

## **ICAC v Bungsraz CN 45-22 Judgment**

**2025 INT 195**

**FCD CN: FR/L45/2022**

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

**In the matter of:**

**ICAC**

**(Now the Financial Crimes Commission pursuant to  
section 168 (1) of the Financial Crimes Commission Act 2023)**

**V**

**Sendeepsingh Rai BUNGSRAZ**

### **JUDGMENT**

#### **A. BACKGROUND**

1. Accused is being prosecuted for the offence of Money laundering (2 Counts) in breach of **sections 3 (1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act** (the 'FIAMLA') coupled with **section 44 (1)(b) of the Interpretation and General Clauses Act** (the 'IGCA').
2. It is the case for the prosecution that, whilst being a person concerned in the management of Collateral & Co Ltd, a sum of **(i) Rs. 100, 000/- was credited on the 07<sup>th</sup> November 2011** and a sum of **(ii) Rs. 262, 500/- was credited on the 14<sup>th</sup> October 2013**, by way of a cheque, in the SBM account and the then MPCB account of Collateral & Co Ltd and that this money was proceeds of crime.
3. Accused has pleaded not guilty and was represented by Counsel, Mr. Banji Soni.
4. The case for the prosecution was conducted by Mr. Arzamkhan, appearing together with G. Bundhoo and Mr. Koonjul, for the ICAC.

#### **B. CASE FOR THE PROSECUTION**

5. PC 10057 Aubeeluck (witness no.8) produced two Occurrence Book extracts (**Doc A1** and **Doc A2**) of Quatre Bornes Police Station. According to him, case OB 2897/2016 has been filed on the 03<sup>rd</sup> September 2020 whilst case OB 1591/2017 has been sent to the Prosecutor's Office for prosecution on the 14<sup>th</sup> August 2019. He is not aware if the latter case has been struck out before the Rose Hill District Court.
6. Mrs. Hema Gungabeesoon (witness no.9) from the Registrar of Companies produced an extract of the particulars of Collateral & Co Ltd (**Doc B**). As at date, the company is still live and has as directors Sendeesingh Rai Bungraz and Neersoo Jeetun. The shareholders are Sendeesingh Rai Bungraz, Saraswatee Bungraz, and Vijay Lakshmee Bungraz.
7. At the time of the enquiry, Mr. Chitrunjun Sowambur (witness no.2) was the Group MLRO of the SBM. Following a disclosure order that was served on the SBM, he had provided certain documents to the ICAC which he identified and produced as follows:
  - a. an account opening form for Collateral & Co Ltd (**Doc C**);
  - b. a certified copy of an image of a MCB Office Cheque dated the 28<sup>th</sup> October 2011 for an amount of Rs. 100,000/-, the beneficiary being Collateral & Co Ltd (**Doc D**); and
  - c. a certified bank statement for Collateral & Co Ltd for the period 01<sup>st</sup> July 2011 to 12<sup>th</sup> September 2016 (**Doc E**). As per that bank statement, on the 07<sup>th</sup> November 2011, a cheque of Rs. 100,000/- was deposited in the account of Collateral & Co Ltd.
8. Mrs. Ramyeed (witness no.10) was deputed by the Maubank to produce certain documents that had been provided by one Mr. Veemalen Poinoosawmy to the ICAC during the course of the enquiry. Mrs. Ramyeed (witness no.10) identified and produced those documents as follows:
  - a. a bank account opening pack on the name of Collateral & Co Ltd (**Doc F**);
  - b. a bank statement for Collateral & Co Ltd for the period 25<sup>th</sup> August 2011 to 14<sup>th</sup> August 2018 (**Doc G**). As per that bank statement, a deposit of Rs. 262,500/- was made on the 14<sup>th</sup> October 2013; and
  - c. a certified copy of an office cheque and a cheque deposit voucher form for the amount of Rs. 262,500/-, the beneficiary being Collateral & Co Ltd (**Doc H**).
9. Senior Investigator Chen Tse King (witness no.1) is the main enquiring officer. He produced one statement that he recorded from accused on the 25<sup>th</sup> June 2019 (**Doc J**). He explained that the ICAC started its investigation following a complaint made by Mrs. Teesha Joyekurun Bumma (witness no.4) to the effect that her mother, Mrs. Amita Joyekurrin (witness no.5), in 2011, saw an advertisement in the newspaper about the sale of plots of land at Palma, Quatre Bornes. A site visit was made and they opted for plot no.2. Accused, who had presented himself as the person responsible for Collateral & Co Ltd, requested for a down payment of Rs. 100,000/- out of the total cost of Rs. 700,000/- to which they agreed. At that time, it was only

