

ICAC v Yodhun Bissessur

2024 INT 63

FCD CN 133/2020

CN 553/2013

**IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)**

In the matter of:

Independent Commission Against Corruption

v/s

Yodhun BISSESSUR

JUDGMENT

1. The accused has been prosecuted for the offence of; a public official using his office for gratification under 9 counts of the Information, in breach of sections 7(1) and 83 of the Prevention of Corruption Act 2002 (POCA). The accused pleaded not guilty to the Information and was represented by Mr G. Glover SC, throughout the proceedings. Miss Bissoonauthsing, of counsel represented the prosecution.
2. It is noted that the case has been transferred to the Financial Crimes Division of the Intermediate Court and consequently restarted.

CASE FOR THE PROSECUTION

3. Witness no.2, Mr Nand Jhottee, Assistant Manager of Human Resources at the Prime Minister's Office stated that he was a Senior Human Resources Executive at the Ministry of Finance and Economic Development in 2012. The witness identified the following documents:

- a. An application by the accused to be authorised to value parastatal and non-Governmental properties against remuneration. The document was marked anew as **Doc AA**.
 - b. A letter dated 07.06.06 approving the above application and signed by the then Financial Secretary. The document was marked anew as **Doc BB**.
 - c. A letter dated 16.05.06, representing an extended application by the accused to be granted the authority to carry out valuation of assets, loans and book value of companies, marked anew as **Doc CC**.
4. Under cross-examination, the witness stated that his involvement in this case was only to provide the ICAC at their request with documents, three of which have been produced to court.
 5. Witness no3, Mr Prithvee Raj Ramsharee, stated that he was the Chief Valuation Technician in 2011. He provided a number of documents to the ICAC during the enquiry, regarding the valuation exercise of one Infinity Tower. These were compiled in a bundle, now marked as **Doc D (D1 to D45)**.
 6. During cross-examination, the witness stated that on 23.02.11, ICAC called at the valuation office to retrieve certain documents. Some documents were in possession of other employees at the valuation office. The accused was the director of the said office at the time and he made those documents available to the ICAC. The witness was delegated by the accused to go to the ICAC for enquiry purposes. The former went to the ICAC on two occasions.
 7. Witness no.1, Senior Investigator Monneron at the ICAC, produced the defence statement of the accused as **Doc E**. He stated that the enquiry started as a result of an anonymous complaint. Documents were requested from the valuation office but none, of relevance, was available. He then proceeded to SIC and BPML where documents were made available to the ICAC. Those documents have been listed in the defence statement. The allegations pertained to the valuation of properties of the following organisations; BPML, Acaccias Ltd, MKLEN Ltd, DAN Fashions Ltd, Atelier Créatif de l'Océan Indien Ltd (ACOI), Infinity Tower, Star Knitwear Ltd and Real Garments Ltd.
 8. The witness further produced the following documents:
 - a. **Doc F**, which was retrieved from the Registrar General's Office, concerning a property purchased by one Mrs Sip Shiong.

- b. **Doc G**, a case cover related to Doc F from the valuation department with RD No.48510.
- c. **Doc H (H1 to H4)**, consisting of an immovable property transaction sheet, the corresponding plan, a valuation report, sales evidence and a sheet written in manuscript. Those were attached to the anonymous complaint.
- d. **Doc J**, obtained from the Assessment Review Committee (ARC). It refers to a list of cases, including one labelled as ARC/RG/1373-06 Tan Sip Shiong William.
- e. **Doc K**, a letter from the ARC confirming the revision of the valuation of the property TV No.5975/38.
- f. **Doc L**, proceedings of the ARC culminating in the revision of valuation for the above property.
- g. **Doc M**, valuation report of the above property including a revision of the valuation by the valuation department in manuscript.
- h. **Doc M1**, working scrutiny for the above valuation.
- i. **Doc N**, valuation report of Mr Sadul.
- j. **Doc P**, proceedings of hearing at the ARC regarding property ARC/RG/1373-06 dated 05.06.08.
- k. **Doc Q**, proceedings of the above hearing dated 03.07.08.
- l. **Doc R**, sales evidence dated 04.06.08
- m. **Doc S**, letter from ARC dated 23.05.08 regarding the representation of Mrs William Tang Sip Shiong.
- n. **Doc T**, representations for review of decision by the said Mrs Sip Shiong.
- o. **Doc U**, dated 06.03.13 from the SIC and signed by witness no.12. It is a breakdown of payments effected to the accused for the valuation of the listed properties.
- p. **Doc V**, valuation report of property at Infinity Tower by the accused dated 23.02.10.
- q. **Doc V1**, another valuation report dated 05.03.10 and signed by the accused regarding Infinity Tower.
- r. **Doc W**, a valuation report which concerns the property Dan Fashion Ltd, signed by the accused and dated 05.10.09.
- s. **Doc X**, valuation report regarding the property of Star Knitwear Group Ltd, signed by the accused and dated 21.05.10.
- t. **Doc Y**, another valuation report regarding the property of Star Knitwear Group Ltd, signed by the accused and dated 04.06.10.
- u. **Doc Z**, valuation report regarding the property of MKLEN Ltd, signed by the accused and dated 05.10.09.

