

ICAC v Descombes & Others

2020 INT 39

CN1069/14

THE INTERMEDIATE COURT OF MAURITIUS
(Criminal Side)

In the matter of:-

The Independent Commission Against Corruption

v/s

- 1. Descombes Marie Belinda Jennifer born Ah Sing**
- 2. Descombes Marie Micaela Karen born Mauraknah**
- 3. Muraknah Marie Christiane Francoise**

JUDGMENT

Accused No.1, No. 2, and No. 3 (hereinafter referred to as A1, A2, and A3 respectively) each stand charged of **Money Laundering, contrary to ss. 3(1)(b), 6(3), and 8 of the Financial Intelligence And Anti-Money Laundering Act 2002 (hereinafter referred to as FIAMLA)** as follows respectively:

- 1) A1 stands charged under each of Counts 1 to 7;
- 2) A2 stands charged under Count 8; and
- 3) A3 stands charged under each of Counts 9 to 11.

The Accused Parties pleaded Not Guilty to their respective Counts as amended, and were each represented by Learned Defence Counsel.

Learned Counsel for the Independent Commission Against Corruption (hereinafter referred to as **ICAC**) conducted the case for the Prosecution.

The Proceedings were held partly in English and partly in Creole.

The Prosecution Case

It was the case for the Prosecution that:

- 1) A1 was wilfully, unlawfully and criminally in possession of a property which, in whole or in part directly represented, the proceeds of a Crime, where she had reasonable grounds for suspecting that the property was derived, in whole or in part, directly from a Crime:
 - a) **Under Count 1:** A1 on or about 17-07-09, in the District of Port-Louis, possessed to the prejudice of Rose Women's Association Of Cité Vallijee (hereinafter referred to as RWACV), the sum of Rs40 000/-, which sum she had reasonable grounds for suspecting to have been derived, in whole or in part, directly from a criminal activity;
 - b) **Under Count 2:** A1 on or about 23-08-09, at Port-Louis, possessed to the prejudice of RWACV, the sum of Rs8 000/-, which sum she had reasonable grounds for suspecting to have been derived, in whole or in part, directly from a Criminal activity;
 - c) **Under Count 3:** A1 on or about 28-08-09, at Port-Louis, possessed to the prejudice of RWACV, the sum of Rs40 000/-, which sum she had reasonable grounds for suspecting to have been derived, in whole or in part, directly from a criminal activity;
 - d) **Under Count 4:** A1 on or about 25-10-09, at Port-Louis, possessed to the prejudice of RWACV, the sum of Rs60 800/-, which sum she had reasonable grounds for suspecting to have been derived, in whole or in part, directly from a criminal activity;
 - e) **Under Count 5:** A1 on or about 30-10-09, at Port-Louis, possessed to the prejudice of RWACV, the sum of Rs53 600/-, which sum she had reasonable grounds for suspecting to have been derived, in whole or in part, directly from a criminal activity;
 - f) **Under Count 6:** A1 on or about 12-11-09, at Port-Louis, possessed to the prejudice of RWACV, the sum of Rs53 600/-, which sum she had reasonable

grounds for suspecting to have been derived in whole or in part, directly from a criminal activity;

- g) **Under Count 7**: A1 on or about 14-11-09, at Port-Louis, possessed to the prejudice of RWACV, the sum of Rs 53 600/-, which sum she had reasonable grounds for suspecting to have been derived, in whole or in part, directly from a criminal activity;
- 2) A2, **Under Count 8**, on or about 05-11-09, at Port-Louis, did wilfully, unlawfully and criminally receive a property which, in whole or in part, directly represented the proceeds of a Crime, where she had reasonable grounds for suspecting that the property was derived, in whole or in part, directly from a Crime, i.e. that in or about the month and place as aforesaid, A2 received the sum of Rs60 800/-, which sum she had reasonable grounds for suspecting to have been derived, in whole or in part, directly from a criminal activity; and
- 3) A3 did wilfully, unlawfully and criminally receive a property which, in whole or in part directly represented the proceeds of a Crime, where she had reasonable grounds for suspecting that the property was derived, in whole or in part, directly from a Crime:
- a) **Under Count 9**: in or about the month of July 2009, at Port-Louis, A3 received the sum of Rs150 000/-, which sum she had reasonable grounds for suspecting to have been derived, in whole or in part, directly from a criminal activity;
- b) **Under Count 10**: in or about the month of August 2009, at Port-Louis, A3 received the sum of Rs105 000/-, which sum she had reasonable grounds for suspecting to have been derived, in whole or in part, directly from a criminal activity; and
- c) **Under Count 11**: in or about the month of September 2009, at Port-Louis, A3 received the sum of Rs59 000/-, which sum she had reasonable grounds for suspecting to have been derived, in whole or in part, directly from a criminal activity.