bare land without any relevant permit. It was only in 2016 that Collateral & Co Ltd made an application to the Ministry of Housing and Lands to obtain a ‘morcellement’ permit. Similarly, Mr. Deven Varma Ramburuth (witness no.6) opted for plot no.5 for a total price of Rs. 875,000/- and made a down payment of Rs. 262,500/-. Those two down-payments were made by means of cheques. However, neither Mrs. Teesha Joyekurun Bumma (witness no.4) nor Mr. Deven Varma Ramburuth (witness no.6) were remitted the plot of land they had opted. The two down payments were also not reimbursed despite accused signing agreements to reimburse same. No ‘morcellement’ permit was obtained and the land was eventually sold in 2017. Senior Investigator Chen Tse King (witness no.1) moreover explained that the predicate offence was in the nature of a swindling operation. He also produced:

- a. a certified copy of an email relating to an application made by Collateral & Co Ltd for a ‘morcellement’ permit at the Municipal Council of Quatre Bornes (**Doc K**);
- b. a certified copy of an application for a ‘morcellement’ permit at the Municipal Council of Quatre Bornes dated the 21<sup>st</sup> January 2016 (**Doc L**);
- c. a certified copy of a title deed bearing TV No: 7966 no.56 whereby a plot of land of 1 arpent and 15 perches was acquired by Collateral & Co Ltd, as represented by accused, for Rs. 4 million/- (**Doc M**);
- d. a certified copy of a letter dated the 08<sup>th</sup> March 2016 from the Municipal Council of Quatre Bornes to the Permanent Secretary of the Ministry of Housing and Lands for sub-division of the land (**Doc N**);
- e. a letter dated the 08<sup>th</sup> November 2016 from the Ministry of Housing and Lands addressed to Collateral & Co Ltd relating to conditions for the development of a ‘morcellement’ to be adhered to by the company (**Doc P**); and
- f. a title deed bearing TV No: 201706 no.000020 emanating from the Conservator of Mortgages relating to the sale of the plot of land by Collateral & Co Ltd to Mr. and Mrs. Iswar Rugoo for the sum of Rs. 6 million (**Doc Q**). It is the same plot of land as in TV No: 7966 no.56.

10. During cross-examination, Senior Investigator Chen Tse King (witness no.1) stated that the police investigation into the offence of swindling against accused was completed in 2019/2020. He does not know if accused was prosecuted on a charge of swindling. He maintained that Collateral & Co Ltd only applied for a ‘morcellement’ permit in 2016. He is not aware if Collateral & Co Ltd had retained the services of a firm of engineers to carry out infrastructural works. He is also not aware if Collateral & Co Ltd was in the process of developing the land before 2016 since documents to that effect were only shown to him during cross-examination. Such documents, according to him, were not produced by accused during the course of the enquiry. He maintained that Collateral & Co Ltd only made the application for the ‘morcellement’ permit in 2016 and did not agree that the present case is one where a land

promoter was delayed in his project resulting in the non-transfer of property to Mrs. Teesha Joyekurun Bumma (witness no.4) and Mr. Deven Varma Ramburuth (witness no.6). According to him, when Collateral & Co Ltd collected the money, it had no relevant permits and it only started making applications to that effect when accused was arrested by the police.

