

CN: FR/L35/2023

In the matter of:

Independent Commission Against Corruption

v/s

1. Hedley Desiré Laval ANTHONY
2. Ibnay Sahood BUNDHEEA

**SENTENCE**

Accused No. 1 (A1) has been prosecuted for having wilfully, unlawfully and criminally, whilst being a public official, made use of his office for a gratification for another person under counts 1 and 2 of the information in breach of Sections 7(1)(b) of the Prevention of Corruption Act 2002 whilst Accused No. 2 (A2) was charged with having wilfully, unlawfully and criminally, received property which in part, directly represented the proceeds of a crime, where he had reasonable grounds for suspecting that the property was derived, in part, directly from a crime, to wit: a corruption offence, in breach of Sections 3(1)(b), 6 and 8 of Financial Intelligence and Anti Money Laundering Act 2002 under count 3 of the information. A1 pleaded guilty to the charges and a hearing was held. A1 was found guilty under counts 1 and 2 of the information. A2 pleaded not guilty to the charge and has passed away. The prosecution moved for count 3 of the information against A2 to be dismissed for want of prosecution. A1 was represented by Counsel Mr R.Valayden SC. The case for the prosecution was also conducted by Counsel Mr Naga for the FCC.

The proceedings were held in English and creole.

### **The case for the prosecution**

Learned Counsel for the prosecution called witness No. 1, Chief investigator Jokhoo, who recorded one defence statement from the accused after having duly cautioned him and informed him of his constitutional rights. The witness identified and read the defence statement, previously produced before another bench, which was marked as **Doc AA**. There was no objection to production of same from Learned Counsel for the defence.

During cross-examination, the witness stated that the accused denied the charges but there was no problem during the recording of his statement.

The case was closed for the prosecution.

### **The case for the defence**

Learned Senior Counsel called the accused (A1) under oath. The accused apologised to the Court and the officers for all the "fautes"/mistakes that he has committed. He explained that he was suspended from work in 2008 and was recalled in 2019. He stated that since his reinstatement he has not had any issues at work. He further stated that for the past 25 years he has been attending Court and has always been punctual. He stated that in the event he was unwell, he produced medical certificates to that effect. He further explained that he has cardiac problems and that he had a stent placed. He stated that his monthly medical expenses amount to Rs 5000/-. He derives his previous salary of Rs 17,000/-. Additionally, he explained that his wife is also a cardiac patient and her medical expenses amount to Rs 3,000/- every month. He stated that his parents have passed away and that his mother passed away in April this year due to the stressful situation. He further stated that he teaches religious education as a volunteer to students of lower and upper six at QEC, St Andrews and Ebène SSS. He expressed how he felt ashamed and deeply regrets his past actions. He prayed to the Court to be granted community work as he does not have the financial means. He explained that after his suspension, he was reinstated as Chief Inspector, in charge of the department on his previous salary. He stated that his work was well appreciated and that he has recommendations from his CEO.

### Submissions by the defence

Learned Senior Counsel invited the Court to consider a non-custodial sentence. He prayed for justice to be tempered with mercy because of the plea of guilty, the accused had candidly agreed that it is not timely, as the case could have dragged on for different reasons and the change in circumstances. Learned Senior Counsel referred to the judgment of *Sabapathee v. The Director of Public Prosecutions* [2013] PRV 50 where Lord Toulson considered the changes of circumstances after conviction that is between the time the accused was convicted by the Supreme Court up to the time that he appealed to the Privy Council. He submitted that the accused has already faced great changes in circumstances in his life namely his health, he lost his mother, he lost his father, his wife is unwell, he is a cardiac patient, he was recalled in another capacity and he did not meet any irregularity or commit any offence since. Learned Counsel also referred to the judgment of *Boolell v. The State (Mauritius)* [2006] UKPC 46 on the issue of delay whereby a trial is not completed in a reasonable time. He prayed for a community service order as the accused derives a salary of Rs 17,000/- and with his medical expenses, he will not be able to pay for a fine in such dire conditions.

### The Court's assessment

The information was lodged on 14<sup>th</sup> March 2015. The accused pleaded guilty on 8<sup>th</sup> May 2026 albeit not at the earliest opportunity.

Section 7(1) of the Prevention of Corruption Act 2002 reads as follows:

7. Public official using his office for gratification

(1) Subject to subsection (3), any public official who makes use of his office or position for a gratification for himself or another person shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

It is important to refer to the following section of the Law:

Section 69B of the **District and Intermediate (Criminal jurisdiction) Act** reads as follows:

"69B. Sentence on timely guilty plea

The District Court or the Intermediate Court may mitigate the sentence on an accused party who appears before it and makes, in the opinion of the Court, a timely plea of guilty to the offence with which he stands charged.”

It is apposite for this Court to consider the following judgments where the Court had applied deductions, where a guilty plea was indicated at the earliest opportunity. Although this is not a timely guilty plea, the Court will still consider the discount to be given.

