

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2020] SCSC 130  
CO11/2020

**THE REPUBLIC**

**Prosecution**

v

**EDWIN TAH EZU**

**1<sup>st</sup> Accused**

**ANNABELLE BERTIN**

**2<sup>nd</sup> Accused**

**PAUL NDI FON ESSAMBLY**  
*(Mr. Gabriel for all Accuseds)*

**3<sup>rd</sup> Accused**

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**Neutral Citation:** *The Republic v Tah Ezu & Ors* (CO11/2020) [2020] SCSC 130 (17 February 2020)

**Before:** Vidot J.

**Summary:**

**Heard:** 14 February 2020

**Delivered:** 17 February 2020

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**RULING**

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**VIDOT J**

[1] The Applicant has filed a Notice of Motion supported with affidavit sworn by. Detective Woman Police Officer Sergeant Maria Eulentin. However, this Ruling shall be in respect of the 2<sup>nd</sup> Respondent only. This is due to her special circumstances. The 2<sup>nd</sup> Respondent is the mother of 2 small children, one of whom is 6 months old. The 1<sup>st</sup> Respondent is, in fact, the partner on the 2<sup>nd</sup> Respondent who is a foreign national. She claims that she has

no one to leave the children with, if she was to be remanded. Her own mother is deceased and her father is of poor health.

[2] The 2<sup>nd</sup> Respondent together with the other 2 Respondents stand charged of serious heinous offenses of human trafficking. These are;

- a) Trafficking in persons contrary to section 3(1) (d) (e) & (g) as read with section 5 (1) (b) of the Prohibition of Trafficking in Person Act, 2014 and section 22 (a) of the Penal Code, and punishable under section 5 (2) of the same Act.
- b) Uttering a false document contrary to section 339. Of the Penal Code CAP 158 and punishable under section 337 of the same Act.
- c) Conspiracy to commit to an offence of trafficking in persons, contrary to section 381 of the Penal Code read with section 3 (1) (d), (e) & (g) of the Prohibition of Trafficking in Persons Act 2014 and punishable under section 3(1) of the Prohibition of Trafficking in Person Act.

The grounds being relied upon for remand of the Accused are as follows;

- i. The alleged offence namely trafficking in person, which is an aggravated offence involving more than one victim, is punishable with imprisonment of 25 years and a fine of SR 800,000 in the event of conviction. Uttering false document carries a maximum of seven years imprisonment. The alleged offences committed show

an aspect of organized crimes involving both international and national parties, making it an aggravated offence.

ii. Since the Respondent recruited the Cameroonians and they are aware of the identity of the potential victims and hence if the Respondent is released on bail, then she might interfere with these victims. Further the 2nd Respondent is continually threatening the other victims and 1<sup>st</sup> Respondent assaulted them, thus there are grounds to believe that if the respondents is released on bail she might interfere with the vulnerable foreign victims. Henceforth, remand is required for the protection and the safety of the victims as well.

iii. Respondent No1 and No3 are foreigners and there are substantial grounds for believing that in the event that they are released on bail, they will not turn up for trial and may abscond, there by obstructing due to course of Justice.

[3] The application is being resisted most strongly by the Respondent. Counsel for the Respondent argued that on a cursory look at the evidence as alleged does not meet the charges. He added that the 1<sup>st</sup> Respondent was brought before the Magistrate Court on section 101 of the Criminal Procedure application but was released by that Court.

[4] I note nonetheless that the fact the 1<sup>st</sup> Respondent was released on a S101 application does not preclude the Applicant from filing a new application. In any event, a S101 application is filed prior to charges being levelled against a person. This application is

made pursuant to section 179 of the Criminal Procedure Code read with Article 18 (7) of the constitution.

[5] Bail is Constitutional right guaranteed under Article 18(1) of the Constitution; see *R v Julie* SSC 49/2006. Such right can only be restricted in exceptional cases where the Prosecution has satisfied court that there are compelling reasons in both law and on the facts for remanding the Respondent; see *Esparon v The Republic* SCA 1 of 2014. Article 18(7) provides for derogations whereby this liberty can be curtailed. The International Covenant on Civil and Political Rights (ICCPR) which Seychelles ratified in 1992 provides that “it shall not be subject to guarantees to appear at trial.” In fact, in *Esparon v Republic* (supra) the Court of Appeal cautioned court that we have to ensure that the rule is not reversed whereby bail instead of jail becomes jail instead of bail.

[6] In essence application for remand is to secure the appearance of the accused at the hearing. The Court has to be satisfied that there isn't any likelihood that the accused will abscond. If there is a likelihood of absconding, then the court should consider if the imposition of bail conditions which will ensure that the accused does not abscond. If there is likelihood of the accused absconding and the bail condition will not safeguard against that then the accused should be remanded. An application for remand is an invitation for the court to exercise its discretion provided by law to restrain a person's right guaranteed under Article 18(1). In exercising this discretion whether or not to accede to an application for remand, the court must bear in mind that pursuant to Article 19(2)(a) of the Constitution Respondents are innocent until proven or has pleaded guilty.

[7] It is trite and it has been established in *Beehary v Republic* [2009] SLR 11 that seriousness of the offence is not a standalone provision. It has to be considered with other grounds of the application. The Applicant has averred seriousness often offense couples with other grounds. However, in considering such grounds, the court needs first assess whether the imposition of bail is the rule remand the exception.

[8] I indeed consider the charges the 1<sup>st</sup> Respondent is charged with very serious and one that should warrant remanding her. However her special circumstances dictate that this Court should consider other means of dealing with her. At this stage I would not want her small children to be affected. That would definitely have a negative impact on them. Therefore I shall proceed to release the respondent on the following bail conditions;

- i. The Respondent shall pay into Court a cash bail in the sum of SR100,000.00
- ii. The Respondents shall provide 2 sureties, to be approved by the Court, who shall each sign a bond of SR 80,000.00 to ensure her appearance in Court each time the case is called. If at any time the Respondent fails to so appear the bail bond shall become immediately payable. The sureties must be in full time employment and if not, must provide proof of sufficient and adequate funds to pay the bail bond if ever it became necessary.
- iii. The Respondent shall not leave the Republic until the final determination of this case and to that end, the Respondent shall forthwith, and before being released on bail, surrender her passport and/or all travel documents

to the Registrar of the Supreme Court and the Immigration Authorities is ordered not to issue any travelling documents to the Respondent and to not allow her to travel out of Jurisdiction;

- iv. The Respondent shall report to the Police station nearest to her place of residence every Mondays and Fridays.
- v. The Respondent shall until this Case is completed remain on Mahe and shall not travel to any other islands of Seychelles jurisdiction.
- vi. The Respondents shall not whilst on bail commit any offence of similar nature.
- vii. The respondent shall not interfere with the investigation of this case and in particular not to have contact of whatever nature with the witnesses.
- viii. The respondents shall not leave her homes between the hours of 7.00pm and 5.30am, until the final determination of this case;
- ix. If the Respondent breaches any of the aforementioned bail conditions; she shall be arrested and produced forthwith before this Court.

Signed, dated and delivered at Ile du Port on the 17<sup>th</sup> February 2020.

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Vidot J

Judge of the Supreme Court