The Independent Commission Against Corruption v Ahmud Shakeel Khan Jahangeer

2024 INT 33

IN THE INTERMEDIATE COURT OF MAURITIUS

(Financial Crimes Division)

Cause Number: 88/2020

The Independent Commission Against Corruption

v

Ahmud Shakeel Khan Jahangeer

RULING

1. In an Information which contains 11 Counts lodged against the Accused, the latter stands charged under the 11 Counts with the offences of money laundering in breach of Sections 3(1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 ("FIALMA") coupled with Section 44(1)(b) of the Interpretation and General Clauses Act ("IGCA").

2. On 17.07.2023, learned Counsel for the Accused made the following motion, namely:

"He objects to the case being started anew and according move that the proceedings be permanently stayed, in as much as starting the trial anew in all the circumstances –

- *runs contrary to the due process of law*
- *constitutes an abus de droit*
- *infringes the Accused's constitutional right to a fair hearing within a reasonable time, such that re-hearing the case would be unfair and it would be unfair to try the Accused at all.*

3. Learned Counsel for the Accused informed the Court that he would not insist on Limb 1 of his motion and would proceed under Limbs 2 and 3.

4. An Agreed Statement of Facts between the Prosecution and the Defence (Doc ASF) and the Affidavit of Witness No.: 1 (Doc AM**)** are on record.

5. The submission of learned Counsel for the Defence is on record. To support his submission, he relied on the cases of ***Mungroo v The Queen,* Privy Council Appeal No.: 22 of 1990**, ***The Director of Public Prosecutions v De L'Estrac* [2010] SCJ 118**, ***State v Jean Jacques & Anor* [2019] SCJ 312**, ***Sooriamurthy Darmalingum v The State* [1997] SCJ 294**, ***Sooriamurthy Darmalingum v The State* [1997] SCJ 295**, ***The State v Bissessur* [2001] SCJ 50**, ***Mc Farlane v DPP* [2008] ISEC 7** and ***Tapper v Director of Public Prosecutions* [2012] UKPC 26**.

6. The submission of learned Counsel for the Prosecution is also on record. To support his submission, he relied on the cases of ***Mungroo***, ***Bissessur***, ***Kaudeer v The State* [2018] SCJ 414** and ***Police v L. Doorgakant & Anor* [2023] INT 256**.

7. I have duly considered the submissions of both learned Counsel and the authorities they have placed before me.

8. The present matter is a retrial before me. Two documents have been placed before me, the Agreed Statement of Facts Between the Prosecution and Accused (Doc ASF) and the Affidavit solemnly affirmed by Witness No.: 1 on the 3rd of October 2023 (Doc AM).

9. The submission of learned Counsel for the Accused can be summed up that the new trial would be in breach of the Accused's right to be tried within a reasonable time due to the delay in prosecuting the Accused and the defence of the Accused has already been exposed to the Prosecution witnesses in the first trial. Hence, when tried anew the Accused will not benefit from a fair hearing under Section 10 of the Constitution.

10. The gist of the submission of learned Counsel for the Prosecution is that there has been no delay and the investigation carried out by the Commission was time consuming and complex. He submitted that the main enquiring officer has explained in Doc AM the investigative steps she took to investigate the matter.

11. The case was initially lodged before the Intermediate Court (Criminal Division) and had Cause Number 246/19. In the meantime, the law was amended. Pursuant to Section 80A (2) of the Courts Act, case Cause Number 246/19 was transferred from the Intermediate Court (Criminal Division) to the Intermediate Court (Financial Crimes Division). The case was not started before the Intermediate Court (Criminal Division).

12. When case Cause Number 246/19 was transferred from the Intermediate Court (Criminal Division) to the Intermediate Court (Financial Crimes Division) a new Cause Number was given, namely Cause Number 88/2020.

13. The case started before the Intermediate Court (Financial Crimes Division) and the Magistrate who was hearing the case was transferred to the Office of the Director of Public Prosecutions ("ODPP"), without completing the hearing, hence the case had to start anew.

