THE MCB LTD v ICAC

2025 SCJ 357

SCR 9157

IN THE SUPREME COURT OF MAURITIUS

In the matter of:-

The Mauritius Commercial Bank Ltd

Appellant

v

1. Independent Commission Against Corruption [ICAC] (Now the Financial Crimes Commission)[1]

2. The Director of Public Prosecutions

Respondents

JUDGMENT

1. The appellant [the MCB/the bank] was prosecuted on a single count before the Intermediate Court under sections 3(2) and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA), coupled with section 44(2) of the Interpretation and General Clauses Act [IGCA], for having wilfully, unlawfully and criminally failed to take such measures as are reasonably necessary [*the **implementation** of proper internal control systems and procedures*], to ensure that services offered by the bank [*in relation to fixed deposit accounts held on behalf of the National Pensions Fund*], were not **capable** of being used by a person to **facilitate** the commission of a money laundering offence.

2. The bank entered a plea of not guilty and after a trial that lasted 3 years, the learned Magistrates of the Intermediate Court[2] found it guilty of the charge on the 13th of October 2017. On the 25th of October 2017, the Magistrates sentenced the appellant to pay a fine of Rs 1, 800, 000, with costs in the sum of Rs 500[3]. We are now dealing with the appeal from the appellant's conviction.

3. It is to be noted that the appellant's representative gave evidence during the trial.

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[1] See: section 168(1) of the Financial Crimes Commission Act.

[2] Brief, vol. 8, p. 2830.

[3] Brief, Vol. 8, p. 2905.

4. The facts presented by the prosecution before the trial court to prove the offence are as follows.

5. On the 28th of January 2003, Mrs Rojoa, the representative of the National Pension Fund (NPF) and the National Savings Fund (NSF), went to the MCB and discovered that the only entry concerning NPF/NSF funds deposited at the bank was for a fixed deposit account holding the sum of Rs 100 million for the NPF, instead of Rs 800 million.[4]

6. On the 14th of February 2003, the MCB filed several Suspicious Transaction Reports to the Financial Intelligence Unit [FIU][5] and on the next day the bank issued a communiqué in Le Mauricien newspaper to explain that serious irregularities had taken place at the MCB during the last few years to the prejudice of its important clients.[6] A letter was addressed by the General Manager of the bank to the Governor of the Bank of Mauritius [BoM] stating that the MCB had "*uncovered a massive fraud*" at the bank and that an investigation was ongoing.[7]

7. The ICAC started investigating the matter. On the 20th of February 2003, the appellant issued a second communiqué in Le Mauricien newspaper to inform the public that "*nos procedures de contrôle interne ont été abusées*" and that it had taken additional measures to strengthen these procedures.[8]

8. On the 27th of March 2003, the MCB addressed a letter to the Permanent Secretary of the Ministry of Social Security where it agreed to repay amounts due in the sums of Rs 668, 171, 829. 77 and Rs 212, 936, 843. 42 respectively.[9]

9. On the 15th of July 2003, a communiqué was issued, this time by the BoM, urging the MCB to pursue efforts towards "*strengthening its internal control system*."[10]

[4] Brief, Vol. 2, p. 524.
[5] Document CC, Brief, Vol. 10, p. 3503.
[6] Document L, Brief, Vol. 9, p. 2941 & Document AC, Vol. 10, p. 3409.
[7] Document CD1, Brief, Vol. 10, p. 3510.
[8] Document AB, Brief, Vol. 10, p. 3408.
[9] Document G, Brief, Vol. 9, p. 2936.
[10] Document DB, Brief, Vol. 10, p. 3578.

10. Learned counsel for respondent no. 2 has explained the fraud mechanism perpetrated at the MCB, as articulated in his skeleton arguments and in the judgment delivered by the trial court. We set it out below.

11. The sums of Rs 25, 000, 000 and Rs 11, 594, 520. 55 were derived from funds and accrued interests held on fixed deposit accounts at the MCB in accordance with instructions from NPF/NSF and these 2 sums had to be rolled over to other accounts as per the client's [NPF/NSF's] instructions. Contrary to such instructions however, these sums were not placed in a new fixed deposit account at the Fixed Deposit Department.[11]

12. What instead happened was that one Mr R Lesage, who at the material time was still working at the appellant bank after he had officially retired from service, issued an office cheque from the Fixed Deposit Department which was made payable to the MCB. Mr R Lesage then endorsed and paid the office cheque into another MCB office cheque account [an Intermediary Account] and thereafter unlawfully drew office cheques from that Intermediary Account in favour of third parties who turned out to be the ultimate beneficiaries of the fraud[12].

13. The grounds of appeal read as follows:

    1. The Learned Magistrates erred on a fundamental and basic principle of law: all money in a bank belongs to the bank, which has a liability towards its customers. This error of law is pervasive throughout the judgment and is instrumental in the Learned Magistrates reaching a number of conclusions which are in turn wrong in law.
    2. The Learned Magistrates misconstrued and made an incorrect application of the legal principles concerning larceny. This error of law is pervasive throughout the judgment and is instrumental in the Learned Magistrates reaching a number of conclusions which are in turn wrong in law.
    3. The Learned Magistrates erred in law and in fact in finding that a larceny of funds occurred when *"those funds had been deposited"* in the intermediary account. This finding shows that the Learned Magistrates failed to grasp the concept of the use of credit and debit in banking transactions.
    4. The Learned Magistrates erred in law and in fact by finding that the Appellant had admitted that, as soon Mr Lesage made the first unauthorised transfer from one internal account of the Appellant to another, this constituted larcenies; when in truth:
        a) There was no such admission,
        b) Any alleged admission by a party can only be in relation to a fact and not to law, which is the exclusive province of the court.

[11] Brief, Vol. 5, p. 1618.
[12] Document AD, Brief, Vol. 10, p. 3410, Mr Allet's testimony, Vol. 5, p. 1660(bis)-1686, Mr Naiken's testimony, Vol. 3, p. 864.

