

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC
CO52/2021

In the matter between

THE REPUBLIC
(*rep. by Ms. Derika Figaro*)

PROSECUTION

and

PATRICK ERNESTA
(*Unrepresented*)

ACCUSED

Neutral Citation: *Rep v P Ernesta (CO 52/2021 [2023] SCSC*
Before: M Vidot
Heard: 07 September 2023
Delivered: 13 October 2023

RULING

Vidot J

- [1] The Accused stands charged with the offence of possession of a Controlled Drugs with intent to traffic contrary to Section 9(1) as read with Section 19(1) (d)(i) of the Misuse of Drugs Act 2016 and punishable under Section 7(1) and the second schedule of the said Act. The drugs in question is 735.00 grams of Cannabis resin.
- [2] On 15th June 2023, the Accused wrote to the Registrar of the Supreme Court indicating that he wanted to start procedure for the recusal of the undersigned Judge from the case. I was made aware of the request and set a date for hearing the Applicant for recusal in Chambers

he was informed by the Registrar that the locus had not been conducted according to procedure.

- (v) The Court has allowed the Police through the Prosecution to file an affidavit with false averments.
 - (vi) When he wanted to make representation regarding the affidavit, he was prohibited from talking by the Court.
 - (vii) At the locus, the Judge did not direct the action as was being performed by Police Officer Malvina.
 - (viii) The exhibit was left in the possession of Officer Malvina, the latter tempered with his house and that when this was done, he protested and this is not reflected in the record of proceeding of the locus in quo it was recorded as to what Servina had done as being important.
- [5] At the early stage of this Case, the Accused was represented by Attorney-at-Law, Mr Basil Hoareau. Mr Hoareau attended the locus in quo and also appeared in an application to have record of proceedings amended. Ruling for that application is yet to be delivered. Mr Hoareau subsequently made application to withdraw his appearance for the case. The application was granted. The Accused is yet to retain new counsel. Therefore, he represented himself in the present application.
- [6] The Applicant accused the Judge of not allowing him to represent his own self together with his counsel. It is noted that at the hearing of the motion to amend the record of proceedings of the locus the Accused attempted to intervene. He was asked by the Court to remain quiet and that since he has counsel, his counsel was the one to address Court. In fact, at this hearing the Accused complained about that. The Accused has no reasons to raise this as a ground for recusal of the Judge. It is

on 7th September 2023. Present at the hearing apart from the Accused, was Ms G. Leste, counsel for the Republic.

- [3] The Accused stated that he was seeking the recusal on several grounds. Just for context, I note that the trial of the case is yet to commence, but upon application by the Accused, the Court conducted a Locus in Quo at the residence of the Accused, where it is alleged that the Accused committed the offence of Possession with intent of Trafficking in a Controlled Drug. This locus in quo was conducted in furtherance of a Notice of Motion filed by his then counsel Mr. Basil Hoareau. The reason for conducting the locus in quo prior for the trial was because the Accused house which was in a dilapidated state was going to be pulled out.
- [4] The grounds for recusal are as follows;-
- (i) Demonstration of where he allegedly threw away the drug, the drug could not easily go through the hole. He complained that this is not properly recorded in the locus in quo report.
 - (ii) There are problems with the audio recording of the locus and there was no written notes taken. The Accused made application to listen to the audio and permission was granted to do so.
 - (iii) Allegation that there were gaps in the recording and these included 20 seconds gaps.
 - (iv) The Locus in quo was not conducted according to procedure. The certified copy of proceedings which he requested does not record everything that happened during the locus. There are no notes to back up the recordings. He alleges that

well established Court procedure that if someone is represented by counsel, it is the latter who should address the Court.

- [7] As regards amendment of the affidavit, the Court cannot be accused of showing bias and prejudice against the Accused. An affidavit is sworn testimony. At this stage of proceeding the Court is yet to make an assessment and determination of evidence before it.
- [8] I wish to point out that when the locus was conducted, the Accused's house was IN a seriously dilapidated state and in fact it was hazardous, having many people to be in that house. At some point we were warned that not everyone present could enter certain rooms at the same time, in fear that the wooden plank floor would collapse. Therefore it is possible that since at times the reporter was standing a distance from the activity, the recording did not capture everything. However, this would have been in rare instances. There is Complaint that there should have been written notes to support the recording. Written notes are normally taken when there is failure of recording devices. In this case there's no such failure. No notes were taken. The Reporter who was present confirmed that to the Court. I fail to see how the Accused was prejudiced because of no written notes were taken and definitely does not show any bias on behalf of the Judge.
- [9] There was recording of proceedings. When given proceedings, the Accused disputed that part of the proceeding were missing or had been wrongly transcribed. He was granted permission to listen to proceedings. As far as I am informed, a few minor corrections were made to the proceedings. The Judge does not exercise control over the typing of proceeding. If after reading proceeding, the Judge has doubt as to its accuracy, he has listen to them and confirm its accuracy. However, the Accused did not establish that the Judge deliberately tampered with proceedings which would have been a violation of the Judge's oath of office. In the absence of

such deliberate acts, it cannot and was never established that the Judge had some prejudice against the Accused.

- [10] As regard complaint (vii) that the Judge did not direct the action as was being performed by Police Officer Malvina. The Judge obviously does not have to describe the action being performed by an Officer as long as the Officer or counsel is describing what was taking place. That was sufficient and most definitely does not show bias on the part of the Judge.
- [11] Furthermore, the Accused complained that the exhibit was left in the possession of Officer Malvina. The case is yet to be heard. The exhibit is yet to be exhibited before the court, so the Court cannot take possession of the exhibits.
- [12] I find that there is absolutely no merit in the application of the Accused for the recusal of the Judge from the case. The Accused has not establish any case of bias or prejudice by the Judge that would have warranted the Judge to remove himself from the case.
- [13] Therefore, the Application is hereby denied.

Signed, dated and delivered at Ile du Port on 13 October 2023.



M VIDOT

JUDGE