

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC ...
CR32 /2019

In the matter between

THE REPUBLIC
(rep. by George Thatchett)

Prosecution

and

IFEANYI UZOR
(rep. by Karen Domingue)

1st Accused

JEAN-CHRISTOPHE PAYET
(rep. by Basil Hoareau)

2nd Accused

Neutral Citation	<i>The Republic v Ifeanyi Uzor</i> (CR32/2019) [2023] SCSC..... delivered on 06 March 2023
Before:	Vidot J
Summary	Conspiracy to import drug, trafficking in controlled drugs and agreeing to traffic in controlled drugs, Duplicity of Charges. Conspiracy; must one of the accused have participated in the final act of completing the offence? Use of decoy pursuant to section 34 of MODA.
Heard:	08-08-2019, 09-03-2020,13-03-2020, 13-13-2020,04-06-2020, 06-08-2020, 17-030-2020,19-01-2022
Delivered:	06 March 2023

JUDGMENT

VIDOT J

[1] The Accused stand charged with the following offences;

Count 1

Statement of Offence

Agreeing with another person or persons that a course of conduct shall be pursued and if pursued will amount to importation of controlled drugs by one or more of the parties to the agreement contrary to section 16(a) read with section 5 of the Misuse of Drugs Act, 2016, further read with section 22(a) and (c) of the Penal Code and punishable under section 5 read with section 48(1)(a) and (b) and Second Schedule of the Misuse of Drugs Act, 2016.

Particulars of Offence

Ifeanyi Jeremiah Uzor, 35 years of Nigerian national, Food and Beverage attendant c/o Ephilia Resort, Port Glaud and Jean-Christophe Achille Payet, 24 years old self employed of Quincy Village on or around the months preceding October 2018, agreed with each other that a course of conduct shall be pursued and pursued amounting to the importation of controlled drugs by one or more of the parties to the agreement namely, diamorphine (heroin) having a total, weight of 579.48 grams and a total average heroin content of 300.56 grams.

Count 2

Statement of Offence

Trafficking in a controlled drug, contrary to section 7(1) of the Misuse of Drugs Act, 2016 read with section 2, section 20(3) and section 23 of the said Act and further read with section 22(a) and (c) of the Penal Code and punishable under section 7(1) read with section 48(1)(a) and (b) and Second Schedule of the Misuse of Drugs Act, 2016.

Particulars of Offence

Ifeanyi Jeremiah Uzor, 35 years of Nigerian national, Food and Beverage attendant c/o Ephilia Resort, Port Glaud and Jean-Christophe Achille Payet, 24 years old self employed of Quincy Village on or around the months preceding 23rd October 2018, were trafficking in a controlled drugs by means of selling, supplying, transporting, sending, delivering or distributing or to do or offer to do an act preparatory to or for the purpose of selling,

supplying, transporting, sending, delivering or distributing a controlled drug namely, diamorphine (heroin) having a net weight of 579.48 grams and a total average heroin content of 300.56 grams at Anse La Mouche, Mahe, which drugs were in the possession of Ifeanyi Jeremiah Uzor with the knowledge and consent of Jean-Christophe Archille Payet, in a Hyundai car bearing registration S13225 belonging to the said Jean-Christophe Archille Payet

Count 3 (in the alternative to Count 2)

Statement of Offence

Agreeing with another person to commit the offence of trafficking in a controlled drug, contrary to section 16(a) and section 7(1) of the Misuse of Drugs Act 2016, read with section 22(a) and (c) of the Penal Code and punishable under section 7(1) read with section 48(1)(a) and (b) and the Second Schedule of the Misuse of Drugs Act 2016.

Particulars of offence

Ifeanyi Jeremiah Uzor, 35 years of Nigerian national, Food and Beverage attendant c/o Ephilia Resort, Port Glaud and Jean-Christophe Achille Payet, 24 years old self employed of Quincy Village on or around the months preceding 23rd October 2018, agreed with one another and also with persons unknown to the Republic, that a course of conduct shall be pursued which if pursued will necessarily amount to or involve the commission of an offence of trafficking in a controlled drug, namely diamorphine (heroin) having a net weight of 579.48 grams and a total average heroin content of 300.56 grams.

Synopsis of Evidence

(i) Prosecution

[2] Christine Kabunda was the person who imported the drug into Seychelles. She testified that she was used as a mule to transport the controlled drug to the Seychelles. She is from Zambia. She recounted that a friend of hers, Juliana Mtale gave her money to obtain a passport. Juliana had indicated that she had a business proposal for her. Juliana informed her the business was in South Africa. Juliana gave her a bus tickets to go to South Africa

and a contact number. When she reached South Africa, she contacted that number and a man answered. That man led her to a house and to another man. Then another man came with the bullets containing the drugs and asked her to swallow them. She asked why she could not carry them in her hand bag and they responded that it was medicine and that she would be charged heavy duty (tax) if she needed to declare it at the airport. They informed her she had to carry it to Seychelles. She could not swallow them, therefore, she was told to insert them in her rectum. On the 19th October 2018, she was taken to the airport, given an airline ticket and boarded the plane to Seychelles.