14. I have to determine whether there is an unjustified delay and whether this new trial would cause prejudice to the Accused.

15. In ***Boolell v The State*** **[2006] UKPC 46** at paragraph 31, it was held that: -

> *"Lord Bingham stated in paragraph 22 that the threshold of proving a breach of the reasonable time requirement is a high one, not easily crossed. He went on to summarise his conclusions at paragraphs 24 and 25:*
>
> > *"24. If, through the action or inaction of a public authority, a criminal charge is not determined at a hearing within a reasonable time, there is necessarily a breach of the defendant's Convention right under article 6(1). For such breach there must be afforded such remedy as may (section 8(1)) be just and appropriate or (in Convention terms) effective, just and proportionate. The appropriate remedy will depend on the nature of the breach and all the circumstances, including particularly the stage of the proceedings at which the breach is established. If the breach is established before the hearing, the appropriate remedy may be a public acknowledgement of the breach, action to expedite the hearing to the greatest extent practicable and perhaps, if the defendant is in custody, his release on bail. It will not be appropriate to stay or dismiss the proceedings unless (a) there can no longer be a fair hearing or (b) it would otherwise be unfair to try the defendant. The public interest in the final determination of criminal charges requires that such a charge should not be stayed or dismissed if any lesser remedy will be just and proportionate in all the circumstances. The*

prosecutor and the court do not act incompatibly with the defendant's Convention right in continuing to prosecute or entertain proceedings after a breach is established in a case where neither of conditions (a) or (b) is met, since the breach consists in the delay which has accrued and not in the prospective hearing. If the breach of the reasonable time requirement is established retrospectively, after there has been a hearing, the appropriate remedy may be a public acknowledgement of the breach, a reduction in the penalty imposed on a convicted defendant or the payment of compensation to an acquitted defendant. Unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all, it will not be appropriate to quash any conviction. Again, in any case where neither of conditions (a) or (b) applies, the prosecutor and the court do not act incompatibly with the defendant's Convention right in prosecuting or entertaining the proceedings but only in failing to procure a hearing within a reasonable time.

25. The category of cases in which it may be unfair to try a defendant of course includes cases of bad faith, unlawfulness and executive manipulation of the kind classically illustrated by R v Horseferry Road Magistrates' Court, Ex p Bennett [1994] 1 AC 42, but Mr Emmerson contended that the category should not be confined to such cases. That principle may be broadly accepted. There may well be cases (of which Darmalingum v The State [2000] 1 WLR 2303 is an example) where the delay is of such an order, or where a prosecutor's breach of professional duty is such (Martin v Tauranga

District Court [1995] 2 NZLR 419 may be an example), as to make it unfair that the proceedings against a defendant should continue. It would be unwise to attempt to describe such cases in advance. They will be recognisable when they appear. Such cases will however be very exceptional, and a stay will never be an appropriate remedy if any lesser remedy would adequately vindicate the defendant's Convention right"."

16. In ***Bissessur***, where it was held that: -

"*1) The court should exercise its discretionary power to order a stay of the proceedings only in exceptional cases and a staying order is an exception rather than the rule.*

2) There is no mathematical calculation for how long is too long, it differs from jurisdiction to jurisdiction and each case has to be decided on its own facts.

3) A stay of criminal proceedings should not be ordered simply as a form of disciplinary disapproval of the DPP's office.

4) The Court ought to carry out a balancing exercise which requires an examination of the length of the delay in the light of other factors, namely: (1) the seriousness of the offence; (2) limits on our instutional resources; (3) reasons for the delay and (4) trial-related prejudice, in order to determine where the attainment of justice lies."

