

SUPREME COURT OF SEYCHELLES

Reportable

CO 37/2024

In the matter between:

THE REPUBLIC

(Represented by Ms Kethlyn Marie)

Prosecution

and

TEDDY BIRUNGI NANYONDO

(Represented by Mr Guy Ferley)

Accused

Neutral Citation: *Rep vs Nanyondo* (CO 37/2024) (04 November 2024)

Before: Adeline J

Summary: Sentencing upon convictions for Importation of a Controlled drug/318.90 grams and 63.09 grams of cocaine.

Heard: 16 September 2024

Delivered: 04 November 2024

FINAL ORDER

Accused charged with two counts of Importation of a controlled Drug – 318.90 and 63.09 net weight of cocaine – Accused is sentenced to serve a term of imprisonment of 8 years – Time which the accused has spent on remand shall be deducted from the 8 year prison sentence.

SENTENCE

Adeline, J

[1] The accused, now a convict, one Teddy Birungi Nanyondo, a 44 year old, by an amended charge dated 6th September 2024, is charged with two counts of Importation of a Controlled drug contrary to Section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 as read with the Second Schedule of the Misuse of Drugs Act, 2016.

[2] The particulars of the offence in the indictment pertaining to count one reads as follows;

“Teddy Birungi Nanyondo, 44 years old, a Ugandan national holding Passport Number A00738341, on the 18th May 2024 on board flight ET879 coming from Addis Ababa, imported into Seychelles a controlled drug, namely cocaine in one cylindrical shape packet that was found inside her Vagina with a total net weight of 318.90 grams”.

[3] The particulars of the offence in the indictment pertaining to count two reads;

“Teddy Birungi Nanyondo, 44 years old, a Ugandan national holding Passport number A00738341, on the 18th May 2024 on board the Flight ET 879 coming from Addis Ababa, imported into Seychelles a controlled drug namely cocaine in 2 cylindrical shape packets that was found inside her abdomen with a total net weight of 63.09 grams”.

[4] On the 16th September 2024, the accused pleaded guilty to both counts at the first available opportunity and was accordingly convicted before this court for two counts of Importation of Controlled Drug, cocaine, after she admitted the facts pertaining to the indictment as narrated by the prosecution which facts led to her arrest and the eventual prosecution for the two counts of Importation of a Controlled Drugs.

[5] In plea in mitigation, learned counsel for the accused/convict submitted, that the accused, is a mother of a son who is a grown up adult of 26 years old. Learned counsel also submitted, that the accused had pleaded guilty to two counts of Importation of a Controlled Drug at the first available opportunity showing remorse for her crime, and that the purity of the 318.90 and 63.09 net weight of cocaine is unknown and so is the commercial value of the drug.

[6] It was also submitted by learned counsel, that the accused/convict has accepted responsibility for her action, which under Section 49 of the Misuse of Drugs Act, 2016, (“MODA”) the court has to take into account as a mitigating factor as well as the fact that she co-operated with law enforcement officers in agreeing to participate in a controlled delivery exercise.

[7] To decide on the right and appropriate sentence that will do justice to this case, I have given due consideration to the punitive objective of sentencing in the light of the following factors balance against each other, notably:-

- (i) The circumstances of the accused now a convict.
- (ii) The nature of the offence including the gravity and extent thereof, at the same time identifying the objective seriousness of the offence.
- (iii) The interest of the community, and
- (iv) The relevant sentencing legislation, guidelines and case law.

[8] The case of *Lawrence & Anor v The Republic [1990] SLR 47*, reminds me, that amongst other things, sentencing must also be directed at addressing the traditional purpose of punishment which has been said to be deterrence, prevention, retribution and rehabilitation. I will add to the list the word denunciation. Given the seriousness of the offence committed by the accused, these terms have to be put in the right perspective. That is to say, (i) deterrence in the sense that the sentence being contemplated should dissuade the convict as well as others who may be tempted to commit similar offence from committing such offence. Retribution in the sense that the convict ought to suffer the punishment which she rightfully deserves, and denunciation in the sense that this is achieved by the imposition of a sentence, the severity of which makes a statement that the offence in question is not to be tolerated by the society we live in.

The circumstances of the accused (now a convict).

[9] In her submission in plea in mitigation, learned counsel submitted, that the right sentence to be imposed must be one based on consideration, that her client who is a first time offender has pleaded guilty at the first available opportunity, and in doing so, she has not wasted the court's precious time. Learned counsel also submitted, that her client is remorseful for the offences she has committed, both, towards the state and the public at large. She stated, that her client who is a mother of an adult child of 26 years old, has co-

operated fully with the authorities, and for these reasons, the court should exercise leniency in considering the right sentence that will do justice in this case, taking also into account the amount of drugs in questions. More so, the fact that the purity of the drug is unknown.

The nature of the offence including the gravity and extent thereof.

- [10] The offence of which the accused has been convicted is very serious. She has been convicted for importing into this country the drug, cocaine, which is a class 'A' drug, with a net weight of 318.90 and 63.09 grams. What saves the convict from a possible longer term of imprisonment is the quantity of the drug imported, which based on the sentencing guidelines is not comparatively too much on the high side.

The interest of the community.

- [11] No sentence, not even a life sentence where a convict deserves to be sentenced to a term of life imprisonment for importation of a Class A drug, can repair the damage which drugs have caused to this country over the last few decades. The suffering which many local families have endured and continues to endure, has been enormous given the huge impact which illicit drugs have had on our small community. Had these drugs gone undetected, they would have inflicted more misery and suffering on our youths at their detriment, while a few would have enriched themselves with the proceeds of this illegal trade.

