

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 5/2014**

**Appeal from Magistrates Court decision 61,64/2013**

**[2016] SCSC**

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**ELVIS ATHANASE**

Appellant

versus

**THE REPUBLIC**

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Heard: 21 June 2016

Counsel: Mr Gabriel for appellant

Ms Rongmei, Assistant Principal State Counsel for the Republic

Delivered: 21 June 2016

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**JUDGMENT**

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Akiiki-Kiiza J

[1] The Appellant was on the 30<sup>th</sup> of December 2013, convicted of the offence of breaking and entering into a building and committing a felony therein Contra Section 291 (a) of the Penal Code and was sentenced to a term of 8 years imprisonment. The learned trial Magistrate ordered this sentence to run consecutive to another previous Sentence of 8 years; hence making it a total of 16 years. The Appellant was dissatisfied with the above conviction, sentence and orders and lodged this Appeal to the Supreme Court.

[2] The following grounds were formulated in his memorandum of appeal.

(A) Against Conviction:-

(1) That the learned magistrate erred in law in having admitted the facts pertaining to the plea of guilty of the Appellant when in actual fact it was the Appellant's attorney who had admitted the facts contrary to law.

(B) Against Sentence:-

(2) That the Sentence imposed by the learned Magistrate was manifestly harsh, excessive and wrong in principle as the Appellant was already serving a term of 8 years imprisonment.

(3) That the learned Magistrate failed to consider the principle of totality of sentences when sentencing the Appellant. He therefore prayed for the allowing of the appeal and the quashing of conviction and the setting aside of the Sentence.

[3] At the hearing, Mr Nicole Gabriel represented the Appellant and Mr Khalyaan appeared before the Respondent.

[4] The lower Court record has the following entries entered on the 5<sup>th</sup> of December 2013 (Second page of the proceedings) quoted;

“ **Republic: Republic by Mrs Youpa.**

**Accused: Present (Mr Guy Ferley)**

**Republic: The case for plea.**

**Accused: Yes it is. Would the charge be put to my client?**

***Charge Read***

**Accused: I am guilty.**

**Court: A guilty plea is entered on the record against the Accused person. Would the prosecution narrate the facts?**

**Republic: As per charge sheet.**

**Court: Are the facts admitted?**

**Defence: Yes the fact(s) are admitted.**

**Court: The Accused person is convicted on his own guilty plea to the charge in the Court. ”**

- [5] It is clear that from the above extract that the word “Defence” connotes the defence counsel, as the Accused person is referred to in the proceedings as the “Accused”. This is contrary to the provision of Section 181 (2) of the Criminal Procedure Code and the principles initiated in the case of **Estico vs The Republic [2014] SLR 483**. This position of the law was again re-emphasized in the recent case of **Freddy Francis vs the Republic [2016] SCSC 392** or (Criminal Appeal Number CN 39/2014). The position of the law is that, it is only the Accused person who had the right to accept, deny or indeed dispute the correctness of some or all of the facts narrated by the prosecution. He is the only person who has the primary knowledge of exactly what he did or what took place at the time of committing the crime. Nobody else, his counsel inclusive, can take that place. Otherwise the plea would be held to be equivocal and cannot be allowed to stand.
- [6] In the premises therefore the conviction based on the purported admission of the facts by the Appellant’s advocate (Defence) had rendered the plea equivocal and the conviction entered by the learned trial Magistrate cannot be allowed to stand and must be quashed.
- [7] Given the fact that this is a 2013 case, and the Appellant has already served a substantial illegal sentence imposed on him, I will not order for a retrial which would ordinarily have been the case. This finding however does not affect the other cases not dealt with by this Court and are not the subject of an appeal here.
- [8] Given the quashing of the Conviction, I would not bother to consider the grounds raised in respect of the Sentence, as it would be a moot question.
- [9] All in all this appeal succeeds to the above extend only. Order accordingly.

Signed, dated and delivered at Ile du Port on 1 July 2016

D Akiiki-Kiiza  
**Judge of the Supreme Court**