5. The Learned Magistrates wrongly concluded that there had been a money laundering offence which occurred at the Appellant, and thereby erred in law.
6. The Learned Magistrates failed to give any consideration nor make any pronouncement and/or finding and/or any correct finding on the submissions of counsel for the Appellant as regards the principles contained in the case R v GH [2015] UKSC 24 and thereby erred in law.
7. The Learned Magistrates failed to give any consideration nor make any pronouncement and/or finding and/or any correct finding on the submissions of counsel for the Appellant on the legal principle of certainty and its application to Section 3(2) of the Financial Intelligence and Anti Money Laundering Act 2002 and thereby erred in law.
8. The Learned Magistrates erred in law in holding that the court has a discretion to "*assess the evidence on record and to determine whether the Bank has taken reasonable measures….*" and that "*That discretion is vested on the Judiciary and is not a flaw in the law*" inasmuch as:
    a) The Learned Magistrates misunderstood the submissions of counsel on the need for certainty in Section 3(2) of the Financial Intelligence and Anti Money Laundering Act 2002.
    b) There is no such discretion provided in the law.
9. Having found that the money laundering guidance notes from the Bank of Mauritius were issued only after the period for which the accused was charged i.e., 2003, the Learned Magistrates failed to reach the proper conclusion that Section 3(2) of the Financial Intelligence and Anti Money Laundering Act 2002 was too uncertain to find the Appellant guilty.
10. The Learned Magistrates should have reached the conclusion that the prosecution failed to adduce evidence as to what in law will constitute "such measures as are reasonably necessary" under Section 3(2) of the Financial Intelligence and Anti Money Laundering Act 2002 of and that this failure was fatal to the case of the prosecution.
11. The Learned Magistrates erred in law inasmuch as they should have reached the conclusion that the proceedings were unfair and were an abuse of process inasmuch as, inter alia, there had been undue delay on the part of the prosecution and that such delay was detrimental to the Appellant.
12. The Learned Magistrates erred in law inasmuch as they should have reached the conclusion that the trial was unfair inasmuch as the Appellant:
    a) Was never given the opportunity to give its version with respect to a possible offence committed by it under Section 3(2) of the Financial Intelligence and Anti Money Laundering Act 2002.
    b) Was not confronted with the statements made against it in relation to a possible offence committed by it under Section 3(2) of the Financial Intelligence and Anti Money Laundering Act 2002.
13. The Learned Magistrates erred in law and in fact in finding that the procedures at the Appellant were not implemented inasmuch as there was no legal nor any evidential basis for such a finding.
14. The Learned Magistrates erred in law and in fact in finding that the Appellant failed to take appropriate measures and/or failed to take such measures as are reasonably necessary so as to ensure that any service offered by it, is not capable of being used by a person to facilitate the commission of a money laundering offence, inasmuch as there was no legal nor any evidential basis for such a finding.

15. The Learned Magistrates failed to take into consideration that originally the case which the prosecution brought before the court was that there was a total absence of books, manuals and procedures at the Appellant. It is only after the Appellant produced evidence of the existence of same that the prosecution then sought to show that the said procedures were not being implemented.
16. The Learned Magistrates systematically relied on the fact that Mr Lesage committed frauds and circumvented the system put in place by the Appellant as evidence that either there was no system and procedures and/or that they were not being implemented.
17. The Learned Magistrates erred in law and in fact inasmuch as, after having found that the Appellant had a number of measures put in place, the Learned Magistrates then arbitrarily, and without any factual or legal basis, concluded that the said measures were insufficient to such an extent that they could form the evidential basis for a conviction in criminal law.
18. The Learned Magistrates erred in law and in fact inasmuch as, having found that the Appellant had a General Instruction Book concerning its procedures and mode of functioning, the Learned Magistrates then wrongly dismissed the whole of this evidence by simply stating that "*However Mr Ramtohul said that the procedures were not being followed*". The fact that Mr Ramtohul said that the procedures were not being followed is not sufficient to discharge the burden of proof of the prosecution.
19. The Learned Magistrates erred in law and in fact inasmuch as they relied on the evidence of Mr Ramtohul to reach a finding on whether the procedures put in place were being followed when in fact Mr Ramtohul never enquired on whether the procedures were being followed or not.
20. In view of the fact that Mr Ramtohul contradicted himself and stated that he was at all material times unaware of the very existence of the General Instruction Book; the Learned Magistrates should have reached the inescapable conclusion that he therefore could not state whether or not the General Instruction Book was being implemented.
21. The Learned Magistrates failed to give any consideration nor make any pronouncement and/or finding and/or any correct finding on the evidence adduced by the Appellant regarding the existence at that time of an Internal Audit Manual and thereby erred in law and in fact.
22. In relation to the Anti-Money Laundering Handbook, the Learned Magistrates found that "*there is ample evidence in the present case to demonstrate that the procedures existed but were not complied to.*"*;* in so doing the Learned Magistrates erred in law and in fact inasmuch as there was no factual or evidential basis and/or there was no sufficient factual or evidential basis for such a finding.
23. Despite the evidence put on record on behalf of the Appellant that the latter had carried out 40 internal audits between the years 2000 and 2002, the Learned Magistrates erred in law and in fact by arbitrarily and wrongly concluding that this was not evidence of "*regular internal audits*" when there was no factual nor evidential basis for such a finding.
24. Despite finding that the Appellant did have an Internal Audit Department consisting of 11 persons, the Learned Magistrates erred in law and in fact by arbitrarily and wrongly concluding the "*IAD of the MCB was not properly staffed*" and that the staff did not have sufficient qualifications when there was no factual nor evidential basis for such a finding.
25. The Learned Magistrates erred in law and in fact in concluding that the evidence showed that Mr Lesage had not taken compliance leave when there was no factual nor evidential basis for such a conclusion.

