

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2023] SCSC  
CO 102/2023

In the matter between:

**THE REPUBLIC**  
*(rep. by Barry Galinoma)*

**Republic**

and

**ROSANDA MARIA ALCINDOR**  
*(rep. by Alexia Amesbury)*

**Accused**

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**Neutral Citation:** *Republic v Alcindor* (CO 102/2021) [2023] SCSC (27 September 2023)  
**Before:** Burhan J  
**Summary:** Motion for the case to be adjourned/stayed  
**Heard:** 3 July 2023 and 11 July 2023  
**Delivered:** 27 September 2023

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**ORDER**

The Motion is dismissed and the matter is to proceed to trial.

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**RULING**

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**BURHAN J**

[1] The Applicant, Rosanda Alcindor in this application is the accused in case CR 102/2021 where she has been charged with the offences of:

1. *Abuse of Position contrary to section 24 (1) (b) read with section 24 (2) of the Anti-Corruption Act, 2016 as amended (Act 2 of 2016) and punishable under section 44 of the said Act; and*

2. *Unlawful acquiring of public funds and public property contrary to section 36 (1) (b) of the Anti-Corruption Act, 2016 as amended (Act 2 of 2016) and punishable under section 44 of the said Act.*

[2] The Respondents are the Attorney General and the Anti-Corruption Commission of Seychelles (ACCS). In the present Motion, the Applicant is asking the Court that the case be adjourned/stayed until:

- a. *“the 2nd Respondent hands over the two case files SBFA RA and SBFA EA and the USBs and therein seized by the 2<sup>nd</sup> Respondent, from the Applicant's past counsel, Mrs Laura Valabhji's office on the 18th November 2021, to Mrs Laura Valabhji or to her current counsel, Mrs Samantha Agale [sic], (“Current Counsel”) by latest 31<sup>st</sup> May 2023;*
- b. *the 2nd Respondent allows the Applicant's past counsel, Mrs Laura Valabhji to access her work laptop seized from her person on the 18th November 2021 by latest 31<sup>st</sup> May 2021, to enable her to locate and retrieve documentation relating to the Applicant's defence and the SBFA investigation which is the subject matter of case CS102/21 so that such can be handed over to the Current Counsel;*
- c. *the Respondents provides the Current Counsel promptly or by latest the 31<sup>st</sup> May 2023 with the requested balance of the disclosure file for case 102/21, ie all statements given by the Applicant and her concubine Andrew Charlette during the SBFA investigation during the period June 2019 to September 2021 to ACCS during the period of June 2019 and copies of the various documents that the ink/signature/writing analysis has been conducted upon as stated in the disclosure documents provided by the 1st Respondent.”*

[3] The Motion is supported by two affidavits of Rosanda Alcindor dated 5<sup>th</sup> May 2023 and Laura Valabhji dated 5<sup>th</sup> May 2023. To summarize the averments in Ms Alcindor's affidavit relevant to the present Motion, she states that she sought advice and retained her sister Mrs Valabhji as her Counsel in relation to case CR 102/2021. The Applicant states that Mrs Valabhji has attended all interviews conducted by the representative of the Internal Audit section of the Ministry of Finance (Kalum). Interviews were conducted following Ms Alcindor's suspension from her duties. The Applicant avers that her Counsel, Mrs Valabhji, whilst the investigations were being conducted has retained copies of all statements, letters and communications between the Applicant and Officers of the Internal Audit section of the Ministry of Finance and other officers of the Government in respect of this matter.