The Defence Case

A1

A1 denied the charges under each of Counts 1 to 7 in her 07 unchallenged out-of-Court statements (Docs. A, A1 to A6).

In Court, A1 elected not to adduce any evidence, as was her Right.

A2

A2 denied the charge under Count 8 in her 03 unchallenged out-of-Court statements (Docs. B, B1, and B2).

In Court, A2 elected not to adduce any evidence, as was her Right.

A3

A3 denied the charges under each of Counts 9 to 11 in her 03 unchallenged out-of-Court statements (Docs. C, C1, and C2).

In Court, A3 elected not to adduce any evidence, as was her Right.

Analysis

In relation to all Counts

The Court has duly considered all the evidence on Record and all the circumstances of the present matter, and the Court has watched the demeanour of the Prosecution Witnesses with the utmost care, and the Court has given due consideration to the Submissions of both Learned Defence Counsel and that of Learned Counsel for the Prosecution.

In relation to A1, under each of Counts 1 to 7, the Prosecution bear the burden of proving beyond reasonable doubt, pursuant to s. 3 of FIAMLA:

- 1) A1;
- 2) Possessed Property;
- 3) Which in whole or in part directly represented the proceeds of a Crime; and
- 4) Had reasonable grounds for suspecting the property was derived, in whole or in part, directly, from a criminal activity.

In relation to A2 under Count 8, and in relation to A3 under each of Counts 9, 10, and 11, the Prosecution bear the burden of proving beyond reasonable doubt, pursuant to s. 3 of the FIAMLA:

- 1) A2 under Count 8, and A3 under each of Counts 9 to 11:
- 2) Received Property;

- 3) Which in whole or in part directly represented the proceeds of a Crime; and
- 4) Had reasonable grounds for suspecting the property was derived, in whole or in part, directly, from a criminal activity.

In the present matter, in relation to all Counts, the Prosecution elected, as it was entitled to as expressly provided by Law, not to aver any particular Crime, and there is no need to prove a particular predicate crime as per the Authority of **Audit v The State & Another** [\[2016 SCJ 282\]](#) in which the principles set out in the Authority of **DPP v Bholah** [\[2011\] UKPC](#) were applied:

In **DPP v Bholah (Supra)** the Judicial Committee held that “Proof of a particular predicate crime is not an essential “element” of the offence of money laundering.” It is therefore sufficient for the purposes of section 3(1) of FIAMLA that it was shown that the appellant was in possession of property, which is, in whole or in part, directly or indirectly represent the proceeds of any crime that is any criminal activity.

The Court has duly analysed all the unchallenged articles of evidence produced in the course of the Proceedings:

- 1) Statement of Account (Docs. D and D1) of the State Bank of Mauritius Ltd (hereinafter referred to as SBM) in relation to RWACV;
- 2) 01 bundle of invoices (Doc. E, and E1 to E10);
- 3) 01 bundle of 28 pages consisting of copies of SBM Savings Withdrawal Forms, Transfer Request Forms, and cheques (Docs. F, and F1 to F27);
- 4) Documents certified by SBM (Docs. G, and G1 to G4);
- 5) Documents in relation to the HIV/AIDS Project and Details Of Payment from July to December (Docs. H, and H1 to H5);
- 6) 01 notebook and 01 envelope (Docs. J and J1);
- 7) 02 statements of A1 and 01 statement of Mrs Anne Sylvie Baptiste born Auguste (hereinafter referred to as W10) (Docs. K1 and K2, and K respectively);
- 8) 01 Attendance Sheet (Doc. L) from World Speed Consolidators Ltd; and
- 9) 02 bags and 02 pouches (Exhibit I collectively); and
- 10) 02 bags (Exhibit II collectively).

It was not disputed that prior to 2009, RWACV had submitted all its Returns to the Registrar of Associations, and that the RWACV could not submit any Return for 2009, with the explanation that all the RWACV's documents were with the ICAC.

In the present matter, the Prosecution case rested on circumstantial evidence in relation to all Counts, and the Court gives itself the warning as to the dangers of acting on circumstantial evidence and bears in mind the principles set out in the Authority of **DPP v Jagdawoo & Others** [2016 SCJ 100]:

In contrast to direct evidence, circumstantial evidence is evidence of “*relevant facts*” from which the existence or non-existence of facts in issue may be inferred. Circumstantial evidence “*works by cumulatively, in geometrical progression, eliminating other possibilities*” (**DPP v Kilbourne [1973] AC 729 at p. 758**). However, although the weight to be attached to circumstantial evidence is not in any way less than that attached to direct evidence, “*It must always be narrowly examined It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference*” (**Teper v Queen [1952] AC 480 at p. 489**).