In *State v. Doorgachurn S. K* [2015] SCJ 55, the Court made the following observation on timely guilty plea:

In the case of *State v Tony Mootien* [2009 SCJ 28], the Court considered the recommendation contained in the **SGC Revised Guideline “Reduction in Sentence for Guilty plea (July 2007)** referred to in **Blackstone’s Criminal Practice (2008)** and agreed that the Criminal Division of the Supreme Court seemed to have applied the recommendation that one third deduction be given where the plea is indicated at the first reasonable opportunity.

In *Mansing K. v. The State* [2020] SCJ 248, the Court referring to the above, further made the following observation:

The guidelines published in 2018 have in substance, remained the same. They are as follows:

“The purpose of reducing the sentence for a guilty plea is to yield the benefits described above. The guilty plea should be considered by the court to be independent of the offender’s personal mitigation. Factors such as admissions at interview, co-operation with the investigation and demonstrations of remorse should not be taken into account in determining the level of reduction. Rather, they should be considered separately and prior to any guilty plea reduction, as potential mitigating factors. The benefits apply regardless of the strength of the evidence against an offender. The strength of the evidence should not be taken into account when determining the level of reduction.

The guideline applies only to the punitive elements of the sentence and has no impact on ancillary orders including orders of disqualification from driving.”

**(Reduction in Sentence for a Guilty Plea Definitive Guideline 2018)”**

In light of the aforesaid, in view of the accused’s guilty plea during the proceedings, he may benefit from a reduction in sentence and this is being considered independently from any mitigating factors.

The Court is alive that the accused has no cognate previous conviction (**Doc X** refers) and that he has not spent time in police cell or on remand.

From the evidence adduced, the accused has expressed deep remorse for his acts and doings. He explained that he had been suspended from work since 2008 and was reinstated in 2019 as Chief Inspector of works. However, he still derived his previous salary of Rs 17,000/- every month. Since his reinstatement, he has not had any issues at work. The accused explained that he is a cardiac patient and had a stent placed. He stressed that his monthly medication expenses amount to Rs 5,000/-. Additionally, he stated his wife also has cardiac problems and her medical expenses amount to Rs 3,000/- every month. The accused also described how for the past 25 years he has been attending Court. He explained his ordeal as due to this stressful situation, his mother passed away last April. Nevertheless, he volunteers to teach religious education to HSC students at QEC, St Andrews and Ebène SSS.

It is also noted that the accused appealed to the Court because of his difficult financial situation arising out of the high medical expenses for himself and for his wife.

This Court will also consider the delay in the present case since the case was lodged and completed. (Re: *Boolell v. The State (Mauritius)* (supra))

However, the Court notes that the offence is one of a public officer using his office for gratification for another person, which is of a serious nature. The Court is also alive to the fact that the accused was reinstated as officer in charge.

Having considered the above principles, the guilty plea of the accused, the mitigating circumstances and the time which has lapsed, the Court, applying section 151 of the Criminal Procedure Act, sentences the accused as follows:

Count 1:

The accused is to undergo two months' imprisonment

Count 2:

The accused is to undergo two months' imprisonment

and to pay Rs 500/- as costs.

The terms of imprisonment are to be served concurrently.

At this stage, applying the principles set out in *Heerah v State* [2012] SCJ 71 as follows:

" [15] That a prison sentence is normally appropriate where an offender is convicted for serious offences, of that there is no doubt. But the level at which the offence should be placed on the scale of offences in terms of the degree of seriousness must not be ignored. Furthermore, not all candidates who fail the test of monetary penalties, or a Probation or Conditional Discharge Order become automatically candidates for prisons. A custodial sentence used to be once the only option for offenders who failed such tests after the Court had ruled out a fine, a Probation or Conditional Discharge Order. However, for this category of offenders, Parliament, in its wisdom, has now added one invaluable and intermediate régime between the custodial option and the non custodial option: that is a suspended prison sentence under the Community Service Order Act.

[16] Courts should refrain from imposing custodial sentences as a matter of reflex and indiscriminately in all cases where fines and Probation Orders and Conditional Discharge Orders are not found appropriate. Serious consideration should be given to that intermediate option inasmuch as "the deprivation of liberty through a custodial sentence is the most severe penalty available to the courts and the proper punishment for the most serious crimes:" [see Home Office, 1990, para. 2.11 of the White Paper on Crime, Justice and Protecting the Public. This study culminated in the passing of the Criminal Justice Act 2003 in England and Wales which vested in their Courts the power to make Community Orders]"

where their Lordships considered the alternatives to a prison sentence and the need to consider the “intermediate option”.

Having considered the mitigating circumstances of the accused and the possibility for him to reform by triggering “his sense of responsibility to society” (Re: *Heerah v. State* (supra)), I find that a community service order will be appropriate in this case.

Therefore, I suspend the sentence of imprisonment of two months under counts 1 and 2 respectively and I order that a social enquiry report be carried out to determine whether the accused may perform community service work.



N.Seebaluck

Magistrate Intermediate Court

17.06.2026

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