

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2022] SCSC  
CO 34/2021

In the matter between:

**THE REPUBLIC**  
*(rep. by Corrine Rose)*

**Republic**

and

**HUGHES ESTICO**  
*(rep. by Danny Lucas)*

**Accused**

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**Neutral Citation:** *Republic v Estico* (CO 34/2021) [2022] SCSC (07 April 2022).

**Before:** Burhan J

**Summary:** Breaking into building and stealing – Breaking into building with intent to steal

**Heard:** 25 March 2022

**Delivered:** 07 April 2022

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**ORDER**

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**RULING**

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**BURHAN J**

[1] The accused Hughes Estico stands charged with the following offences;

**Count 1**

*Breaking into Building and Committing a Felony therein namely Stealing contrary to Section 291 (a) and punishable under Section 291 of the Penal Code Cap 158.*

### **Particulars of the Offence**

*Hughes Estico of Roche Caiman, Mahe, on a date unknown to the Republic in 2021, at the Vortex investment storage facility, Providence, Mahe, broke and entered into the said building and stole therein, one grey insulation tap label high-power 19mm x 20mm valued at Sr 10 and three (3) hose adaptor which was with the garden set valued at Sr 120, being the property of Vortex Investments.*

### **Count 2**

*Breaking into Building and Committing a Felony therein namely Stealing contrary to Section 291 (a) and punishable under Section 291 of the Penal Code Cap 158.*

### **Particulars of the Offence**

*Hughes Estico of Roche Caiman, Mahe, on a date unknown to the Republic in 2021, at the Vortex investment storage facility, Providence, Mahe, broke and entered into the said building and stole therein, 300 double socket-heads, 30 switch 1 Gang 2 way, 50 switch 2 gang 1 way, 50 switch 3 gang 1 way, 100 single socket 13A, 220 multi adaptor 13A, 220 multi adaptor 13A, 300 top plug 13A, 60 insulated screw driver set, 8 tool box 12 inches, 35 roll grass cutting nylon, 120 garden tap ½ inch, 145 screwdriver star 200mm, 120 assorted paint brush, 10 bolt cutter 30”, 8 bolt 18”, 48 combination spanner set, 60 garden rack large, 500 insulation tap, 36 claw hammer 8 oz, 72 mortice lock, 86 cylinder lock, 115 energy saver E27, 60 energy saver B22, 24 LED flood light 50 watt, LED flood light 30 watt, 17 LED flood light 20 watt, 6 flood light 70 watt, 56 ball valve c x c 15mm, 120 tester 220v, 66 tyre tube glue valued at Sr 252,300, being the property of Vortex Investments.*

### **Alternate to Count 2**

### **Count 3**

*Breaking into building with intent to commit a felony therein namely Stealing contrary to Section 292 and punishable under the same section of the Penal Code 158.*

## Particulars of Offence

*Hughes Estico of Roche Caiman, Mahe, on a date unknown to the Republic in 2021, at the Vortex investment storage facility, Providence, Mahe, broke and entered into the said building with intent to commit a felony namely to steal the property of Vortex Investments.*

[2] I have considered the submissions made by learned Counsel Mr. Danny Lucas on behalf of the accused at the close of the prosecution case, in regard to his contention that the accused has no case to answer. I have also considered the submissions of learned Counsel for the prosecution State Counsel Coreen in reply to same.

[3] ***Archbold in Criminal Pleadings Evidence and Practice 2012 Edition 4-363*** sets out the principle in a no case to answer application.

*“A submission of no case should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict”*

[4] In the case of ***R vs. Stiven 1971 SLR 137***, it was held what Court has to consider at the stage of no case to answer is whether:

- a) *there is no evidence to prove the essential elements of the offence charged.*
- b) *whether the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it.*

[5] The main grounds urged by learned Counsel on behalf of the accused are that:

- a) The prosecution has failed to prove that the goods stolen belonged to Vortex Investments. They have failed to prove whether Vortex Investments is a natural person or legal personality which is fatal for the case of the prosecution.

- b) The charges are bad in law on the issue of duplication and learned Counsel made special reference to the charge contained in Count 2 and 3.
- c) In respect of the goods the main prosecution witness Mr. Laval had failed to identify same as there were no special markings for him to identify these items.
- d) The prosecution has failed to produce the items taken into custody and only produced photographs of the exhibits. It is his contention that Court should not take such evidence into consideration.

[6] I have considered the evidence led by learned Counsel for the prosecution up to the close of the prosecution case. The prosecution has called the Sales Manager of Vortex Investments Mr. Aaron Laval to give evidence. In his evidence, he explains that he had been working for the Company Vortex Investments for the past 10 years and its business was situated at Providance. He further explains that the Company he works for sells hardware, building materials, tools, plumbing, electrical items and variety of items used for building homes. His evidence is that goods from this Company were stolen. The necessity for the prosecution to prove the background details of the Company in the view of this Court, is not necessary.

[7] Learned Counsel for the accused further submits that the charges have been duplicated. Learned Counsel refers to Count 2 and 3 and submits that as both are in respect of breaking and entering the charges are duplicated. Count 2 is breaking in and entering and committing a felony under section 291 (a) of the Penal Code while the alternate Count 3 is breaking in and entering with intent to commit a felony under section 292 of the Penal Code. It is to be observed that as Count 3 is an alternate Count to Count 2, the Court cannot find the accused guilty on both Counts. As to whether the prosecution has proved either Count would depend on the evidence led by the prosecution which would be best decided at the end of the case. Learned Counsel for the accused further contends that Mr. Laval had failed to positively identify the exhibits recovered. At this stage, it cannot be said that the evidence of the prosecution witnesses in respect of all these facts referred to herein have been totally discredited by cross examination even though a few

contradictions and shortcomings may exist. As to whether these contradictions and shortcomings are of a material nature is best decided, at the end of the case when one considers the evidence in its entirety.

[8] Further, on consideration of the evidence of the prosecution witnesses, it cannot be said that the evidence is manifestly unreliable nor could it be said that the prosecution has failed to prove an essential element of the offence. The fact that photographic evidence exists in respect of the exhibits is not denied. It may be secondary evidence but is still admissible. In addition, the prosecution has led finger print evidence. As to whether this evidence is sufficient to prove the charge against the accused, is a matter to be decided at the end of the case.

[9] In the light of the above findings by this Court, it cannot be said that there is no evidence to prove the essential elements of the offence charged. Further at this stage, it cannot be said that the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it. Therefore this Court is satisfied that there is a prima facie case against the accused in respect of the charges framed against him.

[10] This Court therefore proceeds to call for a defence from the accused in respect of the charges framed against him.

Signed, dated and delivered at Ile du Port on 07 April 2022

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Burhan J