Furthermore, it is highlighted in the Australian case of **Hillier [2007] 233 ALR 634 (22 March 2007)** that there is an imperative need to avoid a piecemeal consideration of the evidence in a circumstantial case. “*It is of critical importance to recognise, however, that in considering a circumstantial case, all of the circumstances established by the evidence are to be considered and weighed*” [para. 46]. “*All the circumstances of the case must be weighed in judging whether there is evidence upon which a jury may reasonably be satisfied beyond reasonable doubt of the commission of the crime charged.*” [para. 48].

A1

In relation to Counts 1 to 7

The following elements were not disputed, as per A1's unchallenged out-of-Court statements (Docs. A, A1 to A6).

A1 had filled in and signed all the documents (Docs. F, F1 to F27) produced in the course of the Proceedings, and confirmed that she had made all the payments as per the said Counts 1 to 7

herself personally, after having made all the said withdrawals from RWACV's Bank Account herself (Folios 102508/9 of Doc. A3, and Folios 102538 and 98829/30 of Doc. A4).

A1 further admitted that she would at times issue cheques on her personal name, after the Treasurer had signed, and that she, i.e. A1, herself would then cash the said cheques herself (Folio 102509 of Doc. A3). A1 also confirmed that the cheque book of RWACV remained with her, and that she would decide when to issue cheques, that she would then go and cash the said cheques, and would keep the said money herself (Folio 102540 of Doc. A4).

A1 further confirmed that she kept the said money with her once it had been withdrawn from RWACV's Bank Account (Folio 102538 of Doc. A4).

W10, whilst admitting the money was withdrawn from RWACV's Bank Account to pay for the expenses incurred by the said RWACV, categorically denied having signed on (Docs. F10, F11, F13, F14, and F15), which puts in doubt the authenticity of the said Savings Withdrawal Forms (Docs. F10, F11, F13, F14, and F15). Be that as it may, bearing in mind A1's clear admission she had signed on the said documents as per A1's unchallenged out-of-Court statements as highlighted above, the only conclusion which flows therefrom is that A1 was in possession of the said money withdrawn from RWACV's said Bank Account.

From a careful perusal of A1's unchallenged out-of-Court statements (Doc. A, A1 to A6), A1 confirmed having signed on each and every SBM document (Docs. F, F1 to F27). The line of cross-examination adopted by Learned Defence Counsel in relation to Mr Premanand Dosieah (hereinafter referred to as W6) is therefore irreconcilable with A1's abovementioned unchallenged version.

As per each of Counts 1 to 7, in light of all the above, the Court is of the considered view it has not been disputed that A1 was in possession of the said money at the relevant times, and that it has therefore been established that A1 was in possession of the said property as per each of Counts 1 to 7 at the relevant times.

It was as from 2009, when the said money was credited to RWACV's Bank Account, that A1 got involved in the said RWACV, even acting as President of the said Association. The said timing assumes all its importance given the fact that A1 knew that RWACV was a dormant Association, and still gave a favourable Report for the said Association, such that it received a grant of Rs2000/- from the Ministry (Folios 72029-30 of Doc. A), but also given the very fact that it was

A1 who caused a proposal to be prepared on behalf of the said Association, which she herself submitted to the Ministry, despite not being a Member of the said Association at the time (Folio 77577 of Doc. A1), and A1 confirming the only other person aware of same was Mrs Marie Anne Ramboro born Camangue (hereinafter referred to as W3), the Executive Committee of RWACV not being aware of same (Folio 853167 of Doc. A2). And once the said money was credited to RWACV's Bank Account, A1 got even more involved in the said RWACV.

A1 then caused the Secretary of RWACV to write to the SBM in order for the Bank statements of RWACV to be sent to her residential address (Folio 72016 of Doc. A and Folio 85313 of Doc. A2), which is in itself very suspicious, the more so as the said request was made after the said grant of Rs1,6/- Million was received by RWACV (Folio 85313 of Doc. A2). It appears that A1 did so, in order to keep a total control over the said money.

And for A1's said request to look legitimate and in order, A1 needed to have the Certificate of Registration of RWACV, as well as its stamp, which A1 obtained from W3 as follows.

W3 unequivocally stated that no one but her was President of RWACV, and that she had handed over the said Certificate and stamp of the RWACV to A1 in relation to the opening of another Association by A1.

The Court has noted that several inconsistent parts of W3's statement were put to her, and that several times W3 stated there were things she had forgotten.

