

FCD CN: FR/L16/2022

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

ICAC
(Now the Financial Crimes Commission)

V

1. Marie Lourdes BERNARD
2. Weissler Jean Curtis ITTOO

RULING

A. BACKGROUND

1. Accused no.1 and accused no.2 are being prosecuted for Money Laundering offences in breach of sections 3(1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 (the 'FIAMLA'). They have both pleaded not guilty and are represented by Counsels, Mr. J. Panglose and Mr. A. Murday respectively.
2. The case for the Prosecution is being conducted by Mr. Jeeha for the ICAC (now the Financial Crimes Commission).
3. During the course of the trial, Counsel for accused no.1 moved that the case against her be permanently stayed on the grounds (which are hereunder reproduced verbatim) that:

"A. The pros has infringed s.10 (2)(c) of the Constitution and s.65 (1) of the CPA by not giving to the defence copies of all search warrants, three in this case, in providing the brief to the defence. The pros has not provided copies of the said search warrants as unused materials although same was asked by letter to the DPP on 10.05.2022.

B. The pros has unfairly given to defence one copy of one search warrant, which was unsigned by Acc, whereas it kept the original which was allegedly signed by Acc and only produced it in re-exam of w2. In doing so, the pros has manipulated the process of the court by doing something so unfair that no tribunal could accept this behaviour which is



prosecutorial misconduct. The pros has thus deprived defence not only of proper cross examination of w2 but also of a proper preparation of the case it has to meet.

C. In doing A+B, the pros has cause immense prejudice to Acc1 which cannot be cured at all and Acc1 cannot benefit anymore from a fair trial.”

4. Mr. A. Murday did not join the above motion on behalf of accused no.2.
5. The matter was thereafter set for arguments on the motion for stay of proceedings.

B. CASE FOR THE PROSECUTION

6. Investigator Purgaus (witness no.2) deposed on behalf of the prosecution for the purposes of the arguments. He explained that the search warrant he produced during the trial – **Doc H refers** – is the one that accused no.1 signed in front of him at her place in Riche Terre. The search warrant with which he was confronted by Counsel for accused no.1 is only a copy that was remitted to accused no.1 and which is unsigned by her. According to him, the original of any search warrant does not form part of either the case file or the brief. The original of search warrants are remitted to the ICAC (now the Financial Crimes Commission) by the officer (s) who have executed such warrants and are thereafter under the custody of the ICAC (now the Financial Crimes Commission). An enquiring officer does not have custody of search warrants. Investigator Purgaus (witness no.2) further explained that as per **Doc A**, accused no.1 admitted having been shown the original of the search warrant prior to the search and on which she did sign. Also, according to **Doc A**, accused no.1 admitted having been remitted a copy of that search warrant, which she kept at home. Investigator Purgaus (witness no.2) also stated that accused no.1 did not make any complaint in relation to the search warrant or the search carried out at her premises.
7. During cross examination, Investigator Purgaus (witness no.2) maintained that accused no.1 signed the search warrant in front of him prior to the search being carried out. He also maintained that search warrants do not form part of any case file but can be retrieved if the need arises. He also denied that accused no.1 was made to sign the search warrant only at the ICAC (now the Financial Crimes Commission) office. According to him, accused no.1 was made to sign on a Seizure Order at the ICAC (now the Financial Crimes Commission) office.



C. CASE FOR ACCUSED NO.1

8. Accused no.1 deposed under oath for the purposes of the arguments. She stated that she was neither shown nor did she sign on any search warrant at her premises. She was never handed with a copy of any search warrant prior to the search being conducted. According to her, officers of the ICAC (now the Financial Crimes Commission) climbed over the enclosure to enter her premises looking for one Rajkumar Itoo, her paramour at that time. The said Rajkumar Itoo has now passed away. Accused no.1 also stated that she got a copy of a search warrant in the brief she collected from the office of the DPP and produced a copy of the receipt for the brief she collected – **Doc J** refers.
9. She admitted, during cross examination, that her statements (**Doc A, A1, A2, A3, A4** and **A5**) and the search warrant (**Doc H**), did bear her name and signature. She however maintained that she was made to sign on **Doc H** only at the ICAC (now the Financial Crimes Commission) office and not at her premises prior to the search. Accused no.1 also stated that she was made to sign **Doc A** in which she had admitted that she was shown a search warrant and also in which she admitted being satisfied with the search effected at her premises. She further stated that there was like 100 persons effecting the search and that she was traumatized. According to her, this is the reason why she did not make any complaint to the police in that respect. She also conceded having signed on a Seizure Order document at the ICAC office (now the Financial Crimes Commission).

D. SUBMISSIONS

10. The prosecution submitted that as soon as it became aware that the Counsel for accused no.1 needed the search warrants and that same were not part of the brief, needful was done to have same communicated to Counsel. Also, the defence was given time to consider the search warrant and was given the opportunity to ask any further question to Investigator Purgaus (witness no.2) during the trial. Therefore, according to the prosecution, there is no ground to stay proceedings against accused no.1.
11. The defence submitted that the duty of disclosure is absolute and that the prosecution, having not communicated these search warrants as part of the brief, has breached such duty. Such a breach has led to grave prejudice to accused no.1 warranting a stay of proceedings.



