

SUPREME COURT OF SEYCHELLES

Reportable

[2025]

CO 61/2024

In the matter between:

THE REPUBLIC

(Represented by Ms. Hashini Naidu)

Prosecution

versus

TERRY COOPOSAMY

(Represented by Mr. Joshua Revera)

1st Accused

SHARON WAIYEGO MWNAGI

(Represented by Mr. France Bonte)

2nd Accused

KATHERIN ACHIENG ODIEK

(Represented by Mr. France Bonte)

3rd Accused

CLAUDINE LYAVOGA

(Represented by Mr. France Bonte)

4th Accused

ABRAZE APONDI ADE

(Represented by Mr. Ryan Laporte)

5th Accused

EMMANUEL OCHIENG KASURE

(Represented by Mr. Ryan Laporte)

6th Accused

JEAN WINSLEY NOURICE

(Represented by Mr. Joshua Revera)

7th Accused

MARGARET MUKAMI WACHIRA

(Represented by Mr. France Bonte)

8th Accused

EDWARD KIMARU CHEBET

(Represented by Mr. Olivier Chang-leng)

9th Accused

JAMES OKOTH OCHOLA

(Represented by Mr. Olivier Chang-leng)

10th Accused

ABEDINEGO MUTISYA MATOLO

(Represented by Mr. Olivier Chang-leng)

11th Accused

JOSEPH RATH
(Represented by Mr. Olivier Chang-leng)

12th Accused

SAID KASSIM AMIRI
(Represented by Mr. Ryan Laporte)

13th Accused

HENRY VINCENT ADELIN
(Represented by Ms. Eveline Almeida)

14th Accused

Neutral Citation: *Republic v/s Terry Coopooosamy & Ors* (CO61/2024) 14th November 2025

Before: D. Esparon. J

Summary:

Heard: 5th November 2025

Delivered: 14th November 2025

ORDER

Application for leave to amend the charge pursuant to section 187 of the Criminal procedure Code- Application granted - I find that making such an application for amendment of the charge being made at an early stage in the proceedings and hence I find that that there is no prejudice or injustice caused to the accused persons in granting the amendments sought by the prosecution. The Court further granted an adjournment to ensure that no prejudice nor injustice is caused to the accused persons.

RULING

Introduction

- [1] This is an Application by the Republic seeking leave of this Court to amend the charges filed on the 7th of October 2024.

The Pleadings

- [2] The Application is supported by the Affidavit of Inspector Justin Francois attached to the criminal investigation Unit who avers inter-alia the following,

6) That I am advised by counsel and verily believe the same to be true that the prosecution is seeking leave of the Court to amend the formal charge as follows;

Inserting immediately after the names of accused Terry Coopossamy (NIN REDACTED), Jean Winsley (NIN REDACTED) and Henry Vincent Adeline (NIN REDACTED their NIN REDACTED) their NIN numbers.

In counts 1,3,7,9, 11, 13, 15,17, 19, 21, 23, 25, 27 replacing ‘ contrary to section 3(1) (c) of the Anti- Money Laundering Act and Anti- Money Laundering Act’ to ‘Money Laundering contrary to section 3 (1) (b) (c) of the Anti- Money Laundering and Countering of the Financing of Terrorism (Amendment) Act, 2021’ and ‘ Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act,2021

- [3] Going through the rest of the averments in the Affidavit it appears the rest of the amendments being sought by the Applicant is related to dates of the commission of the offence, the amount of money being laundered and also as to the predicated offence instead of Money Laundering it is replaced by theft.
- [4] Further perusing through the Affidavit, it shows that the said amendments are being sought in Counts 1 , 2, 3 ,5 6, 7, 8, 9, 10 , 11, 13, 15, 17, 19, 21, 23, 25, and 27 that being amendments being sought apart from the one mentioned at paragraph 2 of this Ruling. Hence in 28 Counts of the original charge sheet the Applicant is seeking to amend 19 Counts in the said indictment.
- [5] The 1st Respondent Terry Coopossamy and the 7th Respondent Jean Winsley have filed an Affidavit in reply objecting the said Application seeking for leave to amend the said charge. The said Respondents avers the following in the Affidavit in reply;

‘3) That we are advised by counsel and verily believe that the Applicant’s Motion to amend is defective; the defects are fatal and render the Application devoid of merits.

