

KASORY S v THE STATE & ANOR

2026 SCJ 69

Record No. 126950

THE SUPREME COURT OF MAURITIUS

In the matter of:-

Sarvansingh Kasory

APPLICANT

V

- 1. The State**
- 2. Financial Crimes Commission (formerly known as the Independent Commission Against Corruption)**

RESPONDENTS

JUDGMENT

The applicant has by way of motion paper and affidavit, dated 21 and 20 May 2025 respectively, moved for an order pursuant to sections 81(1)(a) and 81(2)(a) of the Constitution, granting him conditional leave to appeal to the Judicial Committee of the Privy Council (JCPC) against the judgment, dated 19 May 2025, in which the Supreme Court dismissed all the 13 grounds of appeal raised by him. The present application is resisted by both respondents.

Sections 81(1)(a) and 81(2)(a) of the Constitution provide as follows-

“81. Appeals to Judicial Committee

(1) An appeal shall lie from decisions of the Court of Appeal or the Supreme Court to the Judicial Committee as of right in the following cases –

- (a) *final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;*

.....

(2) *An appeal shall lie from decisions of the Court of Appeal or of the Supreme Court to the Judicial Committee with the leave of the Court in the following cases –*

- (a) *where in the opinion of the Court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Judicial Committee, final decisions in any civil proceedings; and ”*

As per the information dated 9 February 2011, the applicant, a police officer, was prosecuted before the Intermediate Court for the offence of wilfully, unlawfully, and criminally making use of his position as a public officer for gratification, in breach of sections 7(1) and 83 of the then Prevention of Corruption Act (POCA). The applicant pleaded not guilty but was found guilty as charged. On 18 February 2016, the applicant was sentenced to undergo 12 months' imprisonment and to pay Rs.500 as costs. The said judgment was appealed against and on 19 May 2025, the Supreme Court maintained the conviction of the applicant but substituted a term of 6 months' imprisonment to 12 months' imprisonment with no order as to costs.

In his affidavit, the applicant averred that it is a matter of great general public importance that leave should be granted to him to appeal before the JCPC having regards to section 70(a) of the Courts Act and sections 81(1)(a) and (2)(a) of the Constitution considering the delay between the date of the offence, the date of conviction, the date the appeal was heard and the time taken to deliver judgment. According to the applicant, this requires that sections 3 and 10 of the Constitution be interpreted in that respect.

A reading of sections 3 and 10 of the Constitution provide as follows –

“3. Fundamental rights and freedoms of individual

It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms –

- (a) *the right of the individual to life, liberty, security of the person and the protection of the law;*

- (b) *freedom of conscience, of expression, of assembly and association and freedom to establish schools; and*
- (c) *the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,*

and the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

10. Provisions to secure protection of law

- (1) *Where any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial Court established by law.*
- (2) *Every person who is charged with a criminal offence –*
 - (a) *shall be presumed to be innocent until he is proved or has pleaded guilty;*
 - (b) *shall be informed as soon as reasonably practicable, in a language that he understands and, in detail, of the nature of the offence;*
 - (c) *shall be given adequate time and facilities for the preparation of his defence;*
 - (d) *shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense;*
 - (e) *shall be afforded facilities to examine, in person or by his legal representative, the witnesses called by the prosecution before any Court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that Court on the same conditions as those applying to witnesses called by the prosecution; and*
 - (f) *shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence,*

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the Court has ordered him to be removed and the trial to proceed in his absence.

- (3) *Where a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be specified by or under any law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the Court.*
- (4) *No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.*
- (5) *No person who shows that he has been tried by a competent Court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, except upon the order of a superior Court in the course of appeal or review proceedings relating to the conviction or acquittal.*
- (6) *No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by competent authority, for that offence.*
- (7) *No person who is tried for a criminal offence shall be compelled to give evidence at the trial.*
- (8) *Any Court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a Court or other authority, the case shall be given a fair hearing within a reasonable time.*
- (9) *Except with the agreement of all the parties, all proceedings of every Court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the Court or other authority, shall be held in public.*
- (10) *Nothing in subsection (9) shall prevent the Court or other authority from excluding from the proceedings (except the announcement of the decision of the Court or other authority) persons other than the parties and their legal representatives, to such extent as the Court or other authority –*
 - (a) *may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity*

would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of 18 years or the protection of the privacy of persons concerned in the proceedings; or

- (b) may by law be empowered or required to do so in the interests of defence, public safety or public order.*
- (11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of –*
 - (a) subsection (2) (a), to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;*
 - (aa) subsection (2) (d), to the extent that the law in question authorises a police officer to direct that any person arrested upon reasonable suspicion of having committed any offence related to terrorism or any drug dealing offence be detained in police custody for a period not exceeding 36 hours from his arrest without having access to any person other than a police officer not below the rank of Inspector or a Government Medical Officer;*
 - (b) subsection (2) (e), to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;*
 - (c) subsection (5), to the extent that the law in question authorises a Court to try a member of a disciplined force for a criminal offence, notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any Court so trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.*
- (12) In this section, “criminal offence” means a crime, misdemeanour or contravention punishable under the law of Mauritius.*

Section 3 of the Constitution as set out above establishes the fundamental rights and freedoms of a person. In the present case, we fail to see how this section is relevant to the present application.

