

SUPREME COURT OF SEYCHELLES

Reportable
CO90/2023

In the matter between:

THE REPUBLIC
(*rep. by Mrs. Hermitte*)

Prosecution

and

STELLA WANGARI WAIRIMU
(*rep. by Ms. Chang Thiou*)

Convict

Neutral Citation: *R v Wairimu* (CO90/2023) [2025] (03rd June 2025)

Before: A. Madeleine, J

Summary: Sentence on guilty plea under the Misuse of Drugs Act, 2016 (as amended) –
Importation of a Controlled Drug

Heard: 25th February 2025 and 06th May 2025

Delivered: 03rd June 2025

ORDER

Under Count 1, I sentence the Convict Stella Wangari Wairimu to imprisonment for a term of 7 years for which term she is entitled to remission and the time spent on remand to be deducted therefrom;

SENTENCE

A. MADELEINE J

- [1] By amended formal charge dated 22nd January 2024, the Accused (now “Convict”) was charged as follows.
- [2] The Convict, Stella Wangari Wairimu, 29 years old (at the time of the charge), a Kenyan national with Passport Number AK1188898 was charged under one count for Importation of a controlled drug:

“Count 1

Statement of Offence

Importation of a Controlled Drug contrary to and punishable under section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 as read with the Second Schedule of the Misuse of Drugs Act, 2016.”

Particulars of Offence

Stella Wairimi Wangari, 30 years old, a Kenyan national with Passport Number AK1188898. On Wednesday 25th of October 2023 imported into Seychelles a Controlled Drug Substances weighing total net weight of 678.59 grams of Cocaine in 36 cylindrical shape packets in contravention of the Misuse of Drugs Act, 2016. She caused the said controlled drugs to be imported into Seychelles by inserting the drugs in her anus and vagina on board flight KQ250 from Nairobi Kenya.”

- [3] The Convict pleaded guilty to the amended formal charge and admitted the facts stated by the prosecution on 25th February 2025. She was convicted upon her own unequivocal guilty plea and admission of the prosecution’s facts.
- [4] The admitted facts are, in sum, that the Convict, holder of Kenyan Passport No. AK1188898, arrived in Seychelles on Wednesday 25th October 2023 on board Kenya Airways (KQ250) from Nairobi, Kenya. Convict was among the 30 passengers from the flight who were selected for body scan, in the course of which something abnormal was detected. Convict was then questioned by officers of Customs, immigration and the police, and her luggage(s) were searched. Questioning revealed that she was travelling to Seychelles for the first time for the purpose of 8 days’ vacation at the Chateau Bleu Self Catering at Anse Aux Pins, Mahe. Convict was asked whether she was carrying any substances inside her body and she replied in the negative. A body search was conducted. Convict retrieved one large cylindrical packet suspected to contain a controlled drug from

her vagina at the Seychelles international airport. The cylindrical shaped object was seized by the police as an exhibit and the Convict underwent a CT scan at the Victoria Hospital, where it was revealed that she had multiple foreign objects in her rectum. The following day at the OCU office at the Bois de Rose, the Convict excreted a total of 35 cylindrical shaped objects that were seized from her as exhibits. The officer then pointed out the offence to the Convict, namely importation of a controlled drug, and arrested her. Convict was cautioned and informed of her constitutional rights. Analysis of the 36 cylindrical shaped object showed that they contained Cocaine with a total net weight of 678.59 grams.

- [5] Pre-sentencing reports was received on 25th March 2025 and counsel for the convict submitted to the Court in mitigation of the sentence on 6th May 2025.
- [6] According to the pre-sentencing report, the Convict is a single mother of three children. Two boys are currently in the care of Convict's sister back in Kenya and the third child was born in Seychelles during pre-trial detention. The Convict is a first time-offender and has shown remorse in pleading guilty to the offence. The offence was motivated by poverty and financial constraint on the part of the Convict and resulted into emotional and financial burden to the Convict and her family.
- [7] The pre-sentencing report also highlights that the offence was committed out of desperation for a full time employment to take care of her young family. The Convict was thus vulnerable and succumbed to manipulation into believing that she would be transporting 'black market medicine' to Seychelles as opposed to controlled drugs. Nonetheless, the probation services are of the view that despite remorse, drug offences remain a massive concern for our small country and recommends a minim custodial sentence on the Convict to deter future crimes.
- [8] In mitigation, Counsel submitted that the convict is a young offender, 31 years old, and single mother of three. Her last child was born in the Seychelles' prison and is now about 10 months old. Her two older children, 2 boys, are in the care of her sister back in Kenya. Prior to her arrest in Seychelles, she was the sole breadwinner of the family. The Convict was legitimately seeking full time employment when she was offered a job to transport medicine to Seychelles by Catherine. Catherine introduced her to the drug lord 'Chris'. She