6) That we are advised by Counsel and verily believe that the amendments may in principle be sought before close of prosecution case, the Courts discretion turns on cogent reasons, timeliness, absence of prejudice, and the interest of justice. In this instance;

- a. The supporting affidavit discloses no new evidence, discovery, or material development and annexes no exhibit to justify an amendment at the start of the trial;
- b. The proposed changes are substantive (periods/ particulars and /or alternative counts) not merely formal or typographical; and
- c. Granting the motion would defeat the Court's discretion that the trial proceed on the schedule date.

7) That the evidential record has not changed since earlier proceedings in Cr 40 of 2023, which involved the same constellation of accused and counts.

8) That the facts remain that we were charged in or about June 2023; an amended charge followed in or about November 2023; the matter was fixed for trial on two occasions, but each fixture was vacated at the prosecution 's instance; thereafter the case was withdrawn by the prosecutor Mr Galinoma and refiled as Cr 61/2024.

11) That we have been on bail conditions since 2023 and have complied to all conditions set by the Honourable Courts. Serial amendments and delay cause continuing prejudice to our livelihoods, defence preparation, and witness organization; such prejudice cannot be cured by any ruling that this Court may pronounce.

12) that our bank accounts have, since filing of this matter, been seized and we have no access to the same and are barred and or black listed from opening a fresh bank account or even to apply for a loan.

[6] The 12th respondent Mr Joseph Rath has also filed an Affidavit in reply to the said Application and avers inter-alia the following in the said Affidavit;

5) while the prosecution may, in principle, seek amendment before the close of its case, the Court's discretion is guided by cogent reasons, timeliness, absence of prejudice and the interest of Justice. In this instance:

- a) The supporting affidavit discloses no new evidence, discovery, or material development and annexes no exhibit to justify an amendment at the start of the trial;
- b) The proposed changes are substantive (periods/ particulars and /or alternative counts) not merely formal or typographical; and
- c) Granting the motion would defeat the Court's discretion that the trial proceed on the schedule date.

6) That the evidential record has not changed since earlier proceedings in CR 40 of 2023, which involved the same constellation of accused and counts.

7) I was charged in or about June 2023; an amended charge followed in or about November 2023; the matter was fixed for trial on two occasions, but each fixture was vacated at the prosecution's instance; thereafter the case was withdrawn by the prosecutor Mr Galinoma and refiled as CR 61/2024.

8) The same amended charge is now sought to be amended yet again. Notwithstanding the new CR Number, this amounts in substance to a fourth amendment to the same factual substratum. This pattern reflects lack of preparation and poor case management, amounting to an abuse of process.

9) I have been subject to bail conditions since 2023 and have complied throughout. The protracted delays and serial amendments cause ongoing prejudice, including disruption to my business and family life, sunk cost in legal preparation, and need to re-organise witnesses and documents, none of which can be cured by cost for adjournment.

10) Any amendment that alters periods, particulars, or legal character of a charge at this late stage would require fresh defence preparation and potentially interlocutory application, further delaying the trial and compounding prejudice.

11) My constitutional right to a fair hearing within a reasonable time under Article 19(1) of the Constitution is engaged, a clear abuse of process and in the circumstances, the balance of Justice favours refusing the amendment and proceeding on the extant of the charges.

[7] The 14th Respondent Henry Vincent Adeline has also filed an Affidavit in reply objecting to the said Application who avers inter-alia in his Affidavit the following;

‘5) that I am objecting to the Application based on the following reasons;

5.1) I am advised that the prosecution may move to amend the charge prior to their being concluded. However in the Affidavit in support of Inspector Francois does not provide any reasons whatsoever to the Court as to why it is only now, at the start of the trial, that the charge must be amended. No new evidence or material development has been provided to justify the amendments. As such, I verily believe that an amendment cannot simply be accepted on an unsupported and unjustifiable basis.

