

IN THE INTERMEDIATE COURT OF MAURITIUS

(FINANCIAL CRIMES DIVISION)

CN FR/L 42/2023

In the matter of:

The Independent Commission Against Corruption

v/s

Rechad MOOLYE

RULING

The accused is charged with, whilst being a public official, whose relative had a personal interest in a decision which a public body had to take, wilfully, unlawfully and criminally taking part in the proceedings of a public body relating to such decision under counts 1 to 3 of the information in breach of Sections 13(2), (3) and 83 of the Prevention of Corruption Act 2002 as amended by Section 4 (b) of Act 1/2006. The accused pleaded not guilty to the charges and was represented by Learned Counsel.

The case is being restarted anew and Learned Counsel for the defence had no objection to same.

At the outset, Learned Counsel for the defence moved that the present proceedings be permanently stayed in as much as a new trial would constitute an abuse of process in breach of the accused's constitutional right to a fair trial as the line of cross-examination of the defence has already been put to the prosecution witnesses and the tactical moves of the defence have been brought to light.

The motion was objected to by the prosecution and arguments were heard.

The case for the prosecution was led by Mrs Ramsooroo and the accused was represented by Mr N. Hussenee.

For the purposes of the arguments, Learned Counsel for the prosecution called witness No. 1, Investigator Mr Ackburally posted at the Financial Crimes Commission. He solemnly affirmed an affidavit dated 30th October 2025, which was produced and marked as **Doc I**. There was no objection to the production of same by the defence.

The witness stated that he is the main enquiring officer and that he has explained the investigative steps taken during the course of the enquiry, in his affidavit. He further explained that there were two limbs in the investigation: firstly, the excessive use of funds at the Ministry of Foreign Affairs and secondly, the conflict-of-interest limb. The present information relates to the conflict-of-interest limb whilst no further action was advised on the other limb by the DPP.

In his affidavit i.e **Doc I**, the witness has explained in chronological order the sequence of events before the Court from the time the information was lodged until the case was fixed for arguments. The witness also explained the steps undertaken during the course of the enquiry.

He was not cross-examined.

Submissions by the prosecution

Learned Counsel submitted that a stay of proceedings is a measure which should be used sparingly and only in exceptional circumstances, referring to the judgment of *State v. Jean Jacques R.D & Anor* [2019] SCJ 312. She also referred to the judgment of *State v. Ludovic Sebastien Potage* [2022] SCJ 220 on abuse of process. It was further submitted that as it is an adversarial system, the defence will have the opportunity to adopt the same strategy or change same to cross-examine the prosecution witnesses although some of these witnesses have already been cross-examined and the accused will not be prejudiced. It was further submitted that the prosecution witnesses cannot go outside their statements. Additionally, the defence will have ample opportunity to cross-examine them and also to put inconsistencies to them, should same arise. Referring to the judgment of *State v. Ludovic*



Sebastien Potage (Supra), Learned Counsel submitted that the trial process is equipped to ensure that the defence is not actually prejudiced and witnesses who have deposed will be bound by their previous testimonies. Furthermore, being given that the case is being restarted because the former Learned Magistrate has left the service, Learned Counsel referring to the judgment of *Sip Heng Wong Ng and Ng Ping Man v. R* [1985] MR 142 submitted that it is fundamental that those called upon to deliver a verdict, should hear all the evidence. It was further submitted that, in accordance with Section 10 of the Constitution and referring to the judgment of *The State v. R.Velvindron* [2003] SCJ 319, the trial process is fully equipped to guarantee the fairness of proceedings

Submissions by the defence

Learned Counsel for the defence referred to **Doc I** and invited the Court to consider that the enquiring officer has explained therein that the prosecution had examined witnesses Nos 1, 2, 3 and 4 and had closed its case. Witnesses Nos 1 and 2 had been cross-examined by defence Counsel. Learned Counsel referred to Section 10 (2) (e) of the Constitution to question whether the said witnesses will be examined on the same footing as they already know the line of defence and they may try to find a version that would suit them. It was submitted that the main purpose of cross-examination is to test the credibility as well as the reliability of the witnesses and here, there are risks that the witnesses will rehearse, refine their answers thus eliminating the element of surprise in the questions by the defence. Learned Counsel referred to the judgments of *The Director of Public Prosecutions v. V.S.Chetty* [2023] SCJ 245, *The Director of Public Prosecutions v. C.R.G.M Ducasse* [2023] SCJ 20 and *The Director of Public Prosecutions v. A.R.Hossen* [2025] SCJ 299 on the principles for ordering a stay of proceedings. He laid emphasis on the fact that the accused will not be able to benefit from a fair trial. It is also the contention of the defence that the accused will not benefit from the doctrine of equality of arms for the reasons outlined above.

Learned Counsel for the prosecution briefly replied to the submissions of the defence.

Analysis

I have considered the submissions by the prosecution and the defence as well as the authorities filed.

The Law

In the case of *Velvindron v. the State [2003] SCJ 319*, the following principle was set out:

“One of the safeguards provided under section 10(1) of our Constitution is that any person who is charged with a criminal offence shall be afforded a fair hearing. In that respect, the principle which underlines the jurisdiction to stay proceedings is that the Courts have the power and the duty to protect the law by protecting its own purposes and functions as was expressed in the words of Lord Devlin in *Connelly v. D.P.P.* (1964 A.C. 1254) “The Courts have an inescapable duty to secure fair treatment for those who come or are brought before them” and at page 1296 Lord Reid said “..... there must always be a residual discretion to prevent anything which savours of abuse of process.””