17. In ***Mungroo***, Their Lordships had this to say on delay, namely: -

> "*When delay is alleged, the courts must have regard to the reasons for the delay and to the consequences of the delay. In Bell's case, at page 953, the Board expressed the view that the delay must also be considered in the context of the prevailing system of legal administration and in the prevailing economic, social and cultural conditions to be found in the country concerned.*"

18. Learned Counsel for the Defence submitted that at paragraph 4 of Doc AM, it was stated that the *"Commission initiated an investigation on 21st of December and there is no explanation whatsoever forthcoming from the Prosecution and in the words spelt out in* ***Mungroo****, 'The Prosecution must put the history of the case and the reasons for the relevant period of delay before the Court.'* (see p 27 of the Transcript dated 09.01.2024). He went on to submit that '*So reading paragraph 4 in its entirety, Your Honour, and even the rest of the affidavit, I have seen nothing in the that affidavit where the Prosecution ventures to offer any explanation as why alleged offences occurring in 2005 were only investigated as from 2010*'. (see p 28 of the Transcript dated 09.01.2024).

19. Learned Defence Counsel submitted that "*Even before this matter was brought before this Court, even before this matter was brought before the previous bench, there, the proceedings had not been kept to a minimum. We don't know why it was done this way.*" (see p 28 of the Transcript dated 09.01.2024). Had it been that learned Counsel for the Accused cross-examined the witness on the issue of the proceedings not being kept to a minimum, the Court would have been able to assess the witness's answers. The Court would have been able to determine whether the answers given by the witness were plausible or implausible in the given circumstances.

20. In ***Mungroo***, it was held that: -

> "*Their Lordships consider that, in any future case in which excessive delay is alleged, the prosecution should place*

before the court an affidavit which sets out the history of the case and the reasons (if any) for the relevant periods of delay."

21. I must draw a parenthesis here that in the case of ***Mungroo***, it did not state that the Defence can cross-examine the witness who put in the Affidavit. Any witness who steps into the Witness Box can to be cross-examined by his opponent as a matter of fair trial. In the present case, the witness who put in the Affidavit was cross-examined but was not explicitly cross-examined on the aspect of '*the reasons (if any)* for *the relevant periods of delay*'.

22. I have to determine whether the Prosecution in Doc AM has given a plausible explanation as to the delay it encountered before lodging the Information against the Accused.

23. Witness No.: 1 in Doc AM averred that the Commission initiated an investigation on 21.12.2010. She also averred that a preliminary investigation was carried out as of 21.12.2010 and then the Commission decided on 04.01.2011 to carry out further investigation (see paragraph 4 of Doc AM).

24. As can be gathered from paragraph 5 of Doc AM statements were recorded from 36 persons on various dates.

25. I find reproducing paragraph 6 of Doc AM at this stage relevant and it reads as follows:

"*6. Between January 2011 to 5th June 2017, several requests for documents were made and received from various institutions namely the Ministry of Social Security, the Registrar of Companies, the Ministry of Public Infrastructure and Land Transport, the Passport and Immigration Office, the Commissioner of Police, the National Transport Authority, Conservator of Mortgages, Municipal Councils, the Mauritius*

Revenue Authority, various car dealerships, various banking and non-banking institutions."

26. I also find it apt to reproduce paragraphs 8 to 14 of Doc AM:

"*7. In addition to recording of the statements, the investigation also involved the following:*

(i) An application for Disclosure Order was made on 8th March 2011 before the Honourable Judge in Chambers to obtain financial records of JPS Ltd, Mr & Mrs JAHANGEER and Dölberg Assets Finance Co Ltd. The Order was issued on 9th March 2011;

(ii) An application for a second Disclosure Order was made on 12th August 2011 before the Honourable Judge in Chambers to obtain financial records of some of the clients of JPS Ltd named at paragraph 5 above The Order was issued on 25th August 2011.