26. The Learned Magistrates erred in law and in fact in finding that "*We hold the view that if Mr Lesage would have taken compliance leave, he would have been replaced by another officer and the whole manipulation would have been uncovered.*" inasmuch as there was no evidential basis for such a finding and such finding was merely hypothetical.
27. The learned Magistrates placed too much reliance on the evidence of Mr Ramtohul and Mrs Rojooa whereas the evidence of both showed contradiction, inconsistency, failure to remember clearly key facts and was imminently one-sided.
28. The Learned Magistrates gave little to no consideration to the evidence adduced by the Appellant whilst, on the other hand, made much of the scarce evidence adduced by the Respondent.
29. The Learned Magistrates placed too much reliance on an on-site inspection and report of Messrs Chiniah and Ramtohul when in fact neither could form the evidential basis of the present charge inasmuch as:
    a) neither were in connection with the provisions of Financial Intelligence and Anti Money Laundering Act 2002 nor with the internal systems and control of the Appellant with respect to money laundering.
    b) The on-site inspection was conducted before the coming into operation of Financial Intelligence and Anti Money Laundering Act 2002.
30. The Learned Magistrates should not have relied on the evidence of Mr Ramtohul and Mr Chiniah, inasmuch as:
    a) The statements which formed the basis of their evidence were taken more than 5 years after the events.
    b) They themselves were giving evidence in court 14 years after the events.
31. The Learned Magistrates erred in finding that "*the evidence on record revealed that despite the retirement of Mr Robert Lesage, his signature was still accepted at the level of the bank and was therefore acting as the bank's authorized signatory*" as this finding is contrary to the evidence on record.
32. The Learned Magistrates erred in law by overruling the objection taken on behalf of the Appellant that Mr Naiken should not be allowed to depone on his opinion as to whether or not the offence of Larceny had been committed.

14. The offence considered by the learned Magistrates was one created by **section 3(2) of the FIAMLA,** which provides:

> *(2) A bank, financial institution, cash dealer or member of a relevant profession or occupation that fails to take such measures as are reasonably necessary to ensure that neither it nor any service offered by it, is capable of being used by a person to commit or to facilitate the commission of a money laundering offence shall commit an offence.*

15. At this juncture, some introductory observations are called for. The above offence first appeared in our statute books under a different form in section 17(2) of the now defunct Economic Crime and Anti-Money Laundering Act 2000 [ECAMLA].

16. Under the ECAMLA, the offence was constituted if it was proved that a bank had engaged in a money laundering offence **and** if it had also failed to take measures as are reasonably necessary to ensure that neither the bank nor any of its services were capable of being used to commit or facilitate the commission of money laundering.

17. When the FIAMLA Bill was introduced in Parliament in 2002, the then Honourable Prime Minister made the following statement:

> "*… Clause 3 is couched in terms wide enough to cover cases where a person engages in transactions that involve property acquired from proceeds of a crime as defined in our Criminal Code.* ***The clause also imposes on banks, financial institutions, cash dealers and professionals, such as accountants and lawyers, to take appropriate measures to prevent their services being used as a channel for money laundering***."[13]

18. Section 3(2) was thus introduced with the aim of creating a distinct and self-contained offence to address situations where banks failed to take reasonably necessary measures to ensure that, neither the banks nor any service they offered, were capable of being used by a person to commit or facilitate the commission of a money laundering offence. The FIAMLA consequently no longer made it a requirement for prosecuting authorities to bring proof that banks had engaged in a money laundering offence to secure a conviction under section 3(2).

19. We accordingly find no cause to disagree with the proposition made by learned counsel for respondent no. 2 that one of the primary objectives of the FIAMLA under section 3(2) was to help reduce or eliminate the risk of financial institutions being used as a vehicle for laundering proceeds of crime.

20. We have given due consideration to the detailed skeleton arguments offered by all counsel whilst keeping in mind the intention of the Legislature, as explained above.

21. First, we must agree with the observations of Mr R Ahmine for respondent no. 2, that since **grounds 25 and 26** were not canvassed by the appellant, they must be treated as having been waived. **They are therefore set aside**.

[13] Hansard Debates of the Financial Intelligent and Anti Money Laundering Bill – No. V of 2002 of 4th February 2002 at page 4.

22. We equally concur that **grounds 1 and 2** are couched in broad general terms and, having considered the appellant's arguments to support these 2 grounds, we are unable to exercise our discretion to maintain grounds 1 and 2 as the appellant's submissions "*are not capable of curing the vagueness in the impugned ground[s] of appeal*"[14]. Upon a careful review of the appellant's written arguments in respect of grounds 1 and 2, we find no basis to uphold that the alleged erroneous findings by the learned Magistrates tainted their finding of guilt. **Grounds 1 and 2 are consequently set aside.**

23. Before proceeding further, we record that both learned counsel for the appellant[15] and for respondent no. 2 agreed that the trial court based its finding of guilt on the following conclusions:

    (a) The appellant's services included taking deposits from clients, safekeeping such deposits, and paying interest on the funds deposited at the bank;[16]
    (b) Mr R Lesage, being an employee of the appellant, perpetrated a fraud through different transactions;[17]
    (c) It was not necessary for the prosecution to prove that a money laundering offence was committed in proving an offence under section 3(2) of the FIAMLA;[18]
    (d) Notwithstanding the findings made at (c), the prosecution had proved beyond reasonable doubt that a money laundering offence had been committed since:
        (i) Mr R Lesage committed 2 distinct offences of larceny by taking the Rs 25 million representing the fixed deposit amount and the Rs 11, 594, 520. 55 representing interest from the Fixed Deposit Account of the NPF/NSF, and deposited those funds into an intermediary account at the MCB, so that the abstraction was completed when the money was taken from the Fixed Deposit Account and deposited in an intermediary account;
        (ii) The sums deposited in the intermediary account therefore constituted the proceeds of crime;
        (iii) The proceeds of crime were then subjected to placement, layering and integration, constituting the 3 steps of money laundering;
    (e) It was within the court's discretion to consider what amounted to "*measures as are reasonably necessary*" under section 3(2) of the FIAMLA[19];

[14] See: **Joli J T v The State [2015 SCJ 68].**
[15] See para. 4 of the appellant's skeleton arguments.
[16] Brief, Vol. 8, p. 2860.
[17] Brief, Vol. 8, p. 2860.
[18] Brief, Vo. 8, pp. 2860 & 2863.
[19] Brief, Vol. 8, p. 2870.

(f) The appellant had failed to take measures which were reasonably necessary since:

(i) There was ample evidence to demonstrate that the procedures existed but were not complied with, therefore creating an opportunity for the perpetration of fraud[20];

(ii) There was a failure to carry out regular audits at the appellant's Fixed Deposit Department and that was one of the factors which contributed to the fraud not being detected by the appellant[21];

(iii) The quality of audit was not of the standard required[22];

(iv) The requirement of adequate staffing and properly qualified internal auditors as a measure to prevent money laundering was not satisfied by the appellant[23];

(v) The appellant did not have a Compliance Department before 2003[24];

(vi) The failure to have an adequate Audit Committee with proficient members was a serious flaw in the control mechanism at the MCB since the Internal Audit Department did not report to the Audit Committee[25];

(vii) Mr R Lesage was vested with excessive powers without any structured supervision;

(viii) Mr R Lesage's acts and doings vitiated the operation of a proper internal control system which rests on segregation of duties and checks and balances to identify any deviation from procedures since he operated the system and he was at the same time the head of department conducting supervisory duties;

(ix) There was a blatant over-concentration of powers vested in Mr R Lesage and this allowed him to defraud the NPF without any oversight from top management at the MCB.