This was further emphasized in the case of *Sumodhee v. the State [2005] SCJ 71*:

“Moreover, it is true that the concept of a fair trial guaranteed by section 10(1) of the Constitution involves fair and impartial inquiries into the allegations of accused parties without in any way causing any prejudice to them in their defence or in the preparation of their defence.”

This Court will now consider in which circumstances the Court may exercise its power to stay proceedings.

The power to stay proceedings

In *Archbold digital edition 2018 at para 4.75*, the power of the court to stay proceedings is noted as follows:

“Although it can be exercised in many different circumstances, the court has power to stay proceedings in two categories of case, namely—

- (a) where it will be impossible to give the defendant a fair trial, and
- (b) where a stay is necessary to protect the integrity of the criminal justice system: *R. v. Maxwell* [2011] 2 Cr.App.R. 31, SC, and *Warren v. Att.-Gen. for Jersey* [2012] 1 A.C. 22, PC (indicating that these two categories are distinct and should be considered separately).”

At para 4.99, the following is also noted:

“In the leading judgment of the Privy Council in **Warren v. Att.-Gen. for Jersey** [2012] 1 A.C. 22, Lord Dyson stated that the court had to strike a balance between the public interest in ensuring that those who are accused of serious crimes should be tried and the competing public interest in ensuring that executive misconduct does not undermine public confidence in the criminal justice system and bring it into disrepute.”

Nevertheless, it is pertinent to note the following at para 4.76:

“The power of justices to stay criminal proceedings for abuse of process is to be most sparingly exercised, and should be strictly confined to matters directly affecting the fairness of the trial of the particular accused with whom they are dealing, such as delay or unfair manipulation of court procedure, since the wider supervisory responsibility for upholding the rule of law is vested in the High Court; where, therefore, a question arises as to the deliberate abuse of extradition procedures, they should exercise their discretion to grant an adjournment to facilitate an application to the High Court: **R. v. Horseferry Road Magistrates’ Court, ex p. Bennett** [1994] 1 A.C. 42, HL.” (The underlining is mine)

It follows thus from the above that the Court has to use this discretionary power sparingly. The Court will now consider what would qualify as an abuse of process of the Court.

At this stage, it is apposite to refer to the following extract from the judgment of **State v. S.J. Wasson & Ors** [2008] SCJ 209 where the Court held that:

“Further, in determining abuse of process, the Court in **R. v. Derby Crown Court ex p. Brooks** [1985 80 Cr. App. R. P. 164], after quoting with approval the statement of Lord Diplock in **Sang** [1979 2 AER 1222 p. 1230] pointed out that “the ultimate objective of this discretionary power is to ensure that there should be a fair trial according to law, which involves fairness both to the defendant and the prosecution.”

Lord Roger Ormrod C.J., at 168, stated:

“The power to stop a prosecution arises only when it is an abuse of the process of the court. It may be an abuse of process if either

(a) the prosecution have manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or

(b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation or conduct of his defence by delay on the part of the prosecution which is unjustifiable ...”

Learned Counsel for the defence submitted that since the prosecution witnesses have already been cross-examined, they have the possibility to refine their answers as they are aware of the line of defence. This would impeach on the rights of the accused to cross-examine witnesses under Section 10 (2) (e) of the Constitution.

Now, it follows from the judgment of *State v. S.J. Wasson & Ors* (Supra) quoting in approval *R. v. Derby Crown Court ex p. Brooks* [1985 80 Cr. App. R. P. 164] that when there is an abuse of process, the burden is on the accused to show on a balance of probabilities that he will suffer prejudice.

This Court has carefully considered the submissions of the defence and finds it apposite to refer to the following from the judgment of *The State v. Ludovic Sebastien Potage* [2022] SCJ 220 where the Court held that:

“The trial process is equipped to ensure that the defence is not actually prejudiced. Although the prosecution may have found out the line of defence of the accused, witnesses who have deposed will be bound by their previous testimony and they can be confronted with any inconsistency or departure and the court will assess their credibility accordingly. Again, I fail to apprehend the serious and actual prejudice to the accused. I note that if the accused has given statements to the police, his version is already known.”

True it is that the possibility that the prosecution witnesses may seek to refine their answers exists, however, the defence will still be able to cross-examine those witnesses. Should they seek to fine tune their answers, the defence may confront them with any inconsistency or departure from their previous testimonies and bring same to the Court’s attention. Thus, it

cannot be said, on a balance of probabilities, that the accused will suffer serious and actual prejudice. (Re: *The State v. Ludovic Sebastien Potage* (Supra))

Additionally, this Court is of the view that, at this stage of the proceedings, it is premature to preempt what the witnesses will say or how they will seek to testify so differently than earlier. It is only during the course of trial that the Court will be able to assess the evidence and ensure that the accused does not suffer any serious and actual prejudice. It is important to note the following from *The State v. R. Velvindron* [2003] SCJ 319:

“the trial process itself is equipped to deal with the bulk of complaints on which applications for stay of proceedings are founded.”

Conclusion

In the light of all the above, the motion of the defence is set aside.



Ms N. Seebaluck

Magistrate Intermediate Court

20.05.2026