

IN THE SUPREME COURT OF SEYCHELLES

Reportable

CR22 /2024

In the matter between

THE REPUBLIC
(rep. by Kelly D'Offay)

Prosecution

and

ROBERT PIERRE PANAGARY
(rep. by Amanda Faure)

Accused

Neutral Citation	<i>The Republic v Robert Pierre Panagary</i> (CR22/2024) delivered on 08 September 2025
Before:	Vidot J
Summary	Submission of No Case to Answer
Heard:	parties filed submissions
Delivered:	08 September 2025

RULING

VIDOT J

The Charges

[1] The Accused stands charged with the following two counts;

Count 1

Statement of Offence

Acts intended to resist or prevent lawful arrest or detention contrary to section 219(g) and punishable under section 219 of the Penal Code.

Particulars of Offence

Robert Pierre Panagary, resident of Bel Ombre, Mahe, on 15th August 2020 at his residence at Bel Ombre, Mahe, with intent to resist or prevent lawful arrest , unlawfully threw gasoline /petro at police officers, namely WPC Melissa Mostache, PC Richard Chang-Sam and PC Ralph Confiance and attempted to set fire with a lighter

Count 2

Statement of Offence

Threatening another with injury or harm contrary to section 89(a) and punishable under section 89 of the Penal Code

Particulars of Offence

Robert Pierre Panagary, resident of Bel Ombre, Mahe, on 15th August 2020 at his residence at Bel Ombre, Mahe, threatened police officers namely Melisa Moustache, PC Richard Chang-Sam and PC Ralph Confiance with harm or injury if the said officers entered his house with a grass cutter in his hand.

- [2] At the close of the Prosecution case, Counsel for the Accused raised a Submission of No Case to Answer. Basically, the defence's submission is that the Prosecution has not discharged the burden of proof. Counsel submitted that the Prosecution has failed to establish all the elements of the offence. It was stated that in the circumstances a conviction will be untenable. section 183 of the Criminal Procedure Code which states thus;

"If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him."

The Law

[3] A submission of no case to answer may be made out either if no case has been established in law or that the evidence led is so unsatisfactory or so unreliable that the court should hold that the burden of proof has not been discharged. The principles to be adopted in deciding a submission of no case to answer was established in the case of **R v Stiven [1971] SLR 37**. These principles were adopted in many other cases such as **R v Olsen [1973] SLR 188**, **R v Marengo [2004] SLR 116** and **R v Matombe (No1) [2006] SLR 32**. These principles are;

1. There is no evidence to prove an essential element of the alleged offence; and
2. The evidence adduced by the prosecution has been so discredited as a result of cross-examination, or is so manifestly unreliable, that no reasonable tribunal could safely convict on it.

[4] Similar test was set out in **R v Galbraith 77 Cr. App. R 124 CA** as follows;

- i. If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty - the judge will stop the case;
- ii. The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence;
- iii. Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, therefore it is his duty, upon a submission being made, to stop the case.;
- iv. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts

there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.

- [5] In **R v Galbraith** (supra), Lord Lane CJ had the following to say;

How then should a judge approach a submission of 'no case'? If there has been no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. The difficulty arises when there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty upon submission being made, to stop the case. Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury There will of course, as always in the branch of the law, be borderline cases. They can safely be left to the discretion of the judge."

- [6] Therefore if at the stage of a submission of no case to answer, the court was to rule that as a matter of law there is no evidence on which the accused could be convicted, the judge shall direct the jury to enter a verdict of not guilty or the Court sitting without a jury will make the declaration. In the case of **R v Hoareau** (supra), Chief Justice Twomey makes reference to **Green v R (1972) SLR 55** wherein Sauzier J had the following to say in respect of what constitutes "no evidence" as explained under section 249(1) of the Criminal Procedure Code;

"The considerations which apply at that stage are purely objective and the trial court is not asked to weigh the evidence. At that stage it is only necessary for it to find that a reasonable tribunal might convict."

Section 249(1) provides;

“If, when the case for the prosecution has been concluded, the Judge rules, as a matter of law, that there is no evidence on which the accused could be convicted, the jury shall, under the direction of the Judge, return a verdict of not guilty.”

