

SUPREME COURT OF SEYCHELLES

Reportable
CO102/2021

In the matter between:

THE REPUBLIC
(rep. by Barry Galinoma)

Republic

and

ROSANDA MARIA ALCINDOR
(rep. by Alexia Amesbury)

Accused

Neutral Citation: *The Republic v Rosanda Alcindor* (CO 102/2021) (19 March 2025)
Before: Burhan J
Summary: Ruling on no case to answer
Heard: 7 October 2024, 21 November 2024 and 20 January 2025
Delivered: 19 March 2025

ORDER

The application that the accused be discharged as she has no case to answer is dismissed

RULING

BURHAN J

- [1] This is a ruling in respect of an application made at the close of the prosecution case by learned Counsel for the accused Mrs Amesbury who submitted that the prosecution has failed to establish a case against the accused and therefore the accused has no case to answer and should be discharged from further proceedings.
- [2] *Archbold in Criminal Pleadings Evidence and Practice 2012 Edition 4-363* sets out the principle in a no case to answer application.

“A submission of no case should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict”

- [3] In the case of ***R vs. Stiven 1971 SLR 137***, it was held what Court has to consider at the stage of no case to answer is whether:
- a) *there is no evidence to prove the essential elements of the offence charged.*
 - b) *whether the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it.*
- [4] Learned Counsel for the accused submitted that the entire prosecution case is based on circumstantial evidence and referred to the principles laid down in case law which likens circumstantial evidence to a cord of multiple strands that collectively proves guilt and further submitted that the evidence presented by the Republic, even when taken at its highest, consists of only a few frayed threads that do not amount to a strand. Learned Counsel further argues that the Republic's case lacks sufficient strands of evidence that, even when combined, could meet the standard of proof beyond reasonable doubt. It is the view of this Court that this is a guideline in case law to be applied when deciding the guilt of the accused at the conclusion of a case which casts a burden on the prosecution to prove the case beyond reasonable doubt.
- [5] Based on the aforementioned case law set out in [2] and [3] herein, it is the view of this Court that at this stage what Court should consider after considering the case for the prosecution, is whether there is no evidence to prove the essential elements of the offences charged and whether the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict.
- [6] It would be pertinent at this stage to set out the offences with which the accused has been charged. The accused Rosanda Alcindor stands charged as follows:

Count 1

Abuse of Position contrary to Section 24 (1) (b) read with section 24(2) of the Anti-Corruption Act, 2016 as amended (Act 2 of 2016) and punishable under section 44 of the said Act.

In the month of July 2016, Rosanda Maria Alcindor, the former Chief Executive Officer of the Small Business Financing Agency (SBFA) used her position, office or authority to facilitate a loan for the sum of SCR 19,800 to be disbursed from SBFA bank Account No:005-0021162014 of Seychelles Commercial Bank (SCB) to one Christina Medina, holder of bank Account No:4228224 at the formerly known Barclays bank Seychelles, now Absa bank (Seychelles) Limited, who was the alleged beneficiary for SBFA loan No.475/16 of Jean Abraham Eugenie, both being her relatives of Anse Etoile Mahé.

Count 2

Unlawful acquiring of public funds and public property contrary to section 36(1) (b) of the Anticorruption Act, 2016 as amended (Act 2 of 2016) and punishable under section 44 of the said Act.

In the month of July 2016, Rosanda Maria Alcindor, the former Chief Executive Officer of the Small Business Financing Agency (SBFA) used her position, office or authority to divert the sum of SCR 19,800 by way of approving a concessionary loan No 475/16 to be disbursed from SBFA bank Account No.005-0021162014 of Seychelles Commercial Bank (SCB) to bank Account No. 4228224 which are being occupied by the formerly known Barclays bank Seychelles, now Absa bank (Seychelles) Limited, belonging to one Christina Medina, who was the alleged beneficiary for the said loan of Jean Abraham Eugenie, both being her relatives of Anse Etoile, Mahé, for a purpose other than for what it is intended.

- [7] It is the view of this Court that on consideration of the evidence led by the prosecution, there is evidence to indicate that the accused was holding public office when working as a CEO at SBFA (Small Business Financing Agency). There is no serious challenge to this

evidence. There is evidence from witnesses led by the prosecution to indicate she facilitated a loan for the sum of SCR 19,800 to be disbursed from SBFA bank Account No: 00521162014 of Seychelles Commercial Bank (SCB) to one Christina Medina, holder of bank Account No: 4228224 at the formerly known Barclays bank Seychelles, now Absa bank (Seychelles) Limited, who was the alleged beneficiary for SBFA loan No.475/16 of Jean Abraham Eugene. The prosecution has led evidence to indicate that Christina Medina, Jean Abraham Eugenie and the accused were related.

