

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2022] SCSC  
CO 55/2020

In the matter between:

**THE REPUBLIC**  
*(rep. by Stephen Powles)*

**Republic**

and

**NATASIA CHANG TAVE**

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

**PERCY CHANG TAVE**  
*(rep. by Clifford Andre)*

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

**NICHOL GABRIEL**  
*(rep. by Bernard Georges)*

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

**MICHAEL BASTIENNE**  
*(rep. by Rene Durup)*

**4<sup>th</sup> Accused**

**GARRY ALBERT**  
*(rep. by France Bonte)*

**5<sup>th</sup> Accused**

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**Neutral Citation:** *Republic v Gabriel & Ors* (CO 55/2020) [2022] SCSC (19 April 2022).

**Before:** Burhan J

**Summary:** Conspiracy to commit money laundering - Money laundering – Failing to report a suspicious financing – Carrying a business as an estate agent which not registered on the Estate Agent Register

**Heard:** 17 March 2022

**Delivered:** 19 April 2022

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## ORDER

On Count 5, I sentence him to a term of six months imprisonment and a fine of SR 50,000 (fifty thousand). The term of six months imprisonment to be suspended for a period of three years. In default of payment of fine a term of six months imprisonment.

On Count 9, I sentence him to a term of three months imprisonment and a fine of SR 25,000 (twenty five thousand). The term of three months imprisonment is suspended for a period of three years. In default of payment of fine a term of three months imprisonment. Both default of fine terms of imprisonment to run consecutively

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## SENTENCE

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### BURHAN J

[1] The aforementioned accused were charged as follows:

#### **Count 1**

*Conspiracy to commit money laundering contrary to Section 3 (1) (b) and 3 (1) (3) of the Anti-Money Laundering Act 2006 as amended and punishable under Section 3 (4) (a) of the said Anti-Money Laundering Act.*

#### ***Particulars of Offence***

*Natasia Samentha Chang-Tave of Montagne Posee Prison, Mahe, Steve Percy Chang-Tave of Montagne Posee Prison, Bois De Rose, Mahe, Nichol Russel Gabriel of Pointe-Larue, Mahe, Michael Bastienne of Cascade, Mahe and Garry Mervin Albert of Beau-Vallon, Mahe during the period of 1<sup>st</sup> January 2018 to 28<sup>th</sup> February 2020, at a place unknown to the Republic on Mahe, Seychelles, knowing or believing that the property, namely the land and partly built dwelling house comprised in title No. J2850 situated in*

*Port Glaud, Mahe, was or represented the proceeds of crime, agreed with one another to conceal or disguise the true nature, source, disposition, movement or ownership of the property or any rights with respect to it without lawful authority or excuse.*

**Count 2**

*Money laundering contrary to Section 3 (1) (b) of the Anti-Money Laundering Act of 2006 as amended and punishable under Section 3 (4) (a) of the said Anti-Money Laundering Act.*

**Particulars of Offence**

*Natasia Samentha Chang-Tave of Montagne Posee Prison, Mahe during the period of 1<sup>st</sup> January 2018 and 28<sup>th</sup> February 2020, at a place unknown to the Republic on Mahe, Seychelles, knowing that the property, namely; the land and partly built dwelling house comprised in Title No. J2850 situated in Port Glaud, Mahe was or represented the benefit of criminal conduct namely; drug trafficking, or being reckless as to whether the said property was or represented the benefit of such conduct, concealed or disguised the true nature, source, disposition, movement or ownership of the said property or any rights with respect to it without lawful authority or excuse.*

**Count 3**

*Money laundering contrary to Section 3 (1) (b) of the Anti-Money Laundering Act as amended and punishable under Section 3 (4) (a) of the said Anti-Money Laundering Act.*