[3] She arrived in Seychelles and took a taxi to Jane's Serenity Guesthouse. She was given the guesthouse reservation by a Nigerian man who took her to the airport in South Africa. The next day she was not expelling the drugs and contacted Juliana who at then informed her that it was not medicine she was carrying, but drugs. She then excreted two of the items and kept them in a pillow. On Sunday 21st October 2018, the Police came and conducted a search and discovered the items in the pillow. She was arrested and taken to hospital. This is confirmed by her medical report. A CT Scan was performed. She was taken to theatre where the drug bullets were removed. She was released the next day and conveyed to court for remand proceedings. She agreed to be taken back to the hotel and someone was due to collect the drugs. At the hotel, in the presence of three officers, she made a phone call to Juliana but the conversation was not conducted in English. She was asked by Juliana to buy a local SIM card which one of the Officers went to buy. She gave the number to Juliana. The latter told her that a Nigerian will be coming to collect the drugs. At around 7.00 pm, a local number called and a male voice said they would be there in 45 minutes.

[4] After some 45 minutes they received another call from a number different from the one that called earlier and the person said that he was outside the guesthouse. The person said that he was in a white car. The Officers substituted the drug with a decoy and gave it to her. She went to the car, opened the door and got in. She noticed the first Accused there. There were four people in the vehicle. She handed the decoy over. Then the driver in front said there were people around and to run. The driver started driving away. As they drove away there was a pickup truck that was parked and another vehicle coming in the

opposite direction. It was not possible for the car she was in to pass and the driver collided with the pickup truck. Men who were in the other car that was coming in the opposite direction, got out and arrested them. They were arrested and taken to the police station. She was charged but negotiated and signed a Conditional Offer (Exhibit 5) from the Attorney General, whereby it was agreed that she would serve as state witness.

- [5] In fact, Doctor Marcial, General Surgeon at Victoria Hospital was called to produce the medical report of Mrs. Kabunda. The report signed by the doctor is dated 18th December 2018 (Exhibit P8). He corroborated Mrs. Kabunda's testimony as from the time she was taken to hospital and added that he removed 54 capsules from her colon under anaesthesia and 2 at the casualty.
- [6] Darren Roselie was initially charged with the accused. However, further to a Conditional Offer Agreement (exhibit P38) signed with the Attorney General, he turned state witness. He testified that he was involved in the drug transaction which is the subject of this case through Big Man, whom he identified as Jean-Christophe Payet. He stated that he was sent to Anse-Royale to collect drugs. Such instruction came from the second accused and he and James Gonzalves went in Jean-Christophe's car, which was a Hyundai i.10. With them in the car was the first accused. They went via La Misere. They first went to Port Glaud to collect the first accused. Actually, he had known the first accused earlier in 2018 through Jean-Christophe. At that time the latter was the one driving the Hyundai i.20 vehicle and at one time they went to pick Uzor up at the cathedral in Victoria. On that occasion, Jean-Christophe had asked that he removes money from the dashboard of the car and hand over to the first accused. After they had met the first accused, he stopped the car and embarked therein. Then arriving at the hotel, first accused had indicated to them that it was the hotel.
- [7] Then at the hotel, a big, dark skinned lady, embarked in the car carrying a paper wrapped in cling film in her hand. When she embarked she was asking the first accused for money when all of a sudden the driver asked that they leave and there were vehicles in front of the car they were in. They were ANB officers. The officers asked that they disembarked. At that time the lady had already handed over the package to the first accused. They were

then transported to the ANB Office. He insists that it was the first accused who asked him to ask James Conzalves to convey him to Port Glaud.

[8] Darren Rosalie further testified that he was like one of Jean-Christophe's minions; he was like a slave as he was drug dependent. So, he was attending to transactions for him.

[9] Egbert Payet is attached to the ANB as Exhibit Storekeeper. He was assigned the duty of handling exhibits in this case for safekeeping. He testified that on 22nd October 2018, he received 3 sealed envelopes from Officer Vicky D'acambra for case CB573/18 for safekeeping. That was at the ANB office at Bois De Roses. Vicky D'acambra placed two (2) cylindrical shape bullets in one evidence envelope and labelled it with number one (1), another two (2) cylindrical bullets in another evidence envelope and labelled it number two (2). She placed 54 cylindrical bullets in another evidence bag and marked it with number three (3). The envelopes were sealed. She signed them and handed them to him. That is corroborated by Officer D'acambra.

[10] On 23rd October 2018, he took the sealed envelopes with a request letter for analysis (Exhibit P1) to Ms. Chettiar of the SSCR. All established and approved protocols were followed. On 25th November 2018, the exhibits were handed back to him with a certificate of analysis (Exhibit P2). All established protocols in the handing over of exhibits were followed. The analysis concluded that the controlled drug was diamorphine (heroin). After that he kept the exhibits in the exhibit store. When the exhibits were produced in court all the evidence bags were sealed and intact.