- [4] Further, the Applicant states that in 2019 the ACCS commenced an inquiry into the operations of Seychelles Business Finance Authority (SBFA). During the investigation, which was carried out from June 2019 until September 2021, the Applicant avers that her Counsel retained each and every statement that the Applicant and her concubine gave at the ACCS offices. In addition, she has provided several documents in respect of the investigations carried out and those pertaining to her defence including video footage when the ACCS accessed her home and offices of SBFA and removed documents and files. The Applicant states that her Counsel, Mrs Valabhji, kept a red colored file in the left hand cabinet in her office where all documents and statements and the USBs were kept. The Applicant states there were several USBs, one of them containing the abovementioned footage.
- [5] The Applicant states that in October 2021 her concubine, her son and herself were charged in case CR 103/2021 and she was further charged in CR 102/2021. The Applicant avers that her Counsel, Mrs Valabhji, has prepared separate files for all three accused, with the intention to pass on two other files to the lawyers of the other two accused.
- [6] The Applicant states that before Mrs Valabhji could hand over the files, Mrs Valabhji was arrested and when the Applicant went to her office to collect the said files, Mrs Valabhji's cabinet was empty. It is averred that when the Applicant's and her concubine's cases were called in Court, Ms Benoiton stood in for the Applicant's Counsel.
- [7] The Applicant states that her Counsel, Mrs Valabhji has later given her reference numbers of the files, SBFA RA being the number of file relating to her, her concubine and her son and SBFA EA a file in respect of one Mr Alexander. The Applicant avers that they have learned that the ACCS had emptied the cabinets of all the files and seized all files including these files. The Applicant further avers that the ACCS informed the Court before Judge Vidot in case CR 103/2021 that they did not make a list of the files they took and, therefore, could not confirm whether the two files were amongst those they took. The Applicant states that when her Counsel visited the ACCS's offices the files were not in the exhibit bags; that some of the exhibit bags were torn/cut opened

before her visit; and that the ACCS has confirmed that they have never made an inventory of the files taken from Mrs Valabhji's office. The Applicant avers that all the documents that would prove her innocence were in Mrs Valabhji's custody and states that her new Counsel, Ms Aglae has informed her that she will not be able to properly represent her as she cannot have access to those documents and video footage and that her defence in CR 102/2021 is greatly compromised without the said materials and evidence.

[8] Further, the Applicant states that she has been informed by her new Counsel that copies of all statements that her concubine and herself gave to the ACCS from June 2019 to September 2021 in relation to SBFA investigations has been requested by her new Counsel as part of disclosure and that her new Counsel required access to the documents mentioned in the disclosure in CR 102/2021 on which certain analysis of ink/signature/writing were conducted. The Applicant states that the abovementioned documents were not disclosed.

[9] The Applicant therefore alleges that the Respondent denies her the right to fair hearing by not providing the case files, the USBs and documentation relating to CR 102/2021, which the Applicant was informed by Mrs Valabhji were on her laptop that was seized from her on the 18<sup>th</sup> November 2023 as well the requested disclosure documents containing crucial and vital information required for the Applicant's defence.

[10] The Applicant states that without the two files (SBFA RA and SBFA EA), the USBs and documents on Mrs Valabhji's laptop as well as the balance of the disclosure, the Applicant's defence will be greatly prejudices as well as without representation as Mrs Aglae will not be able to represent her as she was unable to properly advise the Applicant as all she has are the few documents disclosed by the Respondents. She therefore states that it is imperative that the Court compels the Respondents to provide the materials so that the trial can proceed as soon as possible and that the Applicant has a fair trial.

[11] Mrs Laura Valabhji's affidavit reiterates the abovementioned factual averments of the Applicant. Additionally, her affidavit further alleges tampering with the evidence sealed bags containing her work files seized by the ACCS (paragraphs 19, 29-33). Mrs Valabhji

further states that there is a recording of her searching the evidence bags at the ACCS' offices and that despite the request for the video footage it was still not provided. Further, Mrs Valabhji avers that she did not find the file in relation to the Applicant in the evidence bags. She further states that to date the ACCS has been unable to account for location of the SBFA RA and SBFA EA files, which were also being investigated by the ACCS. Mrs Valabhji avers that despite all charges being withdrawn against her since 19<sup>th</sup> May 2022 and given that disclosure has closed in both CR 4 of 2022 and CR 114 of 2021 with no documentation from any of the items and documents seized from her home and her law chambers having been disclosed in either cases, the ACCS is still holding on to all the items and documents including the file in relation to the Applicant, Mrs Valabhji's work laptops, mobile phones, USBs etc.