(iii) An application for Search Order was lodged before the Honourable Judge in Chambers on 4th May 2011 and was issued on 9th May 2011 to search the premises of DAFL. In virtue of that Search Order, the investigation team secured files pertaining to applications made by individuals or companies for leasing facilities to purchase second hand cars from JPS Ltd, together with supporting documents such as leasing contracts, details of amounts disbursed, payments effected as well as all cheque books, receipt vouchers, ledgers and other books of accounts in respects of these transactions;

(iv) *An application for third Disclosure Order was lodged and obtained on 16th February 2017 before the Honourable Judge in Chambers to obtain financial records of Mr James Vurdien, employee of DAFL;*

(v) *Original bank statements of clients of JPS Ltd were analysed and compared with those present in the leasing files submitted by JPS Ltd to DAFL.*

9. *The Prosecution avers that the documents received had to be analysed and investigated into in light of the various statements that had been recorded as averred at paragraph 5 above. The investigation was one which implicated several suspects and thus the analysis of documents proved to be a complex and time-consuming exercise.*

10. *The leasing files of the clients mentioned at paragraph 5 were thoroughly analysed. The veracity of the supporting documents submitted in the lease applications had to be verified, including the source of the payslips which had to be confirmed from employees. NPF records pertaining to those clients were also checked amongst others and also their financial records which were communicated to the Commission after that it made an application for disclosure order as averred above.*

11. *In addition to statements recorded from the Accused in the present matter, statements were taken under caution from not more than twenty-one (21) other suspects. The Commission had reasonable grounds to believe that those suspects has also committed an offence of money laundering under the Financial Intelligence and Anti- Money Laundering Act 2002 (hereinafter referred to as "FIALMA 2002").*

> *12. After completion of the investigation, the Corruption Investigation Division on 29th December 2017 referred the file to the Legal Division of the Commission for advice. Legal advice was tendered on 04th January 2018.*
>
> *13. On 26th March 2018, the Commission recommended prosecution against the Accused party and the file was sent to the Office of the Director of Public Prosecutions (hereinafter referred to as "ODPP") for consideration and advice.*
>
> *14. On 16th January 2019, the ODPP advised that the Accused party should be prosecuted as per the present Information under eleven (11) counts.*"

27. I am of the view that for the reasons given by Witness No.: 1 in Doc AM, I can reasonably believe that the investigation carried out by the Commission against the Accused was a "*complex and time-consuming exercise*". The reasons given by Witness No.: 1 in Doc AM as reproduced above have remained unrebutted and unchallenged by the Defence.

28. In ***Boolell***, the case of ***Martin v Tauranga District Court*** **[1995] 2 NZLR 419, 432** was quoted, wherein it was stated that: -

> "*The right is to trial without undue delay; it is not a right not to be tried after undue delay.*"

29. This case has been ordered to start anew because the Magistrate who was hearing the case was transferred to the ODPP. The transfer of the Magistrate to the ODPP cannot be attributed to the Accused or the Prosecution. Hence, this new trial is unavoidable.

30. In ***Taito v The Queen*** **[2002] UKPC 15**, it was held that: -

"*Delay for which the state is not responsible, present in varying degrees in all the relevant cases, cannot be prayed in aid by the appellants.*"

31. In the case of ***Attorney-General's Reference (No 1 of 1990)*** **[1992] 3 W.L.R. 9**, there was a delay by the prosecution for 27 months before trial. The Attorney-General referred the matter to the Court of Appeal as to whether proceedings upon the indictment could stay on the grounds of prejudice resulting in the institution of those proceedings. The Court of Appeal held:

"(1) a stay for delay or any other reason was to be imposed only in exceptional circumstances; that, even where delay could be said to be unjustifiable, the imposition of a permanent stay was to be the exception rather than the rule; and that even more rarely could a stay properly be imposed in the absence of fault on the part of the complainant or the prosecution, and never where the delay was due merely to the complexity of the case or contributed to by the defendant's action (post, pp. 643G-644A).

Connelly v Director of Public Prosecutions [1964] A.C. 1254, H.L.(E): Reg v Derby Crown Court, Ex parte Brooks (1984) 80 Cr. App. R. 164, D.C. and Reg v Telford Justices, Ex parte Badham [1991] 2 Q.B. 78, D.C applied.

