

**ICAC v Jean Wesley Marthe & Ors**

**2024 INT 163**

**FCD CN: 66/2020**

**CN: 1157/2016**

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

**In the matter of:**

**Independent Commission Against Corruption**

**v/s**

- 1. Jean Wesley Marthe**
- 2. Monique Jacqueline Marthe**
- 3. Jean Jimmy Alexis**
- 4. Moussa Beeharry**

**JUDGMENT**

1. All four accused parties are being prosecuted for the offence of Money Laundering in breach of sections 3(1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (FIAMLA).
2. Accused nos. 1 and 2 are charged under counts 1 and 2 of the Information respectively and have pleaded not guilty. Accused nos. 3 has pleaded guilty to count 3 of the Information. Accused no.4 has pleaded guilty to counts 4 to 24 of the Information. All accused parties were represented by counsels throughout the proceedings.

**CASE FOR THE PROSECUTION**

3. Witness no.13, WPS Thomas from the Passport and Immigration Office, produced **Doc C**, the travel history of Mr Moussa Beeharry (Accused no.4) from March 2009 to May 2012.
4. Witness no.17, PC Joree produced the record of convictions (PF15) of one Mr James Kanamwanje Mukasa, and one Mr Alain Louis Emilien as **Doc D** and **Doc E**, respectively.
5. Witness no.3, Investigator Sahye produced the defence statement of accused no.1 as **Doc F**. He also produced the defence statement of accused no.2 as **Doc G**.
6. Witness no.18 produced a second defence statement of accused no.2 as **Doc G1**.
7. Witness no.2, Investigator Goonjur produced two defence statements of accused no.3 as **Docs H** and **H1**. She further produced two statements of accused no.3 as **Docs H2** and **H3**. She stated that he was the enquiring officer in connection with the accused no.3. The case was referred to the ICAC by the ADSU. One Mr Alexis had been arrested for the selling of drugs and he was involved in a gang of drug smuggling. He built a house which was not commensurate with his income. He was arrested and involved in other drug related cases. In one particular case of importation of drugs, he was positively identified by one Mr Maudarbaccus. His bank statements and sources of fund were enquired into and they were not commensurate with the two houses that Mr Alexis had built. The properties had been evaluated at Rs2.3M. The witness further produced as **Doc J**, a rule (Order) from the Supreme Court following the application of an attachment order against Mr Alexis. He gave his explanations in the form of a statement which has been produced to court.
8. Under cross-examination on behalf of accused no.3, the witness stated that the accused no.3 had been working at the Cargo Handling Corporation for 5 years between 2008 and 2013. His salary in about 2012 was between Rs20,000 and Rs25,000. The accused gave a statement, albeit late, to explain the financing of the property found at Block C, Abercrombie. The witness was further cross-examined on behalf of accused no.4 and she stated that there was an enquiry conducted by the ADSU before the case was referred to the ICAC. During re-examination, it was alleged that the explanations given by the accused no.3 were not commensurate with the valuation of the property.

9. Witness no.1, Senior Investigator Bholah, produced two defence statements of accused no.1 as **Docs F1** and **F2**. He further produced a defence statement of accused no.3 as **Doc H4**, and two defence statements of accused no.4 as **Docs K** and **K1**. He was the main enquiring officer in the case. He stated that in relation to accused nos. 1 and 2, there were reasonable grounds to believe that money obtained from drug related activities was used to finance the construction of a house found at Baie du Tombeau. One Mr Louis Jimmy Marthe was involved in a drug case and is the brother of accused no.1 and the son of accused no.2. The ground floor of the said house was valued at Rs1.4M and the first floor at Rs1.1M. The legal source of income for the accused parties would not have sufficed to fund the said construction. The evaluation was carried out by witness no.8. The accused no.1 made reference to winning tickets from gambling as an explanation for his sources of funds. None of those, nor any documentary evidence were made available to that effect. The brother of accused no.1, one Jimmy Marthe, was convicted in 2008, in a drug case where the drugs amounted to a value of Rs180M. Accused no.4 was involved in a drug case concerning 12 kgs of heroin estimated at Rs118M. He admitted to the police during enquiry that he transported foreign currency to other countries on nine occasions. All four accused parties are connected to the same predicate crime. The accused no.4 admitted that, whilst in prison, he was in contact with one James Kanamwanje, who was serving sentence for a drug case. He transported money for the said Kanamwanje's relatives to Dubai and other African countries. He was paid Rs80,200 each time he travelled abroad.
10. Under cross-examination on behalf of accused no.4, questions were geared to the fact that the accused no.4 was prosecuted for a drug case related to the current prosecution and he was sentenced for the said drug case. The witness answered affirmatively and stated that the case of money laundering is different and the enquiry was more complex.
11. Witness no.4, Mr Rujub, barrister-at-law, formerly police inspector, stated that he was one of the enquiring officers in the drug case OB 2998/12. He searched the dwelling house of one Seewoosing (Ashish) Dayal in July 2012, and a bungalow rented by the said Dayal. Heroin was secured to the amount of 6594 grams. Another 4827 grams of heroin was secured in a forest at Petit Raffray. Through the confessions of Mr Dayal, a number of individuals were incriminated, including the accused no.4. From the list, one Mr Madarbacus confessed that he brought drugs for Mr Jean Jimmy Alexis. The latter was