5.2) I am advised and verily believe that the evidence to be relied on by prosecution has not changed since the initial case was filed in CR 40/2023 against the same accused persons on the same Count. CR 40/2023 was in fact as the court proceedings would show, withdrawn for no legitimate excuse on the day which the trial was supposed to start. Prosecution by their own fault and without reasons, was not prepared to commence trial in CR 40/2023. The same charges against the same accused persons including me, was then refiled in CR 61/2024 showing a clear mockery of this Court and such charges have only now just been amended to read the counts regurgitated at paragraph 4. Notwithstanding the fact that there are now new prosecutors who have taken over this Case, it does not exempt the prosecution office from bearing the responsibility of a clear lack of preparation of this case. Therefore an amendment of the time period in which the offence purportedly occurred is not justified nor warranted as the prosecution had ample opportunity to amend the charges since 2023 and tis is therefore a clear abuse of process of this Honourable court. As such an amendment at this late hour, shows a lack of due diligence and a clear manipulation of the procedures in place before the Court which cannot be allowed. Such actions therefore prove to be highly prejudicial to me for reasons which are provided here and further in the remainder of the Affidavit.

5.3) I have been under continuous stringent bail conditions since 2023 which I am still complying to. It is now October 2025 and we have still not commenced any trial. As a matter of fact, this matter has been listed for trial more than once against the same accused persons and has not proceeded for reasons entirely beyond my control but, within every control of prosecution. Such unjustifiable delay demonstrates a clear breach of my right to a fair hearing within a reasonable time. A substantial amount of time has since passed since I have been able to exercise my freedom and rights fully and freely which has caused me a lot of anxiety, uncertainty as to the conclusion of this case and has morally affected my day to day life.

5.4) Allowing a further amendment would cause further delays for this case to be heard within a reasonable time and as such causes injustice against me and the other accused persons, as our counsels, who had prepared for this case will now have to freshly prepare for new and material amendments to the Counts which will take more time and cause further delays. Such amendments put forth go beyond what can be deemed as superficial amendments and affect our preparation of this case.

[8] The 5th Respondent Abraze Apondi, the 6th Respondent Emmanuelle Ochieng Kasure and the 13th Respondent Said Kassim Amiri filed an Affidavit in reply objecting to the said Application. They aver inter-alia the following in their Affidavit;

‘3) We are verily advised by our legal aid attorney and believe the same to be true that the affidavit along with the Application is defective and such defects are fatal and renders the application devoid of merit.

6) We are advised that, while the prosecution may in principle seek amendments before close of its case, the Court exercises a discretion that must be informed by cogent reasons, timeliness, absence of prejudice and the interest of justice. In this instance;

a) The supporting Affidavits proffer no new evidence, discovery, or material development to explain why amendments are only now sought at the start of trial and no such exhibits are found therein.

b) The proposed amendments are substantive (including changes to particulars/time periods and/ alternative counts) and are not merely formal or typographical as alleged by the prosecution, and

c) Granting them would defeat the Court's express discretion that this matter proceed to trial on the scheduled date.

7) We are advised and verily believe that the evidential record has not changed since earlier proceedings in Cr 40 of 2023, which involved the same constellation of accused and counts.

9) Further, this prosecution began as CR 40 of 2023 we were charged as far back as June 2023, in November 2023 a further amendment was sought; trial dates were adjourned on two occasions; the case was withdrawn by the prosecutor Mr Galinoma and re-filed as Cr 61 of 2024.

11) Se aver that the same amended charge is now sought to be amended yet again, which in substance amounts to a fourth amendment; the change of Cr number does not alter that it is verily the same case and trial.