(2) That no stay was to be imposed unless a defendant established on the balance of probabilities that, owing to the delay, he would suffer serious prejudice to the extent that no fair trial could be held, in that the continuation of the prosecution amounted to a misuse of the process of the court; …"

32. In the present case, the State is not responsible for the delay. In considering the notion of delay "*the delay must also be considered in the context of the prevailing system of legal administration*". Here, those who are entrusted with the legal administration system in

this country found it necessary to transfer the Magistrate, who was hearing the Accused's case on the merits, to the Office of the Director of Public Prosecutions. I verily believe that no one can interfere with the decision of the administrators who are responsible for our legal administration system.

33. Learned Counsel for the Accused submitted and admitted that both the Prosecution and the Defence sought postponements, but it is not specified how many postponements were sought by each. Inevitably, the postponements sought by the parties have contributed to the delay to try the Accused within a reasonable time.

34. Also, judicial notice must be taken that in the years 2020 and 2021 there was the COVID-19 pandemic and due to the pandemic, there were two lockdowns in this country and the lockdowns also contributed to the delay in trying the Accused within a reasonable time. The two lockdowns cannot be attributed to the Prosecution or the Defence.

35. Learned Counsel for the Accused submitted that 19 years have elapsed since the date of the offences being allegedly committed by the Accused and hence, due to the delay the Accused would not benefit from a fair hearing. To support his argument Learned Counsel for the Defence cited the case of ***Tapper***. In ***Tapper***, the case of ***Darmalingum v The State*** **[2000] 1 WLR 2303** was referred. Learned Counsel for the Defence placed reliance on "*In the result the defendant has had the shadow of the proceedings hanging over him for about 15 years. There has manifestly been a flagrant breach of section 10(1)" (p 2310)*" as quoted in ***Tapper*** from the case of ***Darmalingum***. Learned Counsel relied on the case of ***De L'Estrac***, where it was held that: -

> "*There is yet another compelling reason that the case cannot proceed, as by now it is almost 11 years since the event has taken place, and in all the circumstances, it would not, in our view, be fair to impose a trial on the respondent as it will be in breach of his rights to a fair trial within a reasonable time under section 10 (1) of the Constitution.*"

36. Learned Counsel for the Accused also referred to the case of ***Boolell*** and he quoted "*if a criminal case is not heard and completed within a reasonable time, that will of itself, without more, of itself constitute a breach of section 10 of the Constitution whether or not the defendant has been prejudiced by the delay*" (see p 4 of the Transcript dated 09.01.2024). He also submitted that the rights of the Accused had been breached within Section 10, that there had been an unreasonable delay and he invited the Court to stay the proceedings.

37. However, in ***Boolell*** at paragraph 32, Their Lordships held that: -

> "*(i) If a criminal case is not heard and completed within a reasonable time, that will of itself constitute a breach of section 10(1) of the Constitution, whether or not the defendant has been prejudiced by the delay.*
>
> *(ii) An appropriate remedy should be afforded for such breach, but the hearing should not be stayed or a conviction quashed on account of delay alone, unless (a) the hearing was unfair or (b) it was unfair to try the defendant at all.*"

38. In ***Darmalingum v The State*** **[1997] SCJ 294**, it was held: -

> "*On what constitutes reasonable time, the Court writes: "It is apparent that a reasonable time is necessary for the State to be in a position to get the case to trial. A varying extent of time will be needed to prepare the docket, depending on the complexity or otherwise of the proposed charge or charges, to record the statements of witnesses and to arrange for their attendance. In addition, there are the usual systemic delays, such as a congested court calendar, the availability of court facilities, judicial officers and prosecutors, and the considerate accommodation of the schedules of witnesses. The list is not exhaustive. The system is not perfect and resources are limited, and one has to accept as normal and inevitable a period of delay in respect of these matters. But this is not to*

accept that the State can justify abnormal periods of systemic delay on such grounds."