- v. **Doc AAA**, valuation report regarding the property of Acaccia Ltd, signed by the accused and dated 30.07.09.
 - w. **Doc BBB**, valuation report regarding the property of Real Garments Ltd, signed by the accused and dated 28.04.10.
 - x. **Doc CCC**, valuation report of the property of ACOI at Plaine Lauzun Industrial Zone, signed by the accused and dated 22.02.10.
 - y. **Doc DDD**, valuation report of the property of BPML at Beau Vallon, signed by the witness no.8 and dated 27.11.08.
 - z. **Docs EEE and EEE1**, two proforma VAT Invoices with letterhead of the accused obtained from the SIC concerning Star Knitwear Group Ltd dated 21.05.10 and 04.06.10, respectively.
 - aa. **Docs FFF and FFF1**, two VAT Invoices with letterhead of the accused certified by the SIC, concerning ACOI and Infinity Tower, dated 25.02.10 and 05.03.10, respectively.
 - bb. **Doc GGG**, proforma VAT Invoice with letterhead of the accused obtained from the SIC concerning Real Garments Ltd dated 28.04.10.
 - cc. **Doc HHH**, proforma VAT Invoice with letterhead of the accused obtained from the SIC concerning MKLEN Fashions Ltd and Dan Fashions Ltd dated 13.10.09.
 - dd. **Doc JJJ**, VAT Invoice with letterhead of the accused obtained from the SIC concerning Beachwear Co. Ltd and Accacia Ltd dated 09.09.09.
 - ee. **Doc KKK**, letter addressed to SIC to issue cheque to the order of the accused regarding the valuation of ACOI and Infinity Tower, signed by witness no.7.
 - ff. **Doc LLL**, letter addressed to SIC to issue cheque to the order of the accused regarding the valuation of Star Knitwear Group Ltd, signed by witness no.8.
 - gg. **Doc MMM**, letter addressed to SIC to issue cheque to the order of the accused regarding the valuation of Rael Garments Ltd, signed by one Mrs Hurday.
 - hh. **Doc NNN**, a printout of the Coat of Arms of the Republic of Mauritius.
9. Under cross-examination, the witness stated that, at Doc E, when reference was made that the accused's office has been conducting valuation exercises for BPML and SIC from 2008 to 2010, it is to be understood that the office meant the valuation department as headed by the Chief Government Valuer, the accused. He further stated that the accused held the office of the Chief Government Valuer. He produced **Doc PPP** which is a letter faxed to the ICAC on 03.09.12 from the then legal representative of the accused. The witness could not confirm whether the ICAC replied to the said letter. He denied that the investigation for this case started in the light of the Medpoint case in which the accused was involved. The

enquiry for the present matter was triggered by an anonymous complaint. The said complaint concerned a number of properties, not only the one belonging to Mrs Tang Shiong in Port-Louis. The witness further stated that the author of the anonymous complaint was an officer of the valuation department.

10. The witness further stated that witness no.10, who put up a statement under warning during enquiry, was not prosecuted. The documents produced and which are pertinent to Counts 1 to 8 of the Information, show that the SIC and BPML requested a valuation exercise for each property from the accused, then Chief Valuation Officer. The accused signed off each valuation report, except for the property of BPML. Docs EEE, EEE1, FFF, FFF1, GGG, HHH, JJJ were shown to the witness and were described as claims for payment. They are all under the letterhead of the accused, in his personal capacity and not in his position as Chief Government valuer. The accused had his business registration number inscribed on the above documents.
11. Docs AA, BB and CC were shown to the witness. The latter confirmed that the accused was granted authority from his supervising officer, the then Financial Secretary to carry out valuation of parastatal and non-Government properties against remuneration. He clarified that as a government employee, the accused's terms of employment were regulated by the Human Resources Management Manual (HRMM). As a baseline, the accused would not have been able to do private work against remuneration. He sought permission to do so and he was granted same. Extracts of the HRMM were read to the witness and he agreed that the Docs AA, BB and CC were in line with the above manual, in that, there are exemptions where a government employee can do private work against remuneration. One of the conditions attached to the exemption is that such private work should be carried out outside office hours. The defence referred to two PRB reports, those of 2003 and 2008, to elicit evidence about the working hours of a government employee. The possibility of flexi time for government employees was raised and the witness could not give such evidence, as no investigation was conducted on that aspect.
12. Upon further questioning, the witness stated that the SIC as a public body solicited the services of another public body, in the form of the Chief Government Office, not the accused personally. Nevertheless, the witness added that it was a private exercise. When shown Docs F to T, he confirmed that there was no signature nor any handwriting of the accused on them. He further stated that when a property is registered and transcribed at the Registrar General's Office

and a doubt arises as to its value, the file is sent to the valuation office to assess the correct value. A comparative study is made through research as shown at Doc R, so that the appropriate market value is affixed on the property. The said value is then proposed to the Registrar General's Office. In the present matter and in relation to Count 9, witness no.10 sent Doc R showing her comparables used. Docs M and M1 show the value and the revised valuation of the property in question. Issue was raised with an alleged overwriting of the date at Doc H4. The witness no.1 had highlighted parts of Doc H4 when he showed same to witness no10 at enquiry stage. The initials with the date 05.06.08 after the first three lines belong to witness no.10. Questions were asked as to the meaning of the two lines written following the above date. The witness could not give an answer as to their meaning, the time when they were inserted, or that they refer to a sitting dated 04.06.08. The witness stated that there is a policy at the valuation office regarding changes in valuation. The valuation officer normally gives a first valuation, the Registrar issues a notice of new valuation and when proceedings are brought before the ARC, the valuation department then comes up with a reduced valuation. The witness had not come across any policy where for every re-evaluation, the new valuation must be approved by a supervising officer at the valuation department. It is the valuation officer who has the discretion to revise the valuation according to the case brought before the ARC. According to the documents produced, but not her out of court statements, the witness no.10 revised the figures based on her own findings. Apart from the word of witness no.10, there is no other independent evidence to show that the accused ordered her to revise the figures.

