

SUPREME COURT OF SEYCHELLES

THE REPUBLIC
VS.
RICHARD ANTAT

Criminal Side No. 85 of 2005

Mr. Chinnasamy for the Republic

Mr. Freminot for the Accused

RULING

Gaswaga, J

[1] When this matter came up for hearing on the 30th June 2010, no witnesses turned up and the Prosecution prayed for an adjournment to the 14th July 2010 so that they could secure the attendance of the witnesses. The defence has not contested this adjournment.

[2] It should be noted that the accused stands charged with the offences of (1) causing grievous harm and (2) assault occasioning actual bodily harm. Summons had been extracted and sent out to the six prosecution witnesses.

[3] In support of his application, the Principal State Counsel submitted that the court had summoned the prosecution witnesses but there was no proof and or return of service of summons on the said witnesses. It should further be noted that there is evidence on the record that **the summons had been duly extracted and signed by**

the Court and handed over to the Police to effect service on the witnesses. In my view, **this is all the court is mandated to do** unless an accused or a witness duly served, refuses to appear as instructed in the summons without good reason or sufficient excuse. In that case, the court will issue a warrant of arrest in accordance with Sections 78, 79 or 121 of the Criminal Procedure Code, Cap 54.

[4] When it comes to criminal matters, ours is a purely adversarial system, whereby each party comes to war fully armed with all the necessary tools. The court ensures a fair trial within a reasonable time and equality of arms by requiring each party to call or to adduce evidence that will make its case. It therefore follows that once summons are issued to the police by the court, the prosecution must make a follow up to liaise and coordinate with the witnesses to attend court and make its case. In addition, the State, which is instituting charges against the accused is more powerful than the individual (accused), has enormous resources and unlike the Judiciary which is independent and neutral, works closely and in conjunction with the police, which investigated the case and interacted with each individual witness.

[5] Considering the above reasoning, I do not see any merit in the application for adjournment. Nevertheless, bearing in mind that the defence counsel had not turned up I shall reluctantly allow another adjournment to the **14th July 2010 at 09.00 am.**

D. GASWAGA
JUDGE

Dated this 2nd day of July, 2010.