

FCD CN: 109/2020  
CN: 658/2015

**IN THE INTERMEDIATE COURT OF MAURITIUS  
(FINANCIAL CRIMES DIVISION)**

**In the matter of:**

**Independent Commission Against Corruption**

**v/s**

- 1. Hedley Desire Laval ANTHONY**
- 2. Nizam BUGLOO (now deceased)**

**SENTENCE**

The accused no1 has been prosecuted and found guilty for the offence of a Public Official Using his Office for Gratification in breach of section 7(1) of the Prevention of Corruption Act 2002 (POCA), under Count 1 of the Information. The accused no.2 has been prosecuted for the offence Money Laundering in breach of sections 3(1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA), under Count 2 of the Information. The accused no.2 has passed away during the course of trial, vide **Doc DC**. Count 2 has been dismissed consequently.

The prosecution was represented by Mr L. Nulliah together with Mr Arzamkhan of Counsels. Accused no.1 was represented by Mr R. Valayden, Senior Counsel.

The accused no.1 had changed his plea to one of guilty during the course of trial.

**CASE FOR THE PROSECUTION**

Witness no.12, Mrs Gunputh Shalini, produced **Doc A**.

Witness no.11, Mr Vincent Daniel Clement Charoux, produced **Doc B**.

Witness no.3, DPC Calkee, produced **Docs D (D1 and D2)**.

Witness no.4, Mr Lutchmiduth Halkharee, Principal Auditor, stated that he was a Government Auditor during the years 2009 and 2010. He produced **Doc E**.

Witness no.7, Mrs Roomilla Manee, produced **Doc F**, which shows a list of payments regarding construction of kerbs.

Witness no.1, SI Koussa, was the main Enquiring Officer in the case. He produced the three defence statements of the accused no.1 as **Docs G, G1 and G2**. He also produced **Doc H**, the defence statement of accused n.2, which was relevant at the time of production. The witness produced **Docs J and K**, his statements explaining the photographs enclosed at Doc C and Doc D. He further produced **Doc L**, a letter for further investigation.

He stated that the investigation started in the light of an audit report (Doc E) which flagged payments for doubtful works done for the project of tarring roads by the Pamplemousses and Riviere du Rempart District Council (PRDC). The accused, then Senior Work Inspector, submitted quotations to the Ministry of Fisheries for those impugned works. The accused was responsible of completing the works as decided by the relevant committee. The scope of work was prepared by the accused. The site had to be cleaned, kerbs (or curbs) built on the road and then tar laid on top. A local purchase order was issued by the accused no.1 to the name of the accused no.2. The latter was contracted to clean the site and build the kerbs for the amount of Rs 192,545. The works were not carried out but the accused no.1 recommended the payment.

The witness produced the following documents:

**Doc M**, a contract between the accused no.2 and the PRDC.

**Doc N**, a cheque showing a payment of Rs192,545.

**Doc P**, a works order form.

**Doc Q**, a sketch showing a rough layout of the site in question.

**Doc R**, a local purchase order for materials.

**Doc S**, a letter of enquiry on the status of works.

## **CASE FOR DEFENCE**

The accused stated under oath that he has been coming to court for about 25 years. He has always attended court except for the times when he has been sick. After all this time, he has decided to plead guilty to stop wasting the time of everyone involved. He is now a cardiac patient. He was in a life-or-death situation and was saved by the doctors. A stent has been inserted in his artery. He is undergoing treatment with heavy medication. His health has been permanently affected. He cannot do heavy manual work, nor take on work on a permanent basis due to his health condition.

He was promoted at work in 2005. But when he was arrested, he was remunerated for the promotion, pending the outcome of this case. He stayed at home for 11 years but was recalled by the Ministry. He was assigned to the Riviere Noire and Savannes districts as Chief Inspector. He carried out his duty without any blemish. He retired at the age of 65 years after 45 years of service.

He is now in serious financial difficulty due to his onerous treatment. He has a pension of Rs17,000 per month. His wife is equally a cardiac patient who cannot not work. He had lost both of his parents with his mother only recently.

He has completed studies in theology while this case was being heard in court. He teaches religious studies at colleges, including QEC, SSS Ebene, BPS and others. He feels shameful that he preaches good conduct when he has had this case to defend.

He prayed for forgiveness for all the prejudice he had caused.

## ASSESSMENT OF THE COURT

The penalty prescribed under section 7(1) of POCA at the time of indictment is penal servitude for a term not exceeding 10 years.

The accused pleaded guilty years after the case was lodged.

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

*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.*

The case of **State v Doorgachurn 2015 SCJ 55** provides further analysis on the concept of 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. However, the Court was of the view that the discount to be given for a plea of guilty still remained within the discretion of the Court having regard to the circumstances of each case. In view of the circumstances of the present case and the fact that the accused committed two serious offences within seven years and he tried to conceal the present offence, it is a proper and fit case not to give a full discount of one third. (Emphasis is mine)*

It is clear that the accused cannot benefit from the full discount due to his late guilty plea. It is however taken into account that the case is a long standing one, which has been cut short due to the guilt plea.

The accused has no cognate previous conviction, vide **Doc X**. Whilst such does not guarantee a non-custodial sentence, it gives an indication on the accused's behavioral pattern over a sizeable period of time in this case.

The accused's age and state of health is given due consideration. As a cardiac patient saddled with heavy medication, it is important that the sentence caters for the toll it might add on the accused's health condition.

His family ties are considered, including his wife being a cardiac patient with no possibility of work.

His financial situation is viewed with the fact that he is the sole bread winner of his family. It was not disputed that he receives a pension less than the minimum wage.

It is noted that the Ministry did reinstate the accused at some point and gave him a position of authority. He had completed studies in theology and carries out social work in the community. Such aspects point to a reformed individual who has repented his ways. He has been remorseful during his statement in court. On the other hand, it is noted that the accused has been convicted of a serious offence of corruption. He was a public official who had failed to uphold the required high standards of public service.

The delay is a mitigating factor and the findings of **Boolell v State 2006 MR 175** are applied.

## CONCLUSION

Having carried out the required balancing exercise, I apply the proportionality principles as propounded in **Abeeluck v The State of Mauritius [2010] UPKC 13**, as imposing a sentence of penal servitude would be grossly disproportionate in this case.

I therefore sentence the accused to undergo three months imprisonment, plus Rs500 costs.

However, to further reflect the circumstances of this case and applying the principles set forth in **Heerah v State 2012 SCJ 71**, the accused is given the opportunity to reform himself through means other than incarceration. The above sentence is therefore suspended and I order a social enquiry report to see whether the accused is fit to perform community service work.



**P K Rangasamy**  
**Magistrate of the Intermediate Court**  
**09.06.26**