13. Witness no.9, Mrs Rajahbalee-Cader, Permanent Assistant Secretary at the Prime Minister's Office (PMO) stated that she occupied the same post since March 2011. One of her duties was to advise the government and to approve requests from the government on the use of the Coat of Arms of the Republic of Mauritius. The use of the said Coat of Arms is regulated by the section 76A of the Criminal Code. Such use is normally prohibited unless it is authorised by the Prime Minister. The existence of the Coat of Arms as letterheads for instance, represents the stamp of authenticity of official documents from the government. It cannot be used for private business without the Prime Minister's authorisation. The witness produced **Doc QQQ** to that effect. She further stated that, as per records, there is no authorisation granted to the accused for the usage of the said Coat of Arms.
14. Under cross-examination, the witness confirmed that the accused did not receive any authorisation to use the Coat of Arms for any private work. She further stated

that even if it is a Ministry's work, such has to be cleared by the PMO before the Coat of Arms can be used. However, she could not say whether or not the Ministry of Finance has received any authorisation for this case.

15. The witness was re-examined on the issue of whether she was given the general picture of the investigation when she was questioned at enquiry stage. She stated that Docs KKK, LLL and NNN were shown to her and she was asked to comment upon them.
16. Witness no.4, Mr Mohammad Iqbal Mallam Hasham gave evidence to the effect that he was the Managing Director of the State Investment Corporation (SIC) from 2006 to 2014. In his words, the witness said of the role of the SIC as '*the investing arm of the Government of Mauritius. The Government is the main shareholder and our main job and objectives is to invest wherever we feel there is an opportunity to invest and there is a goodwill on the return*'. In 2009, a government policy was in effect, whereby to avoid an economic downturn, the government acquired properties from operators, hence the need for valuation of properties. For such valuation, the practice and policy has always been to have recourse to the chief government valuer. The latter may delegate another member of the valuation office, but he would generally carry out the valuation. A request would be addressed to the valuation office which goes to the director.
17. The witness volunteered that for this case, the Corporate and Legal Affairs Manager of the SIC showed him a letter from the Finance Manager to the effect that the accused was permitted to take any assignment in his own name. Four letters were shown to the witness and were produced as **Docs RRR, RRR1, RRR2** and **RRR3**. They pertain to the properties ACOI, Real Garments Ltd and Star Knitwear Ltd, respectively. The above letters were signed by the witness and were addressed to the accused as the director of the valuation department. They were essentially requests for the valuation of the above properties and as a matter of policy, the government valuation office would be sought, of which the accused was the head. In exceptional situations, the SIC may have recourse to a private valuer. However, for the properties mentioned above, which concerned the stimulus package policy, only the services of the government valuation office were solicited. It is noted that the witness could not answer as to whom payment for the valuation exercises was effected.
18. Upon questioning under cross-examination, the witness stated that he was not aware whether payment was made to the government valuation office or the

accused in his personal name. There were a number of departments involved in deciding to whom payments should be effected. He was not part of that decision making process.

19. Witness no.14, Mr Jacques Kerveen Seedoo, stated that he was a technical officer at BPML. The BPML is a state-owned company which deals in the leasing or renting of office and industrial buildings. In 2010, the company had decided to put a property for sale. A request for a valuation of the property was addressed to the government valuation office. The exercise was carried out and a valuation report of the BPML property found at Pamplémousses under the signature of Mr Navin Jeetun, witness no.8 was obtained. The latter signed for the director of the Valuation & Real Estate Consultancy Services. The said report was produced as **Doc SSS**. The witness further produced **Doc SSS1** which is a letter from BPML addressed to the Chief Government Valuer to assess the market value of four properties to be disposed of by the BPML. It is noted that the said document shows that valuation is requested to be carried out by the government valuer against payment of the necessary fees. **Doc SSS2** was produced to show the valuation and fees payable. **Doc SSS3** was produced and described as a payment voucher to Mr Yodhun Bissessur to the amount of Rs40,000. The particulars are valuation and real estate consultancy fees to Mr Y. Bissessur and valuation report of BPML Properties at Beau Vallon and Pamplémousses. The witness further identified a document with letterhead of BPML addressed to the accused as Director of Valuation & Real Estate Consultancy Services, requesting a breakdown of valuation of the Beau Vallon and Pamplémousses properties. The document was produced as **Doc SSS4**. Finally, the reply to the said letter, signed by Mr Navin Jeetun for the Director of Valuation & Real Estate Consultancy Services, and produced as **Doc SSS5**.

20. Witness no.6, Mr M K Gajadhur stated that he had been the project manager of BPML in the past. He was aware that a property under the portfolio of BPML at Pamplémousses was valued so that a sale could be effected. The BPML being a state-owned company must have received approval from the parent Ministry before moving forward with the evaluation exercise. The process normally leads to the Chief Government Valuer or the Permanent Secretary. He confirmed having signed Doc SSS. The letter of request for valuation against payment of fees was addressed to Chief Government Valuer, but it is the valuation office which decides who in the department would carry out the valuation exercise. He commented upon the note in manuscript addressed to him at Doc SSS2. The fee of Rs20,000 per property was agreed, after consultation with the accused. After

being shown Doc SSS3, he stated that a payment of Rs40,000 was made to the accused for both properties. The above was confirmed during cross-examination.