[11] Officer Vicky D'acambra of the ANB testified that on 21st October 2018, she had received information that Christine Kabunda had been importing drugs into the country. She went to the guesthouse where a search was conducted. She discovered 2 cylindrical packets in a pillow case. Kabunda had testified to having hidden these packets there. Kabunda was taken to the Victoria Hospital. She described the processes that happened at the hospital and corroborated Dr. Marcial's testimony. Kabunda was then admitted to the D'Offay ward and after she had woken up, she confronted her with 54 cylindrical packets that were removed from her body. On 22nd October 2018, in the morning, the cylindrical packets were taken to the ANB station when she placed them in different evidence bags,

marked them with identification number CB573/18 and handed them to Egbert Payet. On 23rd October 2018, a controlled delivery operation was carried out. Other officers involved included Kerry Hoareau, Robert Payadachy, Emmanuel Marie, Joshua Philoe and Bertrand Lucas.

- [12] She went to Kabunda's room together with Officers Hoareau and Payadachy. Kabunda received a WhatsApp message from an international number. It was in a foreign language. Kabunda translated it to them. Officer Hoareau gave instruction to Bertrand Lucas to buy a local SIM card, which he obliged and the local number was 2864059. Kabunda transmitted that number to Juliana. Juliana was in contact with Kabunda. Kabunda received a call from a local number 2545227. The man on the other end said he was coming and a call from 2847211 was received and a male voice said that he was coming to pick up the drugs. He identified the vehicle he would be in which was a Hyundai i20, registration number S13225, at which time a decoy had already been prepared by Officer Kerry Hoareau. It was wrapped in cling film and placed in a red recycle bag. That was handed to Kabunda before she left the room. Together with Officers Hoareau and Payadachy, she followed Kabunda. When they were near the car, she noticed one James Gonzalves who was in the driver's seat and in the front passenger's seat was Darren Rosalie. At the back of the car was the second Accused. Kabunda at this point was in the car as well. As James Gonzalves drove the car off, instruction was given for Officer Bertrand Lucas who was in another vehicle to block the road to stop S13225 from driving through. Officers Hoareau and Payadachy gave chase as well. She went in the direction towards where the car had driven off and when he caught up Uzor, Rosalie and Gonzalves were all in handcuffs. She informed them the reason for their arrest. On 24th October 2018, he witnessed Officer Payadachy take the decoy and the cash seized from the second Accused and placed them in evidence bags. On 29th October 2018, she witnessed the recording of Kabunda's statement under caution which was recorded by Officer Aubrey Labiche.
- [13] Officer Kerry Hoareau is too an officer of the ANB and before that the NDEA. In this operation she was a team leader. She confirmed the evidence D'Acanbra in respect of the operation. She was at the guesthouse and took Kabunda to the hospital. She was involved

with the controlled delivery operation. Controlled delivery was authorised by the Commissioner of Police. She heard the telephone conversation when a man asked Kabunda to bring the consignment outside. Then she described what happened thereafter which corroborates Officer D'Acambra's evidence. She is the one who requested Officer Lucas to intercept the vehicle. After the occupants of the vehicle were arrested, a body search was conducted and nothing was discovered on them. In the car a bag containing money (Seychelles Rupees and US Dollars), silver and gold were recovered. On 24th October 2017 the second Accused was taken to the place of work at Ephilia Hotel and his wardrobe was searched more cash was found in Seychelles Rupees, Euros and US Dollars. Uzor stated that it was money he had made from drugs for a one month period (proceedings 9th March 2020, p25 PM).

- [14] Officers D'Acambra's and Kerry Hoareau's testimonies were corroborated by that of ANB Officer Payadachy. He added that Kabunda received calls from telephone number 254227. They were informed by the second Accused, Gonzalves and Rosalie where they were to bring the drugs. Together with Officer Marie and Uzor they proceeded to that place. Arriving at a house, they knocked and they met with a Guillio Suzette and a Calvin Marie. That was the house of the second Accused. However they were informed that Jean-Christophe was not around. Uzor went in first. When Uzor went in he was in possession of the decoy. A search was conducted at the house and a small scale was seized. Two people at the house were arrested.
- [15] Officer Payadachy then related the operation whereby the residence of the second Accused was searched. He described the money that was seized. Then at the ANB office, he gave the money and decoy to Police Officer Leon to be photographed. These items were photographed in his presence and then he handed the exhibits to Malvina.
- [16] Ryan Durup was at the material time an ANB Officer. He was instructed by Investing Officer Aubrey Labiche that there were photographs to be taken in regards to this case. On the 22nd October 2018 he photographed the cylindrical shaped bullets in the presence of Vicky D'acambra. She confirms that. He produced the album of photos as Exhibit P9.

