

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 294
CO 18/2020

In the matter between

THE REPUBLIC

(rep. by Joji John)

and

LASANTHA KUMARA SILVA DIWA DALAGE Accused

(rep. by Alexandra Madeleine)

Neutral Citation: *R v Dalage (CO 18/2020)* [2020] SCSC 294 (1 June 2020).
Before: Twomey CJ
Summary: fishing without a foreign vessel licence - guilty plea-mitigation
Heard: 18 May 2020
Delivered: 1 June 2020

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 using a foreign fishing vessel which is not licensed contrary to section 11 of the Fisheries Act, for fishing in Seychelles waters contrary to section 58 of the Fisheries Act as amended by Act 20/2014 and punishable under section 58 of the Fisheries Act. The particulars are that on the 26th day of February 2020, in Seychelles waters at a position of 85 NM South East of Mahe, Seychelles at around 16.50

hours, the convict, a Sri Lankan national, being the skipper/master of the fishing vessel “Nuwan Putha 16 used the said fishing vessel that was not licensed or authorised for fishing in Seychelles waters.

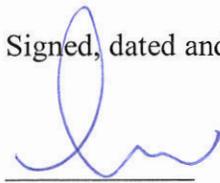
- [2] On boarding the vessel, coast guard officers together with persons from the Seychelles Fishing Authority (SFA) found seven crew members, food, water, fuel, fishing gear and 12, 298.08 kilograms of salt fish, marlin and shark. The latter of the catch was sold by auction for SR 3,400 and the rest disposed of by the SFA.
- [3] The value of the fishing vessel is set at SCR719,000,000. The accused accepts all these facts.
- [4] In his plea of mitigation, the convict, aged 44, claims that he was a first time offender and that he is deeply remorseful for his actions. Counsel for the convict has also submitted that the vessel is of a length of 14.5 metres in terms of the provisions of section 58 of the Fisheries Act.
- [5] Counsel further submits that the boat owner cannot be traced and all the blame has been laid at the door of the convict, a man without means and with no other livelihood besides his job as a skipper. He has a wife and two children in Sri Lanka and also cares for his mother.
- [6] He is also ill with a high hematocrit level and has asked that all these matters be taken into account by the court when he is sentenced.
- [7] As pointed out by Counsel for the accused, the vessel is of a length overall not exceeding 24 meters which attracts a fine of not less than SCR2, 500,000. Courts have pointed out the ludicrousness of this provision of the Fisheries Act, given the means of accused persons for such offences. No amendment has yet been brought before the legislature.
- [8] In *Republic v Attoomani* (CR 19/2019) [2019] SCSC 584 (15 July 2019), the Supreme Court in similar circumstances stated:

“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.”

- [9] In *Republic v Fonsek & Anor* (CO 43/2019) [2019] SCSC 715 (02 September 2019), the Court recognised the established pattern of sentencing in such cases given the constraints of the provisions of the Fisheries Act: a fine and the forfeiture of the vessel to the state.
- [10] I take into account the plea in mitigation and the remorse shown by the convict. I am also aware of his health issues and his means.
- [11] I sentence him therefore to a fine of SCR1000.
- [12] 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.
- [13] 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 onboard the vessel.
- [14] 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.
- [15] The convict has a right of appeal against the conviction and sentence in this case.

Signed, dated and delivered at Ile du Port on 1 June 2020



Twomey CJ



Dr. Madeline Pringle
Chief Justice
Seychelles Court of Appeal