(x) Mr R Lesage did not take compliance leave which resulted in him retaining control at all times, therefore allowing him to commit frauds[26].

24. Insofar as **grounds 1 to 6** are concerned, [and in addition to our conclusions that grounds 1 and 2 are too vague for consideration], it is necessary to address from the outset whether the prosecution had the burden of also proving that a money laundering offence was committed under section 3(2) of the FIAMLA. In that respect, we recall our earlier observations at paragraphs 14 to 18 of this judgment.

[20] Brief, Vol. 8, pp. 2863 – 2873.
[21] Brief, Vol. 8, pp. 2863 – 2879.
[22] Brief, Vol. 8, p. 2879.
[23] Brief, Vol. 8, p. 2879.
[24] Brief, Vol. 8, p. 2881.
[25] Brief, Vol. 8, p. 2880.
[26] Brief, Vol. 8, pp. 2882 to 2886.

25. We refer to what was said in **DSA Company Ltd v The Ministry of Public Infrastructure & Another and Super Construction Co. Ltd v State of Mauritius [2013 SCJ 485]**:

> *As was stated in P G v District Magistrate of Rose Hill and Ah Koon [1914 MR 38], "the intention of the legislature is invariably to be accepted and carried into effect, whatever may be the opinion of the Judicial interpreter of its wisdom and justice. If the language admits of no doubt or secondary meaning, it is simply to be obeyed, without more." 14.1 In R v Oakes [1959] 2 QB 350, Lord Parker CJ had the following to say at page 354: "It seems to this Court that where the literal reading of a Statute .. produces an intelligible result, clearly there is no ground for reading in words or changing words according to what may be the supposed intention of Parliament."*

26. Sections 3(1) and 3(2) of the FIAMLA clearly deal with 2 distinct offences, the former addressing the aspect of property representing the proceeds of crime, and the latter being concerned with sanctioning the failure by a financial institution to take reasonably necessary measures to ensure that it is not capable of being used for purposes of money laundering.

27. Upon a plain reading of the wording of section 3(2), we are of the considered view that the use of the word "*capable*" by the Legislature clearly conveys that the actual proof of commission of an offence of money laundering is not required under this section, so that money laundering is not a constitutive element of the offence created under section 3(2) of the FIAMLA.

28. Since the Concise Oxford English Dictionary [10th ed.] gives the meaning of the word "*capable*" as that of "*having the ability or quality necessary to do something*", the language used in section 3(2) must plainly convey the essential characteristic that the offence is completed once there is proof [beyond reasonable doubt] that the bank or financial institution concerned has failed to take reasonably necessary measures in order to ensure that someone cannot have the "*ability or quality necessary*" to commit or facilitate the commission of a money laundering offence.

29. The offence under section 3(2) was therefore completed once the prosecution succeeded in proving that the MCB had (1) failed to take measures which were reasonably necessary (2) to ensure (3) that neither the MCB nor the services it offered (4) were **capable of being used,** by a person, i.e., the bank failed to ensure, through reasonably necessary measures, that its services or itself lacked the ability or the quality necessary, to be exploited by someone, **to facilitate** the commission of a money laundering offence.

30. The element which the prosecution was required to prove under (4) above, could not therefore have included further proof of a complete money laundering offence since, in the words of the legislator [reflecting his intention and purpose] the offending act perpetrated by the financial institution or bank would be completed once it was established that the failures of the financial institution or bank facilitated the commission of a money laundering offence.

31. Mr R Ahmine for respondent no. 2 aptly explains it in the following terms in his written address[27]:

> … ***section 3(2) of the FIAMLA*** *boils down to sanctioning banks or financial institutions for the failure to take preventive measures to combat money laundering or facilitation of same. There is only a need to show that a bank has failed to take measures which were reasonably necessary to prevent a person from being capable to use the bank or its services to commit or facilitate the commission of money laundering.*

32. We also concur with the comparison made with similar provisions in UK regulations 3(1)(b) and 20 of the UK Money Laundering Regulations of 2003 and 2007, in respect of which it has been stated [especially in connection with regulation 20] that "*It is important to note that failure to maintain the requisite systems and procedures will constitute an offence whether or not the money laundering has taken place*."[28]

33. In the light of all the above principles, we find that the learned Magistrates reached the correct conclusions on this issue[29], so that there was no need for them to embark on further detailed deliberations regarding proof of the constitutive elements of larceny or money laundering. **Grounds 1, 2, 3, 4, 5 and 6 therefore have no merit and must be set aside**.

[27] Para. 24 of his written submissions.
[28] Para. 27 of his written submissions.
[29] Brief, Vol. 8, pp. 2860-2863.

34. Under **grounds 7, 8 and 9**, learned counsel for the appellant finds fault with the learned Magistrates' alleged failure to consider the principles of certainty regarding section 3(2) of the FIAMLA, and with the court's findings that it was within its discretion to assess whether "*reasonable measures*" were taken by the appellant, in particular with regard to the trial court's decision on the Guidance Notes emanating from the BoM.

35. The trial court did in fact consider these points when it held that it had to assess the evidence and determine whether reasonable steps were taken by the appellant bank to ensure that neither it nor its services were capable of being used by another person to commit or facilitate the commission of a money laundering offence[30].

36. We reiterate our observations at paragraphs 24 to 30 above and add that the provisions enacted under sections 14 to 19 of the FIAMLA further set out that one of the main objectives of the enactment, which is to regulate many sectors including the financial sector, is to combat money laundering.

37. We again agree with the submissions of Mr Ahmine on that score[31], which are essentially that section 3(2) of the FIAMLA was deliberately given a broad spectrum as there could not have been an exhaustive list of "*reasonable measures*", so that it was left to banking and financial institutions, as well as to other professionals, to implement reasonable measures according to their own fields of business, in order to ensure compliance with the section. Since such "*reasonable measures*" would entail many variables that would be dependent on the nature of the services offered, the legislator had chosen to leave it to each profession to adopt reasonably appropriate measures best suited to them to prevent their services from being used to launder proceeds of crime.

