

IN THE INTERMEDIATE COURT (FINANCIAL CRIMES DIVISION)

CAUSE NUMBER: 51/2020

In the matter of:

POLICE

V

KERVIN LANGUE

RULING

The Charge and objection

1. The accused stands charged for the offence of money laundering in breach of **Sections 3 (1) (a), 6 (3) and 8** of the **Financial Intelligence and Anti Money Laundering Act**. There are eight counts in the information. The accused has pleaded not guilty to the eight counts and retained the services of counsel. There are five witnesses in the list of prosecution witnesses. On the trial day, the prosecution called witness 5. The purpose of calling witness 5 is to produce the previous conviction of the accused. In the list of witnesses, it can be noted that it is mentioned witness 5 is the *Officer in charge of Crime Records Office or any officer deputed to produce record of conviction of Kervin Langue vide Ref: CP/IC/10 (47) Vol 2 dated 19.06.12*. The defence objected to this course of action. The objection was resisted by the prosecution.

The prosecution and defence contentions



2. The gist of the prosecution's argument on the one hand is that the purpose of producing the previous conviction of the accused is not in connection with the latter's bad character but rather to show the surrounding circumstances of the offence being tried. On the other hand, the defence contends that doing so will violate the fundamental rights which an accused party has under the **Mauritian Constitution** and more precisely **Section 184** of the **Courts Act**¹ concerning admissibility of bad character evidence. This court has carefully considered the submissions of both learned counsel.

The underlying legal principles

3. In the United Kingdom, there is a specific procedure that caters for the admissibility of previous convictions during a trial other than for sentencing purposes. This procedure concerns admissibility of evidence that falls outside the definition of bad character under **Section 101** of the **Criminal Justice Act 2003** which provides that; In criminal proceedings evidence of the defendant's bad character is admissible if, but only if –
 1. all parties to the proceedings agree to the evidence being admissible;
 2. the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross examination and intended to elicit it;
 3. it is important explanatory evidence;
 4. it is relevant to an important matter in issue between the defendant and the prosecution;
 5. it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant;
 6. it is evidence to correct a false impression given by the defendant; or
 7. the defendant has made an attack on another person's character.
4. In the present matter, despite the ingenious submission of prosecution counsel who sought to persuade this court that admitting the previous conviction would be important to prove the origins of the property only. This court, nevertheless needs to point out that during the arguments, the prosecution has not been able

¹ See Annex 1 attached to this ruling: Section 184 of Courts Act.

to justify under which specific section of the law the previous conviction is relevant and admissible like in the United Kingdom. In other words, the prosecution has not convincingly shown which Mauritian law applies to the present circumstances regarding production of previous conviction during a trial and which creates an exception to **Section 184** of the **Courts Act**. For these reasons, in the absence of any specific law that specifically allows this to be done. This court by virtue of the principle of separation of powers cannot create any exception. This court is however fully alive to that the fact that the prosecution has to prove the facts in issue and that the prosecution is fully entitled to call any competent and compellable witness to describe the origins of the property, but as to any criminal antecedents of the accused to be produced, this is would clearly be inadmissible evidence as it will infringe the fundamental tenets that underpin the rights of an accused party during a criminal trial.



A. Joypaul.

Ag Intermediate Court Magistrate

14.4.2022.



ANNEX 1: Section 184 of the Courts Act 1945

Sub-Part II - Evidence in Criminal Cases

184. Competency of witnesses in criminal cases

- (1) Subject to subsection (2), every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person.
- (2) (a) A person so charged shall not be called as a witness in pursuance of this Sub-Part except upon his own application.
- (b) The failure of any person charged with an offence or of the wife or husband, as the case may be, of the person so charged, to give evidence, shall not be made the subject of any comment by the prosecution.
- (c) The wife or husband of the person charged shall not, save as provided in this Sub-Part, be called as a witness in pursuance of this Sub-Part, except upon the application of the person so charged.
- (d) Nothing in this Sub-Part shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage.
- (e) A person charged and being a witness in pursuance of this Sub-Part may be asked any question in cross-examination, notwithstanding that it would tend to criminate him as to the offence charged.
- (f) A person charged and called as a witness in pursuance of this Sub-Part shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless –

(i) the proof that he has committed or been convicted of such offence-is admissible evidence to show that he is guilty of the offence with which he is then charged;

(ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecution or the witnesses for the prosecution;
or

(iii) he has given evidence against any other person charged with the same offence.

(g) Every person called as a witness in pursuance of this Sub-Part shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

(h) Nothing in this Sub-Part shall affect section 51 of the District and Intermediate Courts (Criminal Jurisdiction) Act, or any right of the person charged to make a statement without being sworn.