convicted of the drug related offences. The value of the drugs amounted to more than Rs171M.

12. On behalf of accused no.4, the witness was cross-examined to the fact that he enquired into the drug case in 2012 as part of ADSU, and the part related to money laundering was referred to the ICAC in about 2012/2013. He confirmed that the accused no.4 pleaded guilty to the drug case. He received a sentence of three and a half years of imprisonment together with a fine.
13. Witness no.7, Mrs Meenowa, was a professional member of the professional quantity surveying council of Mauritius and has been working for the Government since 2012. She prepared a cost estimate report regarding a portion of land of 2.5 perches situated at Block C Flamboyant Street, Abercrombie, Roches-Bois. She made on site observations and found variations from the initial drawings provided and the actual construction. The report was made with the assumption that the construction started in January 2009 and completed in December 2009. The said report was dated 31.08.12 and produced as **Doc M**, together with five annexures. She used a de-escalating method from 2011 to calculate the prices in 2009. She further explained the breakdown of her calculations regarding the house extension. The final valuation amounted to more than Rs2.3M.
14. Under cross-examination on behalf of accused no.3, the witness stated that she made rough sketches of the property without precise measurements. It was agreed with the ICAC that the time of construction started in 2009 and the valuation was calculated as such. During re-examination, the witness was referred to the Annexure 5 of Doc M where the BLP file for the property was received on 25.03.09.
15. Witness no.19 was deputed by the Commissioner of Police to produce as **Doc N**, the records of conviction of Mr Louis Jimmy Marthe, the son of accused no.1 and brother of accused no.2.
16. Witness no.20, Mr Reaz Mamade Purahoo, stated that he was the owner of a hardware shop (quaincaillerie) at Route Nicolay, Port-Louis. Mr Jean Wesley Marthe, accused no.1, was an employee of his since 2005. In about 2011, the accused no.1 was receiving a salary of Rs2500 in cash, per week. Apart from his salary, he was not paid any extra money. He further stated that the accused had bought construction materials from his hardware shop. Following the

confrontation of a previous inconsistent statement, he admitted that the accused no.1 would pay for the materials on the same day, or be given some time to do so, but he would never give him any credit facility.

17. Under cross-examination on behalf of accused nos.1 and 2, the witness stated that accused no.1 was paid Rs9000 per month. There was no overtime paid, but the good employees may receive an additional bonus payment in June and December of each year. He was not asked for the payslips during enquiry from 2005 to 2011. He confirmed that the accused no.1 at some point bought construction materials from him. He was shown a number of documents, which he identified in court as receipts for cash sales. He identified his signatures on some of those documents and there were no names of purchasers written. Those documents were dated in the year 2007 and they bore various amounts of sales ranging from Rs155 to Rs19,605. He did cash sales with the accused no.1 but he could not remember precisely when or for what amount over the years.

18. The prosecution re-examined the witness on the earning capacity of the accused no.1. The witness stated that the latter would receive a bonus of about Rs15,000 sometimes twice a year, whenever he was working for him. He further admitted that the receipts did not bear any name, thus he was unable to say whether they pertained to the accused no.1.