had been trapped into committing the offence because she was vulnerable, struggling to make ends meet. Counsel submitted that the Convict had clearly been used as a mule. She is nonetheless a first time offender and has pleaded guilty to charge albeit at a late stage and thereby shown remorse for her actions and wrongdoing and accepted responsibility. Counsel invited the court to consider the case of *Republic v Linda Marie* where the 1st Convict had also taken a guilty plea at the late stage and the court still considered that she had “*expressed remorse and regret at what she had done and co-operated with the prosecution which is a strong factor in mitigation*”.

- [9] Counsel for the Convict also invited the court to consider the fact that the purity of the cocaine is not established and that the Convict cooperated with the police and gave a statement as mitigating factors. In addition, Counsel urged the court to consider the statement under caution – confession – recorded from the Convict which reveals that the Convict had been subjected to death threats to herself and her family by Chris. Counsel submitted that in terms of section 49(e) of the Misuse of Drugs, Act 2016 the presence of an element of coercion is a mitigation factor.

- [10] Counsel referred the court to the comparable sentences involving class A drugs in the following cases: *R v Ratteng* (CR 98/21) [2022] (21st February 2022) where the court imposed imprisonment for a term of 10 years for the importation of 751.34 grams of Cocaine; *Nurdin Kamba v republic SCA01/2020 (21 August 2020)* where the Court of Appeal upheld the Supreme Court’s sentence of 6 years imprisonment for the offence of importation of 627.45 grams of a controlled drug, namely cocaine which had an average cocaine content of 317.49 grams; *Republic v Vambe (CO 105/2021) [2022] scsc.2~4(31 March 2021)* where the court imposed a sentence of imprisonment for 5 years each for the offences of importation of 1512.70grams Heroin (diamorphine) and 503.80 grams Cocaine;

- [11] Counsel also referred the court to the cases of *R v Uwaoma CR56/2022 (16 March 2023)* and *Uwaoma v R SCA CR05/2023 (18 December 2023)* where a sentence of imprisonment for 30 years was upheld on appeal for the offence of importation of 4896.10grams of cocaine; and the case of *R v. Tamirez Souza Hurbath Os Santos CR49/2024 (31 October 2024)* where imprisonment for a term of 26 years was imposed for the offence of

importation of 2438.17 grams Cocaine in view of the commercial element. Counsel submitted that these two cases are clearly distinguished from the case of the present convict. The quantities involved are incomparable. Counsel invited the court to consider the personal circumstances highlighted in her plea in mitigation to impose a lesser sentence.

- [12] In determining the appropriate sentence to be imposed on the Convict in the particular circumstances of her case, I am guided by the following sentencing principles set forth in earlier court decisions. Sentencing does not involve the mere administration of a common formula [vide *Poonoo v Attorney General (2011) SLR 423*] but the human deliberation of what punishment would appropriately protect the public by deterring and preventing others from committing such offences. Also, what sentence would appropriately provide the necessary rehabilitation, reformation, and retribution for the convicted person [vide *Lawrence & Another v Republic [1990] SLR 47* and *Savy v R (1976) SLR 54*. As aptly put by Domah JA (as he then was) in *Poonoo* (supra): “*sentencing involves a judicial duty to individualize the sentence tuned to the circumstances of the offender as a just sentence*”
- [13] The Court of Appeal in *Njue v R (2016) SCCA 12* per Msoffe JA (as he then was) held that a sentencing court should have regard to the following elements “(i) *public interest*, (ii) *nature of the offence and the circumstances under which it was committed*, (iii) *For a first offender the emphasis should be on the reformatory aspect*, (iv) *the gravity of the offence*, (v) *the prevalence of the offence*, (vi) *the damage caused i.e. seriousness of injury caused in an assault, rape, in a case of drug its impact on society, etc.* (vii) *the mitigating factors*, (viii) *the age and previous record of the accused*, (ix) *the period spent in remand custody*, and (x) *the accused’s cooperation with law enforcement agencies.*”
- [14] I first consider the serious nature of the offence of Importation of a Controlled drug which carries a maximum sentence of life imprisonment and fine of SCR.1 million. The minimum indicative sentence for the aggravated offence of importation in a class A drug, like cocaine is 20 years’ imprisonment.