The Court is however satisfied that W3 was speaking the Truth in substance as to the circumstances of the present matter, and that the Court can safely act on W3's testimony, applying the principles set out in the Authority of **Vythilingum v The State** [\[2017 SCJ 379\]](#):

Giving evidence in Court is not a memory test and failure to recollect with precision all the circumstances and details of an incident is understandable. What is important is for the Court to be satisfied that a witness is speaking the truth in substance.

The Court also bears in mind that W3 was deponing in 2019, for incidents which allegedly occurred in 2009, i.e. about 10 years earlier, and hence makes allowances for the passage of time.

From W3's testimony, the Court is satisfied it has been established that A1 was in possession of RWACV's stamp in 2009. Further, A1 also admitted being in possession of the RWACV's

Certificate of Registration (Folios 72024-5 of Doc. A). A1's explanation was that she needed same for the specific purpose of submitting the HIV Project to the Ministry of Health. At no point in time did A1 aver that she returned same to W3 once the said project had been submitted to the Ministry of Health. And at no stage was W3's testimony challenged as to the fact that no elections were held in 2009 and that she, i.e. W3, was the President of RWACV.

The Court therefore finds that it has been established that at the relevant times, A1 was in possession of the said Certificate of Registration and the said stamp of RWACV.

W10 deponed in Court to the effect that, at A1's request, she became Assistant Treasurer of RWACV without any elections being held, and that A1 was the one telling her what had to be bought, and that she, i.e. W10, was not taking any decisions.

A1's contention was that elections were held in April or May 2009, when all Members were present, which was when W10 was elected as Treasurer (Folio 72028 of Doc. A), and then that W10 was not present at the said Elections (Folio 77574 of Doc. A1). It cannot be that both all Members were present at the time of the elections, and then that W10 was absent at the said elections, the more so as W10 was already Assistant Treasurer, and hence was a Member of the said RWACV's Executive Committee. A1 thereby contradicted herself.

The Court has duly assessed the testimony of W10, and has watched the demeanour of W10 with the utmost care. The Court has noted that W10 contradicted herself when she stated in Examination-in-Chief that she had become Assistant Treasurer of RWACV, and then stating in cross-examination that she was the Treasurer of RWACV. Be that as it may, W10's testimony remained unchallenged as to the fact that she became Treasurer of RWACV without any elections being held.

The Court is satisfied that it can safely act on W10's testimony, W10 striking the Court as being a Witness of Truth, and accepts W10's testimony to the effect that she became Treasurer of RWACV at A1's request, without any elections being held.

A1 caused A2 to prepare the accounts for the said RWACV after A1 had compiled same, as A1 was the one in possession of all documents, for her own use, and A1 confirmed that the said accounts had not been approved by the Executive Committee of the said RWACV (Folios

106116/7 of Doc. A5). A1 also admitted not having abided by the Rules of RWACV, by making payments over Rs100/- in cash instead of cheques (Article 12 paragraph 1(i) of (Doc. G), and this for her own convenience (Folios 102541/2 of Doc. A4).

A1's contention she had requested for a cheque book facility in order to make payments by way of cheque (Folio 77575 of Doc. A1 and Folio 102539 of Doc. A4) is put in doubt by A1's own explanation that she had made all payments in cash herself (Folios 77579, 77582 of Doc. A1), and further A1 agreed she had not abided by the Rules of the RWACV when she had made payments in excess of Rs100/- in cash.

Also, A1 could not explain the variance between the expenses incurred by RWACV according to her, and the money withdrawn from RWACV's Bank Account as evidenced by the Bank Statements shown to her during the Enquiry (Folio 106119 of Doc. A5), nor could A1 explain the variance between the receipts produced to the ICAC during the Enquiry and the list of expenses for the same period (Folio 106120 of Doc. A5).

Mrs Shrimatee Pramila Devi Ramdenee (hereinafter referred to as W19) inter alia stated that in 2009, she was Head of Unit at the National Women's Council (hereinafter referred to as NWC), and that A1 was at the time a Family Support Officer (hereinafter referred to as FSO). W19 however stated she did not remember RWACV, and that what she had said in her statement was possibly true, and that she could not say whether in 2008, an FSO was allowed to be a Member of a Ladies' Association or not.

In view of the state of W19's testimony, as highlighted above, the Court is of the considered view that W19's testimony did not assist the Court in determining the central issues of the present matter. At any rate, it was not disputed that A1 was in fact an FSO, as per A1's own unchallenged out-of-Court statement (Folio 72013 of Doc. A).

