

CN 35/2020

In the matter of:

THE INDEPENDENT COMMISSION AGAINST CORRUPTION¹ (ICAC)

V

HEDLEY DESIRE LAVAL ANTHONY

SENTENCE

1. An information dated 1st September 2011 was lodged against the accused (No1) and other co-accused parties (No 2 and No 3). A discontinuance of proceedings dated the 22nd February 2021 (D.O.P) was filed against co-accused No 2. A discontinuance of proceedings dated 21st May 2026 was filed against co-accused No 3. On the 8th May 2026 Accused No 1 pleaded guilty. He was found guilty as charged. The information in view of the D.O.P filed now only contains five counts. Counts 1 to 5 concern offences under **Section 7 (1) of the Prevention of Corruption Act 2002 (POCA)**. It is averred in the respective counts that accused Anthony whilst being a public official wilfully, unlawfully and criminally made use of his office for a gratification for another person; to wit: he facilitated on the 27th July the payment of Rs 50,000 on five occasions to be made to a contractor when in fact the said work was not performed by the said contractor.

¹ ICAC repealed and replaced by The Financial Crimes Commission (FCC) by virtue of the **Financial Crimes Commission Act (FCC) 2023** effected by Proclamation No. 10 of 2024 Government Gazette of Mauritius No. 30 of 29 March 2024.



2. On the 3rd June 2026 a hearing was held. The prosecution did not adduce any further evidence as this case had already started and there is enough evidence on record according to the prosecution for sentencing purposes. During this pre-sentence hearing, the accused testified under oath and explained he has mended his life namely he has taken the opportunity to make further studies in theology. Accused Anthony explained that the delay has caused him prejudice inasmuch as he lost his parents and his wife now has a poor health due to the stress and strain caused by the present proceedings. In submissions, Learned Counsel for the accused invited this Court to pass a humane sentence in view of the delay and good behaviour of the accused during the time lapse. This Court has been apprised by the prosecution that the accused does not have cognate offences on record when the previous conviction of the accused was produced, filed and marked as **DOC X**.

3. This Court has carefully considered the plea in mitigation and the prosecution's submission. **Section 7** of the **POCA** provides that:

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.

(2) For the purposes of subsection (1), a public official shall be presumed, until the contrary is proved, to have made use of his office or position for a gratification where he has taken any decision or action in relation to any matter in which he, or a relative or associate of his, has a direct or indirect interest.

(3) This section shall not apply to a public official who - (a) holds office in a public body as a representative of a body corporate which holds shares or interests in that public body; and (b) acts in that capacity in the interest of that body corporate.

4. In **BURHOO V ICAC & THE STATE 2012 SCJ 211; NOORMAMODE V ICAC 2015 SCJ 93; SOODHOOA V ICAC 2016 SCJ 57**, under not guilty pleas the Supreme Court has approved a sentence of six months imprisonment for offences under **Section**



7 of the POCA. Should accused Anthony be sentenced accordingly? In more recent judgments though unrelated to POCA however the Supreme has set out applicable principles for sentencing purposes. In **Mudhoo A. B & Anor v The State 2025 SCJ 274** the Supreme Court (Court of Criminal Appeal) held that:

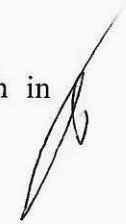
The applicable principles regarding sentencing are as follows: "... the quantum of the sentence imposed upon an offender remains first and foremost a matter for the sentencing Judge to decide. The Judge must impose a sentence tailored to the particular offence and the personal circumstances of the offender. It is accordingly incumbent upon the Judge when passing sentence to take into account all the relevant factors with respect to the commission of the offence as well as any aggravating factors, the personal circumstances of the particular offender and any mitigating factors which are in his favour. It follows therefore that each case must be considered on its own merits by the sentencing court in the light of the above principles." (Agathe J. A. A. v. The State [2022 SCJ 258]).

5. In **Chuttoo v ICAC 2025 SCJ 330** the Supreme Court held that:

In Elaheebocus Haroon Rashid v State of Mauritius [2009 MR 323], paragraph 39 of the judgment in Boolell was referred to, where it was held that it was unacceptable that a prison sentence be put in operation 15 years after the offence was committed "unless the public interest affirmatively required a custodial sentence, even at this stage."

6. In fact, in Elaheebocus the custodial sentence was reduced in view of the delay and remained imprisonment only because of greater criminality involved. In the present matter what should be the outcome?

7. This Court has taken into account the following facts:

- (a) The information was lodged almost fifteen years ago.
 - (b) The alleged offences have occurred twenty years ago (much more than in Elaheeboccus).
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- (c) The accused has pleaded guilty.
- (d) The accused has expressed remorse for the offences.
- (e) He is not borne on record for similar offences
- (f) The letter of counsel dated 20th November 2025 and Medical certificate attached show that accused has undergone cardiac intervention.

8. This court finds that these are strong mitigating factors as opposed to the seriousness of the offence. In fact, the delay in itself is highly prejudicial and sentencing the accused to penal servitude as set out by **Section 7 (1)** of the **Prevention of Corruption Act (POCA)** would undoubtedly be disproportionate. That being said, this Court nevertheless finds that a custodial sentence is warranted given that the accused was a Chief Works Inspector employed at the District Council. He was a public official who had committed acts of corruption. This Court consequently in line with **Section 151** of the **Criminal Procedure Act** attenuates the sentence of “penal servitude”:

151 Imprisonment in lieu of penal servitude

Where under any enactment a Court is empowered or required to pass a sentence of penal servitude other than a sentence of penal servitude for life, the Court may, unless the enactment otherwise provides, inflict imprisonment with or without hard labour, for any term not exceeding 5 years. [Reprint No. 1 of 1983] Amended by [Act No. 36 of 2008.

- 9. And imposes a sentence of imprisonment on the accused in lieu of penal servitude.
- 10. The accused is accordingly sentenced to two months imprisonment under each Count respectively (Counts 1 to 5) + 500 costs.
- 11. Furthermore, this court has taken into consideration **Heerah v The State 2012 SCJ 71** whereby the following principles regarding the application of a community service order were underscored:

[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 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].

[17] In a number of cases, the objectives of the criminal justice system are better served when the offender’s sense of responsibility to society and his self-reliance are triggered. As the Home Office Paper comments: Imprisonment “is likely to diminish an offender’s sense of responsibility and self-reliance,” and “provides many opportunities to learn criminal skills.” What is more serious, imprisonment can have a devastating effect on some offenders as well as on their families. It would be unrealistic for society to expect that those who deserve lesser but are sentenced to imprisonment for not so serious offences would ever “emerge as reformed characters.”

12. **Heerah v The State 2012 SCJ 71** was reaffirmed in **Ramsurrun v The State 2023 SCJ 199**; **Rajackhan v The State 2021 SCJ 388**; **Soogare v The State 2021 SCJ 194**.

13. In light of **Heerah v The State 2012 SCJ 71** so that the accused be given the opportunity to rehabilitate, it is important for the court to determine if the accused is a suitable person to a non-custodial sentence. Consequently, this Court suspends the sentence of imprisonment and orders for a **Social Enquiry Report** to consider whether the accused can benefit from a Community Service Order requiring him to perform unpaid work for a specified period.



A. Joypaul

Intermediate Court Magistrate

Financial Crimes Division

12.6.2026.