

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 981
CO114/2021

In the matter between

ANTI-CORRUPTION COMMISSION
(*rep. by Mr Skeely*)

and

MUKESH VALABHJI
(*rep. by Mr Bonte*)

1st Accused

LAURA VALABHJI
(*in person*)

2nd Accused

Neutral Citation: *Republic v Valabhji & ors* [CO114/21] [2022] SCSC 981

Before: Govinden CJ

Summary Legal fees can be disbursed from both the private accounts of the 1st and 2nd accused and company's account in which they hold beneficial interests, provided conditions are met. Legal invoices presented for payment has to be sufficiently particularised.

Heard: 4 November 2022

Delivered: 10 November 2022

RULING

GOVINDEN CJ

I have read the letter of Ms Samantha Aglae Attorney of the 2nd Accused entitled "RE PAYMENT OF LEGAL FEES FOR MUKESH VALABHJI AND LAURA VALABHJI" and its attachment dated the 21st October 2022. I have also read the letter bearing the same reference from the Commissioner of the Anti-Corruption Commission of Seychelles and its attachments,

dated the 3rd November 2022 and that of Mr France Bonte bearing the same title dated the 3rd November 2022.

I have also carefully scrutinized the submissions of all counsels in this case on the subject matter of payment of legal fees of Mr and Mrs Valabhji.

The Court proceeded to hear the matter in issue based on the exchange of letters, given that there is apparently no contention on the facts in issue and also based upon the agreement of parties.

Having considered all the facts and circumstances of the case and the specific issues that has arisen with regards to the issues of payment of the fees of the accused of both the 1st Accused and the 2nd Accused in this case and the 1st and 2nd Accused in CR04 of 2021. For the purpose of which I will refer to them as the 1st and 2nd Accused in this ruling. The Court considers that the only issue that is left for determination is a narrow one namely whether or not the 1st and 2nd Accused can present invoices for payment of their legal fees to a legal entity and what form the invoices should be presented. It is to be noted that there is no contentions with regards to presentation of bills and invoices for payment from accounts held in the names of the 2 persons. Though apparently no such requests has apparently been made so far with respect to their local personal accounts.

According to the facts presented before me and admitted before the court there is one new payment particular legal entity that is a subject matter of contention, that is the Felicite Island Development Ltd.

The ACCS has issued a number of section 60(1) orders against the account of local entities and companies in which the accused has financial interest and private individual accounts held in their names. The notices are issues under section 60(1) of the Anti-Corruption Act. It allows the ACCS to act as the “administrator” of the account of the entities and the individuals. Under section 60(6) of the Act, a person aggrieved with the directive of the commissioner under section 60(1) may however apply to the Supreme Court for an order to reverse or vary the directive. On hearing of the application and the reply of the Anti-Corruption Commission of Seychelles this court can either confirm the notice or otherwise reverse or vary the directive in the notice. Hence a section 60(1) notice with regards to a bank account can be varied by the Supreme Court in

respect of the restriction of disbursement of any expense including that of legal fees of a person whose account is subject to the restriction.

On the other hand, Article 19(2)(d) of the Constitution provides, inter-alia, that a person has a right to be defended before the court in person or, at the person's own expense by a legal practitioner of the person's own choice.

It is important to understand what is meant by the terms "*at his own expense here*". To this court this simply means at the person's own cost. He or she will have to use their own resources and means in order to finance the legal practitioner of their own choosing. Now, somebody's financial resources and means maybe in many forms. They can be in many places also. They can be one's moveable and immovable properties. Once moveable property may on the other hand be found in one's private account or in one investments such as shares and debentures in companies and other similar entities.

When one read these firmly established legal principles together it is clear to me that the choice of whom becomes one's legal practitioner is that of the accused and the accused alone. The cost and expenditure of the same legal practitioner would also be that of the accused and the accused alone. If this is their choice. Therefore, when it comes to payment of legal fees from accounts that has been subject matter of a section 60(1) order, the ACCS obligation is to allow for payment of all expenses that is bona fide demanded for legal services rendered by an attorney at law or legal practitioner of the accused choice. The invoices and bills of the legal practitioner has to be sufficiently particularised so as to allow the ACCS to know who is the attorney at law who is demanding payment and for what services are the payments being requested for.

In the event that the ACCS refuses to vary the section 60(1) restrictions in order to allow for the settlement of the legal bills the Supreme Court can be asked by the accused to adjudicate on the refusal to vary. This applies to both private accounts or corporate accounts or accounts of legal entities in which the accused has interest.

In this case it appears that there have been divergent views with regards to the payment of attorney's fees between the ACCS and the 1st and 2nd accused. However, unfortunately no attempts have been made by the Accused up to now to apply to the court for variation of the

relevant section 60(1) order, something that could have settled this matter. Instead they chose to approach the subject matter by way of a letter to the Chief Justice in chambers which obviously is not the most appropriate procedure.

According to Mrs Valabhji in her submission Ms Samantha Aglae intentionally wrote a letter to the Chief Justice instead of applying for variation under section 60(6) of the ACCS's decision because they wanted to establish the foundation in order to file a constitutional petition against the ACCs for failure to comply with their rights to counsel. The court finds this highly irregular and amounts to an overt intention to circumvent the law and it also amounts to a failure to exhaust the available remedies provided in law.

The main bones of contention in this matter appears first with the regards to the form that a bill or invoice should be presented and in the sufficiency of particularisation of those documents presented by a legal firm of the accused and attorney at law.

Secondly, the legality of the accused presenting legal bills and invoices for payment to companies and legal entities. It is the contention of the ACCS that these invoices should be paid from the private accounts of the accused when it comes to the second issue and with regards to the first that the invoices are insufficiently particularized.

Having considered the law and the facts and circumstances involved in this matter this court determines as follows on these points.

(1) As regards to the position by the ACCS in respect of the payment of the legal bills and invoices by companies the court will not agree with its position. The accused would be entitled to pay a legal bill or invoice from monies in an account of a legal entity or company in which they hold financial interest and subject to the limits of those interest and the applicability of the provisions of statutes including the Companies Act. This is subject to the following conditions:-

(a) The accused must demonstrate that they have proprietary interest in the legal entity or company against which account the bill is presented for payment. If the ACCS has section 60(1) notice issued against the account of that entity a prima facie case of such an interest will be established.

- (b) The bill or invoice presented must be with regards to a bona fide legal service to be rendered in the case of a retainer fee or having been rendered by the legal practitioner or legal firm.
- (c) That there is compliance with the provisions of the Companies Act, with regards to the decision to settle the payment by the legal entity or company.
- (d) If the funds acquired from the legal entity or company belongs to the 1st Accused alone he would be entitled to decide as to whether he is going to share it with the 2nd Accused and vice versa.

In the event that those conditions are met the bills and invoices should be payable. Therefore, I find that payments can be made from any account whether that of the private accounts of the 1st and 2nd Accused or that of an entity or company in which any or both of them has interest, subject to the above. In the event of disagreements, the 1st and 2nd Accused may apply for variation in pursuance to section 60(6) of the Anti-Corruption Act.

As regards to the form of a legal invoice or bill, the ACCS is right to determine that this has to be particularised in greater details so as to satisfy each of the genuineness of the claim. The name of the legal firm or attorney at law has to be indicated. The period for which the claim is being made has also to be indicated. The legal services rendered or to be rendered has to be sufficiently particularised. Those are questions of facts that has to be decided on a case to case basis. Any disagreement here can also be the subject matter of a section 60(6) application by the aggravated parties.

This is the decision of the court.

Signed, dated and delivered at Ile du Port on day of 2022.

Govinden CJ