E. THE LAW

12. A stay of proceedings is a formidable tool which any Court of law possesses as a remedy for an abuse of its process. However, it is a power which must be used sparingly and in exceptional circumstances when there is “...something so unfair and wrong that the Court should not allow a prosecution to proceed with what is in all other aspects a regular proceedings.” – See **Hui Chi-Ming v R (1992) 1 A.C. 34**.
13. Circumstances in which a stay of proceedings may be warranted was explained in **State v Wasson (2008) SCJ 209** where it was held that:

“Further, in determining abuse of process, the Court in R. v. Derby Crown Court ex p. Brooks [1985 80 Cr. App. R. P. 164], after quoting with approval the statement of Lord Diplock in Sang [1979 2 AER 1222 p. 1230] pointed out that “the ultimate objective of this discretionary power is to ensure that there should be a fair trial according to law, which involves fairness both to the defendant and the prosecution.”

Lord Roger Ormrod C.J., at 168, stated:

“The power to stop a prosecution arises only when it is an abuse of the process of the court. It may be an abuse of process if either

- (a) the prosecution have manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair advantage of a technicality, or*
- (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation or conduct of his defence by delay on the part of the prosecution which is unjustifiable ...”*

14. Also, in **R. v. Beckford [1996 1 Cr. App. R. 94, at 100G]** Lord Justice Neill observed that:

“The jurisdiction to stay can be exercised in many different circumstances. Nevertheless two main strands can be detected in the authorities:

- (a) Cases where the court concludes that the defendant cannot receive a fair trial;*

(b) *Cases where the court concludes that it would be unfair for the defendant to be tried.*"

F. ANALYSIS

15. It is the contention of the defence that there has been a deliberate attempt, by the prosecution, to withhold disclosure of the search warrant leading to grave prejudice to accused no.1 in the preparation of her defence. It is further the contention of the defence that the search warrant in possession of accused no.1 came as part of the brief that was communicated to her. Accused no.1 was never remitted a copy of any search warrant nor did she sign on any search warrant prior to the search at her premises.

16. It is noteworthy that as per the letter sent to the Office of the DPP dated the 10th May 2022 (**Doc K refers**), a copy of the brief and all unused materials were asked for without specific mention of any search warrant. Now, as Investigator Purgaus (witness no.2) explained, the original of search warrants do not form part of the case file either as used or unused materials. They are under the custody of the ICAC (now the Financial Crimes Commission) and can be obtained upon request. The Court, in the absence of any evidence to the contrary, does not have any hesitation in accepting the explanation of Investigator Purgaus (witness no.2) on this issue. Ex-facie **Doc K** coupled with the explanation of Investigator Purgaus (witness no.2), the allegation of deliberate withholding of disclosure of the search warrants is clearly unjustified. On the contrary, the prosecution, upon being aware that the defence needed the search warrant, did the needful to communicate same and even produced a copy of the original during the re-examination of Investigator Purgaus (witness no.2) at the trial. Furthermore, Counsel for accused no.1 was granted time to consider that search warrant and was informed that he will be given latitude to ask further questions to Investigator Purgaus (witness no.2) if he so wishes (**see Transcript of Proceedings of the 26th September 2023**). We are far from the scenario where the prosecution has deliberately withheld disclosure or refusing to disclose certain material to the defence. Indeed, the Court fails to see any manipulation or misuse of the Court's process by the prosecution or any prejudice having been caused to accused no.1 in the preparation of her defence.

17. Investigator Purgaus (witness no.2) was also straightforward and clear in stating that accused no.1 signed the search warrant in front of him and a copy of same was remitted to her. He maintained this version throughout despite a tedious cross examination by Counsel for accused no.1. On the other hand, the Court has not been impressed by the version of accused no.1. Her account as to the number of officers who allegedly jumped over the enclosure into her premises to carry the search is 100, a number clearly exaggerated and worthy of a science fiction movie. Her lack of complaint up to now is even more undermining given that her account of events,

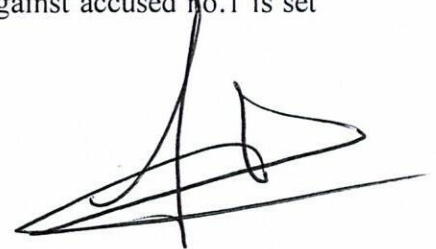


in Court, of what allegedly happened is diametrically different from her unchallenged admissions in **Doc A**. Over and above, CI Seeruthun (witness no.1) who executed the search warrant is yet to depose for the purposes of the trial. Counsel for accused no.1 will have the opportunity to cross examine him fully on that issue thereby ensuring that accused no.1 benefits from a fair trial all throughout.

18. Furthermore, it is apposite that the charge against accused no.1 is one of Money Laundering for having been in possession of a motor car bearing registration No. 2567 AP 14 at Phoenix Car Gallery Ltd in Phoenix, not at her place of residence in Riche Terre. As Counsel for accused no.1 himself conceded, that car was not seized during the search at Riche Terre. In that respect, the prosecution will have to adduce necessary evidence to prove the possession, by accused no.1, of the said car at Phoenix Car Gallery Ltd irrespective of any search warrant. The question of prejudice having been caused to accused no.1 in the preparation of her defence does not arise since the search warrant does not, a priori, have any direct bearing on the issue of possession of the said motor car. In fact, the conduct of the prosecution, after having been aware that Counsel for accused no.1 needed the search warrant, reflects its endeavour to ensure that accused no.1 benefits from a fair trial.

G. CONCLUSION

19. For the reasons explained above, the motion to stay proceedings against accused no.1 is set aside.



A.R. TAJOODEEN
Magistrate of the Intermediate Court (Financial Crimes Division)
28.11.2024