12) The present last-minute application to amend continues the pattern of lack of preparation and poor case management, amounting to an abuse of process of the Court's process and disrespect for the case flow management.

16) Allowing the amendments now would necessarily trigger further delay, including disclosure issues, defence review, and potential re- instructions of counsel, thereby prejudicing us .

17) We aver that the prejudice is real and irremediable given the lapse of time (since 2023) the Courts prior warning that the trial would proceed, and our immigration/ employment vulnerabilities as foreign GOP workers.

18) We further aver that, as lawful GOP holders whose permission are renewed annually with no guarantee of renewal the prosecutions eleventh-hour amendment

(and any consequent adjournment) causes real and irreparable prejudice ; any subsiding of our employment risk non- renewal of our GOP'S, loss of accommodation, and consequent exposure to remand for breach of bail terms requiring a fixed place of abode, all through no fault of ours .

- [9] Counsel for the 9th, 10th and 11th Respondent, Mr Olivier Chang- Leng did not object to the Application. However Counsel for the 2nd, 3rd 4th and 8th Respondent did not file any Affidavit in reply to the Application and sadly did not appear before the Court on the date the Court had fixed for the Respondent to file their reply. The court adjourned the matter to another date for him to do so of which he again did not appear and as on the previous occasion did not offer any explanation as to his absence. As a result, in view of the proximity to the trial date, this Court exercised its discretion not to adjourn the hearing of the Application and to guide the said Respondents as regards to their right to object and state their objections of which the said Respondents stated that they object to the Application and adopt the submissions of Mr Ryan Laporte, Mr Joshua Revera and Miss Eveline Almeida as far as their objections to the Application are concerned.

Submissions of counsels

- [10] Counsel for the 5th, 6th, 12 and 13th Respondent, Mr Ryan Laporte submitted to the Court that the averments in the Affidavit of Mr Francois is not substantiated. He further submitted that the Affidavit is defective relying on Order 41 rule of Court of England and Wales, 1965 in view that the charges has not been exhibited but have been annexed to it in violations of the said rules .
- [11] He further submitted that the conduct of the prosecution in this matter is an abuse of process of Court in view that the charges filed in 2023 was subsequently amended and thereafter withdrawn with no reasons given of which the prosecution has now asked for an amendment of the charges filed in 2024.
- [12] According to counsel, as a result his client has been prejudiced and such an amendment shows the manipulation of the Court's process and further it is a violation of the rights to a fair hearing of his clients of which he submitted that the accused are not being tried within

a reasonable time. Counsel further submitted that as a result, the accused will need more time to prepare their defence adding to the prejudice against the accused.

- [13] Counsel for the 1st and 7th Respondent, Mr Joshua Revera adopted the submissions of both Miss Almeida and Mr Ryan Laporte and submitted that the amended charge has not been filed in court and hence such application for amendment is defective. He also relied on this Court ruling's given in a previous occasion that the trial must proceed.
- [14] He further refers to the amendment made by the prosecution in 2023 and that the case was fixed for trial twice before and was withdrawn without the sanction of the Attorney General and on the same day the charges were re-filed. According to counsel we cannot overlook the history of this case and that it is within his lordship power to look into the frivolous and vexatious manner in which the prosecution has conducted the present matter.
- [15] He further submitted that the proposed amendment is not merely a typographical one of which it seeks material changes in their charge. He relied on section 187 of the Criminal Procedure Code and submitted that the Court can only allow an amendment to a charge only when there is no prejudice to the accused. He further relied on the case of the Republic V Francis Barea CO 64/2017 [2018] SCSC 1109 which the Court held that the Republic has no absolute right for amendment and that the burden lies on the Republic to show that there is no prejudice and that the Court has an inherent power to prevent abuse.
- [16] According to Counsel, the Republic has not substantiated their averments as to why the charge should be amended and further has not exhibited the new charge. Further according to Counsel the Republic has only annexed the original charge sheet and not exhibited it. Counsel relied on the case of Karl Joubert V Marie- Celine Joubert MA 105/2022 [2022] SCSC 465.
- [17] Counsel further relied on the case of the Republic V/S Terrence Lawen (C20/2022) [2024] (5th February 2024) whereby the issue of injustice and prejudice to the accused was considered by the Court in order to disallow an amendment of charge.