[12] There are two affidavits in reply from the Respondents: affidavit of Maureen Young, a Senior Digital Forensic Officer employed by the ACCS, dated 23<sup>rd</sup> May 2023; and affidavit of Andrew Lacy, Principal Exhibit Officer presently attached to the ACCS, dated 23<sup>rd</sup> May 2023.

[13] Officer Young states that she has been employed with the ACCS since 5<sup>th</sup> August 2017 and that her roles involve investigating corruption allegations after preliminary investigation by the complaints department. Officer Young avers that the ACCS does not have in its possession Mrs Valabhji's files, namely SBFA RA and SBFA EA. She further states that she have been informed and verily believed it to be true that no exhibit has been tampered with. Further, Officer Young sates that it has been put to her attention by the ACCS' counsel that Mrs Laura Valabhji has in her possession a digital copy of her work laptop (Sony laptop) given to her by the ACCS. In the event Mrs Valabhji needs access to another laptop, Officer Young states that the ACCS will provide it using a "digital true copy". Officer Young further states that she has been informed by the Prosecution's Counsel that documents to be relied upon by the Prosecution have been disclosed to the Applicant.

[14] Officer Lacy states in his affidavit that he has been employed in his role with the ACCS since 23<sup>rd</sup> January 2023 and that his role involves dealing with the handling of exhibits

connected with the Operation Black-Iron. Officer Lacy states the previous Principal Exhibits Officer's employment with the ACCS ended in late December 2022 and that all material seized during the investigation had been and was still locked within the safe at Victoria House. Officer Lacy further avers that he had been informed by Peter Bennette, the ACCS investigator that no one had been allowed entry or had access to the abovementioned safe since the departure of the previous Principal Exhibits Officer. Officer Lacy avers that exhibits FF001 to FF006 has been held in secure storage in his possession, each exhibit being sealed in a separate exhibit bag. He avers that on any occasion where an exhibit has been moved or altered these actions have been documented in an exhibit storage register. Officer Lacy avers that no exhibit has been tampered with to the best of his knowledge information and belief. He also avers that files with names SBFA RA and SBFA EA and the USBs mentioned in the Application are not in the possession of the ACCS. With regards to exhibits FF001 to FF006 Officer Lacy states that according to the previous Principal Exhibit Officer's statement dated 16<sup>th</sup> May 2022 these exhibit bags were secured from the Chief Investigating Officer Francois Freminot and that she explained that the bags were not strong enough due to the weight of the files inside. As a result, herself and her colleague Graig Gibson double bag each exhibit bag to give them more strength and to protect and secure the content.

### **Submissions**

- [15] Learned Counsel for the Applicant in her submissions extensively challenges the affidavits of Officer Young and Officer Lacy in the Speaking Note (under headings Authority to swear affidavits, Evidence before Court, The Law). Learned Counsel argues that, firstly, as there are two Respondents, the ACCS and the Attorney General, it is ambiguous on whose behalf Officers Young and Lacy were swearing the affidavits; and if Officer Young's affidavit is being filed on behalf of just the ACCS, it is therefore assumed that the Attorney General is not objecting to the Application of the Applicant as no reply has been filed on its behalf. Secondly, learned Counsel argues that Officer Young and Officer Lacy do not have the authority under the Anti-Corruption Act 2016 to swear affidavits on behalf of either ACCS or the Attorney General; and that the authority to swear affidavits for these two authorities rests with the Commissioner of the ACCS

and the Attorney General respectively. Thirdly, learned Counsel argues that exhibits MY1 (affidavit of Officer Lacy) and AL1 (statement of Penfold) have not been properly produced, marked and exhibited; and that Penfold's statement is not signed and does not conform to the form of an affidavit. Fourthly, learned Counsel sates that paragraphs 8 and 9 of Officer Young's affidavit are hearsay as the averments appear not to be within the knowledge and belief of Officer Young.