- [12] In ***Rep v Micoock and Anor SCSC 322 (4th April 2017)*** the court had this to say:-

“The youth of Seychelles is being poisoned by drugs seemingly readily available brought by scrupulous persons. They have no regard for the overwhelming consequences of their acts. Their greed at the expense of the effects of their trade, including a lost youth and work force, the toll on Seychelles and the tax payers to treat and rehabilitate drugs abusers, the cost of education programmes for the prevention of drugs abuse, and efforts to intercept and prevent the trafficking and importation of drugs and prevent abuse is lost on them. They are oblivious to the pain and havoc they wreck on individual families and the community”.

[13] These words, encapsulate the seriousness of the offence of which the accused has been convicted when considered in a wider perspective, and therefore, the sentence to be imposed should reflect public abhorrence to offences of this nature which calls for tougher sentences. I am, however, reminded of the case of *Rep v Raise 1975 (4) SA 855 A*, in which case the court stated the following:

“punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances.”

[14] Locals and foreigner alike should not allow themselves to be misled into the mistaken belief that, this country, known to be a small jurisdiction, is a soft target for the illegal drugs trade. To the contrary, they must always bear in mind that the moment they venture into the illegal drugs trade in this country, they effectively step on a minefield at their own peril with disastrous long term consequences.

[15] Having said that, members of the general public should also not be mistaken into believing, that the court would simply pluck out of the air a sentence to satisfy public sentiments over the drugs issue, without thoroughly consider all the relevant factors to come to a just and fair sentence. The question of imposing a sentence is a matter of discretion to be exercised by the court judicially in consideration of the aggravating and mitigating factors in the individual cases. The approach, is that a reasonable proportion has to be maintained between the seriousness of the offence or the crime, and the punishment.

The relevant sentencing legislation, guidelines and case law.

[16] The maximum penalty which this court can impose on an accused convicted of a single count of importation of a Class A controlled drug, cocaine, is prescribed under Section 5 of the Misuse of Drugs Act, 2016 read with the Second Schedule of the Act. Section 5 reads:

“a person who imports or exports a controlled drug in contravention of this Act commits an offence and is liable on conviction to the penalty specified in the Second Schedule.”

The maximum penalty specified in the Second Schedule of the Misuse of Drugs Act, 2016 is a term of life imprisonment and a fine of up to Seychelles Rupees, one million.

- [17] It is, perhaps, worth mentioning, that the minimum mandatory sentences under the Misuse of Drugs Act, 2016 (“MODA”) Act 5 of 16, have been done away with and replaced by indicative minimum sentences prescribed for offences which are aggravated in nature. For example, Section 7(4) of MODA refers to aggravated factors depending on the weight in a trafficking offence over 250 grams of a controlled drug. Furthermore, in respect of the instant case, regards should also be made to Section 48 of MODA which considers the degree of commercial element as an aggravating factor. As such, the indicative minimum sentence as required under Section 47(5) of MODA has to be given due regard. Clearly, therefore, the offences of which the accused has been charged and convicted are aggravated in nature as the quantity of the controlled drug she imported into this country is over 250 grams although the purity of the drug is unknown and as per the sentencing guidelines, the appropriate sentence should be within the range of 12 to 15 years imprisonment.
- [18] Taking into consideration learned counsel’s submissions in plea in mitigation as a whole, it is conceded, that a guilty plea taken at the first available reasonable opportunity, warrants a reduction in sentencing because of the benefits it brings about as correctly elaborated by learned defence counsel in his submissions. In this respect, in my consideration opinion, in the meting out the appropriate sentence, the court needs to conduct a balancing exercise between the mitigating and the aggravating factors in this case.
- [19] I have taken myriad of competing factors into account in deciding the appropriate sentence that will do justice in this case. I have, in doing so, taken into account the salient aspects of learned defence counsel’s submissions in plea mitigation which are in favour of the accused, now a convict, and have given the credit she deserves.
- [20] I have also had sight of the relevant case law to familiarize myself with the pattern of sentencing in cases of this nature in the light of the recommended sentences. In the case of the *Republic v Jakari Suki, SCSC 142 SL 34/2018*, the accused was convicted for one

count of importation of a controlled drug heroin (diamorphine) with net weight of 942.2 grams of illicit heroin and one count of 244.4 grams of cocaine, net weight with purities of 523.7 grams of heroin and 151.4 grams of cocaine. The accused was sentenced to 15 years for count one in respect of the importation of heroin and 8 years on count two in respect of the importation of cocaine, which sentences took effect concurrently, which sentences were upheld by the Court of Appeal.

[21] I therefore sentence the convict to serve a term of imprisonment of 8 years in respect of count one, and 4 years in respect of count two, both counts are offences of Importation of a Controlled Drug, cocaine. The two sentences shall run concurrently, in that, the convict shall serve a terms of imprisonment of 8 years. Time which the convict has spent on remand shall be deducted from the 8 years term of imprisonment. Given that the accused/convict has been sentenced to serve a long terms of imprisonment for offences committed in contravention of the provisions of the Misuse of Drugs Act, 2016 with aggravated nature, Section 30 (2) (5) of the Prison Act, Cap 180, shall be invoked, in that, she shall not be entitled to remission for good behaviour.

[22] The accused/convict who has been sentenced is informed that she has 30 days from today to appeal against this sentence.

Signed, dated and delivered at Ile du Port 4th November 2024.

Adeline J