

FCD CN: FR/L12/2024

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

ICAC
(Now the Financial Crimes Commission)

V

Mohmed Imran Ibrahim PATEL

RULING

A. BACKGROUND

1. Accused is being prosecuted for the offence of Money laundering (1 Count) in breach of **sections 3 (1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act** (the 'FIAMLA'). He has pleaded not guilty and is represented by Counsels, Mr. I. Mamoojee appearing together with Mr. Luximon and Miss. A. Luttoo. The case for the prosecution is being conducted by Mr. J.Muneesamy, Assistant DPP and Miss N. Pem, Senior State Counsel (for the purposes of the present arguments).
2. During the course of the trial, the defence called one Mr. D. Seebaruth, Court Manager, to produce a copy of the case entered by one Mr. Mohamed Yousouf Suleiman before the Judge in Chambers. The prosecution objected to its production on the grounds that such evidence is (i) not relevant and (ii) is an attempt to adduce inadmissible hearsay evidence through the back door.
3. The matter was fixed for arguments on the objections raised by the prosecution.

B. THE SUBMISSIONS

4. The prosecution did not dispute the fact that a case was lodged before the Judge in Chambers pertaining to the money seized from accused. However, the prosecution submitted that the affidavit and documents attached, in the absence of Mr. Mohamed Yousouf Suleiman, would



be inadmissible hearsay not catered for by any Common Law or statutory exceptions. Furthermore, the prosecution submitted that the Court record is not relevant since it would not shed further light as to the provenance of the money seized from accused.

5. The defence submitted, in length, that relevance must be distinguished from admissibility. The defence argued that late Attorney at Law, Mr. Mungroo, had a 'mandat ad litem' to affirm the affidavit on behalf of Mr. Mohamed Yousouf Suleiman. As such, the contents of that affidavit and documents attached thereto are relevant to show the source of the money secured from accused. The defence also relied on **section 170 of the Courts Act** and **section 188C of the Courts Act** to submit that such evidence does not amount to hearsay evidence.

C. ANALYSIS

6. In **Phipson (2024): 7-05**, it is stated that:

“Relevancy must be distinguished from admissibility, of which, though primary, it is by no means the sole criterion ... It is correct, in deciding whether evidence is admissible, to ask first whether the evidence is relevant and, thereafter, whether there are any rules or discretions, based on convenience or policy, which nonetheless make this relevant evidence inadmissible...”

7. In **Blackstone’s Criminal Practice 2017: F1.11**, it is stated that:

“The cardinal rule of the law of evidence is that, subject to the exclusionary rules, all evidence which is sufficiently relevant to the facts in issue is admissible, and all evidence which is irrelevant or insufficiently relevant to the facts in issue should be excluded.”

8. The above extracts are reflective of the elementary rule of thumb in criminal cases. Evidence which is relevant is admissible unless its admissibility is affected by some exclusionary rules. On the other hand, evidence which is not relevant to facts in issue should not be admitted. In the present case, accused has admitted that the money secured was in his possession. His explanation is that this money was remitted to him by his employer, one Mr. Mohamed Yousouf Suleiman, in South Africa to be transported to Dubai. It is also undisputed that the said Mohamed Yousouf Suleiman came in Mauritius following the arrest of accused and entered a case before the Judge in Chambers through his attorney. The defence is now seeking to adduce, before this Court, a copy of the case file which was before the Judge in Chambers



on the ground that it contains the explanation and documents from Mr. Mohamed Yousouf Suleiman as to the source of the money secured.