19. Witness no.10, Mr Haveshan Maudarbacus, stated that he was working as steward on the ship, Mauritius Trochetia. It is noted that the witness was granted immunity for drug related cases from the DPP. He was arrested by the ADSU on 24.08.12 for a case of importation of drugs. He received instructions from one Mr Jean Rudolphe Derek, commonly known as 'Gros Derek', to collect drugs from a targeted person in Madagascar and to transport same onboard the Mauritius Trochetia. He met with Mr Derek at a school in Pointes-aux-Sables where he was following naval courses. In 2010, he met Mr Derek together with one Azie on board the Trochetia. The latter spoke about the witness' involvement in transporting drugs from Madagascar to Mauritius. Mr Derek, Azie and one Bruno Casimir met with the witness at KFC in Flacq. The plan to retrieve and transport the drugs was explained to the witness. Following the confrontation of a previous inconsistent statement, the witness confirmed that the first operation he carried out was in 2012. He collected nine bottles of milk containing drugs from Madagascar. Six bottles were for Mr Derek and 3 for Mr Jimmy Alexis. The second time, he brought drugs, four

bottles out of twelve were for one Jimmy Marthe. It amounted to about two kilograms of heroin for the latter.

20. Under cross-examination on behalf of accused nos. 1 and 2, the witness stated that he did not know the first two persons sitting as accused nos.1 and 2 in court. He never saw or met them before.
21. Witness no.8, Mr Dumazel, stated that as a chartered quantity surveyor, he carried out an evaluation regarding a property found at Baie du Tombeau. He produced his report as **Doc P**. He further produced two documents as **Docs Q** and **Q1**, emanating from the District Council of Pamplémousses and on which he had relied to prepare his report. As per the witness' estimates, the cost of construction for the ground floor was Rs1.4M and that for the first floor was Rs1.1M.
22. Under cross-examination on behalf of accused nos. 1 and 2, the witness stated that he has 23 years of experience regarding evaluation of properties post construction. The construction in question was of a good standard and could have been carried out by a medium-sized contractor. He was commissioned by the ICAC to do the evaluation exercise. He went on site only once and in company of ICAC officers. He followed the construction plan provided by the ICAC and he verified same during his site visit. He did not open the walls to ascertain the materials used inside but he did not see any reason why those would not have been followed upon construction. The materials indicated on the plan were those normally used for such construction. He visited the property in 2016 but he was informed by the ICAC that the construction started in 2007. It is impossible from an evaluation to know exactly when the construction was completed, but he was told that it could have been in 2008. Finally, he could not give a valuation for the land.
23. Witness no.14, Mr Jeerooburkhan, stated that he provided ICAC with documents related to accused no.4. He produced a letter as **Doc R**. He further produced documents from 'MoneyGram', Western Union and Thomas Cook, showing transfers of money to one Namugga Madina in Uganda, as **Docs S (S1 to S4)**.
24. Witness no.1, Senior Investigator Bholah was called anew by the prosecution with leave of the court to produce documents which had to be retrieved during the course of trial. He produced the following:

- a. A rent book for the period from Sept 2009 to July 2011, as **Doc T**.
- b. Ten winning horseracing tickets which were provided to the ICAC by the accused no.1, as **Docs U (U1 to U9)**.
- c. Statement of accounts from the National Pension Fund of both, accused nos.1 and 2 as **Docs V and V1**.
- d. Credit sales receipts from PF Dealer Ltd provided by the accused no.1, as **Docs W (W1 to W5)**.
- e. A loan application form for the sum of Rs40,000 from Corporative Credit Union by the accused no.2, as **Doc AA**.
- f. The share entry and withdrawal report for the accused no.2, as **Doc AA1**.
- g. A loan repayment details report for accused no.2, as **Doc AA2**.
- h. A loan application form for the sum of Rs40,000 from Corporative Credit Union by the accused no.1, as **Doc AB**.
- i. A pro-note for accused no.1, as **Doc AB1**.
- j. The share entry and withdrawal report for the accused no.1, as **Doc AB2**.
- k. A loan repayment details report for accused no.2, as **Doc AB3**.

25. The witness further stated that the ICAC requested for those documents because the accused nos.1 and 2 had stated during enquiry that they contracted loans with the Roches Bois Credit Union. Those documents were obtained through a judge's order, including the bank statement of one Marie Ange Cassis for the period from 01.03.07 to 31.05.07, which was produced as **Doc AC**.

