicted and damages occasioned on property, resources committed in the surveillance and apprehension of offenders, the manner in which the offence is committed (levels of violence and brutality, risk posed to

human life) and the tools employed, and the antecedents of the accused as well as their cooperation.

In the case of *Rep v Mohamed Dahir and Ten Others* Supreme Court of Seychelles Criminal Side No 51 of 2009 (*Topaz* case), where 11 accused unsuccessfully attacked and fired weapons at the '*Topaz*', a Seychelles Coast Guard ship, and caused neither injury to the crew nor damage to the vessel, each accused was sentenced to ten years in prison. In *Rep v Abdi Ali & Ten Others* Supreme Court of Seychelles Criminal Side No 14 of 2010 (*Intertuna II* case), where 11 accused attempted to seize a ship '*Intertuna II*' and were twice repulsed, the court sentenced each of the accused persons to 6 years in prison. In *Rep v Mohamed Aweys Sayid & Eight Others* Supreme Court of Seychelles Criminal Side No 19 of 2010 (*Galate* case) which involved attacks on three different vessels during the same transaction, a sentence of 11 years was imposed on each accused on counts I and II with an order that they run consecutively. The ten years imposed on count III were to run concurrently with the twenty-two (22) years. In *Nur Mohamed Aden & 9 Others* Supreme Court of Seychelles Criminal Side No 75 of 2010 (the *Faith* case), the accused seized and detained for four days a vessel operated by 7 Seychellois fishermen (whom they roughed up), before the vessel was intercepted by the Seychelles Coast Guard on its way to Somalia. A sentence of 20 years and 10 years to run concurrently was imposed on each of the accused.

For this court to mete out justice in all fairness to the accused, the victims and all the other parties involved, it is important that all the facts relevant to the impact of piracy in the contemporary world and in particular to Seychelles be brought into purview. The court takes note of the fact that, to date, piracy activities in the Indian Ocean, a region in which the Seychelles archipelago is situated, an estimated 30% of the world's oil trade and 98% of South Africa's maritime trade passes through have negatively impacted world trade, tourism and marine safety to the effect that the cost to the international community was between US Dollars 4.9-8.3 billion in 2010 and is likely to increase to US Dollars 13-15 billion by 2015. Additionally, in 2010, Somali pirates carried out more than 200 attacks, including 68 successful hijackings and received US Dollars 50 million paid out in ransom. In the first quarter of 2011, Somali pirates have attacked over 117 ships and held over 338 hostages for ransom, killing 7 crew members. All this has exaggerated costs of maritime transport, marine safety and insurance premiums etc which are ultimately transferred to consumers through high prices for goods and services.

In the case at hand, there was exchange of fire in both attacks on each vessel where upon the lives of the occupants of the *Cap Ste Marie* and the *Talenduic* were put at high risk. Additionally, a lot of resources were engaged, including those of the assets (vessels) in the area and the spotter plane and the *Andromache* belonging to the Government of Seychelles. There is no doubt that any insecurity occasioned in the Indian Ocean adversely affects our country, especially, in the sectors of fishing, tourism, trade, transport and shipping, on which most Seychellois people depend for a living. The judiciary will play its role in averting this trend by administering justice to those apprehended and impose punishments reflecting the seriousness of piracy crimes since it was not accidental but well planned and intentional.

The sentence prescribed for each of the above offences is thirty (30) years and a fine of one million Seychelles Rupees. Bearing in mind the above factors, sentencing pattern and mitigation in favour of the accused as well as the adverse effects of this offence on humanity, the Court shall impose the following appropriate sentences on each of the accused -

on count 1 eighteen (18) years in prison ;
on count 2 eighteen (18) years;
and on count 3 ten (10) years.

ORDER

(1) In view of the fact that all three offences were committed during the same transaction, the said sentences shall run concurrently.

(2) The period spent on remand by the accused shall be considered part of this sentence.

Right of appeal explained.

Sentence read and signed in open court in the presence of the prosecutor, all the five accused persons and their counsel 30 June 2011 at Victoria, Mahe Island.