- [17] Yves Leon too is attached to the ANB. He works with crime scene investigation. His duties include taking of photographs. On 24th October 2018 he photographed a white Hyundai i20, registration number S13225 and moneys in different denominations, particularly US dollars, Euros and rupees that were brought to him by Officer Payadachy. He mounted the photos into an album which was produced as Exhibit P15. Officer Payadachy also showed him a decoy that he photographed.
- [18] Maxime Morel, Manager for Cell Phone, Litigation and Court Representative of Airtel Seychelles was called to provide records of several phone numbers and in particular 2816413 (Exhibit P12), 2864059 (Exhibit P13), 2847211 (Exhibit P14) and 2864059. The aim was to show calls made and received from these telephones. The first two telephones were registered respectively in the names in James Gonzagues and Calvin Marie.
- [19] Deputy Commissioner of Police Ted Barbe (as he then was) was at that time the officer in charge of investigation at the ANB. He confirmed knowledge of Exhibits P20, 21 and 22. He notes they confirm that Aubrey Labiche, Robert Payadachy and Bertrand Lucas were appointed special constable on 1st November 2017. They took oath before him as was directed by the then Commissioner of Police. He produced documents of oath of special constable and Official Secrets Act for Officers Kerry Hoareau, Vicky D'Acambra, Ryan Durup and Egbert Payet.
- [20] Mr. Georges D'Offay, then Sales and Customer Experience Executive with Cable and Wireless, a telecommunication company was also called to give evidence. According to the company's record telephone number 2521515 is registered in the name of Jean Christophe Payet, the second Accused and the witness produced call records details of that phone (Exhibit P32). The Police also requested information regarding telephone numbers 2545227 and 2541506. These telephone numbers were respectively registered in the names of Ifeanyi Uzor and Archilles Rosalie. His evidence centred mainly on evaluating call record logs to establish that there were communications between the three named persons and the locations of these mobile telephones when these communications were undertaken. Despite going through records dating September 2018, the calls

concerned will be those that happened immediately before and immediately after the 23rd October 2018. The records show that there was communication between these phone numbers on days prior and on the day of the incident.

(ii) The Defence

[21] Ifeanyi Uzor elected to take the stand to testify. Jean-Christophe elected to exercise his Constitutional right to remain silent. The defence decided not to call any witnesses.

[22] Mr. Uzor testified that prior to his arrest he was working at Ephilia Resort. At around August 2018, he received a call from Nigeria by someone named Michael who asked if he knew of anyone in Seychelles who deals in drugs, to which he answered in the negative. However, he started looking for someone. One day at Port Launay he saw some guys smoking what he believed to be marijuana. One of the guys informed him that they knew someone by the name of Big Man. They gave him the latter's phone number and he called Big Man. Big Man said that he was interested and he gave Michael's phone number to Big Man. The drugs that would be dealt with is heroin. Later Big Man informed him that Michael had contacted him and they had a discussion about the issue. Big Man contacted him to meet at the ex-Mahe Beach Hotel which they did and Big Man was accompanied by Darrel. Darrel is the person who had testified previously in this case. (The Court believes he meant Darren Roselie because he referred to the person who testified in Court).

[23] After that Big Man was in contact with Michael, he would give the witness updates about his and Michael's discussion until around October 2018. Michael then told him that he would be sending a woman to Seychelles to bring the drugs and that Big Man had been informed. When the woman (Christine Kabunda) arrived in Seychelles Big Man informed him about it. Thereafter, Big Man informed him that he was going to send his boys to pick him up. He said that they will pick him up on 23rd October 2018. At around 8 pm that same date Big Man called and said that he was sending his boys to pick him up, so that they can go pick up the drugs. He then called Big Man to let him know he was having second thoughts as he was scared. Big Man said 'okay' but called later and said that they must go as there will not be police on the road as it was raining.

- [24] Mr. Uzor also testified that the second Accused had previously given him money to send to Michael.
- [25] He testified that he was unaware that Christine Kabunda was in Seychelles by the 19th October 2018 and only communicated with her on 23rd October. On the day he was picked up he was taken to the area of Anse La Mouche at a guesthouse where the lady was staying. The driver at that time was James. When he reached the guesthouse he called the woman. When the lady came out there was nothing with her. It was after they were taken to the ANB office that they were shown the decoy. When the lady approached the car, she asked for the money that Big Guy was supposed to give. He asked that she gets in the car which she did and that is when he noticed officers approaching the car.
- [26] When the woman was coming out from the guesthouse he did not notice anything in her possession. He was only shown the decoy after the Police surrounded and arrested them.
- [27] After arrest he was taken to Big Man's house. Darrel and the ANB took him there, but they did not find Big Man, just two boys who were also arrested
- [28] However, Mr. Hoareau challenged him on his assertion that he was not going to get anything on that drug transaction and he insisted that he was told by Big Man to wait to pick up the drug. He disagreed with Mr. Hoareau that his testimony was not true, because if it were, as there would be no need for the second Accused to deal directly with Michael, from Nigeria, who allegedly was the person facilitating the importation of drugs to be trafficked in Seychelles and explained that Big Man had given him the money for the drugs. Mr. Hoareau put to him that the reason he was there is because the drugs was his, but he insisted that the second Accused had told him that the woman carrying the drugs had arrived in the country.
- [29] Darren Roselie admitted that in his statement of the 24th October 2018, James Gonzalves was present, in which statement he mentions that he had been instructed by a person going by the name of KC, who instructed him to go and collect the first accused. Then Darren Roselie admitted that James was not present when he was giving his statement

