

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 616
CR 88/2021

In the matter between:

THE REPUBLIC

(Represented by Mr. George Tachette)

Prosecutor

And

SUNNY OGBONNA IDAM

(Present/ represented by Mrs. Alexia Amesbury)

Accused

Neutral Citation: *R v Idam* (CR 88/2021) [2021] SCSC 616 (23 September 2021)

Before: B. Adeline, J

Summary: Objection to the prosecution of the accused.

Heard: 13 September 2021

Delivered: 23 September 2021

FINAL ORDER

Accused being prosecuted for unlawful entering and unlawfully being present in Seychelles without a permit– An offence under Section 28 (1) (h) of Part IV of the Immigration Decree – Whether to prosecute or not to prosecute for an alleged Criminal offence is within the prerogative of the prosecuting authority, the Attorney General – Article 76 (4) (a) and (c) and 76 (5) of the Constitution. The decision whether to prosecute, or to deport the accused under the provisions of the Immigration Decree is not one that should be taken by this Court – The objection to the prosecution of the accused is therefore overruled.

RULING

Adeline J

[1] Further to the order of this Court made on the 6th September 2021 to remand the accused, one Sunny Ogbonna, Idam of Lagos, Nigeria for 7 days for the purpose of allowing him to secure legal advice and representation prior to answering the prosecution’s application by way of notice of motion, seeking for his continued detention in Police custody up to

the conclusion of the case, the accused now appears with Counsel, Mrs. Alexia Amesbury.

- [2] Counsel raises a preliminary objection, *viva voce*, to the motion without addressing the merits of the application as per the averments in the Affidavit in support of the same sworn by the investigating officer, one Stenio Cadeau of the Anti-Narcotics Bureau, ANB, of the Police Force.
- [3] The gist of Counsel's submission, is that it is not disputed that the accused is unlawfully present in Seychelles, but then, under Article 25 (3) (e) he can be deported as there are provisions under the Immigration Decree to do so, and that will be within Article 25 (3) (e) of the Constitution which allows restriction of the movement of persons who are unlawfully present in Seychelles.
- [4] Counsel also raised her view, that the offence of an Act of unlawful entering and unlawfully being present in Seychelles without a permit contrary to Part IV of the Immigration Decree and punishable under Section 28 (1) (h) of the Immigration Decree is a law that was enacted prior to coming into force the Constitution of the third Republic is bad law and is therefore anti-constitutional.
- [5] It appears, that it is not disputed by Counsel, that Mr. Sunny Ogbonna Idam is unlawfully in this country. As such he doesn't have the Constitutional right of movement afforded to every persons lawfully present in this county under Article 25 (1) of the Constitution.
- [6] Furthermore, Mr. Idam is charged with an offence under a law that is inforce in this country, and it is up to the prosecuting authority, not the Court, to decide whether the prosecution of him should continue or discontinued, in line with Article 76 (4) (a) and (c) of the Constitution.
- [7] Yes, the right under Article 25 (1) read with Section 25 (3) of the Constitution may be subject to restrictions provided that it is prescribed by law necessary in a democratic

society, for amongst other things, the “lawful removal of persons who are not citizens of Seychelles from Seychelles” as is the case under Part V of the Immigration Decree dealing with prohibited Immigrants rendering any persons unlawfully present in Seychelles liable to deportation.

[8] It is therefore, within the prerogative powers the prosecuting authority, which in this case is the Attorney General, the Attorney General being also the government legal advisor, to decide how to go about dealing with this case.

[9] As for the Court, the accused is charged before it with an offence, and although he is not a citizen of Seychelles, the Court has to allow due process to take its course given that the Attorney General has opted for prosecution instead of advising on deportation.

The objection is therefore overruled.

Signed, dated and delivered at Ile du Port 23rd September 2021.

B. Adeline

Judge