

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 294
CO 105/2021

In the matter between:

THE REPUBLIC
(rep. by *Guilmette Leste*)

Republic

and

ELSIE VAMBE
(rep. by *Michelle Marguerite*)

Accused

Neutral Citation: *Republic v Vambe* (CO 105/2021) [2022] SCSC 294 (31 March 2021).
Before: Burhan J
Summary: Importation of a Controlled drug namely Heroin – Importation of a
Controlled drug namely Cocaine
Heard: 7 March 2022
Delivered: 31 March 2022

ORDER

On Count 1 the accused is sentenced to a term of five years imprisonment.

On Count 2 the accused is sentenced to a term of five years imprisonment.

Both terms to run concurrently.

SENTENCE

BURHAN J

[1] The accused Elsie Vambe was convicted on her own plea of guilt in respect of the following offences ;

Count 1

Importation of a controlled drug contrary to and punishable under Section 5 read with Second Schedule of the Misuse of Drugs Act 2016.

Elsie Vambe, 43 years old from Zimbabwe on the 24th October 2021, imported into Seychelles at Seychelles International Airport, a net weight of 1512.70 grams of controlled drug namely Heroin (Diamorphine), on board the flight HM 060 coming from Johannesburg (South Africa), in contravention of the Misuse of Drugs Act, 2016.

Count 2

Importation of a controlled drug contrary to and punishable under Section 5 read with Second Schedule of the Misuse of Drugs Act 2016.

Elsie Vambe, 43 years old from Zimbabwe on the 24th October 2021, imported into Seychelles at Seychelles International Airport, a net weight of 503.80 grams of controlled drug namely Cocaine, on board the flight HM 060 coming from Johannesburg (South Africa), in contravention of the Misuse of Drugs Act, 2016.

- [2] As per the government analyst report filed the pure quantity of heroin is 892.36 grams in Count 1 and in Count 2 the pure quantity is 210.65 grams of Cocaine.
- [3] At the request of learned Counsel for the accused Ms Michelle Marguerite, a probation report was called. The probation report refers to the fact that the accused is 45 years old and a Zimbabwean national. She is presently living in Johannesburg, South Africa. She is married but at present separated from her husband. Her children, sons, are 25, 16 and 8 years of age. She had attended school for seven years but had to drop out due to financial issues at the age of 16. She started her employment as a self-employed fruit seller and proceeded to South Africa and did the same job. At present she is looking after the twin daughters of her deceased sister. It appears from the report the accused does have a somewhat serious medical issue and chronic asthma. The probation report states that the accused blames her niece for putting her in this position by deceiving her. The report further

states that the accused was the breadwinner in her family and since her arrest and detention in the Seychelles, the family is undergoing great hardships including her aged father who is a diabetic. It is also reported that the accused was involved in church activity. The probation office had also contacted her son on what's up and he had confirmed most of the above facts. The probation report recommends that the aforementioned circumstances be taken into consideration at the time of sentencing.

- [4] Learned Counsel for the accused Ms Marguerite made a plea in mitigation on behalf of the accused thereafter. The main grounds urged by learned Counsel were that the accused had pleaded guilty at the first opportunity, thereby expressing remorse and regret at the incident. She further submitted that the medical condition of the accused be taken into consideration as a special circumstance and referred to the case of **R v Linda Marie [2021] SCSC 67** where a sentence of 4 years was imposed by this Court. She also brought to the notice of Court that in this case the accused had cooperated and assisted in the controlled delivery in order to catch the local culprit but the controlled delivery had failed.
- [5] In similar cases of Importation of Controlled Class A drugs into Seychelles namely **R v Peris Munyao & Anor [2021] SCSC 411**, **R v Nakiganda [2021] 864**, **R v Nurdin Kamba [2020] SCSC 24**, this Court imposed sentences of six years imprisonment on the accused. In the case of Linda Marie, a sentence of four years imprisonment was imposed because the accused had assisted the police by providing information and even giving evidence under oath that resulted in the conviction of the main culprit.
- [6] On the facts before court, I am satisfied that the accused has expressed remorse and regret by pleading guilty at the very outset, thereby expecting leniency from court. She is a first offender. In regard to the quantity found in her possession at the time of importation the government analyst report indicates the quantity of pure heroin was 892.36 grams and the quantity of Cocaine was 210.65 grams. This Court is of the view that in Count 1 as the pure quantity is in excess of 250 grams, the offence is an aggravated offence. Considering the serious nature of the charges and the total quantity of the two Class A controlled drugs imported into the Seychelles, I am of the view as a deterrent, a custodial term of imprisonment should be imposed. Having considered the aforementioned facts, it should

also be borne in mind the accused has a somewhat serious medical health issue as mentioned in the probation report and verified by the Deputy Registrar and keeping in mind the accused will not be entitled to remission, I am of the view that the following sentence would be a just and appropriate sentence considering the circumstances peculiar to this case.:

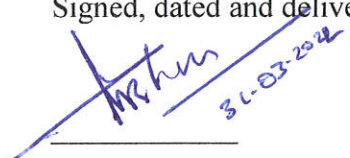
On Count 1 the accused is sentenced to a term of five years imprisonment.

On Count 2 the accused is sentenced to a term of five years imprisonment.

Both terms to run concurrently.

- [7] The accused is not entitled to remission due to the aggravated circumstances of Count 1. Time spent in remand to count towards sentence.
- [8] Right of appeal against sentence explained to the accused.

Signed, dated and delivered at Ile du Port on 31 March 2022


Burhan J