

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
CO 20/2022

THE REPUBLIC
(Rep. by Mrs Leste)

Versus

TERRENCE LAWEN
(Represented by Ms Benoiton)

Neutral Citation: *Republic vs Lawen* (CO 20/2022) [2022] SCSC..... (13th July 2022).
Before: Govinden J
Heard: 13 July 2022
Delivered: 13 July 2022

RULING

R. GOVINDEN CJ

- [1] The Republic has moved this court to recall the virtual complainant on the basis that she did not identify the accused during the course of her testimony. The prosecution moves this court in that regards in the interest of justice and for the full determination of the case between the parties and that it is just and necessary.
- [2] In response to the application, the learned defence counsel makes the following objections;
1. That the complainant has already been given the opportunity of identifying the accused and she has failed to do so.

2. That the court should not give her a fresh opportunity to so testify as this relates to a matter that should have been self-evident by the prosecution.
3. That the application will defeat a motion filed by the defence for the enlargement of the accused on bail; filed partly on the basis of the virtual complainant being no longer a witness. Therefore, that this ground for detaining him in custody has changed in its circumstances.

[3] I have considered the merits of the notice of motion and the objections put forth by the defence. Having done so I have come to the following determination;

[4] The accused is entitled to a fair hearing, that means he is entitled to a just and fair chance during the course of his testimony. Which also means that he is entitled to call a witness on the same conditions as that offered by the Republic. And also to testify on the same conditions as witnesses of the Republic including the cross-examinations of the said witnesses. In this case I am of the view that the recalling of the virtual complainant for the reasons sought for by the Republic will not affect the fairness of the proceedings against the accused person as his counsel would be given ample time and opportunity to cross-examine the virtual complainant with regards to her further testimony. Moreover, he would also be free to call any witnesses in order to rebut any evidence that might be so led given that his defence is not open yet.

[5] The power of the court to recall and call witnesses including virtual complainants are very wide under the Criminal Procedure Code. I am aware that this power has to be exercised judiciously in accordance to the preservation of the right to fair hearing of the accused person. I am satisfied that in this case all these rights have been so satisfied as no unfairness will be caused to the accused by the recalling of the said witness.

[6] I accordingly grant the application to call the virtual complainant anew on the grounds sought for by the Republic and she will give evidence only on the issue raised in the application. And she will be testifying by way of video link.

Signed, dated and delivered at Ile du Port on 13th July 2022.

R. Govinden

Chief Justice