- [18] As for counsel for Mr Adeline, Miss Almeida, she adopted and relied on the submission of Mr Ryan Laporte and submitted that the history of the case show that there has been an abuse of process of Court and that no reason has been be given for the amendment of the said charges and accordingly that his client has been prejudiced by the Application for leave to amend the charge at this stage and that of the right to a fair hearing for the accused as a result has been breached in view of the Application being made at such a late stage.
- [19] In reply to their submissions, counsel for the Republic submitted that the case law cited by counsels, such amendments were attempted to be made at a late stage in the proceedings and thereby causing prejudice to the accused of which they should be distinguished with the present matter of which such an amendment has been made at the early stage of the case.

Analysis and determination

- [20] Before going into the merits of the Application, this Court feels compelled to deal first with the point of law raised by Counsels for Respondents namely that the Affidavit is defective in view of the non- compliance with order 41 of the Rules of Court of England and wales. In adopting the principles laid down in the case of Karl Joubert (Supra) this Court shall consider this in the light of the procedure for the amendment of Charges. Blackstone's Criminal Practice 1997 states at paragraph D9.38 at page 1202 the following;

‘ In Moss [1995] Crim LR 828, it was stated that where counsel seeks an amendment, he ought to ensure that there is a properly amended form of indictment before the Judge and that any order of the Court is clear and is complied with’.

- [21] In considering the above case law and authority, this Court notes that there is a filed copy of the charge sheet in its properly amended form before the Judge which has been filed together with the Application seeking leave to amend. This Court is of the view that since this is the case, the Affidavit is not defective in view that it has followed the procedure as

laid down in the law as referred to above in Blackstone's Criminal Practice 1997. As regards to the original charge sheet in Cr 61/2024, there are sufficient copies on the Court file for the Court to make reference to it and nothing more would suffice for the motion seeking leave to amend to be properly before the Court and that I find there are no issues of non-compliance to order 41 that has arisen in the present matter in order to make the Affidavit in support of the Application defective.

[22] As regards to the issue of abuse of process of Court, Counsels for the accused persons invited the Court to consider the history of the case in the light of the 1st charge relating to the accused persons where they were charged with offences based on the same facts and very much same charges of which the prosecution sought amendments to the said charge and subsequently had withdrawn on the day of the trial and subsequently re-filed the said charges on the same day. According to counsel now we have a further amendment to the charge in CR 61/2024.

[23] In the case of Gomme V/s Maurel, Court of Appeal 6/ 2010 the Court relied on the case of Bradford and Bingley Building society V/S Sedon Hand Cock and Org (1999) 1 WLR 1482 where the Court held ;

“ The rule of abuse of process encompasses more situations than the three requirements of res- Judicata. Courts cannot stay unconcerned where their own processes are abused by parties and litigants. There is a time to decide enough is enough, where lawyers have not advised their clients. Abuse of process will also apply where it is manifest on the facts before the Court that advisors are indulging in various strategies to perpetuate litigation either at the expense of their clients who may be hardly aware or at the instance of their clients who have some ulterior motive such as harassing parties against whom they have brought actions or others who may not be parties. Courts have a duty to intervene to put a stop to such abuses of legal and judicial process”.

[24] In the case of Gomme V/S Maurel (supra) Domah J stated the following;

“ Abuse of process is not a new discovery under the rule of law and the Court's control of cases coming to Court. The source of the doctrine of abused of process' may be traced to

a 1947 decision of Somervell LJ in *Greenhalgh v Mallard* (1947) 2 All ER 255 at 257. The scope may be found in the following pronouncement of the Court that abuse of process is:

...not confined to the issues which the Court is actually asked to decide, but ...covers issues or facts which are so clearly part of the subject matter of litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them”.