[16] With regards to averment in paragraph 6 of Officer Young's affidavit that the ACCS does not have the files in relation to Applicant's case in their possession, Learned Counsel submits that Officer Young's averments are not substantiated as there is no averment that she was the officer seizing the files or that she has at any point had access to these seized files; that no list of seized files was provided nor has the officer who seized the files deponed before the Court. It has been explained that the persons who have given evidence by way of affidavit is Officer Maureen Young the Chief Investigation Officer and the current exhibit officer Mr Lacy.

[17] With regards to the inventory/list of items seized, the Learned Counsel submits that Officer Young does not refute the averment of Mrs Valabhji that no inventory/list was drawn up of the items that were seized. The Learned Counsel makes reference to section 58 of the Anti-Corruption Act.

[18] Learned Counsel for the Applicant addresses missing disclosure files under the corresponding heading of her Speaking Note. In summary, Learned Counsel submits that the Prosecution "*are not bound to disclose only what is to be relied on by prosecution but everything else*".

[19] Learned Counsel submits that the Respondents has asked for documents sent for ink/signature analysis. It is submitted that disclosure contained a report of signature analysis made by Jean Eugene, however, does not provide copies of the documents, which were subject to the signature analysis.

[20] Learned Counsel concludes her submissions by stating that the 2<sup>nd</sup> Respondent has not satisfied this Court that it did not seize the files, USBs and devices from the office of Mrs

Valabhji on the 18<sup>th</sup> November 2021 and further has not proved that it does not or did not have those items in its possession.

- [21] It is submitted that the Attorney General Office being the prosecuting Authority relied on reply affidavit of Officer Young, dated 23<sup>rd</sup> May 2023; and that has sufficient evidentiary value and to be relied upon since she is the Investigating Officer in the case and has information in relation to the case since commencement of investigation until today.
- [22] Learned Counsel for the Respondent further submits that the electronic items seized during the 18<sup>th</sup> November 2021 are not related to present case, but are related to the case against Mr and Mrs Valabhji and furthermore the search and seizure were conducted after the present case has been filed on the 22<sup>nd</sup> October 2021.
- [23] With regards to the missing disclosure allegations, learned Counsel submits that it is the reply of the Investigating Officer Miss Maureen Young that all the documents in relation to CR 102/2021 found in the case file, whether reliable or not reliable for the Prosecution have been disclosed to the defence attorney of the Applicant.
- [24] Learned Counsel for the Respondent concludes the submissions by stating that the issues being raised by the Applicant are premature as the Applicant will have the opportunity to call witnesses or cross-examine the Prosecution witnesses on any issue, including that of withholding any evidence. Therefore, it is the Respondent's position that the Application should be dismissed for lack of merits, abuse of court process as a delaying tactic, preventing the court to proceed with the trial.

### **Determination**

- [25] On consideration of the affidavits filed in this case, it is clear the said affidavits filed by the respective officers are for the purposes of information. One party, the Applicant, states that the officers of the ACCS has taken her lawyer's files pertaining to the case and therefore she cannot prepare her defence and this would result in an unfair trial for the Applicant. The ACCS officers concerned, namely the Chief Investigating Officer Maureen Young and Exhibit Officer Lacy have denied the allegations by way of affidavit, which they have a right to do, and further denied that files or documents



requested by the Applicant are in their possession. The Court cannot make any findings at this stage on the truth of the facts mentioned in the affidavits. Both parties have not been subject to cross-examination on their affidavits filed for this Court to analyse the evidence and determine who is telling the truth. All these matters have to be inquired into at the trial stage when evidence will be given under oath and the defence is in a position to cross-examine and raise such issues in their defence whilst cross-examining. As the Republic represented by the Attorney General has prior notice of the allegations, the Prosecution is free to rebut such allegations when leading their evidence. The Court could at the appropriate time after listening to the evidence under oath which has been tested by cross-examination come to its decision whether the rights of the accused to a fair trial have been violated or not. In regard to the statement of Ms Penfold this Court noted it was not in the file, though it has been served on the Applicant. The Applicant took up the objection it has not been signed. The Respondent admits it has not been signed in their submissions. A copy was called for purposes of record. The copy sent to court contains a signature on it. Due to these discrepancies this Court cannot take into consideration at this stage the statement of Vanessa Penfold.