26. Under cross-examination on behalf of accused nos.1 and 2, the witness agreed that both accused took loans, but those were taken well after the construction of the house in question. The accused parties applied for a construction permit in 2007. From September 2009, tenants were already living in the house, as per the rent book. The alleged winning tickets of accused no.1, as one source of funds were shown to the witness. He confirmed that Docs U to U8 were winning tickets. The tickets were provided to the ICAC by the accused no.1. No enquiry was made from bookmakers to ascertain whether the accused no.1 had won those tickets. The witness explained that he did not carry out that part of the enquiry because the amount of money won from the tickets were Rs315,000. The valuation of the whole house was Rs2.5M. The winning tickets dated back to 2004, 2005 and 2006, when the construction of the house started in 2007. Furthermore, the bookmakers would have been able to confirm that they were winning tickets but not who won them. It was also verified that the

accused no.1 received Rs55,000 on 06.08.07 from the Ministry for the casting of slabs. The version of accused no.1 that he borrowed Rs100,000 from his cousin Wan Alain could not be verified as the former did not provide further details about his cousin Alain.

27. For accused no.2, it was confirmed by the witness that she worked at a factory. The version of accused no.2 was also the fact that she received money from one Joceline Martin. However, the latter could not be traced out, nor contacted.

## **CASE FOR DEFENCE**

28. The accused no.1, Mr Jean Wesley Marthe, gave evidence under oath. He confirmed the content of his defence statement. He stated that he constructed only the ground floor of the house in question. He provided all relevant documents that he had in his possession to the ICAC. He further stated that the construction started in 2007 and was completed sometime in 2008. His brother, Mr Jimmy Marthe, did not contribute to the construction of the house.

29. Under cross-examination from the prosecution, the accused no.1 confirmed that he worked at hardware shop 'quincaillerie' Nationale as helper since 2005. He received an approximate monthly salary of Rs9,000. He admitted that during the year 2007, there might have been a period when he was unable to work due to injury. However, he insisted that he was paid for the four months that he was off work. The accused denied that he was not given credit facilities, since he would purchase items and payment would be subsequently effected. He lived together with his mother. He used the permit of his brother, Jimmy Marthe, to sell fish, even though he first denied having used the said permit. He stated that he was on good terms with his brother and the one Bruno Casimir. He used to buy fish from the latter. He came to know through the radio that the said Bruno Casimir was involved in drug offences. He did not have any documentary evidence that he was making about Rs4000 a month from his fish selling activity. He did not deposit such income in the bank. From his monthly salary of Rs9000, he contributed Rs1000 per month to his mother for household expenditure. His version from his defence statement with regards to his monthly expenditure amounting to Rs7000 was confronted to him. The accused replied that he could not remember how much he spent on his personal needs per month. He insisted that he received money from one



cousin. He did not give the details of that cousin to the ICAC because the latter was abroad at the time. He was questioned as to his out-of-court version that the total cost of construction for the whole house consisting of a ground floor, a first and second floor, amounted to Rs600,000. He replied that he thought he was asked about the ground floor only. He could not answer the questions regarding the alleged winning tickets amounting to Rs315,000. He could not remember same, except he stated that a concrete block at the time cost Rs15. He denied that a contractor built the house, but a friend of his did. When the allegation was put that his income was not enough to contribute to the construction partly valued at Rs1.1M, he stated that he worked as security officer as well. He did not have any papers to prove same. He denied having taken money from his brother, Jimmy Marthe. He came to know of the latter's involvement with drugs in 2008, but the construction started in 2007. The accused was further confronted to an extract in his defence statement, where he said that he used all his income from various sources for his personal needs, and that he never mentioned the construction of a house. In his reply, the accused defined personal needs as including construction of a house since it would be his personal matters.

