IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) ,S. Domah (J.A) ,M. Twomey (J.A)]

Criminal Appeal SCA 20/2015

(Appeal from Supreme Court Decision CR 02/2012)

Roy Brioche — Appellant

Versus

The Republic — Respondent

Heard: 10 December 2015

Counsel: Mr. Joel Camille for Appellant

Mr. Hermanth Kumar, led by Mr. David Esparon for Respondent

Delivered: 17 December 2015

JUDGMENT

S. Domah (J.A)

[1] Pre-trial detention, including detention through trial, is an exceptional measure of the very last resort in a democratic society founded on the rule of law as the Republic of Seychelles is. The legal system in law as well as in practice should shift to this paradigm. And where it does not, the judicial system should ensure that it does so. Even then, the duration of this exceptional measure should be as limited in time as possible. It is the joint responsibility of the law enforcement authorities, the Office of the Attorney-General, the Bar and the Courts to jealously guard this citadel of freedom of the individual from which flows the exercise of all other freedoms of our democratic society: see **Roy Beeharry v Republic SCA 11 of 2009**.

[2] Roy Brioche, the appellant in this case, charged for drug trafficking offences has already spent three years in detention. His trial is pending completion only in 2016. He has made

application upon application for release and commuted from trial court to appellate court three times. Albeit all the guarantees pledged in the republican Constitution, his right to be released enshrined in Article 18(7) of the Constitution and his right to a hearing within a reasonable time enshrined in Article 19(1) of the Constitution have remained dead letters only.

[3] For what reason? His last application before Court was rejected by the trial judge. She accepted the submission made by the prosecution that appellant is a flight risk. Flight risk is a label. The content should justify the labelling. In support, learned counsel for the prosecution adduced evidence that in 2003, applicant had fled the jurisdiction after he was served with a summons to appear before Court to answer a charge of robbery with violence. The prosecution produced the copy of a Court Summons on which was written a note that appellant had refused to sign at the back of the summons. He then had fled jurisdiction and returned only after the charge had been withdrawn against him.

[4] Appellant rebutted these allegations when he was called upon to depose. He denied that he had been served with any summons at all. His story is that he had left legally with a passport in 2004 to be with a woman who had gone to work in Madagascar but that he had returned in 2008. He came back on his own accord and is now in the home country where he has settled even if he has maintained some manner of a tie with the woman in Madagascar. Regarding the alleged refusal to sign on the Court Summons, his explanation is that he is not aware of any such incident. All that he knows is that he had been called at the Police Station once regarding a matter. Following his explanation, he had been allowed to go.

[5] The Constitution requires that there should be substantial grounds for such beliefs of denial: see article 18(7). Looked at more critically, the prosecution should have come up with more meat to show that appellant is a flight risk. It does not make sense to us that an accused in this jurisdiction could have been charged for robbery with violence and he was not arrested and detained and/or on bail. Nor does it make sense that his passport was not retained and/or that there was no prohibition to departure issued. Nor does it make sense