**Particulars of Offence**

*Steve Percy Chang-Tave of Montagne Posee Prison, Mahe, between the period of 1<sup>st</sup> January 2018 and 28<sup>th</sup> February 2020, at a place unknown to the Republic on Mahe, Seychelles, knowing or believing that the property, namely; the land and a partly built dwelling house comprised in Title No. J2850 in Port Glaud, was or represented the benefit of criminal conduct namely; drug trafficking, or being reckless as to whether the said property was or represented the benefit of such conduct, concealed or disguised the*

*true nature, source, disposition, movement or ownership of the said property or any rights with respect to it without lawful authority or excuse.*

**Count 4**

*Money laundering contrary to Section 3 (1) (a) of the Anti Money Laundering Act of 2006 as amended and punishable under Section 3 (4) (a) of the said Anti Money Laundering Act.*

**Particulars of Offence**

*Nichol Russell Gabriel of Pointe Larue, Mahe on 20<sup>th</sup> February, 2018 at the Mauritius Commercial Bank (MCB) located at Caravelle House in Victoria Mahe, knowing or believing that the property, namely: the sum of SCR 3,000,000.00 was the benefit of criminal conduct namely; drug trafficking, or being reckless as to whether the said property was or represented the benefit of such conduct handled the said SCR 3,000,000.00 as a notary public to facilitate the sale and purchase of land and partly built dwelling house comprised in Title No. J2850 situated at Port- Glaud, Mahe and deposited part of the said amount in the sum of SCR 2,640,000.00 into his MCB law chambers bank account number 00000086444 without lawful authority or excuse.*

**Count 5**

*Money laundering contrary to Section 3(1) (b) of the Anti-Money Laundering Act of 2006 as amended and punishable under Section 3 (4) (a) of the said Anti-Money Laundering Act.*

**Particulars of Offence**

*Nichol Russel Gabriel of Pointe- Larue, Mahe on 20<sup>th</sup> February 2018 at the Mauritius Commercial Bank (MCB) at the Caravelle House in Victoria, Mahe knowing or believing that the property namely; the sum of SCR 3,000,000.00 was or represented the benefit of criminal conduct namely; drug trafficking, or being reckless as to whether the said property was or represented the said benefit of such conduct concealed or disguised the true nature and source of SCR 3,000,00.00 which he personally brought to be deposited*

*into his law chambers bank account number 00000086444 at the said MCB to facilitate the sale and purchase of land and dwelling house comprised in Title No. J2850 situated at Port Glaud, Mahe, without lawful authority or excuse.*

#### **Count 6**

*Money laundering contrary to Section 3 (1) (c) of the Anti Money Laundering Act of 2006 as amended and punishable under Section 3 (4) (a) of the said Anti Money Laundering Act.*

#### **Particulars of Offence**

*Nichol Russell Gabriel of Pointe Larue, Mahe on 20<sup>th</sup> February, 2018 at the MCB Caravelle House in Victoria Mahe, Seychelles, knowing or believing that the property, namely; SCR 3,000,000.00 was the benefit of criminal conduct namely; drug trafficking, or being reckless as to whether the said property was or represented the benefit of such conduct acquired SCR 360,000.00 as a commission deducted from the said SCR 3,000,000.00 without lawful authority or excuse.*

#### **Count 7**

*Money laundering contrary to Section 3(1) (b) of the Anti-Money Laundering Act and punishable under Section 3 (4) (a) of the Anti-Money Laundering Act.*

#### **Particular of Offence**

*Michael Bastienne of Cascade, Mahe between the period of 1<sup>st</sup> January 2018 and 28<sup>th</sup> February 2020, at a place unknown to the Republic on Mahe, Seychelles, knowing or believing that the property, namely; land and partly built dwelling house comprised in Title No. J2850, situated in Port Glaud, Mahe was the benefit of criminal conduct namely; drug trafficking, or being reckless as to whether the said property was or represented the benefit of such conduct, concealed or disguised the true ownership of the said property or any rights with respect to it without lawful authority or excuse.*

**Count 8**

*Money laundering contrary to Section 3(1) (b) of the Anti-Money Laundering Act of 2006 as amended and punishable under Section 3 (4) (a) of the Anti-Money Laundering Act.*

