

ATT: Mr. Ghoseawan

P/CAUSE NO 672/17

IN THE DISTRICT COURT OF BLACK RIVER

In the matter of:-

POLICE

V/S

DESIREE VERONIQUE BELUS



RULING

The Applicant has been provisionally charged with the offence of Money Laundering in breach of sections 3(1)(b), 6(3) and 8 of the Financial Intelligence and Anti-Money Laundering Act. The Applicant, through her legal representative Mr Rajani, moved for the provisional information to be struck out on the ground of inordinate and unreasonable delay which amounts to an abuse of the process of the Court.

The motion was objected to by the prosecution and Mr Nulliah, of Counsel, appeared for the ICAC.

The provisional charge dates back to 2017 and the alleged offence was committed in 2016.

The case was heard before a different bench on the same issue on the 15th of December 2020 and a ruling was delivered on the 3rd of September 2021. The Learned Magistrate, in her ruling, urged the prosecuting authorities to complete the enquiry as soon as possible.

The Status of the Case

Chief Investigator Seeruttun, the enquiry officer, deposed on behalf of the prosecution. He was examined in chief after which he was cross examined by Learned Defence Counsel. The witness testified that statements have been recorded from 35 witnesses during the course of the present enquiry and that 10 other suspects apart from the Applicant have been interviewed. The ICAC has applied for 2 attachment orders and two disclosure orders on the account of approximately 30 people. Following an analysis of the bank statements, the ICAC made an application for a Judges Order on 10/10/2019 to obtain the itemised bills of the

Page 1 of 7

Applicant and 30 other people. The itemised bills were obtained from the service providers on 29/9/2021. The Applicant was interviewed in respect of the itemised bills on the 5/4/2022. The investigation was completed in September 2022 and submitted to the legal department of the ICAC on 8/11/2022. As at the 10th of January 2023, the file was still with the legal department of the ICAC. He further added that the case is a complex one consisting of approximately 10 limbs against about 30 suspects. One suspect was in the custody of ADSU and ICAC only managed to record his version in 2022. He stated that the delay is not unreasonable but was due to the itemised bill not being provided. He has had about 3-4 meetings with the legal department in respect of the present case. He cannot say when an advice will be provided in this case.

During cross-examination the witness revealed that it took nearly two years to obtain the itemised bill. The ICAC had entered into an informal agreement to give the service providers additional time to compile the data due to the Covid-19 lockdown. However, the period from October 2019 to April 2020 and October 2020 to January 2021 did not fall within the lockdown period. The enquiry was completed in the beginning of September 2022 but was only referred to the legal department on the 8th of November 2022. Once the legal department of ICAC has vetted the file, it may either be sent back for further investigations or to the DPP's office. The DPP may also request further investigations.

The Arguments of the Defence

The Applicant has been on a provisional charge for nearly five and a half years. The arrangement between the ICAC and the service providers was entered to the detriment of the Applicant who is suffering prejudice. The Applicant had to come to court for variation orders every time she travelled abroad and she had to move for a variation of the bail conditions in respect of the reporting condition when she had surgery in 2022. The delay in the present case is inordinate and constitutes an abuse of process.

The Arguments of the Prosecution

There is no statutory provision regarding the lodging of a provisional charge. The enquiry is a complex one and the delay is not unreasonable in the present case. There are over 10 suspects in the present case who have been provisionally charged. The prosecution cannot say when the case will be lodged but any alleged prejudiced should be balanced in the light of the complex nature of the investigation.

The Law



The issue for this Court to determine is whether this provisional information ought to be struck out for abuse of process. In order to determine the effect of an abuse of process on the provisional information, its purpose has to be ascertained. What is termed in our criminal justice system, a "provisional charge" for the purpose of compliance with section 5 of the Constitution that requires the prosecution authorities to bring a person arrested on suspicion of having committed a serious criminal offence before a Magistrate within the least possible delay (*State vs Rome* [2009] SCJ 139A). No trial takes place on such an information (*DPP v. IOIB* [1989] MR 110).

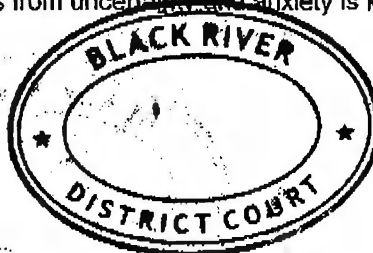
Generally, motions for striking out a provisional charge can be made when the information does not disclose an offence known to the law ("only an offence known to the law and not any act not sanctioned as an offence should give birth to the provisional information" (*Alain Gordon-Gentil v State of Mauritius* [1995] SCJ 118)) or when a provisional information is indeterminately or for an unreasonable delay maintained against a suspect. This however remains within the discretion of the Court. To sum up, it can be said that the provisional information is that device, in the Mauritian context, which seeks to protect the right of liberty of any individual who has been arrested by the police by bringing without inordinate delay the latter under judicial supervision and control.

