

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 44/2017

[2018] SCSC 658

THE REPUBLIC

versus

STEPHAN MONDON & ORS
Accuseds

Heard: 9 July 2018
Counsel: Mr Georges Thachett, Assistant Principal State Counsel for the Republic
Mr Joel Camille for the 2nd accused
Mr Clifford Andre for the 1st, 3rd, 4th and 5th accused
Delivered: 9 July 2018

RULING

R. Govinden, J

[1] This is the ruling of the Court, the Prosecution issued summons to Mr Anthony Juliette Attorney at Law, for him to testify in favour of the Republic. Mr Juliette was to testify about a conversation or communication that he had had with a person that implicated the 5th accused, the conversation of Mr Juliette followed a visit that he paid to the 1st accused, Mr Stephan Mondon, whilst the latter was being detained at the Mont Fleuri Station following his arrest in this case. The 5th accused is the wife of the 1st accused. The 1st accused objected to the admissibility of Mr Juliette evidence on the basis that Mr Juliette

evidence will consist of professional legal privilege, as Mr Juliette would testify about information that he received confidentially from the 1st accused while he was in custody. The Republic contested that the information would be professional legal privilege. According to the Republic the information that Mr Juliette would testify thereon consist of a favour and not him giving evidence on information received following him giving legal counsels and legal services to a client in detention. I have heard submissions of both Counsels in the light of the motion and affidavit of the Republic and the objection and affidavit in support of the 1st accused. I find that the common law on legal and professional privilege enables a client to maintain the confidentiality of first of all communications between him and his lawyer, made for the purpose of obtaining and giving legal advice. Secondly, communications between him and his lawyer or a third party or third parties such as potential witnesses and experts. Thirdly, items enclosed with or referred to in such communications and brought into existence for the purpose of obtaining legal advice. In this case I find that there is a presumption of fact arising out of a lawyer visiting an accused whilst in custody that the visit is for the purpose of giving legal assistance to the detainee. This presumption can only be rebutted by contradictory evidence. In this case the Prosecution has not contradicted the evidence of the 1st accused that Mr Juliette came and visited him in cell as his Attorney at Law. An affidavit from Mr Juliette may have been adduced so as to rebut this presumption, but the Prosecution has failed to provide such document to the Court. The only evidence to contradict this presumption is in the form of the affidavit of Mr Ryan Durup, an Investigating Officer in this case, who avers that as per information provided by Mr Juliette he was not acting as a Counsel . To me this averment is insufficient in weight when compare to the categorical averments to the contrary from the 1st accused, I find therefore that any communication between the 1st accused and Mr Juliette whilst he was being detained at the Mont Fleuri Police Station consist of legal professional privilege and the 1st accused has exercised his right to object to the admissibility of this evidence. The communication cannot be testified upon before this Court, this being the case any consequential or subsequent information arising or obtained by Mr Juliette as a result of the communication given to Mr Juliette by the 1st accused, would also be covered by the said privilege and would hence not be admissible. Accordingly, I rule that Mr Juliette would not be able to testify about such communications before this Court.

Signed, dated and delivered at Ile du Port on 9 July 2018

R Govinden , J
Judge of the Supreme Court