11. Mrs. Nishi Bootun (witness no.12), a Cadastral Officer at the Municipality of Quatres Bornes, identified **Doc K, Doc L, Doc M** and **Doc N** as being documents she had produced to the ICAC during the course of the enquiry. Upon being shown a site plan, she stated that there was no logo and official stamp of the Municipality of Quatre Bornes on it.
12. Mr. Sooroojlall Jagessur (witness no.11), Principal Registration Officer at the Conservator of Mortgages, confirmed that **Doc M** is a copy of title deed bearing TV No: 7966 no. 56.
13. Mrs. Amita Joyekurrun (witness no.5) stated that in April 2011 she saw an advertisement in the newspaper relating to the sale of plots of land in Quatre Bornes by Collateral & Co Ltd. She phoned on the number provided therein and one Mrs. Saloni Bungraz scheduled an appointment at the office of Collateral & Co Ltd. Thereat, she and her husband were given a site plan (**Doc R**) by Mrs. Saloni Bungraz and accused. A site visit of the land was made at Route Bassin, Quatre Bornes. They chose plot no.2 and remitted to Collateral & Co Ltd a deposit of Rs. 100,000/- by way of a cheque she made. An agreement to that effect was signed between accused and her daughter, Mrs. Teesha Joyekurun Bumma (witness no.4). Accused also told them that they would get their plot of land withing a six months' period. After the six months' period, they contacted accused and even met him on several occasions. Accused would always tell them that they would be getting their plot of land. Since it was taking too much time, they made a declaration at Quatre Bornes police station. It is only after this declaration that accused signed an agreement to refund the Rs 100,000/- by the end of September 2015 (**Doc S1**). Accused still did not make the refund and they to continue claiming the refund from accused. Accused finally met them at the office of Mr. Goolamally, barrister at law, whereby he signed an acknowledgment of debt to refund the money by the 04<sup>th</sup> March 2016 (**Doc S**) which he has, up to now, failed to reimburse.
14. During cross examination Mrs. Amita Joyekurrun (witness no.5) stated that accused never told them that he would be making a 'morcellement' and that infrastructural works had to be made before handing out the plot of land. In fact, accused showed them a site plan in which the land was already divided into plots. When they made the site visit, the land had been cleaned with signs of work being carried out there. She maintained that accused had told them that they would be getting the plot of land in six months' time following the Rs. 100,000/- deposit. They entered a civil claim against accused and got a judgment to that effect.
15. Mr. Deven Varma Ramburuth (witness no.6) stated that in 2013, following an advertisement in the newspaper regarding sale of plots of land at Palma, Quatre Bornes, he talked on the phone with one Mrs. Saloni Bungraz, the wife of accused. He thereafter met accused and his wife at Palma, Quatre Bornes, whereby accused showed him a site plan (**Doc R**). He chose plot number 5. He gave accused 30% as deposit, i.e., a sum of Rs. 262,500/- by way of a cheque on the name of Collateral & Co Ltd (**Doc H**). An agreement, dated the 11<sup>th</sup> October 2013, was

signed to that effect at the house of accused (**Doc T**) and the final sale before the notary would take place after some months. That final sale was never made. Accused every time told him that there was delay for several reasons. He also stated that accused did tell him that there was a 'morcellement' project which had to be completed before he gets his plot of land. However accused did not tell him that Collateral & Co Ltd had no 'morcellement' permit.

16. Mrs. Teesha Joyekurun Bumma (witness no.4) stated that following an advertisement in the newspaper, her mother, Mrs. Amita Joyekurrun (witness no.5) and her father contacted Collateral & Co Ltd. They effected a visit of the land and they chose plot no.2 from the site plan (**Doc R**) that was given to them by accused. The price for plot no.2 was Rs. 700,000/- with an initial deposit of Rs. 100,000/-. A cheque to that effect was issued (**Doc D**) on the name of Collateral & Co Ltd by Mrs. Amita Joyekurrun (witness no.5) and remitted to accused on the 28<sup>th</sup> October 2011. An agreement to that effect was also signed (**Doc U**) on the 03<sup>rd</sup> November 2011 between herself and Collateral & Co Ltd. Accused told them that he was sorting out administrative issues for the land and that within six months, they would be getting their plot of land. Her mother, Mrs. Amita Joyekurrun (witness no.5), wrote on **Doc R** "six months' time as discussed" when they met accused. Accused did not inform them that there was no 'morcellement' permit. However, they were not remitted the plot of land after six months. Accused would always delay the remittance despite several requests made. Accused even signed two acknowledgements of debt (**Doc S** and **Doc S1**) stating that he will reimburse the money but failed to do so.
17. During cross examination, Mrs. Teesha Joyekurun Bumma (witness no.4) maintained that accused told them that in six months from the initial deposit, electricity, water and the administrative procedures would be completed. They knew, when the deposit of Rs. 100,000/- was made, that there were works that had to be made for them to get the plot of land. Every time accused was asking for more time because all administrative procedures had not been completed. Accused never told them what was really going on nor were they aware that the land had been sold in 2017.
18. Mrs. Shobna Seetohul (witness no.7), an Office Management Executive at the Ministry of Housing and Lands, stated that Collateral & Co Ltd made an application for the subdivision of the land on the 26<sup>th</sup> January 2016. On the 16<sup>th</sup> March 2016, the Municipal Council of Quatre Bornes recommended the application subject to certain conditions. On the 15<sup>th</sup> June 2016, at a Morcellement Board Meeting, the application was recommended for approval and a Letter of Intent was issued on the 14<sup>th</sup> July 2016 with certain conditions, namely a scope of works to be carried out, clearance from authorities to be obtained and bank guarantee amongst others. None of those conditions were satisfied by the company. The maximum time to satisfy the conditions is normally three years which can be extended upon request. But no such extension was sought by Collateral & Co Ltd.
19. Mr. Neersoo Jeetun (witness no.13), as per **Doc B**, is a director of Collateral & Co Ltd. He stated that he had nothing to do with the management of the company nor can he say how his name appears as such.