- [8] All witnesses called were subject to lengthy cross examination. However, it is the view of this Court that it cannot be said that by cross examination the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it. Certain suggestions made by the defence exists but it would be unwise at this stage on these mere suggestions to come to a finding that the prosecution evidence has completely been discredited and reject the evidence of all the witnesses for the prosecution.
- [9] The question of whether her conduct amounted to an abuse of position contrary to Section 24 (1) (b) read with section 24(2) of the Anti-Corruption Act, 2016 as amended (Act 2 of 2016) and punishable under section 44 of the said Act is a matter to be decided at the end of the case after giving the defence an opportunity to answer the case of the prosecution.
- [10] The evidence of Laura Dookley and Laura Vital who had worked for 14 years with the accused as her secretary, have been challenged on the basis that both are not experts and in the absence of a genealogy expert and handwriting expert evidence the case cannot proceed. It is to be observed their evidence is supported by official documents and attached birth certificates. Therefore, it cannot be said at this stage that there is no evidence to prove the essential elements of the offences in the charge sheet. Further, as to whether the circumstances leading to the conclusion of guilt must be fully established or whether the prosecution has eliminated every possible alternative hypothesis except the one to be proven, are matters to be decided at the end of the case, when deciding whether the prosecution has proved its case based on circumstantial evidence beyond reasonable doubt.

- [11] Learned Counsel next challenges the chain of evidence in respect of the handling of the file under investigation. The prosecution has denied that documents were added or removed from the file while it was in their custody while the investigations were going on. It is the case for the prosecution that the documents relevant to prove the charge were officially produced in Court. The documents produced were identified by the maker of the documents and officers from the SBFA and from the bank as authentic documents pertaining to the file under investigation and by the numerous witnesses called including officers from the SBFA and bank. This evidence has been challenged by the accused but it would be better to decide on the challenges put forward by learned Counsel for the accused at the conclusion of the case after giving an opportunity to the defence to be heard.
- [12] The discrepancies between the evidence of Mr Antat and that of Ms Young's evidence would also be best decided at the end of the case when one is considering the entirety of the evidence in order to ascertain whether the said discrepancies are material or not. As to whether the evidence of Mr Moses from the pension department alone is sufficient to prove the issue that Jean Eugenie did not qualify for a loan from SBFA due to his status as pensioner is a matter to be decided at the end of the case. It cannot be said that the prosecution has failed to lead evidence and there is no evidence on these issues.
- [13] It is the view of this Court that all challenges on expert Chettiar's evidence, the defence contention that the accused approving the loan does not establish any wrongdoing, as loan approval was well within the scope of her duties, and the contention that there is no evidence to suggest that her action was unlawful or outside of SBFA's policies are matters better decided at the end of the case after giving an opportunity to the defence of being heard and not at this stage.
- [14] The defense contention that the evidence presented by the prosecution only shows that Medina was a conduit for the loan and that Mr Eugenie is the actual beneficiary of the loan and the contention that Christine Medina did not personally benefit from the loan and the contention that the evidence Velma Sedgewick evidence does not contribute in proving wrongdoing on the part of the accused are all matters for final determination. Further, as to whether there is a deliberate attempt to mislead court to believe that handwriting on the

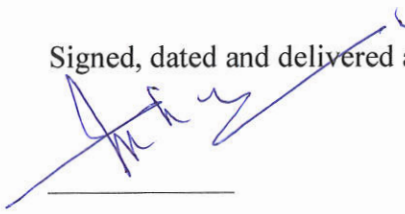
loan application belongs to the accused or whether there is a necessity for direct evidence to indicate that the accused personally benefitted from the loan or whether there is need for a policy preventing employees from processing loans for relatives are once again matters to be decided at the conclusion of the case, after giving an opportunity for the defence to present its case and after due consideration of the entirety of evidence before Court and the law.

[15] As the prosecution has led evidence in respect of the elements of both charges the weaknesses and inconsistencies that raise doubts about whether the prosecution case can be accepted, the conflicting testimonies, gaps in the evidence, and questions about the authenticity of certain documents in the view of this court are matters to be decided at the conclusion of the trial. As it stands all documents produced by the investigation officers in open court have been accepted by the witnesses from the SBFA as documents that are emanating from the connected SBFA file.

[16] In the light of the above findings by this Court, it cannot be said that there is no evidence to prove the essential elements of the offence charged. Further at this stage, it cannot be said that the evidence for the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it. It is the finding of this Court that the prosecution has established a prima facie case and sufficient evidence exists to call for a defence. Therefore, learned Counsel for the accused's application that the accused should be discharged at the no case to answer stage is dismissed.

[17] This Court therefore proceeds to call for a defence from the accused Rosanda Alcindor in respect of both charges framed against her.

Signed, dated and delivered at Ile du Port on 19 March 2025



M Burhan J