***Particulars of Offence***

*Garry Mervin Albert of Beau Vallon, Mahe between 1<sup>st</sup> January 2018 and 28<sup>th</sup> February 2020, at a place unknown to the Republic on Mahe, Seychelles, knowing or believing that the property, namely; land and partly built dwelling house comprised in Title No. J2850, situated in Port Glaud, Mahe was the benefit of criminal conduct namely; drug trafficking, or being reckless as to whether the said property was or represented the benefit of such conduct, concealed or disguised the true ownership of the said property or any rights with respect to it without lawful authority or excuse.*

**Count 9**

*Failure to report a suspicious transaction contrary to Section 49 of the Anti-Money Laundering Act of 2006 as amended and punishable under Section 21 (5) of the said Anti-Money Laundering Act.*

***Particulars of Offence.***

*Nichol Russell Gabriel of Pointe-Larue Mahe being a reporting entity between 1<sup>st</sup> January 2018 and 28<sup>th</sup> February 2018, at a place unknown to the Republic on Mahe, Seychelles, failed to report a suspicious transaction or make a suspicious transaction report in relation to money in the sum of SCR 3,000,000.00 which he had received for the purchase and sale of land and partly built dwelling house comprised in Title No J2850 situated at Port-Glaud, Mahe to the Financial Intelligence Unit (FIU) in accordance with Section 10 of the said Anti- Money Laundering Act.*

**Count 10**

*Carrying on business as an estate agent while not registered on the Estate Agents Register contrary to and punishable under Section 17 of the Estate Agents Act.*

***Particulars of Offence***

*Michael Bastienne of Cascade, Mahe between 1<sup>st</sup> October, 2017 and 28<sup>th</sup> February 2020, at a place unknown to the Republic on Mahe, Seychelles, carried on business as an estate agent in relation to the sale and purchase of the land and partly built dwelling house comprised in Title No. J2850 Port Glaud when not registered on the Estate Agents Register as required under Sections 4, 5, 6, 7 and 8 of the Estates Agents Act.*

- [2] The first and second accused Mrs. Natasia Chang-Tave and Mr. Percy Chang-Tave pleaded guilty to their respective charges and were convicted and sentenced by this Court.
- [3] The third accused Mr. Nichol Gabriel pleaded guilty to Counts 5 and 9 set out above and was convicted on both Counts on the 17<sup>th</sup> of March 2022. Learned Prosecution Counsel Mr. Powles thereafter withdrew Count 1, 4 and 6 against the third accused Mr. Gabriel.
- [4] It is apparent from the particulars of the offence in relation to Count 5 that the third accused had either knowingly and believing that the property namely; the sum of SR 3,000,000.00 was or represented the benefit of criminal conduct namely; drug trafficking, or being reckless as to whether the said property was or represented the said benefit of such conduct concealed or disguised the true nature and source of SCR 3,000,00.00 which he personally brought to be deposited into his law chambers bank account number 00000086444 at the said MCB to facilitate the sale and purchase of land and dwelling house comprised in Title No. J2850 situated at Port Glaud, Mahe, without lawful authority or excuse. The particulars in Count 9 indicate that the third accused failed to report a suspicious transaction or make a suspicious transaction report in relation to money in the sum of SR 3,000,000.00 which he had received for the purchase and sale of land and partly built dwelling house comprised in Title No J2850 situated at Port-Glaud, Mahe to the Financial Intelligence Unit (FIU).