[25] The Court in the Case of *Gomme* (supra) stated the following;

“ So much for the scope. Now for the limit that may be found in what Lord Wilberforce delivering the opinion of the Board of Brisbane City Council V Attorney General for Queensland (1979) AC 411 at 425, stated when he confined it to its ‘ true basis’ the prohibition against re-litigation on decided issues. Abused of process-

.... ought only to be applied when the facts are such as to amount to an abuse, otherwise there is a danger of a party being shut out from bringing forward a genuine subject of litigation”.

[26] In the case of *Ascent Projects (Sey) Ltd V/S Evelyn Fonseka and Ors*, CS 19/2017 whereby in this matter a plea In Limine Litis was raised that the plaint is an abuse of process of Court since identical plaints between the same parties raising the same cause of action were dismissed by this Honourable Court in CC 01/2013 and CC 27/2014. The Court in this case relied on the case of *Board of Brisbane Council V/s Attorney general for Queensland* (1979) AC. 411, 425, the case of *DPP V/S Humphrys* (1970) A.C 1 at 46 and the case of *Hui Ming VR* (1992) 1 A.C 34, Judge S Govinden as she was then stated the Following;

‘Now in the case, this Court based on the above analysis of the facts in line with the rule of abuse of process and its irrelevant criteria as set out by case law both in the Jurisdiction and other relevant Jurisdictions. I find that the Plea in Limine Litis as raised, has no reasonable basis, for there is no evidence ex-facie the pleadings of any manipulation and or misuse of the process of the Court so as to deprive the defendants of a protection

provided by law or to take advantage of a technicality and or that the defendants will be prejudiced in the preparation or conduct of their defence’.

[27] In the present matter, the original charge filed in CS CR 40 of 2023 which was subsequently amended and on the day of the trial was withdrawn to be subsequently re-filed of which now the prosecution is seeking leave to amend the charge. This Court is of the view that in view that the case was withdrawn and re-filed on the said day and now the Republic is seeking leave to amend the charge for the 1st time in Cr 61 of 2024, in view of this, I find that this is not a case whereby the prosecution has shown some ulterior motive such as harassing the accused person by re-filing the same case on more than one occasion after its dismissal for want of prosecution or its withdrawal more than once or re-filing it thereafter after some evidence has been heard. It is certainly not one where there is any evidence of manipulation and or misuse of the Court’s process by the prosecution so as to deprive the accused persons of a protection provided by law or to take advantage of a technicality and or that the accused would be prejudiced in the preparation or conduct of their defence’. In my view what the prosecution is seeking before the court is its 1st amendment in Cr 61 of 2024 at an early stage of the proceedings of which the circumstances is such that it does not amount to an abuse of process of court. Hence, I find that such a point of law raised by the accused persons has no merit.

[28] As regards to the merits of the said Application for leave to amend the charge, this Court hereby reproduces section 187 of the Criminal Procedure Code which reads as follows;

‘(1) Where it appears to the court that the charge is defective, the court may make such order for the amendment of the charge as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

(2)An amendment may be made—

(a)before trial or at any state of a trial, except than in a trial held by the Magistrates’ Court no amendment may be made after the close of the case for the prosecution;

(b) up to the close of the case for the prosecution by way of substitution or addition of a new charge.

(3) Where a charge is amended—

(a) the amendment shall be noted on the charge and it shall be treated for the purposes of the trial and of all proceedings in connection therewith as having been originally drawn up or presented and signed by the proper officer in the amendment form: Provided that, where the amendment is by way of substitution or addition of a new charge, the accused shall be called upon to plead to the new charge;

(b) the court shall, if it is of opinion that the interests of justice so required, adjourn the trial for such period as may be necessary;

(c) the court shall ask the accused whether he wishes to adduce additional evidence or to recall any witnesses for the purpose of further examination or cross-examination and if he so wishes the court shall allow him to do so.