**C. CASE FOR DEFENCE**

20. Accused deposed under oath. He explained that Collateral & Co Ltd had as project to buy a portion of land and subdivide it into plots for sale. The company did acquire a portion of land in 2010. But it is only when the company applied for subdivision that he came to know that the land was an agricultural one requiring conversion before it could make a residential 'morcellement'. The company made administrative procedures to that effect leading to considerable delay and collapse of the project. He has reimbursed both Mr. Deven Varma Ramburuth (witness no.6) and Mrs. Teesha Joyekurun Bumma (witness no.4) the money the company had took as advance payment. For the purposes of the project, he explained that Collateral & Co Ltd:
- a. in 2011, retained the services of EME Engineering Ltd for works thereat (**Doc V**);
  - b. when the application for conversion permit was rejected, made an appeal to the Ministry of Agro Industry and Food Security on the 13<sup>th</sup> June 2012 (**Doc V1**);
  - c. sent a second letter on the 15<sup>th</sup> May 2013 in relation to the Land Conversion Permit (**Doc V2**);
  - d. sent another letter to the Ministry of Agro Industry and Food Security (**Doc V3**);
  - e. sent a letter to the Irrigation Authority on the 10<sup>th</sup> May 2011 (**Doc V4**);
  - f. sent another letter to the Irrigation Authority on the 07<sup>th</sup> January 2013 (**Doc V5**);
  - g. sent two letters to the General Manager of the Irrigation Authority on the 15<sup>th</sup> May 2013 and the 10<sup>th</sup> January 2014 respectively (**Doc V6** and **Doc V7**);
  - h. received a letter and a receipt from the Irrigation Authority dated the 20<sup>th</sup> April 2015 and the 07<sup>th</sup> August 2015 respectively (**Doc V8** and **Doc V9**);
  - i. received a letter dated the 29<sup>th</sup> July 2015 Ministry of Agro Industry and Food Security in respect of its appeal for conversion of the land (**Doc V10**); and
  - j. received a letter dated the 17<sup>th</sup> August 2016 from the Municipality of Quatre Bornes in respect of approval to start infrastructural works for drainage (**Doc V11**).
21. Accused stated that he had retain his right to silence during the enquiry but could have submitted those documents to help that enquiry. He further stated that he neither had any mala fide intention whilst performing the project nor committed any money laundering. He in fact made infrastructural works on the land including cleaning, levelling, architecture and engineering expenses for levelling and drainage (**Doc V12** and **Doc V13**).
22. During cross-examination accused stated that Collateral & Co Ltd was incorporated in 2008. As per **Doc B**, he was its director and was handling its administration. Accused confirmed that as per its financial summary (**Doc V14**) for the period June 2011 to June 2012, the company was engaged in import and export activities. He also conceded that as per a CRBD document from the Registrar of Companies (**Doc V15**), there is no mention that the company was involved in the business of real estate. Accused explained that there was no requirement that

the business activity be mentioned in the BRN and it was not necessary to make any changes to that effect. Accused explained that although the company had only Rs. 275,000/- in its bank account, the 'morcellement' project was to be financed by loans from the bank and deposits from clients. He maintained that he did not take any deposit money to invest in the import and export business. The company bought the land for Rs. 4 million. He genuinely thought that the land was a residential one given its location and with no plantation on it. Also, there were residential premises surrounding it. The agricultural status of the land was not mentioned in the deed of sale nor did he realize that he should have verified all that prior to buying the land. It is only when Collateral & Co Ltd was making administrative procedures at the Municipality of Quatres Bornes for a 'morcellement' permit that he was informed that the land was an agricultural one and was within an irrigation zone. Collateral & Co Ltd still went on with the project and placed advertisements in newspapers because he was sure to get the conversion of the land especially when officers at the Municipality had told him that the conversion would not be a problem given the absence of any plantation on it for more than 10 years. He did inform potential buyers that they would not get the land immediately to which they were agreeable. He did not know that there were irrigation pipes since they were under the soil. Those pipes only became visible when works started on the land. Accused confirmed that, as per **Doc V10**, Collateral & Co Ltd paid Rs. 34,500/- to the Irrigation Authority for modifications to be made on a pipeline in 2015. He also confirmed that by letter dated the 07<sup>th</sup> January 2013 (**Doc V5**), the Irrigation Authority had no objection that the pipes on lateral P3L4 be removed and be blanked at the level of the gate valve. Also, by letter dated the 15<sup>th</sup> May 2013 to the Ministry of Agro Industry and Food Security, Collateral & Co Ltd informed that the pipe does not exist anymore since it had been removed and blanked at the company's own costs. In respect of **Doc V3**, accused explained that this letter was to speed up the procedures to get the conversion permit. Collateral & Co Ltd had to sell the land in order to pay the debts of the company. As for the site plan, Collateral & Co Ltd had it prepared for approval purposes later at the Municipality for subdivision purposes. He also stated that he had always informed the clients of all procedures and correspondences and that it was not true when Mr. Deven Varma Ramburuth (witness no.6), Mrs. Teesha Joyekurun Bumma (witness no.4) and Mrs. Amita Joyekurrun (witness no.5) stated that they were never informed of same.