- [15] I am guided by the following sentences imposed by the Courts in Seychelles for the offence of importation of Class A drugs: *R v. German Dixon* [2023] SCSC 208 (15 March 2023), (where a drug mule was sentenced to 5 years' imprisonment on his own guilty plea to the charge of importation of 4164.50g of Cocaine); *R v Petrus Vermulen* [2022] SCSC 508 (where another drug mule was sentenced to 5 years' imprisonment upon conviction on his own guilty plea to the charge of importation of 695g of Cocaine); *R v Marcos Venicius Da Silva Reis* CO37/2019 [2019] SCSC (25 November 2019) (where a term of 6 years imprisonment with no remission for importation of 545.04 grams of pure cocaine the net weight of the substance containing the controlled drug being 1946.6g); *R v Marcus Asman* CO15/2019 [2019] SCSC 582 (12 July 2019) (where a sentence of 4 years and 6 months imprisonment and a fine of SCR.50,000/- and 6 months in default of fine was imposed for trafficking in 290 grams heroin with a purity content of /197.2grams); *R v Nurdin Mashed Kamba* CO68/2019 [2020] SCSC 24 (17 January 2020) (where 6 years imprisonment with no remission for importation of 627.45 grams of cocaine having an average cocaine content of 317.49g); *R v Vermulen (supra)* (where 5 years imprisonment was imposed for importation of 694 grams of cocaine of which the pure quantity was 464.98 grams with no remission); *R v Dixon (supra)* (5 years imprisonment was imposed for importation of cocaine with a total net weight of 4164.50grams); *R v. Munyao & Anor* (co19/2021 [2021] SCSC 947 (12 July 2021) (where a term of 6 years imprisonment was imposed for importation of 502.00grams which contain the total average cocaine content of 388.35grams).
- [16] I also consider the following cases of *R v Mohamedi Khalidi Mikidadi* (CO6/2022) SCSC (19 May 2022) where the court imposed a term of imprisonment for 9 years for the offence of importation in a total net weight of 361.12 grams with cocaine content of 285.02 grams; *R v Dos Anjos* (CO33/2022) [2023] SCSC (25 May 2023) where the court imposed 8 years' imprisonment for total 4133.70g cocaine with purity 3,118.09g. In *R v. Diallo* CO82/2023 [2024] (19 March 2024) a sentence of 7 year's imprisonment was imposed for the offence of importation of Cocaine with a net weight of 452g with no indication of purity.

- [17] From the above cited cases, the lowest term of imprisonment imposed upon a guilty plea for importation of cocaine where the purity is not established is 5 years (*Dixon/Vermulen*). However, in the recent case of *Diallo*, a term of 7 years was imposed in absence of commercial element.
- [18] I further consider the pleas in mitigation, pre-sentencing report, all the personal circumstances of the convict in relation to her family as stated in the said report and in mitigation. I consider that the convict is a first time offender. I consider that although not taken at the earliest opportunity, the convict eventually took a guilty plea and has thereby shown her remorse and accepted responsibility for the offence charged. She has saved some of the court's time and resources and inconvenience to witnesses had the trial continued. She also cooperated with the police.
- [19] I also take into consideration the circumstances of the offence and the Convict's statement that she was subjected to death threats, to both herself and her family, emanating from Catherine/Chris the same persons that had offered employment to her. I accept that pursuant to section 49(e) of the Misuse of Drugs Act, 2016 sentences may be reduced on account of the presence of an element of coercion, for example from a family member or employer if significant.
- [20] I weigh all the above against the prevalence of similar offences involving a Class A drugs in the country. Had the convict not been arrested, the drugs would have had significant negative impact on the youth and this society in general. The need for deterrence cannot be overemphasized. I also weigh in the fact that the purity of the drugs involved, namely Cocaine, have not been indicated. Therefore, there are no aggravated commercial element involved.
- [21] I therefore sentence the Convict as follows –
- (i) Under Count 1, I sentence the Convict (Stella Wangari Wairimu) to imprisonment for a term of 7 years for which term she is entitled to remission and time spent on remand to be deducted therefrom.

[22] The Convict may appeal this sentence to the Court of Appeal within 30 days hereof.

Signed, dated and delivered at Ile du Port, Mahe on the 03rd June 2025.


A. Madeleine, J