[5] Learned Counsel Mr. Georges who pleaded in mitigation stated that his client had accepted guilt on the basis that he had been reckless as to whether the money represented the benefit of criminal conduct and not on the basis that he had the knowledge that the money represented benefit from criminal conduct. He substantiated his position by stating that the third accused accepts the fact that he ought to have been more diligent when handling such a large sum of money but even from the facts emanating from the prosecution, it is clear that the third accused had always acted in this transaction with utmost transparency by going to the bank himself, filling up the forms and making the necessary payments. Mr. Georges further submitted that his client had not benefited from the transaction at all. He stated that Mr. Gayon the seller of the property was the cousin of Mr. Gabriel and he had not charged his cousin and therefore not gained any benefit from the transaction. Mr. Georges further submitted that from the total sum of three million, the third accused had paid a sum of 2,709,000.00 to Mr and Mrs Gayon for the purchase of the property and the balance sum SR 291,000 he had deposited in the Seychelles Credit Union to set off the charge on the land. The buyer of the property was Mr. Garry Albert and it appears that Michael Bastienne acted as the estate agent and he too had been paid a sum by the third accused for his efforts. Mr. Georges admitted his client had failed to be diligent and question the buyer as to how he came to be in possession of such a sum or formally report the matter to the Financial Intelligence Unit. It was for this reason he had pleaded guilty on the basis of recklessness.

[6] Learned Counsel Mr. Georges submitted further that his client without doubt was one of the lawyers who worked under the most pressure and is every day before almost all Judges and Magistrates. He submitted his client spends long hours working and though this is not an excuse, it explains why he was not more diligent. Mr. Georges further stated that his client had no personal gain from this transaction and he is a lawyer always willing to assist anybody. He has already suffered a long period of suspension. Mr. Georges went on to state that he had personally worked for several years with his client and has observed him to be a counsel who was always willing to assist others.



[7] Mr. Georges went onto further distinguish the cases of **R v Phillip Griffiths & Anr [2007] 1 Cr. App. R. (S.) 95** and **R v Jonathan Michael Duff [2003] 1 Cr. App. R.(S.) 88** tendered by the prosecution. He submitted that in the Griffiths case there was a payment of substantial sums in terms of fees and the conveyance and the transaction was clearly known to the parties to be one which was of suspicious nature. It is his contention that in both cases, there was clear knowledge on the part of the attorneys and monetary gain unlike in this case. Mr. Georges also referred to the letters submitted by members of the Bar by Senior Counsel Mr. Kieran Shah and Mr. Pesi Pardiwalla and the President of the Bar Association of Seychelles Mr. Divino Sabino. He moved that Court kindly consider their letters and their request to be considerate in dealing with the third accused. He further submitted that Learned Counsel Mr. Kieran Shah has volunteered to mentor and to guide Mr. Gabriel. Mr. Georges too gave his assurance that he was ready to guide his client in order to make him a honourable member of the legal profession. When one considers the aforementioned letters, it is common ground that the third accused has always been a person who appears for the down trodden and needy persons regularly on a pro bono basis and the letters further refer to the fact that Mr. Gabriel is a compassionate person always putting the interests of his client first and willing to always help anyone. It is submitted that it is his kind nature that has made him act somewhat recklessly as he had failed to see the warning signs leading to this case being filed against him. The letters move Court to exercise the utmost leniency on him and give him another chance. Mr. Kieran Shah Senior Counsel states “Nichol did not benefit financially from this error of judgment. I believe in him and am prepared to counsel and mentor him.”

[8] This Court observes that in this instant case, the criminal activity that is the predicate or antecedent crime concerning the offence of money laundering is drug trafficking and importation of controlled drug. This indicates the seriousness of the predicate offence from which criminal conduct the money received was being laundered. It has always been considered by the Courts in the Seychelles that organising the cover up or laundering the proceeds of crime was a very serious offence that warrants deterrent punishment. It is to be borne in mind that on conviction Section 3 (4) (a) of the Anti-Money Laundering Act 2006 as amended attracts a maximum term of imprisonment of 15 years and/or a fine not exceeding five million SR while Section 21 (5) of the Anti-Money Laundering Act 2006 as amended attracts a maximum term of 12 years imprisonment and/or a fine of 1 million SR. .