[29] Blackstone's Criminal Practice 1997 states the following at page 1200 paragraph D9.35;

‘ If the indictment is so defective as to be a nullity, then it is not capable of amendment and there is a mistrial. An indictment is invalid from the outset in this way where for example, it alleges a offence unknown to law. Where a count describe a known offence inaccurately, however then it is capable of amendment (subject to the usual considerations of prejudice to the defendant) (Mcvitie [1960] 2QB 483 applied in Tyler (1992) 96 Cr App R 332)’.

[30] In the case *Soomery V/S the Republic*, 1975 SLR 31 No. 7, the Appellant was first brought before the Magistrate on a summons charging him with the offence of unlawful wounding. He pleaded not guilty to that offence and the trial was adjourned. On the 1st day of the trial after the evidence of Mr Ross, the Government surgical specialist had been heard, the magistrate raised the question with the prosecutor whether the charge of grievous bodily harm had been considered. After an adjournment the prosecutor applied to add a new charge

of doing grievous harm as count 1 and to amend the existing count 1. The amendments were granted by the Magistrate. On Appeal Sauzier J. stated the following;

‘Applying the above principles, I find that in this case the evidence already heard by the Magistrate disclosed the offence of doing grievous harm when the Appellant was charged only with the lesser offence of unlawful wounding. The charge was defective in that it contained a latent defect as opposed to a patent defect, and the Magistrate had the power under section 183 of the Criminal Procedure Code to amend the charge by addition of a new Count. Such amendment could, at the stage it was made be made without injustice to the Appellant and infact there is no complaint in this Appeal that the Appellant suffered any prejudice’

In the case of Republic V Emmanuel & Ors 2006 SLR 52, Gaswaga J. stated the following;

‘ An amendment to an indictment may be made before the trial or at any stage of the trial. No amendment may be made after the close of the case for the prosecution’.

[31] In the case of Pople (1951) 1Kb at page 54 the Court held the following;

‘The arguments that the Appellants appeared to involve the proposition that the indictment, in order to be defective, must be one which in law did not charge any offence at all and therefore was bad on the face of it. In my opinion, any alteration in matters of description, and probably many other respect, may be made in order to meet the evidence in the case so long as the amendment causes no injustice to the accused person’.

In this case the amendment was made at the stage of the close of the prosecution case. Furthermore there was no injustice to the accused because the matter in which the indictment was defective was the mere description of the thing obtained ‘while in substance the charge was the same.

[32] In the case of Johal [1973] QB 475 Ashworth J stated the following at p. 481A;

‘In the judgment of the Court there is no rule of law that precludes amendment of an indictment after arraignment, either by addition of a new Count or otherwise ‘. The words arraignment appears in the sentence quoted because the main point in issue was whether

the amendment was made too late, but obviously the addition of a count before arraignment is even less open to objection than a subsequent addition. Where the addition is made after arraignment it will be necessary to put the new counts to the accused for him to plead to them.

On the other hand this Court shares the view expressed in some earlier case that an amendment of an indictment during the course of a trial is likely to prejudice an accused person. The longer the interval between the arraignment and amendment, the more likely it is that injustice will be caused, and in every case in which amendment is sought, it is essential to consider with great care whether the accused will be prejudiced thereby’.

[33] Blackstone’s Criminal Practice 1997 states the following at page 1201;

‘The amendment to an indictment may be so extensive that the question arises whether it amounts to the substitution of a fresh indictment. This was the issue in *Fyffe* [1992] Crim LR 442, where the crown amended an 11 count indictment so that it contained 27 counts. On Appeal, the Appellants argued that the 27-count indictment was a fresh indictment and therefore the judge should have gone through the procedural steps of staying the 11 counts indictment and granting the prosecution leave to prefer the 27 Count indictment out of time, whereby the defendant should have been arraigned once more. The Appeal was dismissed since for all material purposes, the 27 counts reproduced what had appeared in the 11 counts. No new allegations had been added, the amendments were in form rather than in substance and it was not necessary to go through the process of re- arraignment’.