38. We accordingly concur with the learned Magistrates of first instance that it is ultimately for the trial court to determine, whenever such matters are brought to trial before them, whether the particular measures adopted in specific circumstances are reasonable or not. The fact that no exhaustive list was provided under the enactment as to what could amount to such "*reasonable measures*" does not make the law uncertain or cause prejudice to an accused organisation or professional.

[30] Brief, Vol. 8, p. 2870 – judgment.
[31] Para. 43(b) of his skeleton arguments.

39. It must also be emphasized that, notwithstanding the appellant's complaint regarding the alleged uncertainty of the charge, at no time did the bank request further particulars from the prosecution regarding the specific measures averred in the information. The appellant cannot now plead ignorance of the charges it had to answer at the trial.

40. The analogy with the statement in **Dharmarajen Sabapathee v The State (Privy Council) [1999 MR 233]**, is accordingly pertinent, namely that "*the "term trafficking" cannot be defined with any degree of precision. The multifarious forms which trafficking can take, can be measured only by the degree of human ingenuity which, as yet, is unfathomable. No exhaustive list of instances of trafficking can be enumerated, or defined, so that the legislator has left it to the good sense of the Courts to decide what amounts to trafficking in a given set of facts.*"

41. **For all these reasons, grounds 7, 8 and 9 have no merit**.

42. **Under ground 10**, the appellant argues that the court should have concluded that the prosecution failed to adduce evidence as to what in law constitutes "*such measures as are reasonably necessary*" under section 3(2). We disagree.

43. We find that the relevant evidence was correctly identified by the learned Magistrates in relation to the measures which were reasonably necessary, but lacking at the MCB, at the material time. The conclusive evidence before the trial court was as follows:

    (a) Mr R Lesage was vested with many responsibilities although he had officially retired;[32]
    (b) Mr R Lesage's involvement in day-to-day operations resulted in a lack of segregation of duties within the bank[33];
    (c) Mr R Lesage was the File Manager of the NPF/NSF and of other large institutions, thus clearly indicating that he was vested with significant authority[34];
    (d) There was no internal control regarding Mr R Lesage's work[35];

[32] Brief, Vol. 8, p. 2885.
[33] Brief, Vol. 8, p. 2885.
[34] Brief, Vo. 8, p. 2884.
[35] Brief, Vol. 8, p. 2885.

(e) Mr R Lesage exercised considerable power, without any oversight from higher management[36];

(f) Mr R Lesage overstayed his time of employment with the appellant's knowledge[37];

(g) There was no proper compliance leave programme in place[38] within Mr R Lesage's department at the material time;

(h) The appellant had a weak IAD [Internal Audit Department] with inexperienced and underqualified staff[39];

44. All the above evidence, when considered as a whole, can indeed lead to an inference that the appellant bank [MCB] was responsible for a number of clearly identified failures in its internal audit systems which not only allowed, but effectively gave, Mr R Lesage a free pass to commit a massive fraud to the prejudice of the NPF and the MCB, thus proving that these failures to take reasonably necessary measures to prevent the bank's services from being used to commit fraudulent misappropriation, were clearly exploited to facilitate money laundering offences. **Ground 10 cannot therefore be upheld**.

45. As for **ground 11**, the appellant finds fault with the learned Magistrates' failure to conclude that the proceedings were unfair and amounted to an abuse of process because of the undue delay caused by the prosecution resulting in prejudice to the appellant.

46. We also find this ground to be without merit since there was clear evidence from Mr Naiken who outlined the various steps undertaken by the ICAC to conduct its enquiry[40], as well as evidence that the appellant had contributed to some of the delay during the enquiry[41]. The learned Magistrates' in fact delivered a ruling[42] on that issue, where they fittingly justified their reasons for concluding that the proceedings were fair. We have closely perused the reasoning adopted by the trial court and we find no reason to disturb its findings.

[36] Brief, Vol. 8, p. 2885.
[37] Brief, Vol. 8, p. 2882.
[38] Brief, Vol. 8, p. 2886.
[39] Brief, Vol. 8, p. 2879.
[40] Document CB, Brief, Vol. 10, p. 3492.
[41] Brief, Vol. 5, pp. 1827, 1846 & 1834.
[42] Brief, Vol. 3, pp. 1006-1012.

47. We concur with the learned Magistrates' conclusions, namely that the enquiry was complex, it involved the securing of a considerable number of documents, the enquiry had international ramifications, and the MCB had itself refused to attend ICAC's call for further investigation to answer charges on the 25th of June and 8th of July 2009 as it had stated that it had already given numerous statements and documents. The trial court also acknowledged, correctly in our view, that the case against the appellant depended largely on documentary evidence and on the role played by some of the witnesses in their official capacities, so that the issue of failing memories was not sufficiently material to justify a stay of proceedings based on delay alone.

48. The learned Magistrates were therefore perfectly justified to hold that "*the rights of public justice outweigh any likely prejudice to the accused and tilt the scale in favour of a trial*"[43], and that there were alternative remedies, such as those outlined in **Boolell P v The State [2006 MR 175]**, especially since the evidence on which the prosecution relied included some clear admissions made by the appellant bank. We accordingly hold that the contention that the learned Magistrates erred in law on the motion of abuse of process based on undue delay is unfounded. **Ground 11 accordingly fails**.

49. Insofar as **grounds 12 and 15** are concerned, it is averred that the appellant was not given the opportunity to put forward its version regarding the charge under section 3(2) of the FIAMLA and that it was not confronted with the statements made against it in relation to the said offence. It is also contended that the trial court failed to consider that the original case against the appellant was based on a total absence of books, manuals and procedures at the bank, until the prosecution changed its approach [once the appellant produced some evidence] to then try and establish that procedures were not being implemented.

50. The evidence adduced before the trial court however plainly shows that the appellant came with prepared written statements during the ICAC enquiry[44] and that it did not turn up when it was convened for a charge to be put to it[45]. The learned Magistrates in fact considered that two letters were sent to the appellant on the 25th of June and the 8th of July 2009, requesting a representative of the MCB to answer a charge which the ICAC intended to put to it.