#### **D. SUBMISSIONS**

23. Counsel for the prosecution submitted that as per the testimonies of Mr. Deven Varma Ramburuth (witness no.6), Mrs. Teesha Joyekurun Bumma (witness no.4) and Mrs. Amita Joyekurrun (witness no.5), there was a predicate offence in the nature of an offence against property. They were misled by accused to make deposits for the plots of land they had chosen and accused never finalized the deal within six months of the deposits being made. Those persons were made to believe that it was a proper 'morcellement' with specific lots as per the site plan when no approval to that effect had yet been obtained by Collateral & Co Ltd.
24. Counsel for accused submitted that there was a site plan and several documents including applications made by Collateral & Co Ltd to get necessary permits for the subdivision of the

land. Collateral & Co Ltd finally got the Letter of Intent in 2016. According to counsel's submissions, this was a development project which did not succeed and the victims have been reimbursed. As such, there is no offence of money laundering.

**E. THE LAW**

25. **Section 3 (1) (b) of the FIAMLA** provides:

*"(1) Any person who –*

*(a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime;*

*(b) or receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime,*

*where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence."* (Underlining is mine)

26. In the present case, the prosecution has to prove that the:

- (i) accused was in possession of property;
- (ii) property is, in whole or in part directly or indirectly represents, the proceeds of any crime;
- (iii) accused suspected or had reasonable grounds for suspecting that the property is derived, in whole or in part, directly or indirectly from a crime; and
- (iv) accused committed the offences whilst being concerned in the management of Collateral & Co Ltd.

27. It is trite law that proof of a predicate offence is not an element of the offence of money laundering under **section 3 of the FIAMLA**. As such, the prosecution need not aver or prove any crime – See **DPP v Bholah [2011] UKPC 44**.

28. Furthermore, in **R v Anwoir [2009] 1 WLR 980**, it was held that:

*"We consider that in the present case the Crown are correct in their submission that there are two ways in which the Crown can prove the property derives from crime, (a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime."* (Underlining is mine)



29. In the present case, although the prosecution has not averred any predicate offence, its whole case, as can be gathered from the testimony of Senior Investigator Chen Tse King (witness no.1) and submissions of Counsel for the prosecution, is based on the premise that the predicate offence is in the nature of a swindling operation.

**F. ANALYSIS**

30. It is apposite that accused is not disputing that the money specified under Counts 1 and 2 was in the bank account of Collateral & Co Ltd. Accused is also not disputing that he was concerned in the management of Collateral & Co Ltd. Accused is however disputing that the money is criminal property.
31. The prosecution contends that accused duped Mrs. Teesha Joyekurun Bumma (witness no.4), Mrs. Amita Joyekurrun (witness no.5) and Mr. Deven Varma Ramburuth (witness no.6) by making them believe that they would be getting the plot of land after the deposit money was made. Also, by showing them a site plan depicting the plots of land available, it made them believe that the land was ready for acquisition. The prosecution further contends that accused only started making administrative formalities when a police declaration was made against him.
32. Mrs. Teesha Joyekurun Bumma (witness no.4) and Mrs. Amita Joyekurrun (witness no.5) stated that accused never told them that a ‘morcellement’ permit had to be obtained before they could get the plot of land they had chosen. According to them, accused told them that administrative procedures had to be made and that they would be getting the plot of land within six months of the deposit being made. When the plot of land was not remitted to Mrs. Teesha Joyekurun Bumma (witness no.4) and Mrs. Amita Joyekurrun (witness no.5) after the expiry of six months, they started contacting accused. On the other hand, accused stated that he did, beforehand, inform them that they would not be getting the plot of land immediately since administrative procedures had to be done. There was no six months being promised to them as per the testimony of accused. It is apposite that there is no mention of this period of six months in the declaration made by Mrs. Teesha Joyekurun Bumma (witness no.4) at Quatre Bornes Police Station (**Doc A2**) on the 18<sup>th</sup> March 2016. Likewise, in the only statement recorded by the ICAC from accused on the 25<sup>th</sup> July 2019 (**Doc J**), it was never put to accused that he had promised to deliver them the plot of land within six months to them. The case of the ICAC, when that statement was recorded (**Doc J**), was that when the deposits and the ‘promesse de vente’ were made, accused did not have any ‘morcellement’ permit and that an application for same was only made in 2016. Accused was also never cross-examined on whether he in fact promised to deliver the plot of land within six months especially when he, in chief, stated that he had, à priori, informed them that it would take some time to get the plot of land due to administrative procedures. More importantly, in the agreement signed in respect of the deposit that was made (**Doc U**), there is no mention of that period of six months as allegedly stated by Mrs. Teesha Joyekurun Bumma (witness no.4) and Mrs. Amita Joyekurrun (witness no.5). One would have expected that this period of six months, being an important aspect of the ‘promesse