39. I find it apt to cite the following passage from ***Kaudeer***, where it was stated that: -

"*The House of Lords in the* ***Attorney General's Reference No 2 of 2001 [2003] UKHL 68*** *held that failure to determine a criminal charge within a reasonable time constitutes a breach of Article 6 of the European Convention but the remedy will not necessarily be a stay if any lesser remedy will be just and proportionate in the light of all the circumstances of the case.*"

40. In ***R v Stephen Paul S*** **[2006] EWCA 756**, it was stated that the test to be applied when an application for a stay for abuse of process on the ground of delay is made, the correct approach is that the Court must take the following principles into account namely:

"(i) Even where delay is unjustifiable, a permanent stay should be the exception rather than the rule;

(ii) Where there is no fault on the part of the complainant or the prosecution, it will be very rare for a stay to be granted;

(iii) No stay should be granted in the absence of serious prejudice to the defence so that no fair trial can be held;

(iv) When assessing possible serious prejudice, the judge should bear in mind his or her power to regulate the admissibility of evidence and that the trial process itself should ensure that all relevant factual issues arising from delay will be placed before the jury for their consideration in accordance with appropriate direction from the judge;

(v) If, having considered all these factors, a judge's assessment is that a fair trial will be possible, a stay should not be granted."

41. I am of the view that nowadays an Applicant must not only show to the Court that the delay will cause prejudice but will cause serious prejudice for the Court to stay the proceedings.

42. The transfer of a Magistrate to another Office, such as the Office of the Director of Public Prosecutions or to the Attorney General's Office is nothing sinister or abnormal in light of the current prevailing transfer system of officers who are governed by the Judicial and Legal Service Commission in Mauritius.

43. Transferring a Magistrate to another Office, such as the Office of the Director of Public Prosecutions or to the Attorney General's Office, or creating new court divisions must inevitably be regarded as a normal and acceptable process in our Republic. Likewise, creating a new division of a court cannot be viewed as disturbing or irregular feature in a democratic society like ours.

44. Learned Counsel for the Accused submitted that the witnesses for the Prosecution have already been cross-examined and, therefore, his line of defence has been disclosed. At this stage, it is helpful for me to examine some paragraphs of Doc ASF: -

a. Paragraph 4 stated that Witness No.: 1 deponed under oath and was cross-examined;

b. Paragraph 5 stated that Witness No.: 2 was called and he produced documentary evidence. Witness No.: 3 produced documentary evidence and was not cross-examined;

c. Paragraph 6 stated that Witness No.: 4 deponed under oath and produced documentary evidence;

d. Paragraph 8 stated that Witness No.: 25 was heard and produced documentary evidence;

e. Paragraph 10 stated that Witness No.: 26 deponed under oath and was not cross-examined;

f. Paragraph 13 stated that Witness Nos.: 8, 28 and 29 were heard. Witness No.: 29 also produced documentary evidence;

g. Paragraph 16 stated that Witness Nos.: 5, 12 and 26 deposed under oath.

45. I cannot surmise whether Witness Nos.: 2, 4, 5, 8, 12, 25, 26, 28 and 29 were cross-examined according to Doc ASF. As indicated in Doc ASF, only Witness No.: 1 was cross-examined by the Defence. Based on the Information preferred against the Accused, I note that there are 29 witnesses as per the List of Witnesses. There are 18 more witnesses to be called by the Prosecution, namely Witness Nos.: 6, 7, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 27. Apparently, from Doc AM Witness No.: 1 was cross-examined and by only cross-examining Witness No.: 1, I am loathe to conclude that the Defence has disclosed its line of defence to such an extent that prejudice will result to the Accused and the latter will not benefit from a fair hearing.

46. According to Doc ASF, it can be gathered that the Prosecution was not over with its case. The case of ***Jean Jacques*** can be distinguished in the present one. In ***Jean Jacques***, the defence of the Accused has been presented and defence witnesses have testified and have been cross-examined by the Prosecution.

47. Learned Counsel for the Accused submitted that according to ***Mungroo***, the Court need to consider the psychological aspect of the proceedings and delay in proceedings on a person such as the Accused. He also submitted that the standard expected from the judicial process, the criminal justice system is that the period of uncertainty and anxiety must be kept to a minimum.