30. The accused no.2 gave evidence under oath to the effect that she confirmed the veracity of her defence statement.

31. Under cross-examination, she stated that she received a monthly salary of Rs5,000 from her work as a machinist at 'Universal Textile'. She was also given Rs1,000 per month by her son, Mr Jimmy Marthe. She did not know that he was a drug dealer. An extract from her statement was read to her, where she stated that her son, Jimmy Marthe, was in prison for a drug case. She insisted that she did not say that he was imprisoned for matters of drug. She was unaware of same. She further stated that the said Jimmy Marthe was working at a bakery from which he was paid a salary. She worked, so did her husband, which explains the financing of the first floor of the house, and which she had valued at Rs200,000 in her defence statement. Her husband was head cook on a ship. She denied that the house was built by contractors. Her family members helped build the house. She stated that she paid Rs10,000 per month as 'sit', with the help of her husband. She did not mention her husband's income in her defence statement. She replied that she was not asked about her husband. But the latter put up a statement as well, and he spoke about his income. His papers are still with the ICAC. She also stated in court that she has a shop 'tabajie', where she worked together with her daughter. The said 'tabajie' was

still operational. Allegedly her mother, now deceased, and sister, both living in Italy at the time, sent her Rs75,000 and Rs60,000 respectively. She insisted that she received financial help from her husband who put up a statement and provided all paperwork to show his income capacity. The latter is now deceased. On numerous times, the question was asked from the accused that she did not mention her husband finances in her defence statement. The answer was repetitively similar, in that, her husband had explained his work in a statement and all his documents are still at the ICAC and she mentioned Mr Bholah,(witness no.1) who took possession of the documents. She did not agree with the valuer's report. In re-examination, the accused stated that her husband was deceased in 2011.

32. Defence witness, Mrs Jolie Marie Monette, was called to give evidence on behalf of accused nos. 1 and 2. She was the representative of Roches-Bois Cooperative Credit Union. She confirmed that accused no.2 contracted three loans from the Union. She produced **Doc AD**, showing the loans for various amounts; Rs25,000 in January 2007, Rs39,000 in February 2009 and Rs40,000 in 2011. The accused no.1 was also a member of the Union since 2007. The witness produced **Doc AE** showing an accumulated value of shares up to Rs62,641 with the Union.

33. Under cross-examination, the witness confirmed that the first loan Rs25,000 in 2007 was for house improvement and the second of Rs39,000 was for business improvement. She further stated that if the loans were for house construction, it would have been written as such on the document. The purpose for the loan of Rs40,000 for accused no.2, was for construction.

34. The second defence witness, Mrs Jocelyn Lebreu was called on behalf of accused nos. 1 and 2. She was acquainted to the accused no.2 for about 20 years. She was in charge of the arrangement, also known as 'sit'. She confirmed that accused no.2 gave her money. She suggested a range of Rs4000 to Rs6000 as she could not remember the exact amount. She stopped doing so, about seven years before the date of her testimony which was in January 2024. Normally, a participant of the 'sit' would receive the agreed sum of money once a year. But that can vary depending on the needs of each participant. Under cross-examination, she stated that she could not confirm the total amount that the accused no.2 might have received over the years.

35. The accused no.3 made a statement from the dock. He had pleaded guilty and he begged for excuse. The accused no.4 equally made a statement from the dock in the light of his guilty plea and he begged for excuse.

## ASSESSMENT OF THE COURT

### The law

36. All accused parties are being prosecuted under **section 3(1)(b) of FIAMLA 2002**, which is reproduced below:

#### **3. Money Laundering**

*(1) Any person who -*

*(a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime; or*

*(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.*

37. Accused nos. 1 and 2 have been charged to be in possession of impugned property as per the Information. The constitutive elements of the offence of money laundering have been set out by the Supreme Court in **Audit v State 2016 SCJ 282** as follows:

*The elements of the offence under section 3 of FIAMLA are:*

*(a) possession of property;*

*(b) in whole or in part directly or indirectly represents the proceed of any crime;*

*(c) has reasonable grounds for suspecting;*

*(d) the property is derived or realised;*

*(e) in whole or in part, directly or indirectly from any crime.*

38. Accused parties nos. 3 and 4 have pleaded guilty to the Information. The court's assessment of the evidence on record will therefore be centred on those relating to the first two accused parties.