In relation to Counts 1 and 3, Mrs Anne Marie Claire Rose (hereinafter referred to as W15) testified in Court to the effect that she had never signed on (Doc. E in relation to Count 1 and Doc. E2 in relation to Count 3) and had never received any sum of Rs40 000/- for the manufacture of 1000 mobile bags for each of Counts 1 and 3 respectively.

In cross-examination, W15 stated at first that she had not signed on the said (Docs. E and E2), although they bore a signature that resembled her own signature. W15 then went on to state that in fact A1 had remitted to her a blank A4 page (in relation to Doc. E) asking her to sign on same, which she did.

It is on Record that W15 was never part of any Ladies' Association, and that she had never heard of RWACV.

At all stages, W15 denied having done any work in relation to the said Counts 1 and 3.

The Court gives itself the Warning as to the dangers of acting on W15's testimony, given W15 is A1's Sister-in-Law.

In light of W15's testimony to the effect she had never signed (Docs. E and E2) and then that the signatures on (Docs. E and E2) resembled hers, coupled with W15's unchallenged sworn testimony to the effect A1 had given her a blank A4 page to sign, which she did, the Court is of the considered view that the authenticity of the said (Docs. E and E2) has been put in doubt, and therefore finds that it can safely infer, from all the circumstances of the present matter, that W15 did no work for RWACV, signed a blank A4 page at A1's request and not (Docs. E and E2), and did not receive Rs40 000/- for each of Counts 1 and 3.

In relation to Count 2, W3 denied having ever done any work for RWACV, and denied the veracity of the Invoice (Doc. E1). It is to be noted that the said Invoice (Doc. E1) does not bear W3's signature, but only her name.

The Court is satisfied it can safely act on W3's testimony, W3 deponing in a convincing and clear manner as to the central issues of the present matter, for the reasons given above.

From all the above, the Court is satisfied that the authenticity of (Doc. E1) has been put in doubt and that it has been established that W3 did not receive Rs8000/- from RWACV, and that she performed no work for RWACV in August 2009.

In relation to Count 4, Mrs Joyce Jocelyne Coda Baccus (hereinafter referred to as W14) denied having ever received any money from RWACV as per Invoice (Doc. E3), whilst admitting having signed thereon. W14 admitted not remembering how her signature got onto the said document.

In relation to Count 6, W14 denied having received the money as per Invoice (Doc. E5). Whilst admitting having signed on the said Invoice (Doc. E5), W14 admitted not remembering how she had come to sign the said document.

In cross-examination, W14 confirmed that the said Invoices (Docs. E3 and E5) were in relation to work done.

Although it is not clear whether W14's reply in fact meant that she was the one who had performed the said work, the fact remains that W14's testimony was to the effect that the said Invoices (Docs. E3 and E5) were in relation to work done.

This contradiction in W14's testimony, coupled with the fact that W14 had to be pressed for an answer several times, and the fact that W14 stated she did not remember how she came to sign the said documents (Docs. E3 and E5), whilst bearing in mind that the testimony of a Witness is no memory test (**Vythinligum (supra)**) and making allowances for the passage of time given W14 was deponing in Court in 2019 for incidents which had allegedly occurred in 2009, i.e. about 10 years earlier, the Court is of the considered view that it would be most unsafe to act on W14's sole uncorroborated testimony in relation to Counts 4 and 6, as there are doubts which remain in the Prosecution case as regards Counts 4 and 6.

In relation to Count 5, Mr Jean Lionet Ah Sing (hereinafter referred to as W12) deponed inter alia that he had signed on the Invoice (Doc. E4) when same was a blank A4 page, and that he had never provided any catering services to RWACV, and did not know the said RWACV.

W12 confirmed having given a first statement stating therein he had indeed provided the said catering services for Rs53 600/-, and explained that he had given same at A1's request. W12 then stated that he had given a second statement to the effect he had never provided any such services to RWACV and had not received the said money as he had realised the **ICAC** was a serious matter and he had to tell the Truth.

The Court gives itself the Warning as to the danger of acting on W12's testimony, given W12 is A1's Brother.

Be that as it may, W12's explanation struck the Court as being genuine, and W12 appeared to be a Witness of Truth, bearing in mind W12 was deponing against his own Sister in Court. W12 explained the delay between his two statements was due to his ill-Health, and there is no evidence on Record to contradict, or even remotely put in doubt, the said explanation. The Court is satisfied that no doubt was cast on W12's testimony.

For all the reasons given above, the Court is of the considered view that it can safely act on W12's testimony to the effect that he had signed on (Doc. A4) when same was a blank page at A1's request, that he had performed no catering services for RWACV, and had received no money from RWACV.

In relation to Count 7, Mrs Marie Dolly Poona (hereinafter referred to as W13), testified to the effect that she had never been a Member of RWACV, nor had she heard of the said RWACV.