[26] With regards to the first prayer of the Motion, that the case 102/2021 be adjourned/stayed until the ACCS hands over two files SBFA RA and SBFA EA and the USBs allegedly seized, this Court observes as referred to above that at this stage there appears to be a conflict of narratives between the Applicant and the Respondent. The Applicant and Mrs Valabhji state that the files are with the ACCS, while the ACCS officers are stating that they do not have the files. This Court is of the opinion that it cannot compel someone to produce the documents which they say they don't have. Learned Counsel for the Applicant argued that statement of Officer Young that the ACCS does not have the requested files is unsubstantiated. The same, however, can be said regarding statements of the Applicant and Mrs Valabhji that the said files existed and were seized by the ACCS. Further, it could be argued that as Mrs Valabhji was not present at the time she alleges the said files were taken into custody her affidavit evidence is hearsay. At this stage, therefore, the Court is only presented with opposing affidavit statements and submissions of the parties. This Court is of the view that the credibility of witnesses' averments should be decided during the trial and not at this stage. Therefore, the Court is

unable to determine at this stage whether the said files in fact existed and whether they were in fact seized by the ACCS officers. This matter should be decided during the trial.

[27] The Applicant has been given the opportunity to request the files allegedly in the possession of the ACCS. However, to stay the trial until the ACCS provides documents, which they say they don't have, could mean that the case can be perpetually stayed. This Court further observes that the Applicant should have retained copies of her defence materials and her failure to do so has resulted in these issues.

[28] With regards to the ACCS obligation to provide inventory of seized items pursuant to section 58 of the Anti-Corruption Act, it is the view of this Court that the said inventory is relevant to the case against Mrs Valabhji and should be pursued before the Court deciding the said matter and not the present matter. While this Court observed that such inventory would have been helpful in the present matter in determination whether the files requested by the Applicant were indeed seized by the ACCS and in their possession, the inventory does not have direct relevance to the present case as the items were seized from Mrs Valabhji and not Ms Alcindor, the Applicant. Ms Alcindor's failure to keep a copy of her own documents in the view of this Court is not justification to stay proceedings against her for unidentified period of time. The Court could have considered granting more time for preparation of the defence anew especially in cases for example of document loss or damage. However, it is important to note that such extension, which already have been given, cannot be indefinite.

[29] Furthermore, the Applicant is not asking the Court to grant her more time to prepare defence anew but is asking for the trial to be stayed until she retrieves the documents, which may or may not exist and which may or may not be in the possession of the ACCS. Such stay as noted above may amount to indefinite stay of trial due to the failure of the Applicant, the accused in the case of failing to keep copies of her own documents in her custody.

[30] The next issue for the Court's determination is prayer (b) – granting stay until Mrs Laura Valabhji has access to her work laptop seized from her on the 18<sup>th</sup> November. The ACCS stated that the digital copy of Sony laptop has already been provided to Mrs Valabhji,

which is denied by Mrs Valabhji. Counsel for the Applicant further states that Mrs Valabhji's work laptop was Dell ThinkPad Laptop, not Sony laptop.

[31] This Court at the outset observes that the Applicant in her affidavit states that she requires her files which were stored in a physical document folder; and the USB drives. The most part of her affidavit does not make reference to Mrs Valabhji's laptop until paragraph 21 where the Applicant states that without two files, SBFA RA and SBFA EA, the USBs, documents on Laura Valabhji's laptop and the balance of the disclosure, she would be greatly prejudiced in her defence. From the Applicant's affidavit it is therefore not entirely clear which documents/files she requires from Mrs Valabhji's laptop for her defence. The Motion refers to "*documentation relation the Applicant's defence and the SBFA investigation*".

