

IN THE INTERMEDIATE COURT OF MAURITIUS

Cause No: 602\09

Independent Commission Against Corruption

v

- 1. Peerthum Sheilendra**
- 2. Abdool Said Jaumally**

Ruling

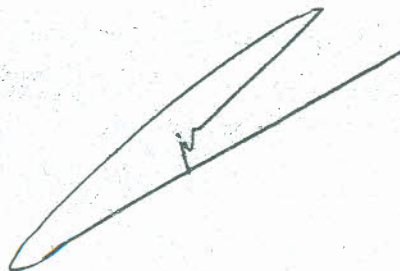
Both accused parties stand charged with the offence of public official using his office for gratification in breach of section 7(1) of the Prevention of Corruption Act.

The defence objected to Mr Nursing Rishi, the acting Deputy Chief Executive of the Pamplemousses and Riviere du Rempart District Council producing the Minutes of the Welfare Sub Committee held on the 23rd July 2003 on the ground that he was not the maker thereof.

The prosecution then intimated to the Court that there were the following Minutes of Proceedings which it intended to produce namely :

- (1) Minutes of Finance Committee held on 29\09\2003,
- (2) Minutes of Welfare Subcommittees held on 12\08\03, 23\07\03, 08\08\03 and 18\08\03.
- (3) Minutes of Sports Committee held on the 20\08\03

Learned counsel for accused no1 objected to the above Minutes being produced whereas learned counsel for accused no2 's stand was that he would not object to the Minutes of the 29\09\2003 and that dated 12\08\2003 being produced but he would object to the other Minutes being produced.



The prosecution called Insp Soodagur the enquiring officer to shed light on the Minutes which the prosecution intended to produce. The latter deposed to the effect that during the course of the investigation the above Minutes of Proceedings of the Pamplemousses and Riviere du Rempart District Council were produced to the ICAC officers by Mr Peertum, accused no1, the then Secretary of the Pamplemousses\ Riviere du Rempart District Council. Accused no2 was then a counsellor at the said Council.

He stipulated that in relation to the Minutes sought to be produced as follows:-

I: Minutes of Welfare Sub Committees dated 23\07\03, 08\08\03 and Finance Committee dated 18\08\03

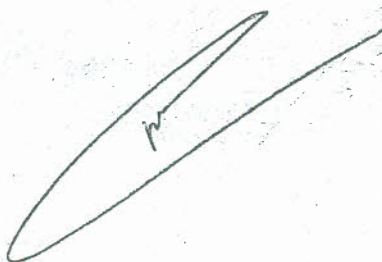
In relation to Minutes of the Welfare Sub –Committee on the 23 July 2003 and the Welfare Sub-Committee held on the 8 August 2003 and of the Finance Committee held on 18 August 2003, Insp Soodagur highlighted that there was no mention in the Minutes who took same.

II: Minutes of Finance Committee dated 12\08\03

Then there was the Minutes of the Finance Committee held on 12 August 2003 , he clarified that it was taken by the Head Clerk, Mr Mudhoo and the latter had passed away. He could not say if accused no1 had the instruction or authority of the defunct Pamplemousses and Riviere du Rempart District Council when he remitted the said documents to the ICAC as he had not joined the ICAC then. There was no such authority according to the file.

III: Minutes of Finance Committee dated 29\09\03 and Sports Committee dated 20\08\03

In relation to Minutes dated 29\09\03 and 20\08\03, he specified that they were prepared by Ms Chabilall. The prosecution intended to call her as witness for the



prosecution to produce same. The said Minutes were remitted by accused no 1 but he could not find any authority for him to do so in the file.

Insp Soodagur further expatiated the Minutes contained the decision of different Committees in relation to tenders for the purchase of national flag in the context of the Indian Ocean Island Game which formed part of the day to day administration of the Council. He confirmed that all the documents had been communicated to the defence.

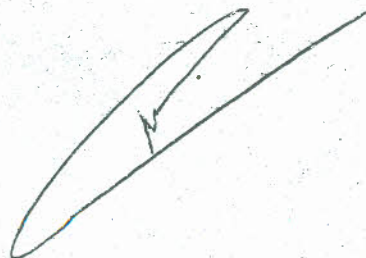
Part A: Confidentiality of the Minutes

Learned counsel for the defence contended that he would object to the production of the Minutes including that by Mrs Chabilall who could be called by the prosecution because they were confidential documents within the meaning of the Local Government Act and the Council of the Defunct Pamplemousses and Riviere du Rempart District Council had not voted for any resolution to make the said Minutes of Proceedings public. In support of his arguments he referred to the Section 14 of the Fourth Schedule of the Local Government Act 1989.

On this score, learned counsel for the prosecution submitted that the arguments of the defence could not stand as the defence did not hold the right to assert the right to confidentiality of the document nor could it waive it. He cited **Murphy on Evidence -7th Edition, page 375 par 13.2**, where it was propounded '*The privilege is personal to the party or witness and he alone can waive it*'.

