

SUPREME COURT OF SEYCHELLES

Reportable
CM 83/2024
(Arising in CR 41/2024)

In the matter between:

THE REPUBLIC
(Represented by Mrs Luthina Monthy)

Applicant

and

BAMMANNAGE MALAN PRIYANKARA FERNANDO
(Represented by Mr Clifford Andre)

Respondent

Neutral Citation: *Rep vs Priyankara* (CM83/2024) (21 June 2024).

Before: Adeline J

Summary: Sale and disposal of perishables/Section 54(1) (a) and (c) of the Fisheries Act, 2020.

Heard: 21 June 2024

Delivered: 21 June 2024

ORDER ON MOTION

Adeline J,

[1] The Applicant has brought this application by way of Notice of Motion under Section 54(1) (a) and (c) of the Fisheries Act, 2014 (Act 20 of 2014). By its application, the Applicant pleads to the court for the following order;

“An order allowing the highly perishable articles seized under the Fisheries Act, 2020 to be sold, and or destroyed in accordance with Section 54 (1) (a) and (c) of the Fisheries Act 2014”.

[2] The Applicant supports its application by an affidavit sworn by one Detective Sergeant Vanessa, Racombo who is attached to the Priority Crime Unit at Bois De Rose.

- [3] Learned counsel for the Respondent raised objections to the application without filing an affidavit in reply or any form of pleadings.
- [4] Making his objection known, in his oral submissions, learned counsel contended, that this application in an abuse of process given that the “perishable are already perished”, and that has been because of the lapse by the prosecution “to do things properly”. Learned counsel submitted, that the vessel having those perishable articles on board was arrested on the 24th May 2024, clearance by public health was on the 25th May 2024, and this application was filed on the 17th June 2024. It was the submission of learned counsel, that the cargo of fish could have been saved if only “proper measure was taken”.
- [5] Based on the affidavit evidence of Sgt Racombo, the facts of this case that led to the arrest and prosecution of the accused, is that, on the 24th May 2024, the Maritime Operation Centre (MOC) received credible information from a local fisherman on board vessel FV Ste Marie of a suspected Sri Lankan vessel carrying out illegal fishing in an area around 79 nautical mileS South East of the Southern of Mahe.
- [6] Such information was conveyed to the Seychelles Coast Guard then to the Seychelles Fisheries Authority as well as the Seychelles Police. At approximately 2210 hours, PS Topaz located FV ste Marie and adjacent to it was the suspected TUU Fishing vessel. PS Topaz approached the Fishing vessel and thereafter a boarding team carried out a boarding operation and successfully secured the IUU fishing vessel.
- [7] Instructions were then given to escort the IUU Fishing vessel to Mahe. Following clearance from the Public Health Authorities on the 25th May 2024, the vessel was handed over to SCG FRB 213 then escorted to Providence Fishing Port. At Providence Fishing Port, the Coast Guard handed over custody of the IUU Fishing vessel and its crew members to officers of the Seychelles Fishing Authority to carry out inspection procedures.
- [8] Thereafter, the IUU Fishing vessel was handed over to officers from the SSCRb of the Police Force who examined the vessel and completed the necessary documentation as well as taking photographs. A thorough examination of the vessel was carried out by an officer from the Digital Forensic Laboratory of the Police Force, including, an examination of its

navigation equipment. The GPS devices were removed from the vessel for subsequent analysis.

[9] A thorough search and inspection of the vessel was carried out by the police in the presence of the skipper and the translator. It was found, that there were 3 compartments and that the 1st compartment contained approximately 5000 kilograms of sharks. The 2nd compartment contained ice and the 3rd compartment contained fender balls. Thereafter, the six suspects on board the IUU Fishing vessel were arrested, and charged subsequently.

[10] On the 29th May 2024, in the presence of officers from the Seychelles Fisheries Authority, the police including the skipper and a translator, offloaded from the IUU Fishing vessel 119 whole sharks weighing a total of 4,866 kilograms, 2 kilograms of shark fins and 54 kilograms of salted catch which have since been placed in a refrigerated container. In a report produced by the Seychelles Bureau of Standards, (A1), it is reported, that with the exception of the 54 kilograms of salted catch, the sharks and the shark fins from the vessel are unfit for human consumption. It is for these reasons that the Applicant applies to this court for the orders being sought for.

[11] The statutory provisions of Section 54 (1) (a) and (c) of the Fisheries Act, 2014 under which this application is made, reads as follows;

“54.(1) The court may, on application, order;

(a) Any fish, fish products or other perishables articles seized under this Act, to be sold,

(c) any, or fish products or other perishable articles seized under this Act which are likely to become unfit for human consumption before the matter can conveniently be dealt with by the court, to be destroyed”.

[12] In the circumstances, this application is granted, and accordingly, this court orders that the 54 kilograms of salted catch be sold, and the 119 whole sharks as well as the 2 kilograms of shark fins be destroyed.

Signed, dated and delivered at Ile du Port on 21 June 2024.