The facts of the case

- [7] The case arises from an incident that happened on the 15th August 2020. It is alleged that the Police received a complaint from John Talma that the Accused was swearing and causing disturbance. The Accused was at his home at Bel Ombre. The Police sent officers to the scene. Cpl. Melissa Moustache was one such officer. She was one of the only two prosecution witnesses who testified. She was accompanied by SPC Chang-Sam (though it came out in evidence that at the time of the incident, he was not then an officer but merely a driver), Cpl. Ralph Confiance, PC Luc and WPC Freminot. She testified that when they arrived at Mr. Panagary's home, they informed him of the complaint. He was swearing and they asked him to come out but he refused. They threatened to break down the door at which point he switched on a grass cutter. He was at all times inside his home. They phoned to seek instruction as what to do. Asp Sophola instructed them to remove the louver blades. She and ASP Chang-Sam removed the louver blades and she testified that the Accused threw fuel on the louver blades and she heard the noise of a lighter being lit up. Thereafter ASP Sophola instructed them to break down the door which ASP Chang-Sam did. They entered the house and arrested the Accused who did not show any resistance and he was brought to the police station.
- [8] PC Ralph Confiance was the other prosecution witness to testify. He stated that a call from Cpl. Moustache asking for assistance as she was proceeding to the Accused place and that there was report that the latter was creating disturbance. Arriving at the scene he met with Cpl. Moustache and SPC Chang-Sam. Whilst he was coming up to the resident of the Accused, he did not hear anything. Upon arrival he saw the Accused sitting inside. Assisted by Chang-Sam, he broke down the door.

Discussions

- [9] The witnesses were challenged on the statements they gave to the police, in that some of the averments in their court testimony were not reflected in their respective statements. It is clear that there were some discrepancies but such were not necessarily material. It is always part of human nature not to record everything that happens in an incident, though it is expected that police officers would record all material and pertinent facts.
- [10] I have no doubt in my mind that the Accused was causing disturbance. However, when officers arrived at the scene, I find that the swearing had died down. In fact, PC Confiance testified that there was only complaint emanating from the house. There is discrepancy as to whether Police could see inside the house. Cpl. Moustache had stated that inside the house it was dark and that there was no lights on (p12 proceedings of 13-03-25 a,m). Indeed, in answer to a question as how did she knew it was the Accused inside the house if the lights were off, she answered *"I said I suspect, I believe it was him, I presumed."* PC Confiance suggested that he could see the Accused inside the house. The Accused was asked to step out which he did not want to do. The Officers testified that the Accused switched on a grass cutter. There is no evidence that he used that machine to threaten the officers. In fact, after the officers had broken down the door, it is in evidence that he was seated down and wearing only a towel. He agreed to go with the Police but asked for time to wear some clothes which he did and there not an iota of evidence that he resisted arrest. In fact Cpl. Moustache was asked; *"did you feel threatened at any time?"* Her answer was *"no"*. She was equally asked as whether she felt scared. She answered in the negative. Whilst PC Confiance testified that the Accused got aggressive at the police station. At the time he had already been arrested. There was no resistance at the time of arrest.
- [11] Cpl Moustache testified that the Accused threw a pink liquid on the louver blades when police were removing the same. She states that she presumed the liquid to be fuel. Both she and PC Confiance testified that they heard what sounded as a lighter being lit up. Yet, there was no louvers that was taken as evidence and the bottle with the liquid and the lighter were not seized either. That being the case there was no forensic examination of such items that places the Court in doubt as to this aspect of her evidence. In view that the particulars of offence specifically state that with the Accused with intent to resist

lawful arrest, threw fuel at the police officers, it was important that such forensic examination was out.

- [12] As regards Count 2, Cpl. Moustache clearly stated that she did not feel threatened. I do not doubt that the Accused switched on a grass cutter but not necessarily to use against the officers. They removed the louver blades and broke down the door, yet there is no testimony that at the time these were done he threatened them with the grass cutter. When the officers entered his house, he was seated and put up no resistance.

Determination

- [13] I therefore find that the prosecution has not established its case to the required standard. The evidence is so tenuous, that no reasonable court would convict the Accused on the evidence. The evidence is of such nature that that shows weaknesses that taken at its highest no reasonable court can convict the Accused on such limited evidence.

- [14] Therefore, I find that the Accused has no case to answer and acquit him accordingly.

Signed, dated and delivered at Ile du Port on 08 September 2025


M Vidot J