21. Witness no.11, Mr Tookraj Seewoo, stated that he was the principal registration officer at the Registrar General's office in 2012. He briefly explained the role and function of the Registrar General. Whenever there is a conveyance of property and the need for registration arises, a request is sent to the valuation office to assess the market value of the property in question. If the market value is greater than what has been declared, an additional registration duty is claimed from the purchaser. Such was the case for the property related to Count 9 of the Information. Doc F was shown and was described as a minute sheet of the Assessment Review Committee. The sitting was dated 05.06.08 and the government valuer was Mrs Khedun. The case was lodged at the ARC by the purchaser after the additional registration duty was claimed from the latter. The document further shows that the government valuer, Mrs Khedun, revised the market value to Rs4M from Rs8.7M. After the revised market value, the additional registration duty was reduced from Rs875,000 to Rs100,000. The latter amount was paid on 08.10.08. The said transaction relates to the one dated 13.10.05 as per the deed at Doc H.
22. Under cross-examination, the witness stated that, for the time period he was representing the Registrar General at the ARC, Mrs Khedun, the government valuer, assisted him for the cases heard. As a general rule, the values suggested by Mrs Khedun would be accepted by the Registrar General.
23. Witness no.5, Mrs Anista Devi Indira Ramphul-Punchoo, gave evidence to the effect that in 2012, she was an investment executive at the SIC. The accused was doing valuation exercises for properties on behalf of the SIC. Those exercises were carried out against remuneration. The witness produced 2 payment vouchers together as **Doc TTT**. They refer to six valuation exercises with the corresponding payments. **Doc UUU** was produced, which is an email the witness received from the accused, detailing the properties to be evaluated. A certified copy of a payment voucher was produced as **Doc VVV**, showing a payment by the SIC to the accused for the valuation of various properties. A correspondence dated 08.09.09 signed by witness no.4 and addressed to the accused was produced as **Doc WWW**. It was a request for the valuation of properties as listed in the document, by the accused. The witness went on to identify a number of produced documents in Court and confirmed most of their content.

24. Witness no.7, Mr Andre Jacques Richard, stated that he was at the time of trial a principal property valuation inspector. In the years 2009 and 2010, he held the position of senior valuation technician. For the latter position, his duties were to inspect properties as per the files he would receive. He was posted at the valuation office and worked under the Chief Valuation Technician, who was the accused at the time. The office was situated at Rainbow House. As part of his responsibilities, the witness would measure buildings, take note of the features. That would include calculating the area, making drawings and a brief report which is submitted for assessment to the Chief Valuation Technician. In summary the job of the witness was to do the preliminary work before a valuation officer does the actual valuation. Files were sent to him by the registry with the instructions in the files. His entries would also be minuted in the file. With regards to the property Infinity Tower the witness was involved in the valuation. He received the file and the Chief Valuation Officer, the accused, asked him to do the work. The accused and him went to the Infinity Tower together and they met with a person. He was not aware of the person's identity.
25. The witness was questioned on who gave him the file for the valuation of the Infinity Tower property. When he answered that it was the registry, a previous inconsistent statement was confronted to him, where he had stated that the file was handed over to him by the accused on the site. However, in Court, the witness stated that he must have made a mistake and confirmed that he received the file from the registry.
26. On the site of the property, the witness took measurements of the building, an exercise which lasted for about 30 to 45 minutes. Thereafter, he drew a plan and made a brief report. He handed over the file with all his findings to the accused. The latter did the valuation exercise and the file was sent back to the witness for him to draft a report. The report was submitted back to the accused for vetting. The witness then took hold of the final draft and same is forwarded to the typing pool for a typed written copy. The said report was finally sent to the registry. The witness was subsequently called to the accused's office and was asked to sign a letter (Doc KKK). He questioned the accused whether he can sign for the director and he received an affirmative answer. He signed the said letter which is a request to issue a cheque to the order of the accused.
27. With regards to the ACOI property found at Plaines-Lauzun, the witness stated that he received the file from the registry and he was told by the accused, as Chief Government valuer to do an inspection. He proceeded on his own during office

hours to the site, which he later rectified in that he was accompanied by the accused. He followed the same procedure and made a report, which he handed over to the accused on the following day. He confirmed the same Doc KKK in relation to the said property. The same process was followed for the property of MKLEN Ltd found at Pointe aux Sables and the corresponding report was likewise handed over to the accused. Another property, namely Acaccia Ltd found at Belle Etoile Coromandel, was inspected by the witness. He was accompanied by Mr Jeetun and the latter dealt with the file. He was shown and confirmed the content of Docs V, Z, CCC and AAA.

28. Under cross-examination, the witness was asked whether he worked together with the accused for the valuation of private entities, outside office hours. i.e., after 1600 on weekdays or during weekends. It was not entirely clear to the witness as to what kind of work amounted to private work, but he did state that he did so once. He mentioned SICOM cases and he was remunerated for it. He agreed that when he took measurements of Infinity Tower at 1600, he was working outside office hours. When confronted to the allegation that every time the accused requested him to do private work, it was done outside working hours, he replied, sometimes. He confirmed that he did not carry out any valuation, but calculations, which are the preliminary workings leading to a valuation, normally done by the Chief Valuation Officer. The witness further stated that for all the above properties he inspected, he did so upon the request of the valuation office. The valuation was ultimately carried out by the accused as Chief Government Valuer, who asked to be paid personally.

