

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 27/2017

[2018] SCSC 130

THE REPUBLIC

versus

ALBERT GEERS & ORS

Accused

Heard: 12 February 2018
Counsel: Mr. Kumar, Assistant Principal State Counsel for the Republic
Mr. Derjacques for the accused
Delivered: 12 February 2018

RULING

R. Govinden, J

- [1] Prosecution called Julia Volcere, a Government Forensic Analyst. At the start of her Examination in Chief, Mr. Derjacques objected to the admissibility of her evidence. Learned Defence Counsel submitted that she is not a lawful Government Analyst appointed under the Misuse of Drug Act 2016.
- [2] In his submissions a Letter of Appointment of the witness, dated March 2016, was not competent and as a result her evidence is inadmissible and that the proper legal step that

should have been taken was to publish the appointment in a Regulations published under Section 17 of the Misuse of drug Act 2016.

- [3] Counsel submitted that this was done in respect of the appointment of Mr. Jemmy Bouzin and Mr. Bhagat Singh, two other Government Analysts, by way of a SI 35 of 2016, a Regulation published on the 30th day of May 2016.
- [4] Mr. Kumar on the other hand objected to the application of the Defence. He submitted the publication of the names of the Government Forensic Analyst was done under the 1994 Misuse of Drugs Act.
- [5] According to the Learned Assistant Principal State Counsel, under the Section 17 (1) of the new Misuse of the Drug Act 2016, a letter issued by the Minister responsible for Home Affairs will suffice to legally establish the fact that Forensic Analyst is duly authorised under the said Act. He submitted that under the new Misuse of Drug Act, Section 17 (2) and 17 (3), there is no requirement to call a Forensic Analyst to testify unless the Defence gives to the Prosecution advance notice in that regard. Mr. Kumar submitted that in this case he is calling the Forensic Analyst in order to establish the chain of evidence.
- [6] I have given careful consideration to submissions of both counsels in this case. In my view a clear reading of Section 17 (1) of the Misuse of Drugs Act 2016 leads to only one conclusion. The Minister appoints a Forensic Analyst for the purpose of examining, testing and certifying a suspected controlled drugs. The Minister obviously needs to show proof of this appointment and this can only be provided in writing. Therefore, a written letter of appointment is necessary and essential as proof of the fact that an analyst has been so appointed under Section 17 (1) of the Act.

[7] I find therefore that in law there is no requirement for the publication of the appointment in the Government Gazette by way of an SI.

[8] If this was done in respect of Mr. Jemmy Terence Bouzin and Mr. Bhagat Singh this would have been made over and above the requirements of Section 17 (1) of the Misuse of Drugs Act 2016. It was to that extent a surplusage. There is in law, no legal obligation to publish the Forensic Analyst appointment by the Minister in the Gazette. Accordingly, this trial may proceed with the evidence of Ms. Julia Volcere. It cannot be rendered inadmissible because this lack of publication.

Signed, dated and delivered at Ile du Port on 12 February 2018

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke, positioned above the printed name.

R Govinden , J
Judge of the Supreme Court