

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 54/2013

[2015] SCSC 320

THE REPUBLIC

versus

RASHID MOHAMED LIWASA

Accused

Heard: 21 April, 2015
Counsel: Mr. Kumar, State Counsel for the Republic
Mr. Camille for the accused
Delivered: 14 July 2015

RULING

Dodin J

- [1] This is a ruling on the objection of the Accused to admit a confession statement he made whilst in detention on the grounds that the statement was made after it was proposed to him that if he co-operated with the NDEA he would be released and that he was not read his Constitutional rights before giving the statement.
- [2] The Prosecution called Tania Lozaique an NDEA Agent who testified that on the 29th August 2013 she recorded a statement from the Accused in the presence of Agent Lisa Larue who witnessed the taking of the statement.

- [3] The statement was recorded at the NDEA Station's, interview room. She testified that she did not recall who instructed her to go and interview Mr. Liwasa but remembered that she was told that Mr. Liwasa wanted to give a statement about the events that led to his arrest. She introduced herself and Ms. Lisa Larue to Mr. Liwasa. Mr. Liwasa appeared okay and relaxed.
- [4] She testified that at 9:30 am, the Accused was informed that they wanted to take a statement. He was cautioned and informed of his Constitutional rights, that is; he was not obliged to say anything but if he decided to say anything it would be recorded and it could be used as evidence against him and he was told that he could get a lawyer of his choice.
- [5] Agent Lozaique further testified that the statement started at 09:41 hours and ended at 12:00 pm in the presence of Ms. Lisa Larue. It was recorded in English. She then read the statement back to Mr. Liwasa made one correction and signed the statement. She certified the statement and the witness signed.
- [6] She testified that she did not issue any threat, or use violence against the Accused nor did Lisa Larue. She maintained that the Accused gave the statement voluntarily.
- [7] In cross examination, Ms Lozaique agreed that it was the first time that she saw Mr. Liswasa on the 29th August 2013. She was aware that the Accused had been arrested on the 25th August. She testified that she was not aware that other NDEA Agents had talked to the Accused but she was made aware that there has been attempted controlled delivery made with the assistance of the Accused.
- [8] Ms. Lozaique maintained that she was not aware that Mr. Nial Scully had spoken to the Accused, and that Ms. Lisa Larue was always present as a witness throughout. Ms. Lozaique denied that Ms. Larue was never in the room.
- [9] She maintained that she was not aware if the Chief NDEA Officer had promised the Accused that he will be released after giving the statement and after the controlled delivery.

- [10] Agent Tania Larue testified that a statement was taken from the accused in the interview room on the 29th August 2013. She was on duty starting at 8am at NDEA station. She was asked to witness a statement to be taken under caution. Tania Lozaique took the statement and she was the witness. She had heard the name of Rashid Mohamed Liwasa and she identified the Accused in the dock as the said Rashid Liwasa.
- [11] The witness testified that Agent Lozaique cautioned the Accused and told not allowed to the Accused his rights.
- [12] She maintained that she did not check the time when she went into interview room, No clock in the interview room.
- [13] She denied that she was never present when statement was given. She denied that the caution and Constitutional Rights not read to the Accused. She denies that she signed the statement later.
- [14] Rashid Mohamed Liwasa a Kenyan national testified that he was arrested on the 25th August 2013. He gave a statement on the 29th August 2013. Upon arrest he was brought to NDEA Headquarters. He met Mr Nial Scully and two other agents. Mr Scully said, my “friend this is Seychelles. I need your co-operation; you must help us for us to help you.” He asked what was the plan. He told them and they planned 2 days for controlled delivery and the deliveries failed. On the 28th he was taken to the NDEA office of Mr Brandon Burke who told him that they were not looking at the courier but at the importer.
- [15] On the 29th Mr Scully told him if he gave a statement they will help him. He did not give the statement voluntarily because he felt he had to cooperate in order to go home. He gave the statement to Tania Lozaique and Lisa Larue was not there. He was taken to Brandon Burke’s office handed over to Tania Lozaique after Mr. Burke told him that if they will finish with this matter.
- [16] He maintained that Tania Lozaique did not inform him he had a right to remain silent or to have a lawyer. He was not cautioned. She only recorded the statement on a plain paper. Then they went inside and came back and he made a correction, then she went back and

- the statement was taken on the current paper. He did not sign the plain papers but he signed the statement around 2pm same day.
- [17] During the time he only asked for water and he was given. Then he was put in a cell. He maintained that if he had not been told to co-operate he would not have given statement.
- [18] In cross-examination, the accused maintained that on the 25th August 2013 he came with 2 tins. On the 25th to 28th he was in custody at the NDEA and at Berjaya Hotel. On the 29th August 2013 he was produced before Court in the afternoon. He has since been appearing in Court. He never made any complaint to the Judge but he told his lawyer and he said he will raise it as his defence.
- [19] It is trite law that for a confessional statement of an Accused to be admitted it must have been made voluntarily without any threat or force or promise or inducement made at the time of, or before the giving of the statement.
- [20] Whilst in the Voire Dire hearing both witnesses for the Prosecution testified that they were not aware that the Accused was involved in making controlled delivery operations which failed, such evidence has already been brought to the attention of the Court by the testimonies of other witnesses and is part of the record of the case.
- [21] In fact the Affidavit of Agent Terrence Dixie dated 12 September 2013 clearly elaborated the attempts to make control deliveries by the Accused who appeared to have been co-operating with the NDEA at the time.
- [22] The Accused in his testimony maintained that he agreed to give a statement because he was told by Mr. Nial Scully that if he co-operated with the NDEA by helping them they can help him.
- [23] Indeed, I take note that words alone need not always amount to inducement unless the Accused acted on that belief.
- [24] I am satisfied that in this case the Accused not only acted on the belief that he stood to gain something in return for his co-operation with the NDEA, but also that such inducement and promise although not made in return for giving a statement, as it was

made prior to the taking of the statement, were likely to have an effect on the voluntariness of the Accused when the time came for him to give a statement.

[25] For that reason I find that the voluntariness of the statement has been compromised. I find that the incriminating statement made by the Accused has been tainted by possible inducement and promise made prior to the taking of the statement and therefore such statement fails the test of voluntariness as required by law.

[26] Consequently, on that ground alone, I find that the statement of the Accused is not admissible evidence and the application of the Republic to produce the statement as an exhibit is declined and the statement is ruled inadmissible.

[27] Signed, dated and delivered at Ile du Port on 14 July 2015


G Dodin
Judge of the Supreme Court