29. During re-examination, the witness could not say which SICOM cases he referred to during cross-examination. He was not remunerated for his work related to the properties; 'Acacia', 'ACOI', 'MKLEN' or 'Dan Fashion'. At no point, he was informed that those were considered as private work. Furthermore, he worked on the said properties at the office as well.

30. Witness no.8, Mr Navin Jeetun, stated that in the years 2009 and 2010, he was working as a government valuer at the valuation office. He would conduct valuation exercises for various kinds of properties. However, he was not allowed to do valuations of private properties. Any valuation was done under the instructions of the Chief Government Valuer, the accused at the time. The instructions were made either verbally or in written form, in which case, through minutes in a file. As per Doc X, the witness confirmed that he did the valuation exercise of the property of Star Knitwear Ltd under the instructions of the

accused. He also signed Doc LLL under the instructions of the accused. With regards to the property of Star Knitwear Ltd, he inspected the said property on site with Mr Andre, witness no.7. He did the valuation and drafted the valuation report at the office, during office hours. In connection to the valuation of the property of BPML at Pamplémousses, he was shown Doc SSS. He signed for the director of the valuation office and he received the instructions from an official file. Following a memory refreshing exercise, the witness agreed that he was involved in the valuation of the BPML, Real Garments Ltd and Star Knitwear properties. He did the work during the normal office hours under the instructions of the Chief Government Valuer. He was not allowed to claim payment for the said work. He did collect one payment for the BPML property for the accused. It was by way of a crossed cheque. He produced **Doc XXX**, which is a letter dated 27.11.08 showing an instruction to issue a cheque to the order of the accused, as director of Valuation & Real Estate Consultancy Services, for the valuation of BPML properties at Pamplémousses and Beau Vallon. He further stated that Doc SSS5 bears the coat of arms of Mauritius, and was an official file, likewise for Doc SSS2.

31. Under cross-examination, the witness stated the above properties were valued by the accused as Chief Government valuer. The latter officially asked to be paid for his services. All the documentations were in the official files of the valuation department. The Registrar General would send a title deed of a property to the valuation office, to assess the market value of the said property. The valuation was done under the leadership of the Chief Government valuer. Whenever the Government needs a valuation of a government or parastatal property, it is carried out by the valuation department. On occasions, the department is called upon to evaluate some properties such as SICOM, SIC, BPML and others. In those cases, the Chief Government Valuer requested payment for the valuations. When a request is sent to the department, it goes to the registry, where a file is opened with a reference number. All work is done in the file, including Doc LLL. Thus, when the accused asked to be paid for the valuation, he claimed it under the heading of the valuation office, with the coat of arms. The witness was asked to sign the documents on the accused's behalf.

32. Witness no.10, Mrs Taramatee Khedun-Sewgobind, was the deputy director of the valuation department in June 2008. The accused was the director. The department was divided into region-based sections, each with a head of section. Each request valuation from the government lands at the appropriate section of the registry. She was a head of section in June 2008. She had two valuers, Mr Callychurn and Mr Kinoo and fifteen assistants in the technical cadre. All

requests were channelled through her. She would allocate the work to the two valuers, who in turn would use the technical staff to assist the work.

33. The requests from the Registrar General would be looked into by the director, the accused, and would be sent back to the registry. Once the work is done and vetted by the witness as head of section, she would reply to the Registrar General. The assessment is sent to the Registrar General. If the valuation is in line with the declared value of the client, then she will accept the declared value. If it is below the assessed value, the Registrar General would be informed as such. In case of dispute on the valuation, the client would submit an objection at the objection unit, found at the Registrar General, to resolve the matter. If that fails, the matter is sent to the Assessment Review Committee. There were instructions from the accused as the then director to have the head of sections to deal with any assessment of more than Rs5M. Normally the first time the case is heard at the ARC, the government valuer would make an offer for settlement. If the value is less than Rs5M, the government valuers can accept values which are within 10% of the proposed price. In cases where the difference is more than 10%, approval would be needed from the director of the valuation office, the accused in 2008.
34. Regarding a property belong to Mrs Tan Sip Shiong, the valuation was conducted in 2008 and the witness received the file, as head of section. She allocated the file a government valuer, and the report was submitted to the Registrar General. There was an objection. The case was heard at the ARC which the witness attended. Before that, the witness was called at the director's office but she could not say whether it was to discuss the property in question. She revised her initial valuation as she did not consider that the property was tenanted and that it was in a residential zone. Her initial value was based at a commercial rate. She used the sales evidence of residential plots of the region to re-evaluate the property. A few documents were shown to the witness and she has confirmed their contents. The initial value of the said property was at Rs8,750,000 and was revised at Rs4,000,000, around 50% less. A warning against self-incrimination was given to the witness at the request of the prosecution.
35. A previous inconsistent statement was read to the witness with regards to the answer she gave in relation to whether she received instructions from the accused to revise the valuation of the said property. The extract is found at page 15 of the transcript dated 13.07.23. She denied her out of court statement and confirmed that she would have revised the valuation irrespective of instructions for the reasons given above. The Court notes that further down the line in examination

in chief, she was asked again about the tenor of her meeting with the director in the morning the matter was called at the ARC, she then stated that there was no meeting on that day. Documents were shown to her. The questions were geared as to whether she was aware that the property had tenants before she gave the initial value and when she looked at the sales evidence. She was evasive in her answers, but did state that she her initial reference value was from the title deed, which contained the information that the property was tenanted. However, she did not take into account that information when devising the first valuation. She later revised the valuation when took it into account, and the fact that it was a residential property.