39. The case laid against the accused nos. 1 and 2 concerns two immovable properties, namely the ground floor and first floor of a building, respectively for each accused, and situated at Avenue Yeye, Baie du Tombeau. It is undisputed that the accused parties were in possession of the ground and first floor of the said building. Hereinafter, the ground floor will be referred to as 'Property A', and the first floor as 'Property B'.
40. The criminal activity, from which the proceeds used in their construction have allegedly emanated, has been identified, as per the Information, as drug related offences. Witnesses no.4 and 10 for the prosecution, at paragraphs 11 and 19 above, have narrowed the criminal activity to a case bearing OB 2998/12, involving a number of individuals, including Mr Jean Rudolphe Derek, commonly known as 'Gros Derek', Mr Azie, Mr Bruno Casimir, Mr Jimmy Marthe, Mr Maudarbacus (witness no.10), Mr Jimmy Alexis (accused no.3) and Mr Beeharry (accused no.4). The value of drugs involved in those cases ranged in the hundreds of millions of rupees. The above individuals have been convicted, as prosecuted in their respective cases, except witness no.10 who was granted immunity by the DPP.
41. With regards to the second element that the property *in whole or in part directly or indirectly represents, the proceeds of any crime*, the case of the prosecution is mainly based on two axioms. First, the earning capacity of accused parties 1 and 2, is not commensurate to the cost of construction of Property A and Property B. Second, the close relationship of both accused parties with the one called Jimmy Marthe, convicted for the alleged criminal activity, would create the inference that the money used to build the said properties was proceeds of crime.

#### Valuation of Property A and Property B

42. The accused no.1 deposed under oath and confirmed the content of his defence statement, **Doc F**. At folio 92139, he stated that he must have spent about Rs600,000 in total. There is no further precision at Doc F, as to what item the accused spent the said sum of money on. However, it is the case for the prosecution and undisputed by the defence that the accused no.1 built Property A and nothing else. In the accused's testimony, he stated that when he put up his defence statement, he thought he was being asked about the ground floor

only. It is therefore understood that accused no.1 alleged that he spent Rs600,000 on the construction of Property A.

43. Witness no.8 was the expert witness for the prosecution who carried out the evaluation of both properties. **Doc P**, was produced as his report showing the steps taken in the evaluation process and the actual valuation of both properties. Doc P consists of two pages, the first being a physical description of the residential land and the structure on top of it. The second lists the valuation of the ground floor area including land cost as Rs1.4M, and the first floor area as Rs1.1M. The witness, as per his report, was requested by the ICAC to value the property in two different sections, firstly, the ground floor area together with the cost of land and secondly, the first floor area. It is quite manifest that the valuation amounting to Rs1.4M, included the value of the land on which the ground floor rested. He did state under cross-examination that he could not give a valuation for the land. During examination in chief, he seemed to suggest that the valuation of Rs1.4M was for the ground floor excluding the land. The charge laid against the accused no.1 under count 1 of the Information avers that the accused was in possession of the ground floor and the proceeds were used in its construction. There is no averment of the land in question. Indeed, the said land was not part of the prosecution's submissions. There is therefore doubt as to the exact valuation of the ground floor excluding the land on which it was built. If the report (Doc P) is read verbatim, the ground floor (Property A) should have a lesser value than Rs1.4M.

44. The evaluation of witness no.8 was based on the information provided by the ICAC and the documents provided by the District Council of Pamplemousses. The accused no.1 has stated under oath that he did not employ a contractor to build the ground floor, but relied on friends and acquaintances to help in the construction. The expert opinion of witness no.8 was that the construction was of a good standard and therefore a medium-sized contractor could have been used for the work. As submitted by the defence, a comparative study between Doc P and **Doc M**, the cost estimate report of witness no.7 related to the property of accused no.3, shows a marked difference in the process of evaluation. Doc M illustrates a more thorough and detailed analysis of the property, including a de-escalation process. The weight of Doc P, pertaining to the valuation of Property A, the ground floor, is therefore reduced.

45. Property B (first floor) was valued by the witness no.8 at Rs1.1M. The accused no.2 in her defence statement at folio 89327 stated the cost of construction for the first floor was about Rs200,000. It is agreed that the construction of both properties started sometime in 2007 and was completed in 2008.

Earning capacity of accused no.1 leading up to the time of construction

46. The accused no.1 was on a monthly salary of Rs9000, with occasional bonuses, from his job at 'Quaincaillerie Nationale', the hardware shop. From his defence statement, he had worked there for 7 to 8 years from the date he put up his statement. He was granted Rs55,000 from the government as financial aid to install the concrete roof of the house at Baie du Tombeau. He alleged to have won about Rs200,000 from horseracing. But he provided winning tickets to the ICAC amounting to Rs315,000 (Docs U, U1 to U9). Furthermore, as per his version, he was in the business of selling fish. He did not bank the income from the latter activity. Consequently, there is no documentary record, although he stated under oath that it amounted to about Rs4000 per month. An unknown cousin of his lent him Rs100,000. The latter lived in Italy, which was the reason why he did not give the details to the ICAC. He also stated that he worked as a security officer, but he was not registered as such, and there is no record of the related income.