Since the motion of abuse of process of the applicant is based solely on inordinate delay, only this limb will be assessed by the court.

In the case of *Neeyamuthkhan v DPP* (1999 SCJ 284a), it was held that "Section 5(3) of our Constitution being very similar to article 5(3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms which states that everyone detained on suspicion of having committed an offence shall be entitled to trial within a reasonable time or to release pending trial..." (emphasis added).

In *Boolell v The State of Mauritius* (2006 UKPC 46), it was stated that, "if a criminal case is not heard and completed within a reasonable time, that will of itself constitute a breach of section 10 (1) of the Constitution, whether or not the defendant has been prejudiced by the delay".

True it is that a provisional charge does not amount to a criminal charge under section 10 of the Constitution. Nevertheless, in *Mungroo v The Queen* [1990] UKPC 22, the Privy Council stated that the right to a fair trial "within a reasonable time" also implies that the accused is not prejudiced in his defence by delay and that the period during which an innocent person is under suspicion and any accused suffers from uncertainty and anxiety is kept to a minimum.



It cannot be disputed that the period during which an accused party is under suspicion and suffers from uncertainty begins from the time that person is arrested and subsequently brought before a District Court under a provisional information.

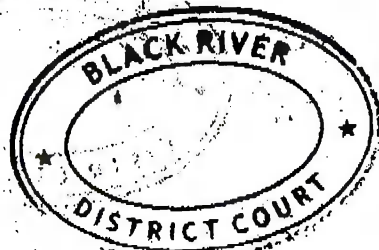
In light of the above-mentioned authorities, the Court is of the opinion that an Inquiry has to be completed without inordinate delay to enable an accused to stand trial within a "reasonable time" as referred under section 10(1) of the Constitution. Therefore, the period forming part of the investigation also falls within the ambit of the "reasonable time" requirement guaranteed under section 10(1).

The elements that ought to be considered when assessing whether a case has started and or completed within a reasonable time have been stipulated in the case of **R v S [2019 EWCA Crim 1728]**, and are as follows: "the length of time that has elapsed, the reasons and explanations advanced for such lapse of time, the length and depth of the investigation, nature and complexity of the investigation and of the potential proceedings and the degree of assistance or of obstruction to the investigation".

Furthermore, in the case of **Dyer v Watson [2002 UKPC D1]** it was held that, "the manner in which the case has been dealt with by the administrative and judicial authorities" has to be taken into account. The relevant propositions are as follows:

"[52] In any case in which it is said that the reasonable time requirement (to which I will henceforward confine myself) has been or will be violated, the first step is to consider the period of time which has elapsed. Unless that period is one which, on its face and without more, gives grounds for real concern, it is almost certainly unnecessary to go further, since the Convention is directed not to departures from the ideal but to infringements of basic human rights. The threshold of proving a breach of the reasonable time requirement is a high one, not easily crossed. But if the period which has elapsed is one which, on its face and without more, gives ground for real concern, two consequences follow. First, it is necessary for the court to look into the detailed facts and circumstances of the particular case. The Strasbourg case law shows very clearly that the outcome is closely dependent on the facts of each case. Secondly, it is necessary for the contracting state to explain and justify any lapse of time which appears to be excessive.

[53] The court has identified three areas as calling for particular inquiry. The first of these is the complexity of the case. It is recognised, realistically enough, that the more complex a case, the greater the number of witnesses, the heavier the burden of documentation, the longer the time which must necessarily be taken to prepare it adequately for trial and for any necessary



hearing. But with any case, however complex, there comes a time when the passage of time becomes excessive and unacceptable.

[54] The second matter to which the court has routinely paid regard is the conduct of the defendant. In almost any fair and developed legal system it is possible for a recalcitrant defendant to cause delay by making spurious applications and challenges, changing legal advisers, absenting himself, exploiting procedural technicalities and so on. A defendant cannot properly complain of delay of which he is the author. But procedural time-wasting on his part does not entitle the prosecuting authorities themselves to waste time unnecessarily and excessively.

