IN THE INTERMEDIATE COURT OF MAURITIUS

(FINANCIAL CRIMES DIVISION)

CN: FR/L39/2023

In the matter of:

Independent Commission Against Corruption

v/s

Hedley Desiré Laval ANTHONY

SENTENCE

The accused has been prosecuted for having wilfully, unlawfully and criminally, whislt being a public official, made use of his office for a gratification for himself under counts 1, 2 and 3 of the information in breach of Sections 7(1) and 83 of the Prevention of Corruption Act 2002 and for having wilfully, unlawfully and criminally receive property, in whole, directly representing the proceeds of a crime where he had reasonable grounds for suspecting that the property was derived, in whole, directly from a crime in breach of Sections 3(1)(b), 6 and 8 of Financial Intelligence and Anti Money Laundering Act 2002 under count 4 of the information. The accused pleaded guilty to the charges and a hearing was held. The accused was found guilty under counts 1, 2, 3 and 4 of the information. The accused 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, former Chief investigator Deepchand, who recorded three defence statement from the accused after having duly cautioned him and informed him of his constitutional rights. The witness identified and read

the defence statements, previously produced before another bench, which were marked as **Doc AA**, **Doc AA1** and **Doc AA2**. 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 did not cause any problem to the officer of the FCC.

The case was closed for the prosecution.

The case for the defence

Learned Senior Counsel called the accused under oath. The accused apologised to the Court. He explained that for the past 25 years, he had always been present in Court except when he had health problems and he produced medical certificates for same. He stated that he has cardiac problems and had a stent placed. He further stated that he has medical expenses amounting to Rs 5,000/- on a monthly basis. He has been unable to find another employment as he falls down regularly. He also stated that his wife is also a cardiac patient and her medication amounts to Rs 3,000/- every month. Moreover, he explained that his father who was a municipal inspector, passed away due to the stress and shame brought about by the cases. His mother also passed away in April 2026 as she was under stress. The accused also volunteers to teach religious education at QEC, St Andrews and SSS Ebène. He expressed how he was ashamed for what had happened and begged for excuse. He prayed for a community service order. Furthermore, he stated that he was reinstated as the in charge of the District Council of Savanne and Black River and he has resumed on his previous salary.

He was not cross-examined

The case was closed for the defence.

Submissions by the defence

Learned Senior Counsel invited the Court to take into account of plea of guilty. He submitted that the cases of Anthony have dragged on for many reasons namely change of magistrates, change of Counsel, even changes at the ICAC, his personal circumstances which have changed to worse. Learned Senior Counsel referred to the judgment of ***Sabapathee v. The Director of Public Prosecutions*** [2013] PRV 50 where the Law Lords considered the change of

circumstances. It was submitted that here the accused has health issues: he is a cardiac patient and feels dizzy causing him to fall down, preventing him from doing any heavy duty job. Additionally, he spends Rs 5,000/- out of Rs 17,000/- monthly for his medication. The accused's father has passed away; he was also a Chief inspector, who saw his son arrested and prosecuted for corruption. The accused's wife is also a cardiac patient and her medical expenses amount to Rs 3,000/- monthly. Learned Senior Counsel further submitted that the accused was recalled to work as Chief Inspector but he was not paid for the extra duty until he derived his pension. It was highlighted that the accused has not had any problems with his employer, the police or any other institution since he resumed work. It was stressed that the accused feels ashamed because of what has happened when he teaches religious education and feels remorse as he has contributed to the demise of his parents. Learned Senior Counsel invited the Court to consider a non-custodial sentence and to take into account the delay in this case. Reference was made to the judgments of ***Boolell v. The State (Mauritius)*** [2006] UKPC 46 and ***Sabapathee v. The Director of Public Prosecutions*** [2013] PRV 50.

The Court's assessment

The information was lodged on 1st September 2011. The accused pleaded guilty on 8th 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.

The relevant sections of the **Financial Intelligence and Anti-Money Laundering Act 2002** read as follows:

3. Money Laundering

(1) Any person who -

.....

(b) 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.

8. Penalty

(1) Any person who -

(a) commits an offence under this Part; or

(b) disposes or otherwise deals with property subject to a forfeiture order under subsection (2),

shall, on conviction, be liable to a fine not exceeding 10 million rupees and to penal servitude for a term not exceeding 20 years.

At this stage, it is apposite to refer to Section 69B of the **District and Intermediate (Criminal jurisdiction) Act,** which 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 has always been present in Court for the past 25 years except where he had been unwell and produced medical certificates to that effect. The accused further 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 that his wife also has cardiac problems and her medical expenses amount to Rs 3,000/- every month. He has shown great remorse and regret when he explained how his father, who was also a municipal inspector, had passed away due to this stressful situation. His mother also passed away last April due to the stress and tension caused by his situation. However, he volunteers to teach religious education to HSC students at QEC, St Andrews and Ebène SSS. He implored the Court for leniency as he has financial constraints due to his medical expenses and those of his wife.

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

However, the Court also notes that the seriousness of the offence under counts 1 to 3 of information, whereby the accused being a public officer i.e Chief Works Inspector, had used his office for gratification for another person. In respect to count 4, it is noted that the offence of money laundering which is also intrinsically related to the other counts of the information, is also 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 one month imprisonment

Count 2:

The accused is to undergo one month imprisonment

Count 3

The accused is to undergo one month imprisonment.

In relation to count 4, the Court has considered the aforesaid principles, the guilty plea of the accused, the mitigating circumstances and the delay whilst bearing in mind the principle of proportionality as pronounced in ***Aubeeluck v The State of Mauritius*** [2010] UKPC 13.

Therefore, under count 4, the Court sentences the accused 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".

in addition to 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 one month under counts 1, 2, 3 and of two months' imprisonment under count 4 respectively of the information 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