W13 confirmed having signed on (Doc. E6), explaining that A1 had asked her to put her name on a blank A4 sheet, as same was needed for a Ladies' Association, that she trusted A1 and did so, but that the said paper was blank.

W13 denied having carried out any catering services for RWACV.

The Court is alive to the danger of acting on W13's testimony, given the very fact that W13 is A1's Sister.

The Court has watched the demeanour of W13 with the utmost care, and W13 struck the Court as a Witness of Truth, who had no personal agenda, W13 readily admitting having signed on the said blank A4 page, and maintaining throughout the Proceedings never having been part of any Ladies' Association, as she had no time for same, having never heard of RWACV, and having never done any catering services for the said RWACV.

W13 unambiguously stated she had signed on the said blank A4 page at A1's request as same was needed for a Ladies' Association.

No doubt was cast on W13's testimony, who maintained her version in Court. W13 deponed in a straightforward manner, not wavering in the least, bearing in mind W13 was deponing against her own Sister, i.e. A1, and the Court finds no reason not to act on W13's testimony.

In light of W13's clear and unequivocal testimony she had never done any catering services for RWACV and had never received any money from RWACV, the only irresistible inference to be drawn is that (Doc. E6) is not a genuine invoice.

W12, W13, and W15 deponed along the same lines as to how they came to sign blank A4 pages at A1's request. No doubt was cast on this aspect of their respective testimony. The Court is therefore of the considered view that it can safely infer that A1 attempted to justify the withdrawals she was making from RWACV's Bank Account by way of the said Invoices allegedly signed by W12, W13, and W15, the genuineness of which has clearly been put in doubt, in light of the clear and cogent testimony of W12, 13, and W15 as highlighted above.

All the above factors clearly tend to suggest that A1 was taking an active role in putting in place the several pieces of the puzzle, which would enable her to commit the said offences.

A1 needed the Certificate of Registration and the stamp of RWACV, which she obtained, as highlighted above, in order to give a veneer of genuineness to the "Extrait Du Compte Rendu" (Doc. G) which would justify the request for the change of address sent to the SMB (Doc. G4). The Court also notes that the said request was made only in relation to RWACV's Bank Account on which the said grant of Rs1, 6/- was credited.

A1 was not allowed to be in possession of the said Certificate of Registration and Stamp of RWACV, as she was not a duly elected Member of RWACV, as evidenced by W10 and W3's unequivocal testimony.

Once this change of address was done, as evidenced by the Bank Statement (Docs. D and D1), A1 was equipped to withdraw the said money as she pleased, as evidenced by W10's testimony, as highlighted above. The Court is comforted in reaching the said conclusion given A1's own explanation she had requested for a cheque book facility, which she obtained, but failed to abide by the RWACV's Rules, by making payments in excess of Rs100/- in cash for her own convenience. Further, the whole scheme appears to have been a one-person show, with A1 being in control of the RWACV's Bank Accounts and transactions, and A1 keeping all documents herself, including the cheque book, the receipts, and causing A2 to prepare the expenses and accounts based under her instructions, as highlighted above.

And A1 attempted to justify the withdrawals made on the said RWACV's Bank Account through the Invoices allegedly signed by W12, W13, and W15, for services done for the account of RWACV. Each of the said Witnesses denied same, as highlighted above.

A1 therefore necessarily, not only had reasonable grounds for suspecting, but in fact knew, that the said property, was derived in whole or in part, directly from a Crime, A1 being in fact the Mastermind behind the whole scheme.

In light of all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, the Court is of the considered view that:

- 1) In relation to each of Counts 1, 2, 3, 5, and 7: the only irresistible, logical, and reasonable inference to be drawn is that A1 was in possession of the said property, i.e. the said money, which property in whole or in part represented the proceeds of a Crime, where A1 had reasonable grounds for suspecting the said property was derived, in whole or in part, directly, from a criminal activity; and
- 2) In relation to each of Counts 4 and 6: that there are doubts which remain in the Prosecution case, which doubt must necessarily go to A1.

A2

Count 8

It was not disputed that A2 became Assistant Treasurer of RWACV in May-June 2009 without any elections being held (Folio 80189-80191 of Doc. B).

A2 confirmed having made no reconciliation between the receipts and the bank statements for RWACV when preparing the return for RWACV (Folio 104611 of Doc. B1), and even admitted that she could not confirm whether the said expenses were in fact made or not (Folio 104613 of Doc. B1). A2 also admitted having prepared the said return based on what A1 had told her (Folio 104615 of Doc. B1). This is in total contradiction with A2's version that she would prepare the returns each month based on the receipts and SBM bank statements (Folios 104606 and 104609 of Doc. B1).