[9] I will now proceed to set down the sentences usually imposed for such offences by Courts. In the case of **R v Monfries [2003] EWCA Crim 3348 and [2004] 2 Cr.App.R (S )3**, it was held that prior to sentencing in offences of money laundering, the following factors should be considered:

- a) The circumstances of assisting another to retain the benefit of drug trafficking/criminal conduct.
- b) There need not be a direct relationship between the sentence for the laundering offence and the original antecedent (predicate) offence. If the antecedent offence can be identified, some regard may be given to the appropriate sentence for that offence when considering the appropriate sentence for money laundering.
- c) The criminality in laundering is the assistance, support and encouragement it provides to criminal conduct.
- d) Regard should be had to the extent of the launderer's knowledge.

[10] In the case of of **R v Lopez and Phillips [2007] EWCA Crim 2515** where 60 transactions amounting to GBP 40,000 were conducted over a 16 month period, a sentence of 3 ½ years imprisonment was imposed. In the case of **R v Dennis Cave [2008]**

**EWCA 1119** a sentence of 2 years and 4 months imposed in appeal as the accused had pleaded guilty.

- [11] In this instant case, the main offenders the first and second accused Mr and Mrs Chang-Tave have been sentenced by this Court to consecutive sentences ranging from 3 to 6 years for the offences of trafficking in controlled drug, importation and money laundering. These two convicts on their own plea of guilt were convicted of the predicate offences and therefore were directly involved, well aware and had knowledge of the predicate offence.
- [12] This Court could take judicial notice of the fact that two main accused (Chang Tave's) were first charged in the Supreme Court for the offences of importation and drug trafficking on the 5<sup>th</sup> of April 2019 in CR 18 of 2019. Therefore Court could come to a finding that it was public knowledge that the two accused were involved in such serious offences around this period time or even 30 days prior i.e at the time the accused were produced in the Magistrates' Court. The next question to consider would be whether the third accused had accepted the said money which he admits laundering, before or after the main culprits (Chang –Taves) were formally charged in the Supreme Court. It is clear to this Court on perusal of the charges framed against the third accused that the charges against him for the offence of money laundering and failure to report a suspicious transaction date back to January/February 2018, prior to the main culprits being charged under the Misuse of Drugs Act. As the said period of time referred to in the charges is before the date on which the main culprits were charged under the Misuse of Drugs Act, it could be safely presumed that the third accused had not accepted the said money with knowledge or knowing that the predicate offence concerning the money was the proceeds of criminal conduct involving drug trafficking as these offences would have become public knowledge only after the filing of the cases against the Chang Taves in April 2019. The gravity and seriousness of the offences of money laundering and failure to report a suspicious transaction would have been serious had it been committed after April 2019 as the third accused would have by then had public knowledge of the predicate offences.
- [13] On this basis, I would therefore distinguish this case from the aforementioned cases including the cases of **R v Phillip Griffiths & Anr** and **R v Jonathan Michael Duff** (supra) where custodial terms of imprisonment of six months have been imposed on the basis the perpetrator had knowledge of the predicate offence and benefitted from it.

[14] Giving due consideration to all the aforementioned facts and the fact he is a first offender. I proceed to pass the following sentence on the third accused which I feel would act as a suitable deterrent and at the same time give him an opportunity to correct himself and continue to remain an asset to society.

On Count 5, I sentence him to a term of six months imprisonment and a fine of SR 50,000 (fifty thousand). The term of six months imprisonment to be suspended for a period of three years. In default of payment of fine a term of six months imprisonment.

On Count 9, I sentence him to a term of three months imprisonment and a fine of SR 25,000 (twenty five thousand). The term of three months imprisonment is suspended for a period of three years. In default of payment of fine a term of three months imprisonment. Both default of fine terms of imprisonment to run consecutively.

[15] Nature of suspended term and right of appeal against sentence explained.

[16] The fine to be paid in instalments of SR 10,000 (ten thousand) commencing 6<sup>th</sup> of June 2022.

Signed, dated and delivered at Ile du Port on 19 April 2022

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Burhan J