48. The Defence has adduced no evidence on the issue of the psychological aspect of the proceedings. I need such evidence to make an informed assessment of the psychological aspect. However, the Court can understand that the Accused is in a state of uncertainty since the Information was lodged against him on 18.04.2019.

49. Learned Counsel for the Accused submitted that the Accused through no fault of his own is being subjected to the ordeal of having to undergo trial under the same Information which constitutes an abuse of the justice system and breaches the notion of a fair trial within a reasonable time according to Section 10 of the Constitution.

50. Learned Counsel for the Accused referred to the case of ***Mungroo***, where it was held that: -

> "*Section 10 of the Constitution of Mauritius provides that: -*
>
> > *"(1) Where any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law"*
>
> *The right to a trial "within a reasonable time" secures, first, that the accused is not prejudiced in his defence by delay and, secondly, that the period during which an innocent person is under suspicion and any accused suffers from uncertainty and anxiety is kept to a minimum.*"

51. I accept that any criminal trial is to some extent an ordeal for an Accused party. In ***Reid v The Queen*** **[1980] AC 343**, it was held that: -

> "*The seriousness or otherwise of the offence must always be a relevant factor; ... So too is the consideration that any criminal trial is to some extent an ordeal for the defendant, which the defendant ought not to be condemned to undergo for a second time through no fault of his own unless the interest of justice require that he should do so.*"

52. I verily believe that one of the duties of the Court is to curtail the anxiety and concern of an Accused and to restrict the possibility that the defence of the Accused is undermined.

In ***Charles, Steve Carter and Leroy Carter v The State of Trinidad and Tobago*** **[1999] UKPC 24**, it was held that: -

> "*(i) …; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired…*"

53. The new trial must be allowed in the interest of justice because of the gravity of the alleged offence. In ***R v Maxwell*** **[2010] UKSC 48**, at Paragraph 22 it was held that:

> "*The gravity of the alleged offence is plainly a factor of considerable weight for the court to weigh in the balance when deciding whether to stay proceedings on the grounds of abuse of process. At page 534D in Mullen, giving the judgment of the court Rose LJ said: "As a primary consideration, it is necessary for the court to take into account the gravity of the offence in question". It is unnecessary to engage with the academic criticism of this approach: see, for example, Professor Ashworth's article already cited at page 120. That is because, whatever the position may be in relation to an application to stay proceedings for abuse of process, it seems to me beyond argument that, when the court is deciding whether the interests of justice require a retrial, the gravity of the alleged offence must be a relevant factor. Society has a greater interest in having an accused retried for a grave offence than for a relatively minor one.*"

54. The Defence has been unable to demonstrate on a balance of probability that the Commission and/or the ODPP caused the delay in trying the Accused.

55. Learned Counsel for the Prosecution referred the Court to the following passage in ***Mungroo***, where it was stated: -

"*In dealing with the question of delay the court said this: -*

> *"The Police no doubt took time to investigate. They cannot be expected to investigate the most difficult cases within a fixed period of time. If it were so, police work would suffer, law and order would go out of hand and crimes would increase to an alarming degree. It is indeed not the aim of section 10(1) of the Constitution to clog police machinery.*"

56. I agree with the submission of learned Counsel for the Prosecution when he submitted that the above observation would apply to all types of investigatory bodies investigating certain criminal offences in Mauritius, including investigations being carried out by the Commission as well and also that money laundering is not the type of offence which can be dealt with quite quickly and speedily given the complexity involved in such type of offence. He went on to submit that the Investigator in her Affidavit explained why the investigation took so much time and he also submitted that the investigation had been dealt with diligently, I am in agreement with his submissions.

57. For the reasons given above, the grounds put forward by learned Defence Counsel are unjustified. There are no convincing reasons to warrant exercising my discretion to order a permanent stay of the proceedings against the accused. Therefore, I set aside the motion of the Defence.

58. The new trial is ordered.

Neeshal K JUGNAUTH
Acting Magistrate
Intermediate Court
(Financial Crimes Division)
12.02.2024