[43] Brief, Vol. 3, Ruling, p. 1010.
[44] Brief, Vol. 6, pp. 2035 & 2042.
[45] Brief, Vol. 5, p. 1834.

51. But the bank replied by letter of the 17th of July 2009 that it had already given many lengthy statements. The trial court took note that as a result, the charge could only be put on arraignment[46].

52. Although it is desirable that an accused party be confronted with the case levelled against him during the course of an enquiry and that it consequently be given an opportunity to respond to the accusation which will eventually lead to that party being put on trial, the evidence before the learned Magistrates indicated that the appellant had come up with prepared statements during the enquiry and that, for reasons which will remain best known to themselves, the bank's representatives declined to face the enquiring officers when a charge was about to be put to them.

53. We cannot, in the light of such uncontroverted evidence, find that the learned Magistrates erred in finding that the appellant was not given the opportunity to answer the charge during the enquiry, or that the trial was unfair because the prosecution chose to change its approach during the course of the trial. The information and the particulars given therein were clear from the outset and, when considered with the way that the defence conducted its case at the trial, we can only conclude that the appellant was very much aware of the charge it had to meet and that it could have suffered no prejudice in that respect during the trial process[47].

54. Insofar as the complaint made under ground 15 is concerned, the fact that the prosecution changed direction during the trial is part and parcel of the normal trial process and there is nothing on record which indicates that a different charge than the one set out in the information was directed against the appellant at any stage of the trial.

55. We are consequently of the view that there was nothing sinister about the fact that the prosecution chose to plough forward, notwithstanding the appellant suddenly producing evidence of "*books, manuals and procedures*"[48], in order to establish the charge as per the information.

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[46] Brief, Vol. 3, Ruling, p. 1010.
[47] See also **Police v Roheman A [2010 SCJ 415]**.
[48] Para. 66(b) of the appellant's written submissions.

56. If the appellant was taken by surprise, it could only have been due to its inability to detect that the prosecution had consistently challenged the appellant's failure to ensure "*the implementation of proper internal control systems and procedures … in relation to fixed deposit accounts*"[49], as clearly set out in the particulars given in the information. **Grounds 12 and 15 cannot therefore succeed**.

57. With regard to **ground 13**, the appellant complains that the trial court erred in law as there was no basis to justify its findings that the procedures at the MCB were not implemented. It is thus argued that there was, at best, the contradicted versions of Mr Ramtohul and Mr Chiniah and that their evidence did not provide the evidential or legal basis for the findings reached by the learned Magistrates.[50]

58. We are of the view that this argument is wholly misconceived as it makes total abstraction of the many examples brought before the learned Magistrates, from which they found it easily established that, in spite of the rules which existed at the MCB, these were simply and squarely not implemented by the bank.

59. The learned Magistrates in fact addressed this issue thoroughly in their judgment[51] and carefully analysed the testimonies of the 2 witnesses which they had the advantage to see deposing in court.[52] It is evident that the court of first instance not only relied on the evidence of these two witnesses but that it also considered the version given by the bank itself, as can be culled from its communiqués and statements, and as can also be gleaned from the evidence of Mr Allet who came to represent the bank in court.

60. The arguments of learned counsel for the appellant under that ground rest on the following extract from the judgment:

> *We wish to highlight firstly, Mr Ramtohul categorically said that the procedures could have existed in books but were not being followed. Secondly, at Par 10 of the GIB (Document DG), it is stipulated that 'on refund, the depositor must endorse the fixed deposit receipt and the signature must be checked with that on the application form'. In the present matter, when Mr Lesage perpetrated the fraud, the deposits were being manipulated without the instructions of NPF. Thirdly, Mr Allet himself, confirmed that there were indeed no instructions from NPF …*

[49] See information, Brief, Vo. 1, p. 3.
[50] Para. 71 of the appellant's written submissions.
[51] Brief, Vol. 8, pp. 2871-2873.
[52] See: **Benmax v Austin Motor Co. Ltd. (1955) 1 All E.R. 326**.

> *We therefore find that <u>there is ample evidence</u> in the present case to demonstrate that the procedures existed but were not complied to* [sic]*. These obviously created an opportunity for the perpetration of fraud. After a scrutiny of the transactions effected by Mr Lesage in relation to the fixed deposit and the interest generated we hold that in fact, the procedures laid out in the books and manuals were not applied in practice resulting in no check and balances* [sic] *while the system ran loose and exposed to fraudulent practices.*[53]

61. Clearly, the extract above is incomplete and should have accurately included the following missing part:

> *… on the forms namely documents DX, DY, EA, and EC when the fixed deposits reached maturity and finally, Mr Allet admitted that for the stolen sum of RS 25 million, the correct procedure was not adopted in as much as an application form and new fixed deposit receipt were meant to be issued. He added that par 1.1 of F50 of the GIB was not adhered to and the written directives of the bank was not followed.*

62. The above extract, when read carefully and completely, undeniably shows that the court took into account that Mr Ramtohul had simply stated that although the requisite procedure was found in books at the bank, this was not being followed.

63. The same extract also clearly indicates that the trial court not only considered the version adduced from Mr Ramtohul, but that it additionally examined the procedures contained in the books and manuals held by the bank in the light of the circumstances in which the fraud was committed by Mr R Lesage, together with the clear evidence of Mr Allet, before it concluded that there was "*ample evidence*" to show that the procedures did in fact exist but were not adhered to by the bank, thereby creating an opportunity for the fraud to be committed.

64. The learned Magistrates accordingly held, "*after a scrutiny of the transactions effected by Mr Lesage in relation to the fixed deposit and the interest generated*", that the procedures laid out in the bank's books and manuals were not applied in practice and exposed the system to fraudulent practices.

65. We have seen nothing in the judgment which can lead us to conclude that the learned Magistrates relied solely on the evidence of Mr Ramtohul or that of Mr Chinniah, or that they had no evidential basis to reach the conclusions that they did in the light of the clear evidence before them. **Ground 13 cannot accordingly be upheld**.

[53] Brief, Vol. 8, p 2873.

66. **As for ground 14**, it challenges the complete findings of the trial court regarding the elements of the offence under section 3(2) of the FIAMLA having been proved by the prosecution. The appellant here argues that there is no evidential basis for such findings to be made. We note that **grounds 16 to 32** also question the detailed findings of fact made by the trial court.