36. Witness no.12, Mr I. Golam, identified Doc U and his signature. They showed payments from SIC on behalf of the companies stated therein, as per the stimulus package then in place. Two payments were made by the Star Knitwear Group to the accused. They were approved by the Stimulus Package Committee. Payments were also made by the companies Infinity Tower Ltd, Fashions Ltd, Accacia Ltd, Real Garments Ltd to the accused.

37. Witness no.15, Mrs Ghobin-Bheenick, who was at the Ministry of Finance in 2012, identified her signature on a letter which confirms the status of the accused at the material time. The document was produced as **Doc YYY**.

CASE FOR THE DEFENCE

38. No evidence was adduced on behalf of the defence.

ASSESSMENT OF THE COURT

39. The Information is laid under nine counts. The first eight deal with the alleged fact that the accused made use of the resources available at the valuation department to cause the private valuation of the following properties:

- a. Star Knitwear Group Ltd for a payment of Rs112,000.
- b. Infinity Tower for a payment of Rs140,000.
- c. MKLEN Fashions Ltd for a payment of Rs44,800.
- d. Dan Fashions Ltd for a payment of Rs44,800.
- e. Acaccia Ltd for a payment of Rs28,000.
- f. Real Garments for a payment of Rs56,000.
- g. Les Ateliers Creatif de L'Ocean Indien for a payment of Rs56,000.

h. Business Parks of Mauritius Ltd for a payment of Rs40,000.

40. The ninth count deals with the alleged fact that the accused caused Mrs Taramatee Khedun, witness no.10, to reduce the value ascribed to the property of one Mrs Tan Sip Shiong from Rs8.75M to Rs4M, thus enabling the latter to reduce her registration duty by Rs762,500.

The law

41. **Section 7 of the Prevention of Corruption Act (POCA) 2002** reads as follows:

- (1) *Subject to subsection (3), any public official who makes use of his office or position for a gratification for himself or another person shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.*
- (2) *For the purposes of subsection (1), a public official shall be presumed, until the contrary is proved, to have made use of his office or position for a gratification where he has taken any decision or action in relation to any matter in which he, or a relative or associate of his, has a direct or indirect interest.*

42. As per **Joomeer v State 2013 SCJ 413** and **Jhurry v ICAC & Anor 2015 SCJ 258**, the elements to be proved by the prosecution are:

- a. The accused was a public official;
- b. He made use of his office or position;
- c. In order to obtain a gratification either for himself or for another person.

43. As per the submissions of the prosecution, count 9 of the Information is not being insisted upon as witness no.10 has not come to proof with regards to the particulars averred under the said count. Nevertheless, I have considered the evidence of witness no.10, which has been summarised and assessed at paragraphs 32 to 35 above. It is clear that the said count as particularised, has not been sustained by her testimony, nor any other evidence on record.

44. The first eight counts of the Information require the prosecution to prove the three elements as listed in **Joomeer (supra)** for each. The fact that the accused was a public official is not in dispute, vide **Doc YYY**.

45. **Doc U** shows a breakdown of the payments made to the accused for valuations of various properties. In fact, the list represents the properties under each of the first

eight counts of the Information. The document was a letter from SIC addressed to the ICAC during enquiry. Additionally, **Docs EEE to MMM**, as listed at paragraph 8(z) to (hh) above, show the various VAT Invoices and instructions to issue cheque to the order of the accused in return for the valuation of the corresponding properties of the SIC. Furthermore, **Docs TTT, FFF, VVV, GGG, FFF** and **SSS3**, show the payment vouchers for the valuations of the properties; Star Knitwear Ltd, Infinity Tower, MKLEN Fashions Ltd, Dan Fashions Ltd, Acaccia Ltd, Real Garments Ltd, ACOI and BPML, respectively. It has not been disputed by the defence that such payments have been received by the accused. The issue is one which is derived from the definition of gratification at **section 2 of POCA** being; a gift, reward, discount, premium or other advantage, other than lawful remuneration.

46. The question is whether the remuneration has been lawfully made or not. The particulars of each of the first eight counts of the Information, are paraphrased as *'the accused made use of the resources available at the valuation department during normal working hours, to cause private valuation to be effected in relation to the property and for which the accused was paid a sum of money'*. A cursory reading would tend to show that the sum of money is being used as the gratification purported to be proved by the prosecution. However, the wording of the whole set of particulars which describes the offence is unconventional in the sense that section 7(1) of POCA uses the phrase 'make use of his office' whereas the counts aver 'made use of the resources available at the valuation department'.
47. Indeed, the prosecution in its submissions proposed that *'The valuation fees out of these contracts should have been for all intent and purposes lawful remuneration. However, the fact that Accused made unlawful use of the resources of the Valuation Department ("in terms of staff during normal office hours and the coat of arms the Republic of Mauritius for private valuation) to generate such payments, corrupts its nature from a lawful remuneration into a gratification'*. The suggestion is that the unlawful use, by the accused, of the resources at his office would have tainted the otherwise lawful remuneration, into a gratification.
48. I shall therefore address the second element that the accused has 'made use of his office', as it is intrinsically linked to the element of gratification. The natural starting point is the authorisation sought by the accused and the response obtained. **Docs AA, BB** and **CC** are of relevance here and emphasis has been laid on their exact wordings by both parties.