[32] This Court also notes that in the second case against the Applicant, CO 103/2021, Judge Vidot has given an Order dated 26 June 2023, which has stated that the ACCS shall make arrangements that Mrs Valabhji is given access to the laptop in order for her to identify or verify if there are any documents on the laptop in relation to case CO 103/2021 against Ms Alcindor. The Order also provided for a requirement that following that exercise a report be furnished to the Court.

[33] Since the filing of this application a report by the ACCS dated 3<sup>rd</sup> August 2023, filed on the 5<sup>th</sup> September 2023 has been provided to the Court in CO 103/2021. This Court takes note of the said Report. In summary, it states that Mrs Valabhji and Mrs Amesbury, learned Counsel for the Applicant, have been given access to a ThinkPad Laptop seized by Peter Bennet on the 18<sup>th</sup> November 2021. Mrs Valabhji suggested searching the following emails and folders: folder named SBFA, folder named DCAL, folder named WOLReqJA, all sent/received emails with the names Kalum Bandara, Jessie Cosgrow, Myra Melanie. The Report states that no folders or emails were found. Laptop was further searched to locate folder named/labelled Video & Footage on the desktop, the folder was not found.

[34] Mr Shafiq Andrade, Digital Forensic Officer at the ACCS, who made the Report further states that in connection to the same order he received instructions from Senior Digital

Forensic Officer Maureen Young to create a new set of word list to run against all the devices that were seized from Mrs Valabhji. The Report shows several search hits with regards to SBFA, Josepha Albert, Myra Melanie, Video & Footage. The remaining of suggested searches showed no results. The search results for which several hits were found were exported and stored on USB Flash Drive, sealed in a tamper proof evidence bag bearing Seal Number MPSB26668742 and handed over to the Senior Digital Forensic Officer.

[35] Senior Digital Forensic Officer Ms Young filed a statement to the Court (filed on 5<sup>th</sup> September 2023) confirming the above findings and that she has received the abovementioned sealed evidence bag with the flash drive.

[36] Therefore, this Court finds that since Mrs Valabhji has been given access to her laptop as requested by the Motion, albeit in relation to CR 103/2021, the necessity for a stay until she is granted access to the laptop enabling her to locate and retrieve the relevant documentation to the Applicant's defence, no longer applies. As appears from the Report, Mrs Valabhji was granted access and was unable to locate the relevant documents claimed to be on the said laptop. Any further issues with this matter will be dealt with by this Court during the trial.

[37] With regards to the third prayer in the Motion regarding the balance of disclosure, namely, statements given to the ACCS officers during the SBFA investigation, the Applicant argued that despite the request for the documents, these statements were not provided. State Counsel for the Attorney General submitted at paragraph 6 of the Written Submissions on behalf of both Respondents that, *"it is the reply of the Investigation Officer Miss Maureen Young that all the documents found in the case file, whether reliable or not reliable for the prosecution case, in connection to the CR 102/2021 have been disclosed to the respective defense lawyer of the applicant, before the plea was taken in this case"*.

[38] The issue before the Court is similar to the issue which arose in relation to the first prayer (a) in the Motion. The issue is conflicting statements of the parties, where the Applicant states that records of certain statements of the Applicant and documents pertaining to the

signature analysis were not received despite the request, and the Respondents stating that all disclosure of documents whether reliable or not reliable have been disclosed. I agree with the submissions of the Respondents' Counsel that the matter of whether all the documents have been disclosed should be left for the determination at the trial where the Applicant will have the opportunity to call witnesses and cross-examine the Prosecution witnesses on the issue of alleged withholding of evidence. It is important for the Prosecution to abide by the disclosure procedure, and if Prosecution at this stage submits that they have so abided, the Court will determine the veracity of this submission at the trial stage, when as pointed out by the State Counsel, the Applicant will also have the opportunity to present her evidence to prove allegation that evidence or documents are being withheld. After the Court hears the evidence on the issue, it will come to the determination whether the Applicant's right of defence was affected in any way.

[39] Therefore, for all the above mentioned reasons, the Motion is dismissed and the matter is to proceed to trial.

Signed, dated and delivered at Ile du Port on 27 September 2023.

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M Burhan J