de vente’ to be included in that agreement (**Doc U**). The only place where those six months appear is in the site plan (**Doc R**). According to Mrs. Teesha Joyekurun Bumma (witness no.4), this was written on **Doc R**, not by accused but by her mother, Mrs. Amita Joyekurrin (witness no.5), when they had met accused. Unfortunately, the prosecution never elicited from Mrs. Amita Joyekurrin (witness no.5) whether she had in fact written that six months and in what circumstances. Moreover, **Doc R** was never signed by accused or anyone else. That important aspect, i.e., six months allegedly written down on **Doc R** by Mrs. Amita Joyekurrin (witness no.5) when they met accused reflecting latter’s promise to remit the plot of land within that period of time, was neither confronted to accused during the enquiry and nor during his cross-examination. As such, it is doubtful whether in fact there was any promise that had been made by accused to remit the plot of land to them within six months.

33. In respect of Mr. Deven Varma Ramburuth (witness no.6), there was no such six months promise made but rather that the final sale would be made after some months but which final sale never happened. This is not being disputed by accused who explained why that final sale did not take place since the project collapsed.
34. It is undisputed that Collateral & Co Ltd did not have any ‘morcellement’ permit at the time it placed the advertisement in newspapers and took deposits from Mrs. Amita Joyekurrin (witness no.5) and Mr. Deven Varma Ramburuth (witness no.6). However, it would be oversimplistic to conclude that this in itself (i.e., the absence of a ‘morcellement’ permit) shows the criminal activity being operated by accused. The Court needs to look at the overall circumstances of the case, including the absence of that ‘morcellement’ permit to determine whether a criminal activity in the nature of a swindling operation, has been proved beyond reasonable doubt. First and foremost, the land which had to be subdivided into plots had been acquired by Collateral & Co Ltd on the 17<sup>th</sup> December 2010 (**Doc M**). The company was the owner of that land at the time Mrs. Amita Joyekurrin (witness no.5) and Mr. Deven Varma Ramburuth (witness no.6) met with accused and went for a site visit. As per **Doc M**, it is not mentioned whether that land was of agricultural or residential nature. Accused explained that he thought that the land was residential given that there was no plantation on it and there were residential houses surrounding it. It is only when Collateral & Co Ltd applied for subdivision of the land that he became aware that the land was an agricultural one and needed conversion. It is noteworthy that it is not only in Court that accused stated that Collateral & Co Ltd was not aware that the land was an agricultural one. As per **Doc V3**, which is a letter addressed to the Minister of Agro Industry and Food Security, it can be noted that:

*“...despite my appeal letters addressed to your ministry since the beginning of year 2011, with regards to the conversion of my plot of land situated at Palma in an irrigation zone, has remained so, without any efforts from your Ministry.*

*We wish to draw your attention that the company contracted a loan from the S.B.M for the financing of that plot of land, we have also, on several times, drawn the attention of your officers that, we were not*

aware of the status of the land before the purchase of that plot of land as we were misled by the seller.

... You will notice that the price paid for the land is not according to a plot situated in an irrigation area and not even an agricultural zone.