Testimony of the First Accused

[30] This Court will consider the evidence of the first Accused with a grain of salt. The Court had the possibility in assessing his demeanour and find that at certain times he was not being truthful. In particular, I do not believe that he was unaware that heroin was a drug and that it was illegal in the Seychelles. The first Accused knew full well that what he was dealing with was a controlled drug. If he did not know that such was an illicit drug, his reason for being concerned about the collection of the drug 23rd October 2018, is an indication that he was not entirely truthful. Why would the second Accused have told him that since it was raining that day, there would be no police officers on the road and implying that it was safe to carry out the transaction. I certainly do not believe that he was not promised anything from Michael. If his role was just to merely engage someone with Michael and nothing more, there would have been no reasons for his continuing involvement in the transaction that ended with him being arrested after attempts to collect the drug was made. The indication is that he was continually involved in the transaction.

[31] However, I do believe him that the first Accused was involved in the transaction. He kept referring to the first Accused as Big Man and talking about the latter with an air of familiarity.

[32] Mr. Georges D'Offay of Cable and Wireless produced call records which show that there was amongst others communication between the first and second Accused prior and on the day when the first Accused was apprehended. I entirely believe him when he testified that the second Accused had communicated to him that he would be picked up by Darren Rosalie and James Gonzalves.

[33] In fact, in a statement given to the police on 24th October 2018, (Exhibit P23(a)), he rehearsed what he testified in Court that after contacting Big Man and putting him in contact with Michael, the latter later called him and asked that he meet up with Big Man. He did at the ex-Mahe Beach Hotel and Big Man was in the company of Darren. This is confirmed by Darren. I believe without doubt that that meeting took place. Big Man had said that Michael had contacted him and that he is ready to buy drug. Later, in October he met Big Man at the Cathedral in Victoria and Big Man gave him SR63,000.00, approximately US\$9000.00 and approximately €1000.00. It was in the presence of

Darren. This evidence is corroborated by Darren. When he received information about of the arrival of Kabunda, he send a WhatsApp of that information to Big Man. Though I will consider such testimony with cautiousness, I believe that testimony of the first Accused.

Darren Rosalie and James Gonsalves

[34] Counsel for the second Accused has urged the Court to disregard the testimonies of Darren and James in their entirety. The testimonies of these two prosecution witnesses need to be approached cautiously as well. That is because they were named co-accused in this case until such time that charges against them were withdraw after they had signed Conditional Offer Agreements with the Attorney General to appear as state witnesses. I note that Darren Rosalie is alleged to have made three statements. However, the Defence produced one statement for each of them as exhibit and these are exhibits D2. 1 and D2.2.

[35] Whilst I approach the evidence of these two prosecution witnesses with caution since they were co-accused in the case, before charges were withdrawn against them, I do not consider the entirety of their evidence to be untrue. In fact, James' evidence does not necessarily implicate the second Accused. However, he corroborated the first Accused and Darren's testimonies in regards to events immediately before, during and immediately after the operation that resulted in their arrest.

[36] Counsel for the second Accused stated that Darren Rosalie had given three statements with each contradicting the other. However, he only produced one of such statement which is dated 24th October 2018 (exhibit D2.2). In that statement he makes no mention of the second accused by name. He makes mention of a person who lives at "Kensi" (Quincy Village). However, it is in evidence that the second Accused resides at Quincy Village. I interpret that statement as reference to the second Accused. Furthermore, the witness testified that he was a drug user and dependant on the second Accused to supply him with drugs. He described himself as the second Accused's minion. It is my assessment that in his initial statements he made no mention of the second Accused by name mainly because as a drug dependant person, he needed to protect the person who was feeding his dependency. Then subsequently, appreciating the magnitude of the

offence with which he was charged, he somewhat changed his story. I had the privilege of seeing him testify in Court and judging from his disposition, I am confident to state that on the whole his Court testimony was truthful.

Formulation of Charges

[37] Mr. Hoareau, Counsel for the second Accused was very critical of the manner in which the charges have been formulated. He noted that the charge of conspiracy is brought under section 16(a) of the Misuse of Drugs Act (MODA). That section reads that;

“16. A person who agrees with another person or persons that a course of conduct shall be pursued which, if pursued –

(a) will necessarily amount to or involve the commission of an offence under this Act by one or more of the parties to the agreement; or

(b)”

[38] The Statement of Offence also states that section 16(a) is read with section 22 (a) and (c) of the Penal Code. That section provides;

“22. When an offence is committed, each of the following person is deemed to have taken part in committing the offence and guilty of the offence, and may be charged of with actually committing it, that is to say-

(a) Every person who actually does the act or makes the omission which constitutes the offence;

(b)

(c) Every person who aids or abets another person in committing the offence.”

[39] Mr. Hoareau argues that there is no necessity to include section 22 of the Penal Code as part of a Statement of Offence to a charge under section 16 of MODA. I agree with Mr. Hoareau. However, the Court has to consider whether the inclusion of that statutory provision in the Statement of Offence is bad in law and therefore dismiss the charge as it

would be considered defective and that the Accused will be prejudiced. I consider the inclusion of section 22(a) and (c) to the charge not necessary and as Mr. Hoareau describes it, as surplus. A conspiracy by its very nature involves two or more persons to an agreement. In fact section 16 of MODA is sufficient to be included in the statement of offence.