All the above factors lead to the reasonable and irresistible inference that A2 knew full well that the said figures were not accurate, and were in fact not true. This is further supported by the very fact that A2 started preparing the said return (Doc. H), based on the figures given to her by A1, well after the ICAC had started its Enquiry (Folios 104611-2 of Doc. B1). Had the returns

been prepared as required by the Rules (Doc. G3), there would have been no need for A2 to prepare the said return (Doc. H) after the ICAC Enquiry had started. It stands to reason, therefore, that the very fact that the said return was prepared after the ICAC Enquiry had started, no returns were being prepared as set out in Article 12(1)(e) of the Rules of RWACV (Doc. G3).

A2 explained having received Rs60 800/- from A1, which money she used for her personal use (Folio 106125 of Doc. B2). This is in total contradiction with A2's version to the effect she had received Rs60 800/- from A1, explaining same was for catering services she had provided for RWACV on 05-11-09 at Cité St Louis, Port-Louis, and that she had used the said money to buy ingredients to prepare the said meal of 05-11-09 (Folio 80197 of Doc. B).

The Court has noted that A2 explained having prepared dinner for RWACV on 05-11-09, and at about 18h00 on the said day, she brought the said meal to Pailles (Folio 80197 of Doc. B). The said meal was therefore a dinner, bearing in mind also that A2 explained having left her place of work early at about 12h00 on 05-11-09 in order to prepare the said meal (Folio 80197 of Doc. B).

However, the Invoice (Doc. E7), which A2 confirmed having signed (Folio 80199 of Doc. B), mentions the "Supply of lunch", and not dinner.

Further, although Mr Jean Noel Francois Gilbert Laverdure (hereinafter referred to as W23) deponed as to the fact that he could not personally confirm that A2 was present at her place of work on 05-11-09, as per the unchallenged Attendance Sheet (Doc. L), A2 is mentioned as being present at her place of work on 05-11-09. Applying the presumption of regularity, and in the absence of any evidence putting in doubt the said Attendance Sheet (Doc. L), the Court finds that it has been established that A2 was present at her place of work on 05-11-09, and hence puts in doubt that A2 had taken a half-day of Leave in order to prepare the said meal on behalf of RWACV. The Court also takes Judicial Notice of the fact "qu'on ne s'improvise pas traiteur".

A2 gave herself the lie in light of the many contradictions in her version, as highlighted above, and the Court finds that it has been established that A2 did not in fact prepare the said meal for RWACV on the said day, and that A2 received the said money without having provided the said catering services for RWACV.

In light of all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, the Court is of the considered view that the Prosecution has established beyond reasonable doubt that A2 received the property, i.e. the said money, as unequivocally admitted by A2, at the relevant time and place, which money in whole or in part directly represented the proceeds of a Crime, where A2 had reasonable grounds for suspecting the said property was derived, in whole or in part, directly, from a criminal activity.

A3

A3 admitted having received the said sums as per each of Counts 9, 10 and 11 from A1, and maintained same was as payment for her production of 1000 valisettes, i.e. small bags, which she delivered to A1 on three different occasions.

A3 explained she had no receipts for the materials she had bought, as either she had not kept any or she had burnt same, as she was not used to keeping any papers at her place.

At no point in time did A3 say that she had to work day and night to complete the said order of 1000 valisettes given she had other orders to complete too, or given there was any urgency in relation to the said 1000 valisettes.

The Court also notes that some valisettes and pouches were produced by A3 during the Enquiry.

In relation to Count 9, A3's version was to the effect that when A1 had paid her Rs150 000/-, she had bought 50 metres (hereinafter referred to as m) of material, with which she had manufactured a first batch of 300 valisettes, explaining further that she needed 75 centimetres (hereinafter referred to as cm) of material per valisette (Doc. C2).

From a simple mathematical calculation, 50 m is equal to 5000 cm. And 5000 cm divided by 75 cm, is about 66. This means that A3 would only have been able to manufacture a maximum of 65-66 valisettes with 5000 cm of material, which is very far from the 300 valisettes produced with the said material, as claimed by A3. The version of A3 is further put in doubt given A3's own explanation that after the said first batch of 300 valisettes had been manufactured, there was some material left (Doc. C2).