*Sir, it has been nearly two years since I am repaying the debts contracted from S.B.M for this project, the company has found itself in such a critical position that we will be no longer able to bare that repaying capacity anymore ...” (underlining is mine)*

35. From the contents of **Doc V3**, it can be deduced that Collateral & Co Ltd (i) made procedures for conversion as far back as beginning of 2011, (ii) since that time, it was made clear that the company was not aware that the land was an agricultural one because it was misled by the seller and because of the price for which the land was bought, and that (iii) the company was in critical financial difficulty. **Doc V1, Doc V2, Doc V3, Doc V4, Doc V5, Doc V6, Doc V7, Doc V8, Doc V9** and **Doc V10** were produced by accused during his testimony under oath without any objection from the prosecution. Those documents first came to light during the cross-examination of the main enquiring officer, Senior Investigator Chen Tse King (witness no.1) on the 05<sup>th</sup> February 2024. The prosecution sought and obtained a postponement so that counsel for accused communicate to them a copy of such documents before proceeding with the cross-examination of Senior Investigator Chen Tse King (witness no.1). On the 30<sup>th</sup> April 2024, counsel for the prosecution informed Court that such documents had been communicated and cross-examination continued. Senior Investigator Chen Tse King (witness no.1) merely stated that such documents were hearsay, that he could not vouch as to its veracity since they were only recently communicated and that accused should call relevant witnesses to prove its veracity. However, the prosecution never challenged the admissibility of such documents nor did it attack its weight in any way whatsoever. It is a cardinal rule in criminal cases that the burden is always on the prosecution to prove the case against an accused beyond reasonable doubt. To require the accused to bring witnesses to prove the veracity of those documents when the prosecution did not challenge its admissibility would breach that cardinal rule. It was for the prosecution, upon being made aware and communicated with such documents and fully knowing that accused would be relying on same as part of its case, to rebut same, if need be, the more so when the main enquiry officer Senior Investigator Chen Tse King (witness no.1) was still under cross-examination when those documents were shown to the prosecution. As it is, those documents have remained unchallenged. **Doc V1, Doc V2, Doc V3, Doc V4, Doc V5, Doc V6, Doc V7, Doc V8, Doc V9** and **Doc V10** are revealing of the several steps that Collateral & Co Ltd had undertook, since 2011, to get the conversion of the land. As per **Doc V10**, it appears that the conversion was obtained after the 29<sup>th</sup> July 2015. The application for ‘morcellement’ permit was made on the 21<sup>st</sup> January 2016 (**Doc L**) and same was recommended as per a correspondence from the Municipality of Quatre Bornes dated the **08<sup>th</sup> March 2016** to the Ministry of Housing and Lands (**Doc N**). Further to that, the Ministry of Housing and Lands issued a Letter of Intent to Collateral & Co Ltd on the 08<sup>th</sup> November 2016 informing the company that infrastructural works, to the satisfaction of the Morcellement Board, had to completed within a period of three years to enable the Morcellement Board to

recommend the approval of the issue of a 'morcellement' permit (**Doc P**). Accused explained that Collateral & Co Ltd had to sell the land for Rs. 6 million because of the loan it had taken from the bank to make its initial purchase and that it had received a notice that the land would be seized by the bank. Accused also explained that they did ask and obtained a delay from the bank. But at the expiry of that delay, Collateral & Co Ltd could not hold on the land any longer and had to sell it to pay off the debts.