47. The accused's monthly salary of Rs9000, with a bonus of Rs15,000 once or twice a year would have been partly spent on his own personal expenses and household bills. From the evidence on record, it is impossible to construe the exact proportion of his salary that would have been spent on his cost of living. But it is undeniable that a sizeable portion of the salary would have had to be allocated towards that end. Additionally, from his own version, he was contributing Rs1000 per month to his mother, the accused no.2.

48. The winning horseracing tickets have been provided to the ICAC in 2011 and they date from 2005 to 2007. They have been confirmed to be true winning tickets, and there are about 38 copies of tickets which have been produced in court. The identity of the person placing a horseracing bet is generally not inscribed on the betting slip. It would therefore be impossible for the accused to show through the tickets alone that he won those races. Similarly, it creates the corresponding difficulty for the bookmaker to record the persons who placed the bets. That was the reason for the inability of the ICAC to investigate that aspect of the case. The proposal of the defence is that one source of income

for the accused is the total amount of Rs315,000 that he had won at the races, and such has contributed to the construction of Property A. Using winnings from a gambling activity skews the net income of the accused over the material period of time, that is, the years preceding the said construction. To assess whether the accused's income is commensurate with the cost of building a house, it is the net income which has to be looked at. Generally, any gambling activity would generate wins and losses. It stands to reason that the accused could not have placed only 38 bets and they have all been winners. The accused has provided only the winning tickets. Losing tickets would offset the total windfall of Rs315,000. Furthermore, the court notes that there has been a significant outlay of money to place those bets. For instance, the first bet at Doc U, was for Rs25,925 and the last at Doc U4 was for Rs60,000. Thus, I find that the accused's winnings offer a mere indication that he could have had an additional source of income, but much weight cannot be attached to those.

49. The valuation of Property A has to be less than the Rs1.4M as estimated at Doc P for the reasons given above. The accused has stated that he bought the plot of land in question for Rs300,000. Therefore, the valuation of Property A has to be above the alleged Rs600,000 by the accused, but somewhere around the Rs1M mark. The defence witnesses did not come to proof with regards to the alleged loans taken by the accused no.1. If the accused's allegations of work-related income and various grants are taken as true and, when balanced out by a reasonable cost of living, such is not commensurate with the valuation of Property A or the cost of construction.

Earning capacity of accused no.2 leading up to the time of construction

50. The valuation of Property B, the first floor, was estimated by the prosecution at Rs1.1M. That was on the assumption that a medium-sized contractor was employed to carry out the construction. The accused no.2 stated that she spent about Rs200,000 to build the said property, by using friends and family to help in the construction. There is no evidence from the witness no.8, the expert witness, that without a medium-sized contractor, a construction of that standard could not have been carried out.
51. The accused no.2 was on a monthly salary of Rs5000. She received some financial help from her son and she contributed towards a scheme commonly called 'Sit'. However, there are two sources of income that she has adduced in evidence that the prosecution had difficulty to rebut. First, the accused had

stated in her defence statement and under oath, that she worked in a shop 'tabajie' with her daughter. She owned the said business. The said shop was still in operation. There is no evidence from the prosecution to address this point. That could be a decent source of income that would weigh in the balance. Secondly, the accused has explained at length in court about her deceased husband's contribution to the construction of the property. The latter allegedly worked on a ship as head cook. The fact that the accused did not mention same in the defence statement would have weighed against her, in the final assessment of the evidence. However, she stated under oath that her late husband has put up a statement during enquiry at the request of the ICAC. She even mentioned the investigator by name, Mr Bholah (W1), who took possession of the documents related to her husband's work. There was no rebuttal of such evidence by the prosecution during cross-examination. The only issue confronted to her was that she did not mention any of that fact in her defence statement. As such the court is left in the dark on an important issue made live by the defence. It does create a doubt in the prosecution's case in proving that the net income of accused no.2 was not commensurate to the cost of construction of property B.