Further, A3 explained that it took her 30 minutes to manufacture one valisette (Doc. C2). This means that A3 needed 150 hours, which is 06 and a quarter day, to manufacture 300 valisettes, were A3 to work round the clock. This explanation of A3 does not sit well with A3's explanation that she worked day and night in order to complete the said order of 300 valisette. A3's own explanation was that towards the end of the month of July 2009, A1 had come to her place and had given her Rs150 000/- in cash to start the said work, and that she delivered the said first batch of 300 valisettes to A1 towards the end of August 2009. This clearly eliminates any possible contention that A3 had to work night and day for the said first batch to be produced, there being about one whole month, i.e. about 30 days, between the end of July 2009 and the end of August 2009, and A3 needing a total of 06 and a quarter days to complete the production of the said first batch of 300 valisettes, as highlighted above.

In relation to Count 10, A3's version was to the effect that A1 gave her Rs100 000/- in cash towards the end of August 2009, which she used to buy another 25 m of material, with which she produced a batch of 400 valisettes, which she delivered to A1 towards the end of October 2009, having worked day and night.

From a simple mathematical calculation, 25 m is 2500 cm, which divided by 75 cms needed per valisette, is about 33 valisettes, which is very far from the 400 valisettes as claimed by A3.

Further, given A3's claim that she needed 30 minutes to manufacture 01 valisette, A3 would have needed about 08 and a half days to manufacture 400 valisettes, which puts in doubt A3's claim she worked night and day for the said production, bearing in mind A3's contention she bought the said material towards the end of August 2009, and only delivered the said 400 valisettes to A1 towards the end of October 2009, i.e. about 02 months later which is equivalent to about 60 days.

The Court has noted that Count 10 mentions Rs105 000/-, whereas A3 mentioned Rs100 000/- (Doc. C2). The said variance was not made a live issue in the course of the Proceedings by the Defence. The Court further is of the considered view that the said variance is a minor one, and caused no prejudice to A3, who was fully aware at all times of the charges there were against her, and who was duly assisted by Learned Defence Counsel at all times.

In relation to Count 11, A3's version was to the effect that A1 had given her Rs59 000/- towards the end of November 2009, when she delivered a last batch of 300 bags to A1.

The Court is of the considered view that in the absence of any other cogent evidence on Record to put in doubt the fact that A3 produced the said bags for RWACV, the Prosecution has failed to establish conclusively that A3 did not in fact produce the said bags for RWACV.

The Court has noted that Count 11 mentions the month of September 2009, whereas A3 mentioned November 2009 in her statement (Doc. C2). Be that as it may, the Information as per Count 11 mentions the words "in or about the month of September 2009", and this variance was not made a live issue by the Defence. The Court is further of the considered view that A3 was fully aware at all times of the charge there was against her.

In relation to each of Counts 9 and 10, in light of all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, the Court is of the considered view that the only reasonable and logical inference to be drawn is that A3 received the said property, i.e. the said money as per each of Counts 9 to 11, which property in whole or in part directly represented the proceeds of a Crime, where A3 had reasonable grounds for suspecting that the said property was derived in whole or in part directly from a Crime, given A3 received the said money when she did not in fact produce 1000/- valisettes for RWACV.

In relation to each of Counts 1, 2, 3, 5, 7, 8, 9, and 10

The Court also finds that there are no other co-existing circumstances on Record which could weaken or destroy such an inference (**Teper (supra)**).

Conclusion

- 1) A1: a) **Under each of Counts 1, 2, 3, 5, and 7:** In light of all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, the Court is of the considered view that the Prosecution has proven its case against A1 beyond reasonable doubt under each of Counts 1, 2, 3, 5, and 7 only, **A1 is therefore found Guilty as charged on each of Counts 1, 2, 3, 5, and 7 only;** and
 - b) **Under each of Counts 4 and 6:** In light of all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, the Court is of

the considered view that there are doubts which remain in the Prosecution case as regards Count 4 and 6 only, A1 is therefore given the Benefit of the Doubt on Counts 4 and 6 only, and **Counts 4 and 6 only are each dismissed against A1;**

2) A2: **under Count 8:** In light of all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, the Court is of the considered view that the Prosecution has proven its case against A2 beyond reasonable doubt on Count 8, and **A2 is therefore found Guilty as charged on Count 8;** and

3) A3: a) **Under each of Counts 9 and 10:** In light of all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, the Court is of the considered view that the Prosecution has proven its case against A3 on each of Counts 9 and 10 beyond reasonable doubt, and **A3 is therefore found Guilty as charged on each of Counts 9 and 10;** and

b) **Under Count 11:** In light of all the evidence on Record, all the circumstances of the present matter and all the factors highlighted above, the Court is of the considered view that there are doubts which remain in the Prosecution case, which doubts must go to A3, and A3 is therefore given the Benefit of the Doubt on Count 11 only, which is accordingly dismissed against A3.

[Delivered by: D. Gayan, Magistrate]

[Intermediate Court (Criminal Side)]

[Date: 26 February 2020]