9. It is noteworthy that there is no iota of evidence before this Court, by any witness, for the purposes of this arguments, as to who lodged that case before the Judge in Chambers, when was it lodged, who swore the affidavit, what was the nature of that case and the outcome of it. These would have been important factors on which the relevance of the evidence, which defence is seeking to adduce, could have been assessed. Be it as it may, the Court, in the interest of justice, has taken the overall submissions of the defence into consideration. It can be understood that the relevance of the case file is to show that the money indeed belonged to Mr. Mohamed Yousouf Suleiman with latter's explanations as to its source backed by the documents annexed. The Court cannot but agree that this would indeed amount to relevant evidence to accused given the nature of the case against him.
10. However, the Court hastens to add that though such evidence may be relevant to accused, such evidence still has to pass the test of admissibility. There is no evidence, from any witness, as who swore the affidavit in the case before the Judge in Chambers. The Court is only in presence of the words of the defence to the effect that there was a 'mandat ad litem' whereby the Attorney at Law swore the affidavit on behalf of Mr. Mohamed Yousouf Suleiman. The Court need not delve itself on the issue of 'mandat ad litem'. Suffice for the Court to say that these are Civil Law procedures and instruments which cannot be imported in Criminal Law cases. In that respect, the Court has no difficulty in finding that the contents of the affidavit would be inadmissible hearsay in as much as the defence would be relying on the truth of what has been stated therein in respect of the ownership and provenance of the money. The only person who can vouch for the ownership and source of the money is Mr. Mohamed Yousouf Suleiman not the attorney at law who swore that affidavit. The same reasoning will apply to any document attached with that affidavit.
11. The defence has also relied on **section 170 of the Courts Act**¹ to submit that the affidavit and documents, being public documents, should be admissible. That is not a correct reading of **section 170 of the Courts Act**. What **section 170 of the Courts Act** provides is that if the

¹ "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 any 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.

(2) The copy shall be admissible in evidence at any trial to the same extent and in the same manner as the original would but for this Act be admissible.

(3) Certificates that such copies or extracts are true and purporting to be signed by the Registrar or other person under subsection (1) shall, in the absence of proof to the contrary, be held to have been so signed."



original of any document, amongst others, is in the custody of the Supreme Court, a copy of same, duly signed by the Registrar, would be as good, as the original, as evidence before any Court. **Section 170 of the Courts Act** is, in no way whatsoever, converting inadmissible hearsay found in any such documents admissible. In fact, the relevance and admissibility of such evidence must still be assessed.

12. The defence further relied on **section 188C of the Courts Act**² to submit that the affidavit and documents should be admissible since Attorney at Law Mungroo who swore that affidavit has passed away. The short answer to this is that **section 188C of the Courts Act** does not apply to a situation where there is double or multiple hearsay. Having concluded that the contents of the affidavit and documents are inadmissible hearsay, the Court, in allowing same to be admitted under **section 188C of the Courts Act**, would be condoning a double hearsay situation outside the scope and ambit of that section.

² "188C. Admissibility of out of Court statement in criminal proceedings where maker is unavailable

(1) In any criminal proceedings, a statement made out of Court shall be admissible as evidence, with leave of the Court, of any matter stated when

- (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter;
- (b) the person who made the statement is identified to the Court's satisfaction;
- (c) and one of the 5 conditions specified in subsection (2) is satisfied.

(2) The conditions referred to in subsection (1)(c) are that the person who made the statement –

- (a) is dead;
- (b) is unfit to be a witness because of his bodily or mental condition;
- (c) is outside Mauritius and it is not reasonably practicable to secure his attendance;
- (d) cannot be found although such steps as is reasonably practicable to take to find him have been undertaken; or
- (e) through fear, does not give or does not continue to give oral evidence in the proceedings, either at all or in connection with the subject matter of the statement.

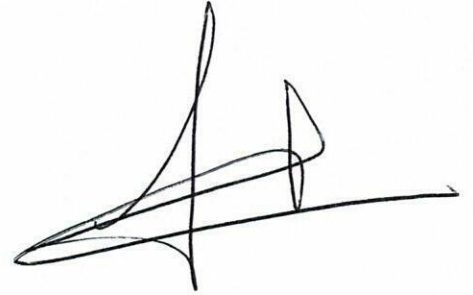
(3) Where a statement is admitted in evidence under subsection (1) any evidence which, if that person had been called as a witness, could have been admissible for the purpose of impeaching or supporting his credibility, shall be admissible for that purpose.

(4) In assessing the weight, if any, to be attached to a statement admitted in evidence under subsection (1), the Court shall have regard to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise."



D. CONCLUSION

13. For the reasons explained above, the objection of the prosecution in relation to the affidavit and attached documents in that case file is well taken. That affidavit and the documents attached would constitute hearsay evidence and are therefore not admissible.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

A.R.TAJOODEEN
Magistrate of the Intermediate Court (Financial Crimes Division)
27.11.2024