52. The Privy Council in **Bholah v State 2010 PRV 59** dealt with the element of whether the property was *in whole or in part directly or indirectly represents the proceeds of any crime*. A number of cases such as **R v Anwoir [2009] 1 WLR 980** and **R v W (N) [2009] 1 WLR 965** were cited and the relevant extracts are as follows:

*We consider that in the present case the Crown are correct in their submission that there are two ways in which the Crown can prove the property derives from crime, (a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime.*

The Court of Appeal in **Anwoir** (supra) endorsed the pronouncement in **R v El-Kurd [2001] Crim LR 234** which is reproduced below:

*“you will note from the definition of criminal conduct that you do not have to be satisfied what conduct it was that produced a financial benefit for the other person. While it could be the proceeds of theft or fraud it could equally be the proceeds of unlawful gambling, prostitution, revenue offences or any other kind*



*of dishonesty. The useful test, you may think, is to ask yourselves whether the financial benefit was honestly derived from legitimate business or commercial activity.”*

53. As determined above, the accused no.1's net income was not commensurate with the cost of construction of Property A. The accused no.1 was the brother of one Jimmy Marthe. As per Doc N, the latter was convicted of two drug offences in 2009 and 2015 respectively. The circumstances of the drug case related to Jimmy Marthe has been summarised above. Being a mere relative of Jimmy Marthe, even as a sibling, may not carry much weight. However, the accused no.1 in his own evidence stated that he was in the fish selling business. He did not have a permit for doing so, but he was using that of his brother, Jimmy Marthe, to sell fish. Furthermore, in his defence statement, he stated that he went to Reunion Island for a medical intervention and he was accompanied and financially aided by Jimmy Marthe. Since the construction of the Property A could not have been financed solely from the accused's net income, another financial aid must have been granted to the accused. The normal commercial practice would have been to contract loans from a bank or any other financial institution. Proposing winnings from a gambling activity spanning over a number of years as a constant source of fund, is inherently suspicious for the reasons given above. The close relationship of the accused no.1 with Jimmy Marthe and the previous financial help given by the latter, creates the irresistible inference that part of the money used for the construction of Property A, the ground floor, must have come from Jimmy Marthe. That money has been tainted through the unlawful activities of the said Jimmy Marthe. I therefore hold that Property A, the ground floor, has been partly constructed with proceeds of crime.

54. It is incumbent upon the prosecution to prove that the accused no.1 must have *suspected or had reasonable grounds for suspecting that the said money was derived or realised, in whole or in part, directly or indirectly from any crime.* The test is an objective one, vide **Antoine v The State 2009 SCJ 328** and **Manraj and Others v ICAC 2003 SCJ 75**. It is helpful to take inspiration from the English case **R v Da Silva [2006] EWCA Crim 1654**, where 'reasonable suspicion' in money laundering cases was given some clarification:

*The prosecution must prove that the defendant's acts of facilitating another person's retention or control of the proceeds of criminal conduct were done by a defendant who thought that there was a possibility, which was more than*

*fanciful, that the other person was or had been engaged in or had benefited from criminal conduct.* (Emphasis is mine)

55. The accused stated that he came to know about his brother's involvement with drugs after his conviction in 2009. Having assessed the whole evidence on record, it is a clear that the accused had a close relationship with his brother, Jimmy Marthe. The latter's altercation with the law and resulting conviction was contemporaneous with the construction of the house in question. Any reasonable person would have suspected that there was a real possibility that Jimmy Marthe's finances were connected to unlawful activities. I therefore find that the accused no.1 had the required mens rea.

56. Regarding the accused no.2, the prosecution has not been able to prove that the former's net income was not commensurate with the value of Property B, the first floor, as considered above. There is no evidence on record showing any close relationship between the accused and Jimmy Marthe, other than they were mother and son. The monthly Rs1000 contribution from Jimmy Marthe to the accused is not enough to show that Property B was partly built from proceeds of crime.

## CONCLUSION

57. For the above reasons, accused no.1 is found guilty as charged under Count 1 of the Information.

58. Based on the guilty pleas of accused nos. 3 and 4, they are respectively found guilty under Count 3 and Counts 4 to 24 of the Information.

59. The prosecution has been unable to prove, beyond reasonable doubt, the case against accused no.2. The case laid against accused no.2 at count 2 of the Information is therefore dismissed.

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

**15.07.24**