[40] Counsel for the second Accused also challenged the particulars of charge of conspiracy which shall be addressed below. However, I am of the opinion that despite error in including section 22 (a) and (c) to the charges of conspiracy, that did cause any prejudice to the Accused.

[41] In **Amelie Builders v Republic [2013] SLR 511 (SCA 14/2012)**, dealing with formulation of charges, the Court of Appeal stated;

“Further to Archbold, Chiltern and Black’s Law Dictionary, we are fortified in the above view by the provisions of s 344 of the Code of Criminal Procedure which states, inter alia, that no findings by the Court of competent jurisdiction shall be reversed or altered on appeal on account of any error, omission or irregularity in the charge unless the error, etc. has occasioned a failure of justice. This principle of law finds support in this Court’s decision in Jules v R SCA 11/2005, Rene v R SCA 3/99 and Benoiton v R SCA 15/95. For instance in Jules this Court stated:

“If the statement and particulars of offence can be seen fairly to relate to a known criminal offence but have been pleaded in terms which are inaccurate, incomplete or otherwise imperfect, a conviction on that indictment can still be confirmed.”

[42] Counsel for the Republic relied on **R v Ayres [1984] AC 447** wherein it was stated;

“But if the statement and particulars of offence can be seen fairly to relate and to be intended to charge a known and subsisting criminal offence but pleads in terms which are inaccurate, incomplete or otherwise imperfect, the question whether a conviction on an indictment can be properly affirmed under a proviso must depend on whether in all the circumstances, it can be said with confidence that the particular error in the pleading cannot in any way have prejudiced or embarrassed the defendant.”

[43] I have already found that any irregularity or error in the first counts in this case did not occasioned any prejudice, embarrassment to the Accused. However, Counsel for the second Accused raised certain point of contention in formulation of the other counts which shall be addressed when these counts are considered.

Count 1: Conspiracy to Import Drugs

[44] Count 1 is an offence contrary to sections 5 and 16 of MODA which a conspiracy to import drugs into Seychelles. I don't believe that it is contentious that 579.48 grams of heroin (diamorphine) with a purity content of 300.56 grams was imported into Seychelles by Christine Kabunda. Nonetheless, in order for the offence to be committed, there is no necessity that the drugs are physically imported into the country. Conspiracy is an inchoate offence.

[45] The essence of conspiracy is an agreement. Conspiracy cannot exist without an agreement, consent or combination of two or more persons; see **Mwaji v R [1957] A.C 126**. Therefore, the first requirement of conspiracy is that two or more were in agreement to commit a crime. Secondly, the conspirators must have specific intent to commit the objective of the conspiracy. That means that someone who is entirely unaware that he is participating in a conspiracy cannot be charged with conspiracy. The specific intent requirement does not require that each individual knows all the details of the crime. It is sufficient that the individual understands that the crime being planned is a criminal one, but proceeds nonetheless.

[46] Halbury's Laws (5th Edition) provides that "*the offence of conspiracy is committed where two or more persons agree to pursue a course of conduct, which if carried out in accordance with their intentions, will necessarily amount to or involve the commission of an offence by one or more of the conspirators, or would do so but for the existence of facts which render the commission of the offence impossible.*"

[47] In **R v Parsons [1963] 1WB1 392**, it was said that the agreement may be proved in usual way by proving circumstances from which it can be inferred. Since, there are no direct evidence of the conspiracy, the Court has to consider the circumstantial evidence.

[48] There is without doubt in my mind of an agreement between the first and second Accused and one person by the name of Michael in Nigeria. It is in evidence that when the said Michael contacted Uzor, he had asked him whether he knew of any one in Seychelles who would deal in drugs. Michael had indicated that it was heroin that he was referring to. He had asked Uzor to look for someone for him. Uzor contacted the second Accused. It will be absurd to believe that Uzor would have only told the second Accused that someone in Nigeria wanted to talk to him. He would, most definitely have told the second Accused the reason what Michael wanted to talk to him about. Furthermore, the second Accused would have queried the reason why Michael wanted to contact him. Uzor testified that he did not know heroin was a drug nor that he knew that such drug is illegal in the Seychelles (which is not believed), then, that means, he would have had no issue discussing that with the second Accused. Uzor was always in communication with both Michael and the second Accused. Then the second Accused and Uzor were meeting each other. I am sure that when they decided to meet at the cathedral, it was not to say a few Hail Marys. They met at the ex-Mahe Beach Hotel a place that has been abandoned and in a depilated state. It is somewhere secluded. Uzor testified that the second Accused was giving him substantial sums of money to send to Michael. It was the second Accused who had informed Uzor that Kabunda was in Seychelles. There have been, before that, a number of calls made between the two as per the call logs that were produced as exhibit. On the day of incident, calls between the two had also been made. The second Accused had told him to go and collect the drugs and promised that there will not be many police officers on the road due to weather condition. All this is indication of an elaborate plan. It was an agreement between the parties. These are evidence of specific intent that a conspiracy to import drugs shall be carried out was made.

