

MAGISTRATES / SUPREME / CONSTITUTIONAL COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2019] SCSC ...
CO54/2017

In the matter between

THE REPUBLIC
(*rep. by Mr. Joji John*)

REPUBLIC

and

JEAN-PAUL BASTIENNE
(*rep by Mr. Clifford Andre*)

ACCUSED

Neutral Citation: *THE REP v BASTIENNE* (CO54//2017) [2019] SCSC 27 March 2019.
Before: GOVINDEN J
Summary: Warrant of arrest issued, following failure to obey summons of the Court.
Heard: 27 March 2019
Delivered: 27 March 2019

ORDER

RULING

GOVINDEN J

[1] Dr. Wix Cupidon, being the last Prosecution witness and an essential witness for the Prosecution was summoned to appear before the Court yesterday for him to give his testimony on behalf of the Republic. He has however failed to obey the summons of the Court. Upon the Republic's representative carrying out an investigation he has reported that the Doctor failed to appear because he went to an outer island to carry out some cleaning campaign. On that basis Learned Counsel for the Republic moved the Court for the matter to be adjourned and a warrant of arrest be issued upon Doctor Cupidon for failure to comply to the summons of this Court. Mr. Andre, Learned Counsel for the

defence, on the other hand, strenuously objected to the issuing of the warrant of arrest and submitted that Prosecution case be deemed to be closed so that he be given the opportunity to open his defence as he believed that his client must not be penalised for the delay in this case caused by none appearance of the Doctor, and that this is unfair prejudicial to his case. The reason lying squarely with the Republic.

- [2] I have given to consideration to the submissions of both counsels in the light of the facts and circumstances surrendering none appearance of Doctor Cupidon and I find that it is very serious that a Doctor failed to obey to the summon of this Court and to testify in the prosecution case. I find it especially seriously that he has failed to do so not as a result of his professional duties, which I am sure that he is sometimes over taken with, but as a result of deciding personally to carry out some private and personal activities on one of our outer islands.
- [3] I will however not rule that the Prosecution close its case now. I will adjourn this matter to another date as I find that the cause for none appearance lies beyond the capacity of the Republic or the Republic's counsel. The Republic has done the needful to issue summons upon the doctor, it is the doctor who failed to abide to the summon. In order to ensure that there is fairness and equity and that the case is dealt at arm's length it is essential for this Court to balance the interest of all parties.
- [4] I feel that the Accused is on bail and he is not remand and that if he was on remand my decision would have been otherwise.
- [5] I will issue a warrant of arrest upon Doctor Cupidon, it will be an open warrant of arrest for him to be arrested and brought to Court and when he appears before the Court he will need to show cause as to why he failed to comply with the Court order.

Signed, dated and delivered at Ile du Port on 26 March 2019.

Govinden J