As for section 10 of the Constitution, it deals with the provisions to secure the protection of the law. We find that the applicant has failed to show which specific part of this section needs interpretation by the JCPC.

Furthermore, as rightly submitted by learned counsel for the respondent no.1, at no time were issues concerning the interpretation of any section of the Constitution raised before the Supreme Court on appeal.

A copy of the judgment of the Court of Appeal was annexed to the affidavit. It reveals that it was on 19 November 2015 that the applicant was found guilty by the trial Court. He was sentenced on 18 February 2016 and he appealed to the Supreme Court on the same date following which his appeal was dismissed on 19 May 2025.

We have considered the oral and written submissions of all learned Counsel and all the authorities referred thereto. It is important to note that the Supreme Court took into consideration the delay factor and substituted a term of 6 months' imprisonment to the 12 months. We disagree with learned Counsel for the applicant as stated in paragraph 22 of her written submissions that "*the Supreme Court did not take into consideration the considerable delay from the time of the offence **19 August 2009** and the date of the appeal judgment **19 May 2025***". In fact, the Supreme Court was aware that the applicant was prosecuted for a charge which had been committed on 19 August 2009. As borne out in paragraphs 1, 60 and 64 of the said judgment, **Kasory S v Independent Commission Against Corruption & Anor [2025 SCJ 205]** –

"1.*The prosecution averred that he had, on the 19th of August 2009, whilst being a police officer, wilfully, unlawfully and criminally made use of his position for gratification for himself.....*

.....

60. *It is undeniable that there has been considerable delay in the present matter.*

.....

64. *In the light of the foregoing, we are bound to acknowledge that the delay incurred since the commission of the offence in the present case must now be reflected in a reduction of the initial sentence imposed by the learned Magistrate.* (Emphasis added)

The Supreme Court also referred to the cases **Elaheebocus Haroon Rashid v State of Mauritius [2009 MR 323]** and **Prakash Boolell v The State of Mauritius [2006] UKPC 46** which dealt with considerations which should be relied upon in the assessment of sentencing when the offence had been committed 12 years and 15 years respectively before. We, therefore, do not agree with the submission of learned Counsel for the applicant

that the Supreme Court did not consider the delay factor from the commission of the offence until the judgment was delivered.

We note with concern that the applicant has relied on the very same 13 grounds of appeal already raised and adjudicated by the Supreme Court on appeal, for the purpose of the present application for leave to appeal before the JCPC. We find that this is no more than a mere attempt to use the JCPC as a second Court of Appeal which the Judicial Committee has repeated time and again that it is not its function. **See Tonta L.E.C v The State [2021 SCJ 353]**. As of note, out of the 15 grounds of appeal which the applicant intends to raise at the JCPC, 13 of them had already been dealt with and adjudicated upon by the Supreme Court on appeal.

As regards the requirement which needs to be satisfied under section 81(2)(a) of the Constitution, we find that the applicant has not substantiated what is the issue of great general public importance which ought to be submitted to the JCPC. As laid out in **Halsbury's Laws, 4th Edition, Volume X, Vo Courts at paragraph 786 -**

“... Questions of great public importance arise where –

“the due and orderly administration of the law is shown to be interrupted or diverted into a new course which might create a precedent for the future, and where there are no other means of preventing these consequences.”

It is well settled that when determining an appeal for leave to the JCPC, the principles in **Ibrahim v R [1914] AC 599 at page 614** have been consistently applied. **vide Tonta [supra] –**

“... Leave to appeal is not granted ‘except where some clear departure from the requirements of justice’ exists: Riel v R. (1885) 10 App. Cas 675; nor unless ‘by a disregard of the forms of legal process, or by some violation of the principles of natural justice or case (1887) 12 App. Cas. 459. ... Misdirection as such, even irregularity as such, will not suffice: ex parte Macrea (1893) A.C. 346. There must be something which, in the particular case, deprives the accused of the substance of fair trial and the protection of the law, or which, in general, tends to divert the due and orderly administration of the law into a new course, which may be drawn into an evil precedent in future: R v Bertrand (1867) L.R.1.P.C. 520.”

We also find it relevant to refer to **Dip C.P. v The State [2022 SCJ 386]** which held, inter alia, –

“At this juncture it is apt to remind legal advisers that an application contrived to fall within the purview of Sections

81(2)(b) of the Constitution and 70A of the Courts Act, by merely having recourse to the wording of the above sections, is not a magic formula that would, per se, entitle an applicant to leave to appeal to the Judicial Committee.

An application for leave must first and foremost contain material which satisfies the Court that it raises issues of great general public importance, as defined in the above cited authorities, that ought to be submitted to the Judicial Committee and which warrant that leave be granted under Section 81(2)(b) of the Constitution and Section 70A of the Courts Act.”

In addition, we also do not find that the application before us is one where the due and orderly administration of the law had been diverted into a new course which might create an evil precedent following the judgment of the Supreme Court.

We find that the application devoid of merits for all the reasons set forth above and we accordingly set it aside, with costs.

**V. Kwok Yin Siang Yen
Judge**

**M.J. Lau Yuk Poon
Judge**

12 February 2026

Judgment delivered by Hon. M.J.Lau.Yuk.Poon, Puisne Judge

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