ICAC v O K Lungut Ruling

2025 INT 322

FCD CN: FR/L36/2020

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

Oodaye Kumar LUNGUT

RULING

A. BACKGROUND

1. Accused is being prosecuted for Money Laundering offences (5 Counts) in breach of **sections 3(1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002** (**the 'FIAMLA'**).

2. He has pleaded not guilty and is represented by Counsels, Mr. J. Ramphul and Miss R. Kangloo.

3. Mr. T. Naga conducted the case for the Prosecution on behalf of the ICAC (Now the Financial Crimes Commission pursuant to **section 168(1) of the Financial Crimes Commission Act 2023**).

4. During the course of the trial, Learned Counsel for accused moved for particulars of the crime of Forgery as specified in the 5 Counts of the Information.

5. Learned Counsel for the prosecution objected to that request for particulars and the matter was fixed for arguments

B. THE SUBMISSIONS

6. Learned Counsel for accused submitted that the following particulars are being requested, namely the (i) date and location of the alleged forgery, (ii) description of the forged documents, (iii) identity of victims and beneficiary associated with the forgery and (iv) circumstances under which the forgery occurred. He submitted that failure to provide the said particulars would contravene the statutory law and the constitutional rights of the accused in as much as the accused would be deprived of the opportunity to mount a meaningful defence and/or to challenge the authenticity of the documents and call expert evidence if need be.

7. Learned Counsel for the prosecution submitted that the predicate offence has been identified, in the 5 Counts of the Information, as one of Forgery. This, in itself, is sufficient without any need to provide particulars of the forgery itself which would be a matter of evidence.

C. THE LAW

8. In the landmark case of **The DPP v Bholah (2011) UKPC 44**, the Judicial Committee of the Privy Council held that:

> *33. The Board has therefore concluded that proof of a specific offence was not required in order to establish guilt under section 17(1) of ECAMLA. It is sufficient for the purposes of that subsection that it be shown that the property possessed, concealed, disguised, or transferred etc represented the proceeds of any crime – in other words any criminal activity – and that it is not required of the prosecution to establish that it was the result of a particular crime or crimes. In light of this conclusion it follows that a failure to identify and prove a specific offence as the means by which the unlawful proceeds were produced is not a breach of section 10(2)(b) of the Constitution. In the Board's view, that section requires that the nature of the offence of which the accused person must be informed is that with which he is charged, in this case the offence of money laundering. Proof of a particular predicate crime is not an essential "element" of the offence of money laundering.*
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> *34. The decisions in the English cases are informative beyond their firm conclusion that proof of a specific predicate offence is not required, however. They are unanimous, in the Board's view, in suggesting that where it is possible*

to give particulars of the nature of the criminal activity that has generated the illicit proceeds, this should be done. Some of the cases appear to suggest that this is an indispensable requirement; others that it is merely required where it is feasible. All are agreed, however, that where it is possible to give the accused notice of the type of criminal activity that produced the illegal proceeds, fairness demands that this information should be supplied.

35. Section 17(7) of ECAMLA did not preclude a request for particulars of the type of criminal activity which was said to have produced the illegal property. The Supreme Court's conclusion that a request for particulars could not be made was founded on its opinion that a specific predicate crime had to be identified and proved in order to meet the requirements of section 10(2)(b) of the Constitution. There is nothing in section 17(7) or its successor which contraindicates a request for particulars of the type of criminal activity that is alleged to have been the source of the criminal property nor is there anything in that provision which would relieve the prosecution of its obligation, in the interests of fairness, of supplying it, if it was able to do so." (Underlining is mine)

9. It is settled law that proof of a predicate offence is not an element of the offence of money laundering under **sections 3(1)(b), 6 and 8 of the FIAMLA**. As such, it is not essential to aver and prove any predicate offence. The prosecution, if possible, must only provide particulars of the criminal activity that has generated the proceeds. However, even a failure to provide such particulars will not necessarily lead to an unfair trial - See **Bholah (supra)**.

D. ANALYSIS

10. In the present case, the prosecution has identified the predicate offence as one of Forgery in all the 5 Counts of the Information. The accused is therefore well aware that the proceeds under those 5 Counts of the Information are allegedly derived from the crime of Forgery. It is noteworthy that such precision is already well above the threshold of providing particulars of the criminal activity when possible.

11. Moreover, accused has been provided with a full copy of the brief. He is, as such, well aware of the evidence on which the prosecution would be relying quoad the crime of Forgery that has allegedly generated the proceeds as averred in the 5 Counts of the Information. The (i) date and location of the alleged forgery, (ii) description of the forged documents, (iii) identity of victims and beneficiary associated with the forgery and (iv) circumstances under which the forgery occurred would indeed be matters of evidence for the prosecution to adduce and prove, if need be, bearing in mind that the present offences are not one of Forgery but are one of Money Laundering under each of the 5 Counts of the Information.

E. CONCLUSION

12. For the reasons explained above, it is not incumbent on the prosecution to provide the particulars as requested by Learned Counsel for accused. Accordingly, the motion of Learned Counsel for accused is set aside.

A.R.TAJOODEEN
Magistrate of the Intermediate Court (Financial Crimes Division)
24.10.2025