Doc AA – a letter from the accused a Acting Chief Government Valuer to the Financial Secretary - *“My predecessors, Messrs Ramrekha and Salarbux were authorised to carry out valuation of properties for parastatal and non-Governmental bodies against remuneration. I should, therefore, be grateful if you could grant authority for the same facility to be extended to me.”*

Doc BB – a letter from the Financial Secretary to the Chief Government Valuer - *“This office has no objection to your undertaking valuation of properties for parastatal and non-Government bodies against remuneration provided that such assignments would not conflict with the interest of the office of your post and should be carried out outside normal working hours”.*

Doc CC – a letter from the Acting Chief Government Valuer to the Financial Secretary - *“Further to my letter dated 16 May 2006, I wish to point out that your authority is required to enable me to provide my expertise to Non-Governmental Bodies for carrying out private valuation with regard to valuation of Assets, valuation for loan purposes and valuation in connection to book value in company accounts. I assure you that I will not undertake valuation work which will be of conflicting interest- with that of my office. I understand that my predecessors, Messrs Ramrekha and Salarbux were granted such authority in the past”.*

49. There is no evidence that there was a reply to Doc CC. Nevertheless, the response given by the Financial Secretary at Doc BB clearly grants the authority to the accused, as Chief Government Valuer to undertake valuation of properties for parastatal and non-Governmental bodies against remuneration. The conditions are that it should not conflict with the interest of the valuation office and it should be carried out outside normal office hours. The contention of the prosecution in their submissions, is that there was no mention of private work at Doc BB, but only properties for parastatal and non-Governmental bodies. The definition of private as per the ordinary dictionary meaning is non-public or non-Governmental. It has been semantically argued by the prosecution that private work is not covered by Doc BB. However, the accused as Chief Valuation Officer was already under duty to carry out valuation of public properties as part of his employment. It is thus construed that a special authorisation would cover properties, other than public ones, and therefore private or parastatal. Furthermore, the properties spread over the first eight counts of the Information have been valued by the accused at the request of SIC and BPML, both parastatal and public respectively.

50. Irrespective of the authorisation granted to the accused, the centre piece of the prosecution's case seems to be the evidence of witnesses 7 and 8, who were the government valuers working under the accused at the material time. Their evidence was relied upon in an attempt to prove that the accused made use of the resources available at the valuation department during normal office hours. Witness no.7 did the preliminary calculations for the accused to finalise the valuation reports of properties; Infinity Tower (Count 2), MKLEN Fashions Ltd (Count 3), Acaccia Ltd (Count 5) and ACOI (Count 7). I have considered his evidence at paragraphs 24 to 29 above. He has been clear in that he received all instructions as per the minutes in the files sent to him by the Registry. Even after having been confronted to a previous inconsistent statement, he stated that he must have made a mistake at enquiry stage and confirmed that he received all files from the registry. However, it is manifest that the witness reported to the accused as Chief Government Valuer regarding his work in relation to the above properties. He was vague as to when he worked on those properties. He stated sometimes, he worked outside office hours, meaning at other times, he would do the work during office hours. He was not remunerated for the said work, but he was aware that the accused was personally remunerated for the said valuations. He was not made aware that the work on the above properties amounted to private work.

51. The witness no.8 worked on the properties; Star Knitwear Group Ltd (Count 1), Dan Fashions Ltd (Count 4), Real Garments Ltd (Count 6) and BPML at Pamplermousses (Count 8). As per his evidence, he was instructed by the accused to work on the above properties. All the work was documented in the official files. Whenever the Registrar General would request a valuation for parastatal or non-Government bodies, it would be addressed to the valuation office, headed by the accused at the time. The files would be processed by the registry.

52. From the evidence of the above two witnesses, some work for the valuation of the properties under the first eight counts, has been done during office hours. That part is inconsistent to the authorisation (Doc BB) granted to the accused to carry out valuations of properties requested by parastatal or non-Governmental bodies. Furthermore, the work done by the two government valuers who were government employees, was not remunerated. It is inferred that they were not informed that they might be entitled to remuneration. The accused used them to assist in the work for which he was additionally remunerated. There has clearly been some sort of violation. The issue is whether such violation gives rise to an offence under section 7(1) of POCA.

53. From the record, only two corporate bodies requested the valuation of properties; the State Investment Corporation (SIC) which is a parastatal body and the Business Parks of Mauritius Ltd (BPML), which is a governmental body. The SIC is concerned with the properties couched under counts 1 to 7 and the BPML for the properties under count 8. On top of the authorisation (Doc BB) received by the accused, the evidence of witness no.4, Mr Mallam Hasham, the then managing director of the SIC, shows that, for such properties, it has always been the practice and policy to have recourse to the Chief Government Valuer (*Paragraphs 16 and 17 above*). He stated that the latter may carry out the valuation himself, or delegate the matter to another government valuer. I take note that the witness has no personal knowledge of the internal policy of the valuation office, but rather he was speaking from practice and experience of working with the valuation office. He further stated under examination in chief, that the SIC may exceptionally seek valuation from the private sector, but those properties, he identified at Docs RRR, RRR1, RRR2, and RRR3, were concerned with the stimulus package devised by central government at the time. Therefore, only governmental services were solicited.
54. The witnesses 6 and 14, both gave evidence on behalf of BPML, as considered at paragraphs 19 and 20 above. The gist of their evidence is that BPML, being a state-owned entity sought the government valuation office to value properties which they, as part of the government, owned before proceeding to sell them. It was known that the accused, as the then Chief Government Valuer, was to be paid fees for each valuation on an agreed amount. Docs SSS to SSS5 were produced to that effect. It is on record that the whole valuation exercise must have been approved by the parent Ministry before it went forward.
55. Witness no.12, Mr Golam who was posted at the Ministry of Finance at the material time, stated that the list of payments, at Doc U, to the accused were made by the SIC on behalf of the private companies under the stimulus package. The payments were approved by the Stimulus Package Committee.
56. The law states that the accused, as a public officer must have made use of his office or position to obtain a gratification. The 'making use of his office or position' connotes an abuse of his influence or authority by virtue of the public officer's position or status at his office. The unlawful use of his office must be more than a legitimate act, tainted by the wrong use of the resources available at the public office, so as to qualify as an act of corruption. *The opprobrium lies in the abuse or*

