

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC ... 584
Cr. No 19/2019

In the matter between

THE REPUBLIC

(rep. by Jayaranth Chinassamy)

and

BEN ATTOOMANI

(rep. by Nichol Gabriel)

Neutral Citation: *R v Attoomani Cr.19/2019* [2019] SCSC (15 July 2019).

Before: Twomey CJ

Summary: fishing without a foreign vessel licence - guilty plea-mitigation

Heard: 11 July 2019

Delivered: 15 July 2019

ORDER

The accused is fined SR1000. The vessel in which he was fishing together with all the fishing gear if any found therein is forfeited to the Republic of Seychelles.

SENTENCE

TWOMEY CJ

- [1] The convict has pleaded guilty to fishing without a foreign fishing vessel licence contrary to section 11(1) as read with sections 58 and 89 of the Fisheries Act, 2014 and punishable under section 58 (a) of the said Act. The particulars are that on the 25th day of March 2019 in the vicinity of Assumption Island, Seychelles the convict, a 51 year old Comorian was

found on board a foreign fishing vessel that was not licensed or authorised for fishing in Seychelles waters and used the said vessel for fishing in Seychelles waters.

[2] In his plea of mitigation the convict claims he went fishing in a boat, the Pevoni, with an engine borrowed from a friend, near Assumption Island from the Comoros but states that he did not know that this was an offence.

[3] He also states that he now owes money both for the engine that was seized and for the fuel for the trip. He states “poverty strikes like a whip” in the Comoros and has begged for forgiveness and for clemency. He has also stated that the vessel and the fishing was not of a commercial nature but rather more artisanal.

[4] He is also ill with a lot of pain from an STD and collapsed on one occasion in court from the pain he was experiencing. He has asked that all these be taken into account by the court when he is sentenced.

[5] I note first of all that the vessel is of a length overall not exceeding 24 meters which attracts a fine of not less than SCR2, 500,000. In *Poonoo v Attorney General* (2011) SLR 423 the Court of Appeal reiterated that sentencing is an intrinsic judicial power involving the human deliberation of the appropriate conviction to be given to a particular offender in the circumstances of the case. In line with that authority therefore, I wish to impose the sentence I find appropriate in this case.

[6] I take into account the plea in mitigation and the remorse shown by the convict. I am also acutely aware of his health issues and the poverty stricken situation of the Comoros.

[7] I sentence him therefore to a fine of Rs1000.

[8] I further order that the vessel in which he was fishing together with all the fishing gear if any found therein be forfeited to the Republic of Seychelles pursuant to Section 70(a) of the Fisheries Act.

[9] In view of the convict having no means to pay the fine, I hereby order that the fine be levied from the sale or disposal of the vessel, fishing gear, other equipment and fish found on board the vessel.

[10] I further recommend that the convict be repatriated to his country of origin or residency as a prohibited immigrant as soon as is reasonably practicable.

[11] The convict has a right of appeal against the conviction and sentence in this case.

Signed, dated and delivered at Ile du Port on 15 July 2019



Twomey CJ