[55] The third matter routinely and carefully considered by the court is the manner in which the case has been dealt with by the administrative and judicial authorities. It is plain that contracting states cannot blame unacceptable delays on a general want of prosecutors or judges or courthouses or on chronic under funding of the legal system. It is, generally speaking, incumbent on contracting states so to organise their legal systems as to ensure that the reasonable time requirement is honoured. But nothing in the Convention jurisprudence requires courts to shut their eyes to the practical realities of litigious life even in a reasonably well-organised legal system. Thus it is not objectionable for a prosecutor to deal with cases according to what he reasonably regards as their priority, so as to achieve an orderly dispatch of business. It must be accepted that a prosecutor cannot ordinarily devote his whole time and attention to a single case. Courts are entitled to draw up their lists of cases for trial some time in advance. It may be necessary to await the availability of a judge possessing a special expertise, or the availability of a courthouse with special facilities or security. Plans may be disrupted by unexpected illness. The pressure on a court may be increased by a sudden and unforeseen surge of business. There is no general obligation on a prosecutor, such as that imposed on a prosecutor seeking to extend a custody time limit under s 22(3)(b) of the Prosecution of Offences Act 1985, to show that he has acted "with all due diligence and expedition". But a marked lack of expedition, if unjustified, will point towards a breach of the reasonable time requirement, and the authorities make clear that while, for purposes of the reasonable time requirement, time runs from the date when the defendant is charged, the passage of any considerable period of time before charge may call for greater than normal expedition thereafter."

The Court's Assessment

The present case has been lodged against the Applicant since they were charged with offences which dates back to March 2016. She was released on bail and has been attending court regularly for follow-up. One of the conditions of release on bail was for her to call once on a daily basis



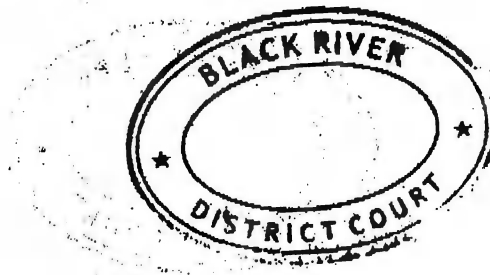
at the nearest police station from her place of abode. She had moved the court to dispense her from calling at the police station when she underwent surgery in the year 2022 and she regularly moves the court to vary her prohibition order to be able to travel in respect of her work. This is done against a security being furnished by her.

The offence with which the Applicant stands provisionally charged is undoubtedly a very serious one not only by reason of the heavy penalty which it carries but also by reason of the large amount of money involved in the present matter. There are 10 other suspects involved in this case and no less than 30 witnesses have been interviewed. There were applications for attachment orders and Judges orders in respect of a number of people. Undoubtedly this enquiry is a complex one and the investigation was accordingly lengthy.

However, I am of the view that the complexity of a case in itself cannot justify inordinate delays. The prosecuting authorities have already been urged by a different bench to expedite matters and complete the enquiry without undue delay. Yet, 15 months after that ruling was delivered, the enquiry is still not complete and there is no indication as to when the formal charge will be lodged against the Applicant.

I am of the view that the conduct of the ICAC in reaching an agreement with the telecommunication companies in relation to the itemised bills in the present case was to the detriment of the Applicant and is not justified, even though part of that period was during the covid lockdown. It took the ICAC nearly two years to secure the itemised bills despite the fact that the Judges Order had set a time limit within which the order should have been complied with. When this time limit was not adhered to, the ICAC entered into an arrangement with the service providers instead of compelling them to forthwith comply with the Judges Order. Even after the enquiry was completed it took the investigation department one month to send the file to the legal department. This delay could not be explained by the ICAC. As at the time the present application was being heard, the legal department of the ICAC had the file for 2 months in their custody. Still, the ICAC could not give an indication as to when a formal charge will be lodged. There is no explanation as to why the ICAC only decided to ask for itemised bills more than two years after the arrest of the Applicant. The ICAC also chose to not put in affidavit in this case which would have greatly assisted the court in understanding the overall delay including the period prior to the request for the itemised bill being made, that is from the date of arrest to 10/10/2019.

It is not disputed that the conduct of the Applicant in this case has not contributed to the delay. It is also worth noting that the case has yet to be sent to the DPP's office for advice. The delay in ICAC advising the file and transferring it to the Office of the DPP has remained unexplained.



Conclusion

For all the aforesaid reasons, the Court holds that the delay of 5 years and 6 months in the present case is not justified and is not acceptable. The dicta in *Mungroo (supra)* bears repeating: the period within which an innocent person is under suspicion and any accused suffers from uncertainty and anxiety must be kept to a minimum.

I therefore order that the present provisional information against the Applicant be struck out and all orders to lapse. However, the present order shall not preclude the prosecution from lodging a main case if same is ready in the future.



Mrs Vidya Mungroo Jugurnath

Senior District Magistrate

3/3/2023