misuse of the office or the position as a public officer for a gratification, vide Joomeer (supra).

57. From the above assessment of the evidence on record, it is abundantly clear that it has been the practice of the SIC, the BPML or the Registrar General to seek the services of the valuation office as headed by the director, or Chief Government Valuer, whenever valuations of property, whether public or private, are needed. It is also manifest from the evidence, as discussed above, that remuneration in return for the valuations as averred under the eight counts of the Information, has been made in a transparent fashion. All the documentation has been part of the official files of the valuation office. There has been express approval for some payments by the Stimulus Package Committee at the Ministry of Finance. The authorisation obtained by the accused at Doc BB is in line with the official manner in which the valuations have been carried out. The prosecution has not shown that the valuations themselves were unlawful but rather, the manner in which the work was done, was a misuse of the resources at the valuation office. If the requests for valuations by the SIC and BPML have been officially addressed to the valuation office through the registry of the said office, it is a matter of course, that staff members of the office will have to deal with the said files. As they are considered as files of the valuation office, it is natural that every official document will bear the coat of arms of the Republic of Mauritius. The evidence falls short of establishing that the accused was not allowed to deal with those valuations, for which he would be remunerated, through the registry of the office. I am unable to agree with the suggestion of the prosecution that the authorisation (Doc BB) does not cover such valuations for the reasons given at paragraph 49 above.

58. The prosecution has submitted that the valuations of private properties at the request of parastatal and governmental bodies are considered as private valuations without explaining why it should be so. There was no evidence adduced by any witness for the prosecution to describe the scheme of duties of the valuation office, and whether it is prohibited from conducting, through employees, valuations of private properties, at the request of parastatal or public bodies. The sum of the evidence on record points to the fact that it has been an established practice, and if remuneration for same is approved by the government, the court is inclined to agree with the submissions of the defence on the issue. It follows that the use of the two government valuers by the accused, is not a misuse of the resources of the valuation office. The fact that they may not have been aware they were doing work for which that they could have been remunerated, is independent of the issue of whether they were allowed by the office to do so.

59. Count 8 of the Information deals with properties owned by BPML, a government company, hence a public body as per **section 2 of POCA**. The accused was thus required to value government properties, albeit against additional remuneration. The case for the prosecution is that such valuations are considered as private valuations. The witness no.8 assisted in the valuation of the said property. There is no evidence to show that he acted outside his scope of work in that instance.

60. It is conceded by the prosecution that payments made to the accused for the valuations he conducted, for all intents and purposes, appear to be legitimate. The contention is that the otherwise lawful remuneration has been corrupted by the misuse of the resources at the accused's office to obtain the said remuneration, thus converting it into a gratification. Such an approach is flawed on two points. First, it fails to consider the purpose for which the remuneration was made. The accused was paid for services he provided, in terms of valuation of a number of properties, as requested by public or parastatal bodies. There is no ambiguity as to the fact that he did provide those valuations. The manner in which he carried out the valuation exercise cannot negate the end result as benefitted by SIC and BPML. Otherwise, if the remuneration was tainted so as it becomes a gratification, the accused would have had no right to it, and there would have been no payment for the services rendered, as agreed. However, as discussed above, my finding is that the two government valuers were entitled to assist in the valuation exercise. They acted under the authority of the valuation office since their instructions were officially laid out in the office files. Second, the above proposition dissociates the alleged gratification from the required mens rea of the accused. As per the definition of gratification at section 2 of POCA, the gift, reward, discount, premium or other advantage, must be the fruit of the corrupt practice in the mind of an accused party. In our present case, remuneration has been agreed before the alleged corrupt practice has supposedly tainted it. The remuneration could not have been a gratification in the mind of the accused at the time it was agreed. I therefore hold that the remuneration was lawful and cannot be considered as a gratification.

61. However, it cannot be entirely glossed over the fact that the accused may not have acted to the required standard of a public official in his position. Such conduct may fall foul of certain rules, but is not within the purview of section 7(1) of POCA. I am aware of the high expectations that are set for public officials in the exercise of their duties. Nevertheless, a reprehensible act of corruption must represent *a serious departure from the standards and is deliberate and prompted by an*

improper motive, vide **Seeruttun v ICAC & Anor 2023 SCJ 321**. Such has not been the case in the present matter.

62. For the above reasons, I hold that the prosecution has failed to prove its case beyond reasonable doubt. All nine counts of the Information laid against the accused are dismissed.

P K Rangasamy
Magistrate of the Intermediate Court
06.03.24