I have duly considered the submissions of learned counsel appearing on both sides on the issue of confidentiality

Under the Fourth Schedule of the Local Government Act 1989, at Part II par B section 9 it is provided that:



"9 All notices, reports and other documents and all proceedings of committees shall be treated as confidential unless and until they become public either in the ordinary course of the business of the Council or in accordance with any instruction or authority issued or given by the Council"

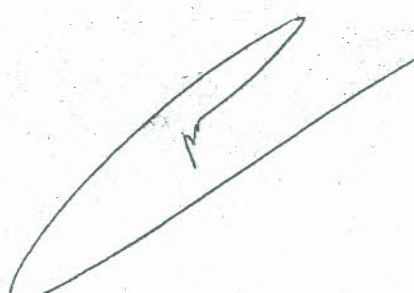
I wish to observe that the District Council had duly deputed Mr Nursingh the acting Deputy Chief Executive of the Pamplemousses and Riviere du Rempart District Council who was the custodian of the documents of the defunct Pamplemousses and Riviere du Rempart District Council to produce these documents in Court and the latter had not chosen to invoke the issue of confidentiality under the provisions of the Local Government Act. At no time did Mr Nursingh invoke public interest immunity to prevent the materials being disclosed. In **R v Chief Constable of the West Midlands Police exp Wiley [1995] 1 AC 274** Lord Woolf said that *voluntary disclosure should be made where 'a Secretary of State on behalf of his Department as opposed to any ordinary litigant concludes that any public interest in documents being withheld from production is outweighed by the public interest in documents being available for the purposes of litigation* –**Archbold 2002 ed para 12-44H.**

Moreover, it is to be noted that the documents were already in the public domain as same had already been produced to the defence and by accused no1 the then Secretary of the Pamplemousses\ Riviere du Rempart District Council to the ICAC during the course of the enquiry so that the issue of confidentiality does not arise.

The arguments of learned Counsel for the defence cannot stand on this score.

Part B: Admissibility of the Minutes

Learned counsel for the ICAC submitted that the prosecution would be insisting on the admissibility of the above mentioned Minutes as public documents and as an exception to the hearsay rule.



Learned counsel for the defence did not agree that the said Minutes were public documents within the meaning of the Local Government Act. As regards Minutes 23\07\03, 08\08\03 and 18\08\03, learned counsel for the defence submitted that the maker of same being unknown even to the prosecution, the witness could never be called to answer questions. He opined that they amounted to hearsay evidence and prejudice would be caused to the accused no1. as the defence would not be able to cross examine the maker of the documents which were being produced to prove the truth of their contents.

The issue to be determined by the Court is whether the makers of these Minutes of Proceedings of the Committees and Sub Committees need to be called to produce same as submitted by learned counsel for the defence.

I wish at this stage to refer to the Fourth Schedule of the Local Government Act 1989 at Part II par B section 5 it is provided that:

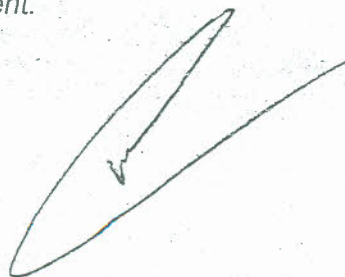
'Minutes of the proceedings of a standing committee shall be drawn up in English and entered in a book kept for that purpose by the Chief Executive , or in his absence by any officer appointed for that purpose by the Chief Executive...'

As such from the above, the Minutes of Proceedings were official minutes taken according to law. They were entered by the Chief Executive or the Minutes were made by officers appointed by him. The Minutes were what occurred during the Committee and taken by officers who were under the direction and control of the Chief Executive.

Under section 167 of the Local Government Act 1989 it is provided:

'167. Production of documents at trial

Section 170 and 171 of the Courts Act shall apply to any documents in the official custody of a local authority as they apply to any document in the official custody of a Government department.'



Section 170 of the Courts Act reads as follows:

'170 Copies of public documents admissible

(1) At any trial, the contents of any record, book, deed, map, plan or other document in the official custody of the Supreme Court, of the Conservator of Mortgages, of any Government department, of the Intermediate Court, of any District Court or of any notary may be proved by means of a copy or extract certified under the hand of the Registrar, the Conservator of Mortgages, the chief clerk or head of such department, the Head Clerk of the Intermediate Court, the District Clerk or such notary as the case may be, to be a true copy or extract.'

From the above, by virtue of section 167 of the Local Government Act 1989 coupled with section 170 of the Courts Act, certified copies of any document in the custody of any local authority are admissible.

I find that the objection raised by learned counsel for the defence for certified copies of the Minutes to be produced by Mr Nursingh cannot stand and is therefore set aside.

Ruling delivered on: 8/8/2014

Ruling delivered by: R. D. Dabee, Vice –President,
Intermediate Court (Criminal Division).

A handwritten signature in black ink, appearing to be 'R. D. Dabee', written over a horizontal line.