36. The nature of the charge that was put to accused, at the time of the enquiry (**Doc J**), was that he made Mrs. Teesha Joyekurun Bumma (witness no.4) and Mr. Deven Varma Ramburuth (witness no.6) believe that he would sell them two portions of land and swindled Rs. 100,000/- and Rs. 262,500/- as deposit money. At that time, Collateral & Co Ltd did not have any 'morcellement' permit; it only made such an application in 2016. From the version of accused in Court, there is no evidence pointing that Collateral & Co Ltd must have known that the land it purchased was in fact an agricultural land. True it is that Collateral & Co Ltd could and should have been more diligent before buying the land but its later actions do not reflect any mala fide on its part. Indeed, as far back as early 2011 (**Doc V3**), well before any deposit was taken, Collateral & Co Ltd had started making administrative procedures to get the land converted. As was explained by accused, there was no obvious reason or obstacle why the land would not get the conversion. No witness for the prosecution also pointed to the contrary. Collateral & Co Ltd went forward with the project and took deposits only because accused was sure the conversion would not be a problem. As can be seen, the company was involved in constant administrative procedures since early 2011 to obtain the conversion of the land. As per the unrebutted evidence of accused, the company only applied for a 'morcellement' permit in 2016 because it had first to obtain the conversion for the land. Again, as per the unrebutted evidence of accused, despite obtaining the Letter of Intent (**Doc P**), Collateral & Co Ltd did not go forward with the project because the land would have been seized by the bank and had to be sold to pay off debts. It is noteworthy that both Mrs. Teesha Joyekurun Bumma (witness no.4) and Mr. Deven Varma Ramburuth (witness no.6) did admit, during cross examination, that accused did tell them that there were administrative procedures to be made before they could get their plot of land. True it is that Mrs. Teesha Joyekurun Bumma (witness no.4) and Mr. Deven Varma Ramburuth (witness no.6) stated that accused did not tell them that there was no 'morcellement' permit. This has not been disputed by accused who stated that he told them that administrative procedures had first to be completed and that it would take some time to get their plot of land. Even accepting that accused did not tell them about the absence of the 'morcellement' permit, the overall evidence before this Court does not prove that accused used this absence of 'morcellement' permit to lure Mrs. Teesha Joyekurun Bumma (witness no.4) and Mr. Deven Varma Ramburuth (witness no.6) into a fictitious buying of plots of land. On the contrary, the land existed and belonged to Collateral & Co Ltd since 2010. The site visit was made to that very land. The site plan shown by accused to Mrs. Teesha Joyekurun Bumma (witness no.4) and Mr. Deven Varma Ramburuth (witness no.6) was the site plan for that very land (**Doc R**). Administrative procedures for the conversion of the land had started as far back as early 2011 and went through a number of years before getting the conversion in 2015. Those administrative procedures had been undertaken by Collateral & Co Ltd well before any declaration was made at the police station by Mrs. Teesha Joyekurun Bumma (witness no.4)

and Mr. Deven Varma Ramburuth (witness no.6) (**Doc A1** and **Doc A2**) on the 16<sup>th</sup> May 2017 and the 18<sup>th</sup> March 2016 respectively. It is clear that it was not such declaration to the police that prompted Collateral & Co Ltd to start the administrative procedures for the conversion of the land and later applying for the ‘morcellement’ permit. It is also undisputed that accused did sign two acknowledgement of debt which he did not honour (**Doc S** and **Doc S1**). However, as is stated in **Doc V3**, Collateral & Co Ltd was in critical financial difficulty due to the loan it had taken from the bank. And as explained by accused, Collateral & Co Ltd had to sell the land in 2017 to repay such debts. As such, no mala fide can be attached to the non-repayment of the deposit money taken from to Mrs. Teesha Joyekurun Bumma (witness no.4) and Mr. Deven Varma Ramburuth (witness no.6) at that time. Accused did reimburse that money during the course of the trial. Likewise, the fact that Collateral & Co Ltd sold the land in 2017 without informing Mrs. Teesha Joyekurun Bumma (witness no.4) and Mr. Deven Varma Ramburuth (witness no.6) cannot also be considered as a mala fide act given that the land had to be sold, as per the unrebutted evidence of accused, to repay the debts Collateral & Co Ltd due to the loan it took from the bank to buy the land initially. The sale of the land in 2017 cannot be said to have been made to flee with money. Also, as can be read from **Doc S** and **Doc S1**, accused had finally resolved and committed himself, not to remit the plot of land but to reimburse the deposit money it had taken. As accused himself explained, the project had collapsed. If to swindle potential clients was the real intention, Collateral & Co Ltd would not have bought the land since 2010 by taking a loan from the bank and well before advertisements were placed in the newspaper, and afterwards undertake painstaking administrative procedures to obtain the land’s conversion well before any declaration to the police was made and make finally an application for a ‘morcellement’ permit. Also, the explanation of accused to the effect that there was no need, at the time, to effect changes to the company’s BRN to reflect also real estate development over and over its import and export business, has remained unrebutted.

37. The overall evidence in the present case falls short of revealing any criminal activity in the nature of a swindling operation or offence against property committed by Collateral & Co Ltd. Rather, the facts and circumstances of the present case reveal that Collateral & Co Ltd got involved in an unfortunate land project, for circumstances accused explained and which have not been seriously challenged, did not reach the target set out, i.e., to deliver residential plots of land.

#### **G. CONCLUSION**

38. Therefore, the prosecution has failed to prove beyond reasonable doubt that the deposits of Rs. 100,000/- (count 1) and Rs. 262,500/- which Collateral & Co Ltd had in its bank account amount to criminal property as per **section 3 (1)(b) of the FIAMLA**. The case against accused under both Counts is accordingly dismissed.

**A.R.TAJOODEN**

**Magistrate of the Intermediate Court (Financial Crimes Division)**  
**26.06.2025**