67. The appellant thus contends, among many other things, that the court of first instance relied on the evidence of Mr Ramtohul and Mr Chiniah, who made unfounded statements to the effect that the procedures at the bank were not being implemented, and that it failed to consider that their evidence was contradicted.

68. We find such assertions to be unjustified in the light of the learned Magistrates' thorough analysis of all the evidence adduced before them, including the evidence adduced for the appellant.

69. The salient parts of Mr Allet's testimony [the appellant's representative] were closely assessed by the learned Magistrates in their judgment. They found that Mr Allet gave the following evidence:

    (a) Following the promulgation of the FIAMLA in 2002, the MCB issued an anti-money laundering handbook with new banking guidelines, as well as banking guidance notes in 2003[54];
    (b) The General Instructions Book [GIB] at the bank also contained general guidelines regarding the approach to be adopted in relation to banking activities;
    (c) These guidelines propounded that all banking transactions had to be subjected to a dual control approach;
    (d) Updated policy guidelines were uploaded on the bank intranet system as from 2002;
    (e) Fixed deposit receipts were to be issued following strict verification and upon confirmation of sufficient funds by 2 bank employees;
    (f) The Fixed Deposit Department had to issue a certificate which was then sent to the Audit Department to conform to the principle of segregation of duties;
    (g) The procedure adopted by the Internal Audit Department [IAD] was based on best practices, as stipulated in the General Instructions Book [GIB], the Computer Branch Manual, the Branch Security Manual and the Internal Auditing Manual[55];

[54] Brief, Vol. 8, p. 2847.
[55] Brief, Vol. 8, p. 2848.

(h) Each of the 11 officers posted at the Audit Department in 2002 were in possession of the Internal Auditing Manual, which was considered as a "Bible" in the execution of auditing duties;

(i) At the Deposit Department, several steps had to be complied with when a request was made by a client to withdraw money;

(j) He agreed that although an internal control system existed at the bank, the fraud committed by Mr R Lesage had not been detected[56];

(k) He admitted that although guidelines for the internal control system existed, **some employees had not followed the dual control principle relating to various operations**[57];

(l) He also admitted that Mr R Lesage had overstepped his mandate after his official retirement and without the bank's knowledge;

(m) He agreed that Mr R Lesage continued to occupy his office at the bank as a mere "*facilitator*" and without any remuneration;

(n) He stated that all the guidelines which existed at the bank at the material time should have been followed by bank staff;

(o) He admitted that Mr R Lesage had acted as File Manager for the NPF file;

(p) **He admitted that the cheques signed by Mrs Decotter were done under Mr R Lesage's instructions although she should first have sought instructions from the NPF[58];**

(q) **He therefore agreed that Mrs Decotter had not followed the appropriate procedure in that regard**;

(r) **He also admitted that Mrs Nosaic and Mrs Amurat did not follow the required procedure whilst signing cheques, as instructed by Mr R Lesage[59]**;

(s) **He also admitted that in respect of the amount of Rs 75 million which Mr R Lesage requested to be transferred to the BoM there had been no endorsement or instructions by the NPF although Mrs Walter and Mrs Decotter should have made the required verifications prior to the transfer instead of following the instructions from Mr R Lesage**;

(t) **Mr Allet further admitted that the guidelines were not followed in these particular circumstances since there were no instructions from the NPF regarding the transactions effected, especially in relation to paragraph 3 of Instruction F50 of the GIB[60];**

(u) **He also conceded that paragraph 13.1.1 of Instructions F50 of the GIB was not followed as the fixed deposit receipt was not endorsed[61]**;

[56] Brief, Vol. 5, p. 1759.
[57] Brief, Vol. 5, p. 1782.
[58] Brief, Vo. 5, pp. 1927 - 1928.
[59] Brief, Vol. 5, p. 1937.
[60] Brief, Vol. 6, pp. 2152 – 2153.
[61] Brief, Vol. 6, pp. 2155.

(v) **Mr Allet thus agreed that if the dual control exercise was properly followed or the signature of the NPF had been verified, Mr R Lesage would not have been able to effect the impugned transactions**[62];

(w) **He further admitted that in relation to the deposit of Rs 200 million, the application form which he had produced in court did not bear any signature from the NPF, contrary to what the procedure required, and that as a result there had been no efficient control by the bank**[63];

(x) **He also admitted that document EE – a deposit receipt – ought to have been endorsed**[64];

(y) **Mr Allet admitted that insofar as the sum of Rs 25 million was concerned, the correct procedure was not adopted and an application form and a new fixed deposit receipt were meant to be issued**[65];

(z) **He further agreed that there was no adherence to the directives contained in paragraph 1.1 of instruction F50 in the GIB**[66];

(aa) **Mr Allet conceded that the IAD report [document EF] had flagged several flaws where forms were found not to bear customer signatures, specific documents were not filled in at the fixed deposit level and no dual control was exercised over fixed deposit amendments**[67];

(bb) **He admitted that the said report found that there was a lack of proper general control in relation to the setting up of deposits and refund thereof**[68];

(cc) **He further conceded that Chief Internal Auditor at the MCB did not possess any diploma in accounting or auditing and that the BoM Report of the 14th of June 2000, had recommended that employees within the IAD should be professionally qualified in the accounting field and possess relevant experience**;

70. All of the above evidence, emanating from the appellant's representative himself, establish that Mr Allet made a number of admissions under oath which corroborate the conclusions drawn by Mr Ramtohul, namely that the procedures set up by the appellant were wholly inadequate, including the fact that Mr R Lesage was allowed to continue working on the bank premises, without remuneration and without any form of supervision, to deal with very important accounts, whilst bank personnel working with him were not in a position to question any of his decisions.

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[62] Brief, Vol. 6, p. 2236.
[63] Brief, Vol. 6, p. 2202.
[64] Brief, Vol. 6, p. 2206.
[65] Brief, Vol. 6, p. 2199.
[66] Brief, Vol. 6, pp. 2199-2200.
[67] Brief, Vol. 6, pp. 2214, 2215, 2216, 2217.
[68] Brief, Vol. 6, pp. 2231 – 2232.

71. The sum total of the evidence adduced during the trial therefore established beyond reasonable doubt that the procedures laid down in the books and manuals at the bank were in fact not applied in practice, resulting in no checks and balances being performed by the IAD of the bank, while the "*system ran loose*" and became "*exposed to fraudulent practices*"[69], as rightly found by the learned Magistrates.