[49] Counsel for the second Accused argues that the charge has not been established. His argument is that despite the particulars of offence stating that the two Accused “*agreed with each other that a course of conduct shall be pursued and that if pursued amounting*

to the importation of controlled drugs by one or more of the parties to the agreement....” the evidence did not show such agreement between the two Accused. I have dealt with that above. He argues that in his interpretation of section 16 of MODA, if two or more persons conspire to import drugs into Seychelles, but cause another person to commit the offence, that cannot be concluded as a conspiracy. He states that in this case despite the Accused being charged with the conspiracy, it was Christine Kabunda who brought the drugs into Seychelles and not any of the Accused. Furthermore, he adds that Christine Kabunda was not part of the agreement if ever there was one. He seems to suggest that section 16 requires that one of the parties to the agreement must be the ones who commit the act of importation. In explaining his interpretation he referred Court to section 1 of the Criminal Act 1977, of England, which is couched in almost similar language as section 16.

[50] I do not share Mr. Hoareau’s views in the interpretation of section 16 as above mentioned. For a charge of conspiracy to succeed the parties only need to agree that a course of conduct shall be pursued and if pursued that course of conduct would result in an offence. It does not require that the commission of the offence would have been completed. It was held in **John Sifflore v Republic SCA15/2011** that *“conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed as long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be.”*

[51] Halsbury’s Laws (supra) further states that *“the offence of conspiracy is committed where two or more persons agree to pursue a course of conduct which if carried out in accordance with their intentions, will necessarily amount to or involve the commission of an offence”*

[52] In this case, the act of importation is not completed when Kabunda came into Seychelles with the drugs. It is completed when the drug is delivered. We know that the Accused were party to a plan as to how the drugs would be delivered. The second Accused had contacted Uzor and arranged for him to be picked up and Darren was sent to assist Uzor.

There was a delivery of the decoy. It was brought into the vehicle sent to collect the drug. Once that was done, possession in the drugs had been passed. I note that Mr. Hoareau argued that the drug was never delivered because the decoy could not be a substitute for the drugs. I have addressed that matter when dealing with the second count. I do not agree with Mr. Hoareau.

[53] Therefore, I find that the elements of the offence of conspiracy established beyond reasonable doubt and convict the Accused accordingly.

Count 2 Trafficking in a Controlled Drug

[54] The Accused are charged with trafficking in a controlled drug. The Charge Sheet states, this is contrary to section 7(1), read with sections 2, 20(3) and 23 of MODA. Section 7(1) deals with the actual act of trafficking. Itself. The section reads;

“The person who traffics in any quantity of a controlled drug, whether on his own or on behalf or on behalf of another of another person, whether the other person is in Seychelles or not, in contravention of this Act commits an offence of trafficking and is liable on conviction to the penalty specified in the second Schedule.”

[55] To “traffic” is described in the definition section (section 2) of MODA as;

“(a) to sell, broker supply, transport,, send, deliver or distribute;

(b) to offer to do anything mentioned in paragraph (a); or

(c) to do or offer to do any act preparatory to or for the purposes mentioned in paragraph (a).

Anyone of these is essential to establish trafficking in a controlled drug. In **R v Francois [2000] SLR 103**, it was held that the words offer or offer to do, or for the purpose of drug trafficking, the legislature extended the range of culpability beyond those who sell, give, administer , transport, send, distribute or transfer the drug.

[56] It was held in **R v Albert [1977] SLR 27**, that once it has been established that the Accused had both possession and knowledge of that possession, circumstantial evidence

may be admitted from which reasonable inferences may be drawn that the possession was for the purposes of trafficking.

[57] However, before considering whether such charge has been made out, I wish to consider Counsel for the second Accused contention that no drugs was seized from the first Accused, Darren and James. In fact it was a decoy and therefore without the drug, he argues, the charge has not been made out. He said that section 34 does not allow the Republic to charge a person with trafficking the actual drugs when the drug was not present as it was been substituted with a decoy. He also argued that the decoy at all times remained with Christine Kabunda. In fact Uzor had testified that the Officers moved to arrest them the decoy was still with Kabunda. However, Kabunda testified differently whilst Darren Rosalie gives contradictory evidence stating that throughout the drug was in the hands of Kabunda, then stated that the Kabinda handed over the package. He argues that under section 34 of MODA does not state that a decoy shall be used and shall be deemed to be controlled drug. He maintains that section 34 is for the purpose of preserving the exhibit only.

[58] Unfortunately, I am not in full agreement with Mr. Hoareau. The decoy is in indeed used to preserve the exhibit. There is a risk that the person doing the controlled delivery or the person receiving it could escape with the drugs if a decoy is not used. However, the essence of a controlled delivery as provided for under section 34 is to protect the exhibit from being loss or destroyed. In fact, section 34(3) provides that “[A] *controlled delivery may be authorised in writing may be authorised or subject to conditions, including the substitution or partial substitution of a consignment of controlled drugs with other substance.*” To state that the use of decoy to substitute the actual controlled drugs in such circumstances is not permitted, would be absurd. Therefore, I find that the use of a decoy entirely proper.