[34] The above case cited and authorities as referred to above lays down the guiding principles as to amendment of charge namely that an amendment of charges can be made at any stage of the proceedings subject that it is not one that alleges an offence unknown to law and hence not a nullity nor invalid and that it does not cause any prejudice or injustice to the accused person. That the greater the delay after arraignment, the greater the risk of prejudice or injustice that it may cause to the accused person.

[35] In the present matter, I have considered the submissions of counsels for the Respondents and counsel for the Republic as well as their respective Affidavits and the cases cited by them, and I find that indeed the amendments sought by the prosecution is quite extensive

since it appears that 13 counts under the said enactment, the prosecution seems to have quoted in the statement of offence sections of the previous law rather than the new law which was in force at the time of the alleged commission of the offence namely the sections of the Anti- Money Laundering and Countering of Financing of Terrorism Act, 2020 of which was admitted by counsel for the Republic . They have also sought the amendment of dates as to the accused persons have allegedly committed the offences and so are amendments to the particulars of the offence as to the amount of money which is subject to the charge in numerous counts. Amendments are also being sought to change the predicated offences in numerous counts from Money Laundering to one of theft.

[36] Although the above is the case, I find that the original counts in the indictment avers offences known to law and hence are valid the more so that the offences charged under the original count was an offence even under the previous law and that the elements of the offence remains the same. Although I find that the amendments sought to be quite extensive, however I'm of the view that the 19 counts sought to be amended reproduce what had appeared in the original 27 counts. No new allegations had been added and the amendments were in form rather than in substance and hence the amendment can be made subject to the consideration as to whether the court finds that the proposed amendment at this stage of the proceedings causes any prejudice or injustice to the accused persons.

[37] In view that the Application seeking leave of the Court was made in Cr 61/2024 at an early stage in the proceedings after the accused person had pleaded to the said charge but before any witness had testified in the matter, I find that making such an application for the amendment of the charge being made at an early stage in the proceedings and hence I find that that there is no prejudice or injustice caused to the accused persons in granting amendments sought by the prosecution.

[38] The averments in their Affidavits concerning allegations of prejudice from the foreign accused persons that because of the trial may be protracted in view that the court is likely to grant an adjournment in the event leave is granted to amend the charge and as a result their contract of employment is not guaranteed to be renewed since they are on GOP and the likelihood of them having no fix place of abode on some future date and liable to be remanded into custody by the Court as a result of this is at its best highly speculative

without evidence to the contrary coming from their employer and further such a decision rest in the sole discretion of the Court in its eventuality of which I do not find any prejudice or injustice caused to the foreign accused persons as a result of this.

[39] I also find that the other reasons given by the accused persons as averments in their respective Affidavits in reply to the Application are the normal inconvenience faced by an accused person when faced with a charge before the Court albeit in this matter these are serious charges and does not amount to any prejudice or injustice against the accused persons.

[40] Furthermore the cases cited by counsels for the accused persons is accordingly distinguished with the present matter in view that in these cases amendments to the charge was being sought by the prosecution at a later stage of the proceedings when the court has heard some evidence in the matter which is not the case in the present matter.

[41] As a result of the above, I accordingly grant leave to the prosecution, the Republic in the matter to amend the charges as per the amended charge filed in CR 61/2024. As a result of the extensive amendment made by the prosecution, in ensuring that no prejudice or injustice is caused to the accused persons and ensuring that there are no breach of their rights to a fair trial as enshrined in the Constitution bearing in mind that I have already granted an adjournment of more than one month to allow the Respondents to file their objections to the said Application and to fix a new hearing date to hear the Application, I shall grant a reasonable further adjournment to allow the accused persons more adequate time and facilities to prepare their defence in view of the new amended charge now on file. The accused persons shall now take plea on the said amended charge.

Signed, dated and delivered at Ile du Port on 14th November 2025.

D. Esparon J.