

**ARMON-DRESSLER S. v INDEPENDENT COMMISSION AGAINST  
CORRUPTION**

**2020 SCJ 139**

**Record Nos. 8950 & 8952**

**THE SUPREME COURT OF MAURITIUS**

**In the matter of:-**

**Siven Armon-Dressler**

**Appellant**

**v.**

**Independent Commission Against Corruption**

**Respondent**

**In the presence of:-**

- 1. AfrAsia Bank Limited**
- 2. The Director of Public Prosecutions**

**Co-Respondents**

**And in the matter of:-**

**AfrAsia Bank Limited**

**Appellant**

**v.**

**Independent Commission Against Corruption**

**Respondent**

**In the presence of:-**

- 1. Siven Armon-Dressler**
- 2. The Director of Public Prosecutions**

**Co-Respondents**

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## **RULING**

It is the common stand of all the parties that both appeals be heard together. This ruling, however, concerns a preliminary objection raised by the respondent in the first appeal only (Record No.8950).

The preliminary objection is to the effect that the appellant should be debarred from submitting as per paragraphs 32 to 40 of his skeleton arguments under ground 2 of the first appeal. The said paragraphs (32 to 40) should not be considered by the Court inasmuch as they do not arise from ground 2 and they are tantamount to raising a new ground of appeal outside delay.

Ground 2 reads as follows:-

*“Because the learned Magistrate erred in holding that the “offence under scrutiny is a strict liability one”.”*

The appellant in the first appeal was charged with making a payment in cash (in euros) in excess of Rs.500,000, in breach of sections 5(1) and 8 of the Financial Intelligence and Anti-Money Laundering Act, under counts 1 and 2 of an information before the Intermediate Court. The learned Magistrate found the appellant guilty as charged under both counts. He held that the offence against the appellant was a strict liability one and that whether the latter had a guilty knowledge was therefore not an issue. He further held that, in any event, even if it was an offence requiring *mens rea*, he would still find the appellant guilty as ignorance of the law, which was invoked by the appellant, was not a defence.

Learned Counsel for the respondent has submitted as follows: whereas the specific issue under ground 2 is whether the present offence is one of strict liability, the issue raised under paragraphs 32 to 40 of the appellant’s skeleton arguments is whether the latter could have availed himself of the defence of *“officially induced mistake of law”*. These are 2 different issues and would have been considered by the learned Magistrate, if he had to, at different stages of his judgment. Moreover, there are no exceptional circumstances which would allow the Court to exercise its discretion to entertain this new issue at this stage.

Learned Counsel for the appellant, for his part, has submitted that paragraphs 32 to 40 do not raise any new ground of appeal and are in fact part and

parcel of his submissions under ground 2. The defence raised under these paragraphs is very closely related to the issue to be determined under ground 2.

Learned Counsel for co-respondent No.1 (AfrAsia Bank Ltd) has concurred with the appellant's submissions whereas learned Counsel for co-respondent No.2 (the Director of Public Prosecutions) has not taken any firm stand on the preliminary objection raised by the respondent.

We have duly considered the submissions of all learned Counsel. As rightly pointed out by the respondent, it is well settled that an appellant will not be allowed, in his skeleton arguments, to raise new grounds of appeal or new issues not contemplated in a ground of appeal through the back door well outside the statutory delay (**Rama v The State of Mauritius** [2010 SCJ 249], **Langué v The State** [2017 SCJ 55] and **Ramgoolam v The State** [2019 SCJ 35]).

In the present case, the issue to be determined is whether the appellant is attempting to raise a new ground of appeal or a new issue, as it is through the back door, outside the statutory delay at paragraphs 32 to 40 of his skeleton arguments under ground 2.

Under ground 2, the issue turns on whether the offence with which the appellant was charged is a strict liability one. In other words, ground 2 raises the issue as to whether there is a need for the prosecution to establish *mens rea* as an element of the present offence. If the answer were to be in the affirmative, the ensuing question would be whether the appellant had the necessary guilty knowledge.

In this context, the appellant stated in his written out-of-court statement that he had read from the website of the Mauritian Government that foreign currency may be brought into Mauritius without restriction. It is alleged that he reasonably relied in good faith on what he had read, hence the defence raised at paragraphs 32 to 40 of his skeleton arguments that it was a case of "*officially induced mistake of law*".

We are of the view that this defence would be relevant to the issue as to whether the appellant had the required *mens rea*, were it to be held that the offence is not a strict liability one. Whether the appellant would be able to avail himself successfully of this defence is of course an entirely different matter to be thrashed out on the merits. Suffice it to say that, for our present purposes, we find that the defence raised by the appellant at paragraphs 32 to 40 of his skeleton arguments is intricately

and closely linked with the core issue under ground 2, namely whether the present offence requires proof of *mens rea* by the prosecution. We agree with learned Counsel for the appellant that paragraphs 32 to 40 do not purport to raise any new issue or new ground of appeal but are in fact part and parcel of the submissions to be made under ground 2.

For the above reasons, we set aside the preliminary objection raised by the respondent in the first appeal (Record No.8950). Both appeals will be fixed for merits by circular.

**D. Chan Kan Cheong**  
Judge

**K. D. Gunesh-Balaghee**  
Judge

**19 June 2020**

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**Judgment delivered by Hon. D. Chan Kan Cheong, Judge**

**Record No. 8950**

<b>For Appellant</b>	<b>:</b>	<b>Mr O. Bahemia, Attorney-at-Law Mr N. Ramburn, SC together with Mr S. Hussenbocus, of Counsel</b>
<b>For Respondent</b>	<b>:</b>	<b>Mr S. Sohawon, Attorney-at-Law Mr H. Ponen, of Counsel</b>
<b>For Co-Respondent No.1</b>	<b>:</b>	<b>Mr T. Koenig, SA Mr R. Chetty, SC together with Mr C. Kong, of Counsel</b>
<b>For Co-Respondent No.2</b>	<b>:</b>	<b>Principal State Attorney Mr R. Ahmine, Deputy Director of Public Prosecutions together with Ms R. Segobin, State Counsel</b>

**Record No. 8952**

<b>For Appellant</b>	<b>:</b>	<b>Mr T. Koenig, SA Mr R. Chetty, SC together with Mr C. Kong, of Counsel</b>
<b>For Respondent</b>	<b>:</b>	<b>Mr S. Sohawon, Attorney-at-Law Mr H. Ponen, of Counsel</b>
<b>For Co-Respondent No.2</b>	<b>:</b>	<b>Principal State Attorney Mr R. Ahmine, Deputy Director of Public Prosecutions together with Ms R. Segobin, State Counsel</b>