[59] Though not addressed in Mr. Hoareau’s summing up, during the trial he challenged the fact that the authorization issued under section section 34(2),(3) and (4) of the MODA (exhibit P16) to use a decoy was given by Nichol Fanchette but that it was decoy was prepared by Officer Kerry Hoareau. He said that this was not permissible. I disagree with

Mr. Hoareau. The ANB Officers when carrying out an operation would work in groups with officers on the ground others co-coordinating the operation from afar. Each is assigned a duty. The authorization is normally assigned to a senior officer within the group. I do not find anything in MODA that prohibits the officer in receipt of the authorization to delegate one other officers from preparing the decoy.

[60] Counsel for the second Accused further challenged the Statement of Offence as being duplicitous. In that charge, the prosecution has listed both section 20(3) and section 23 of MODA in the Statement of Offence. Section 20(3) deals with presumption of possession while section relates to presumption relating to vehicle. It provides that “[W]here a controlled drug is found in a vehicle, vessel or aircraft, other than a vessel or aircraft referred to in section 22, it shall be presumed, until contrary is proved, that the controlled drug is in possession of the owner of the vehicle, vessel or aircraft and of the person of the vehicle, vessel or aircraft for the time being.” Section 20(3) on the other hand deals with “[W]here one of two or more person with knowledge and consent of the other person or persons has any controlled drug in that person’s possession, all of the persons shall be deemed to be in possession of the controlled drug.” It is evident that the two sections envisaged different scenarios and not necessarily compatible with each other. They envisaged the commission of different offences.

[61] Thus, I have to agree with Mr. Hoareau that the charge is duplicitous and therefore dismiss and acquit the Accused of the second count.

Count 3; Agreeing With Another Person to Commit the Offence of Trafficking in a Controlled Drug

[62] The third Count is in alternative to Count 2. This is a charge of conspiracy under section 16(a) and 7(1) to commit the offence of trafficking in a controlled drug. However, the Statement of Offence states that those above mentioned section is to be read with section 22(a) and (c) of the Penal Code. Section 22(a) and (c) reads as follows;

“22 When an offence is committed, each of the following person is deemed to have taken part in committing the offence and be guilty of the offence, and may be charged with actually committing it, that is to say-

(a) Every person who actually does the act and makes the omission which constitutes the offence;

(b)

(c) Every person who aids and abets another person in committing the offence

(d)

.....

Any person who procures another to do or omit to do any act of such nature, that if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission, and he may be charged with himself doing the act or making the omission.”

[63] Mr. Houreau submits that the charge does not disclose an offence and that makes the charge not defective but bad in law. He adds that under section 16, the fact that section 16 (a) says it “*will necessarily amount to or involve the commission of an offence*” does not create an offence. He also question why the “*persons known to the Republic*” as per the particulars of offence are not named. He repeats his submission in respect of Count 1, that the drugs was not brought by neither of the Accused. I have already expressed myself on that issue and therefore, shall not be reiterated here.

[64] Counsel then referred to section 111 of the Criminal Procedure Code which deals as to appropriate way of formulating information and quoted **Graham Pothin v Republic SCA13/2017 (2018 SCA 17)** which cited Archbold 2012 (para. 1-190) it was stated that “[W]hen an offence charged depends on allegations, which could be put on several

different footings, it is incumbent on the prosecution to particularise the facts on which it relies to support the allegations”.

[65] In **Rex v Alexander & Others 1936 AD 445 at 445** it was stated

“The purpose of a charge sheet is to inform the accused in clear and unmistakable language what the charge is or what the charges are which he has to meet. It is not to be framed in such a way that the accused person has to guess or puzzle out by piercing sections of the indictment or portion of sections to gather what the real charge is which the crown intends to lay against him.”

[66] Having considered at the above, the Court moved on to consider section 111 of the Criminal Procedure Code which deals with the manner in which the charge sheet should be couched and which states;

“Every charges or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.”

[67] Pondering over the charge in Count 3, I do not consider that there is anything seriously defective with the Statement of Offence, however, my reservations are with the Particulars of Offence. I opine that it does not give sufficient particulars for the Accused to understand the charge against them. The Particulars of Offence needed for the Accused to appreciate the charge against him. It is not sufficient to state *“that a course of conduct shall be pursued which if pursued shall necessarily amount or involve the commission of an offence of trafficking.”* The Particulars of offence has to particularise what the course of conduct is and ensure that it corresponds to the offence the Accused is supposed to have committed as laid down in the Statement of Offence. The allegations has to be particularised.

[68] That being the case, the charge is dismissed and the Accused acquitted of this charge.

[69] So, the Accused are found guilty only of the first count and are acquitted of the second and third count.

[70] If unsatisfied with this judgment, the Accused have 30 working days from today to appeal against the same.

Signed, dated and delivered at Ile du Port on 06 March 2023

M Vidot J