72. We also agree with the court of first instance that one of the reasonable measures which a financial institution, especially one as important as the appellant, had to put in place was a proper system of internal audit and processes. The court thus held that the failure to carry out regular internal audits at the Fixed Deposit Department was one of the factors which contributed to the fraud perpetrated by Mr R Lesage not having been detected and that the IAD at the bank had also failed to detect the wrong manipulation of the Rs 200 million, in particular the sums of Rs 25 million and Rs 11, 594, 520. 55, as this remained unnoticed.[70]

73. The court also found, as it should have, that the IAD would have uncovered the impugned transactions if it had taken a more systematic and diligent approach to the internal audit of the Fixed Deposit Department. It further held that the staff of 11 employees at the IAD, where there were no properly qualified internal auditors, was inadequate to audit 40 branches at a bank conducting a minimum of 150, 000 transactions daily, so that the Audit Department was not properly staffed to enable it to perform its duties.

74. The court additionally held that the failure to have an adequate Audit Committee with proficient members was "*a serious flaw in the mechanism of control at the MCB*"[71] and that in the absence of a proper Audit Committee the IAD was left without control and had no impetus to perform its job correctly.

75. We agree with the conclusions of the trial court that in the circumstances of this case, good management practice "*would have entailed that the overstay of Mr Lesage at the bank, should have been properly defined within an appropriate institutionalized framework like the MCB*", but that "*On the contrary, no mechanism was put in place to define the parameters of operation of Mr Lesage*".[72]

[69] Judgment, p. 2873 of the brief.
[70] Judgment, p. 2877 of the brief.
[71] Judgment, p. 2880 of the brief.
[72] Judgment, p. 2883 of the brief.

76. We accordingly concur with the learned Magistrates of first instance that the evidence undeniably shows that Mr R Lesage was in effect given "*carte blanche*" to deal with files although it was incumbent on the MCB, once Mr R Lesage's contract of employment had ended, to stop all facilities granted to him and to notify all bank personnel of any extension to his contract with a clear definition of his scope of responsibilities. The evidence of Mr Allet demonstrates that this was evidently not done.

77. The court thus found that "*the acts and doings of Mr Lesage vitiated the operation of a proper internal control system which rests in segregation of duties and check and balances to identify deviation from procedures as he was operating the system while at the same time being the head of department with supervisory duties. And this went unchecked for long resulting in the commission of the offence by Mr Lesage*."[73] It was further concluded that had there been supervision, it would have been impossible for Mr R Lesage to do what he did. In the light of all the evidence adduced, we find that these conclusions are unimpeachable.

78. Finally, we fully concur with the conclusions reached by the learned Magistrates when they held that "*the guilty intention of the Accused Company can be clearly inferred from the facts and circumstances of the case. The fact that the MCB has pertinently* [sic] *failed to take adequate internal control measures throughout years made the offences possible in as much as this culture thus created an environment conducive for frauds which have been perpetrated.*"[74]

79. As already stated at paragraph 66 of this judgment, all the remaining grounds of appeal question the findings of fact made by the trial court. In the case of **Soonarane S. M. K. v The State** [2021 SCJ 222], the following observations in **Edoo M B T v The State** [2015 SCJ 9], were reproduced: "*It is not because counsel does not agree with the analysis of the trial Magistrate or because counsel is of the opinion that the Magistrate should have taken another approach that he can rush to the appellate court and ask for the findings of facts to be upset. … It therefore follows that the grounds of appeal and the skeleton arguments must set out quite clearly and in concrete terms what amounts to the gross misapprehension of the facts or, in other words, what are the elements which are said to be perverse.*"

[73] Judgment, p. 2885 of the brief.
[74] Judgment, P. 2889 of the brief.

80. We agree with Mr R Ahmine for the second respondent that the appellant has in fact failed to identify which aspects of the findings in fact or in law of the trial court are so perverse as to warrant our intervention on appeal.

81. It has been reaffirmed time and again that "*an appellate Court should not lightly reverse a finding of the trial Judge on a question of fact unless there are sufficient indications that on trial the facts have not been well appreciated.*"[75]

82. In **D. Lalldeosing v The State** [2008 SCJ 151], it was said that "*An appellate jurisdiction is ill-placed to intervene in a matter where the appeal is based on facts of which the trial court's appreciation remains sovereign unless the conclusion reached by the trial magistrate appears to be perverse.*"

83. For reasons which we have already outlined, we find that the trial court made a clear and thorough analysis of the facts adduced before them, based on which it found that the charge under section 3(2) of the FIAMLA was proved against the appellant beyond reasonable doubt.

84. We accordingly see no reason to disturb the findings made by the trial Magistrates based on their detailed assessment of the evidence.

85. On a separate note, although this appeal does not challenge the sentence imposed by the learned Magistrates, we are fully conscious that substantial delay has been incurred since conviction. Although there can be "*no question of setting aside the conviction*"[76], we consider that a reduction in sentence will be appropriate in order to reflect the time elapsed since the offence was committed more than two decades ago.

86. We therefore substitute a fine of Rs 1. 2 million for that of Rs 1.8 million imposed by the trial court.

[75] **Mootaloo v The Queen [1958 MR 333]**.
[76] **Elaheebocus Haroon Rashid v State of Mauritius [2009 MR 323].**

87. We otherwise find that this appeal has no merit and, all grounds having failed, we dismiss it, with costs.

N. F. Oh San-Bellepeau

Judge

M. J. Lau Yuk Poon

Judge

This 20th August 2025.

Judgment delivered by Hon. N. F. Oh San-Bellepeau

For Appellant	**:**	**Mr T Koenig, Senior Attorney** **Mr E Ribot SC, Mr M Sauzier SC, Mr L E Ribot Jr. &** **Ms N Behary-Paray & Mr N Dookhit, of Counsel**
For Respondent No. 1	**:**	**Ms N Seetaram, Attorney-at-Law** **Ms P Bissoonauthsingh,** **Mrs A Rangasamy-Parsooramen &** **Mr H Jeeha, of Counsel**
For Respondent No. 2	**:**	**Ms D Dabeesing Ramlugan, Deputy Chief State Attorney** **Mr R Ahmine, Director of Public Prosecutions &** **Mr Y Ramsohok, State Counsel**