

SUPREME COURT OF SEYCHELLES

Reportable
CM 121/2024

In the matter between:

THE REPUBLIC
(Represented by Ms Shireen Denys)

Applicant

vs

SAMARASINGHE KAMKANAMGE
RANJAN PRIYANTHA
(Represented by Mr Clifford Andre)

Respondent

Neutral Citation: *Rep vs Priyantha* (CM 121/2024) (20 March 2025)

Before: Adeline J

Summary: Forfeiture of vessel – Section 70 (a) of the Fisheries Act, 2014 — Respondent convicted and sentenced for the offences of Fishing without a Foreign Fishing Vessel license, and for Interfering with the vessel monitoring system - Vessel used in the commission of offences.

Delivered: 20 March 2025

FINAL ORDER

This court being satisfied that the conditions under the provisions of Section 70 (a) of the Fisheries Act, 2014 have been made out, orders the forfeiture of the vessel IMULA 1549 MTR FV SUNSHINE to the Republic, the Applicant in this matter.

ORDER ON MOTION

Adeline, J

INTRODUCTION

- [1] By Notice of Motion supported by an affidavit deposed by one Detective Sub-inspector Brian Dogley, the Republic (“the Applicant”), pursuant to Section 70 (a) of the Fisheries Act, 2014 applies to this court for an order of forfeiture of the vessel, IMULA 154 9 MTR FV SUNSHINE against one Samarasinghe, Kamkanamge, Ranjan Priyantha, (“the Respondent”).

DISCUSSION OF A PRELIMINARY ISSUE OBSERVED

- [2] Responding to the application, learned counsel, Mr Clifford Andre, sworn an affidavit with the caption “*Affidavit in Reply to the Notice of Motion*”. In his affidavit in reply, learned counsel confirms, that he is the “*Attorney representing Mr Samarasinghe Kamkanamge Ranjan Priyantha, 45 years old Sri Lankan skipper who had already left the country*”.
- [3] The fact that the affidavit in reply is disposed by learned counsel, as a preliminary issue, the questions that call for answers are, 1. is the affidavit valid, and 2. what is the ramification for counsel? The Appeal case of Frank Elizabeth vs Commissioner of Police SCA 16/2024 (Arising in MC 57/2024) [2024] 18 December 2024, does provide some insights and guidance on the law as well as answers to these questions, when the Court of Appeal sought to interpret the provisions of Rule 11(5) (a) of the Legal Practitioners (Professional Conduct) Rules 2013, (SI 57 of 2013).
- [4] In this case before the Court of Appeal, Mr Elizabeth was the Applicant who by Notice of Motion supported by an affidavit he deposed, sought leave of the court to amend his appeal to appeal against the judgment of the Supreme Court. In the Supreme Court, Mr Elizabeth was also the Applicant. As the Applicant, he was viewed to be entitled to depose to an affidavit in support of the application, not as legal counsel representing Gianni and Deborah Bordino. The Court of Appeal found, that the affidavit filed in support of the application for leave deposed to by Mr Elizabeth was valid.
- [5] However, the court found, that Mr Elizabeth simultaneous appearance as legal counsel contravenes Rule 11 (5) (a) of the Legal Practitioners (Professional Conduct) Rules 2013. The provisions of Rules 11 (5) (a) is couched in the following terms;

“A Legal Practitioner must not appear before any court in a matter where they have reason to believe they will be required to give evidence, whether verbally or by affidavit. If such a situation arises, they are obligated to withdraw from the case”.

- [6] The court went on as to say, that Mr Elizabeth was precluded from serving both, the Applicant and legal counsel in the same matter. He could properly appear before the court solely in his capacity as the Applicant but not concurrently as legal counsel. It was stated by the Court of Appeal, “that the objective of rule 11(5) (a) is to avert situations where a legal practitioner serves simultaneously as both an advocate and a witness as this could compromise the integrity of the proceedings”. Therefore, under Rule 11 (5) (a), learned counsel having deposed to the affidavit in reply, is obligated to withdraw his appearance for the Respondent in the instant case.

DISCUSSION ON THE MERIT OF THE APPLICATION IN THE LIGHT OF THE LAW

- [7] The application for forfeiture of the vessel IMULA 1549 MTR FV SUNSHINE is made under the provisions of Section 70 (a) of the Fisheries Act, 2014. Section 70 (a) is couched in the following terms;

“70 Where a person is convicted of an offence under this Act, the court may in addition to any penalty

(a) Order the forfeiture of the Fishing Vessel, any gear or article used in the commission of the offence”.

- [8] In my considered opinion, the wordings of the statutory provisions of Section 70 (a) of the Fisheries Act, 2024 is without any ambiguity leaving no room for misinterpretation. There must have been a conviction, a penalty must have been imposed, and forfeiture is in addition to the penalty. The use of the word “may” in Section 70 of the Fisheries Act, 2014 suggests, that forfeiture of the vessel is in exercise of the court’s discretion.
- [9] In the case proper, that is to say, CR 60/2024, the Respondent has been convicted and sentenced on his guilty plea for one count of Fishing without a Foreign Vessel License and one count of Interfering with the Vessel Monitoring System.

- [10] At paragraph 7 of the affidavit in reply, the deponent, learned counsel Mr Clifford Andre, makes the following averments;

“I have been advised by my lawyer that it is therefore settled that only failure to pay the fine which should attract a forfeiture order and under no circumstances that should be done”

Learned counsel/Deponent relies on the case of *Mahalingam Kanapathi vs The Republic [2020] SCCA 36 (19 August 2022) SCA CR 14/2021 (Appeal from CR 62/2021)* and *The Republic vs Mawalla Kattadilage Padmasiri CO 45/2024* for his proposition that only failure to pay the fine which should attract a forfeiture order.

- [11] In the case of Kanapathi (supra) the Court of Appeal substituted the original sentence of the Supreme Court of a fine of 2,500,000.00 by an order providing for a new sentence which was a fine of SCR 400,000.00 that was to be paid within one month from the date of the order, plus a default sentence of forfeiture of the vessel, its gear and other equipment on board should the SCR 400,000.00 not paid within the one month period as so ordered. The sentence imposed on the convict by the Supreme Court was a fine of SCR 2,500,000.00 in default of which the convict was to serve a term of imprisonment of two years as default sentence.
- [12] The basis for the substituted sentence as discussed by the justices of appeal, *inter alia*, was the fact that the trial judge had in their opinion, imposed the maximum prescribed sentence disregarding the principles of sentencing and failing to take into consideration the different balancing factors mitigating against the imposition of the maximum sentence. The Justices of Appeal cited the case of *Poonoo v The Republic SLR 424* and reiterated that sentences have to be individualised and the principle of proportionality considered.
- [13] It was the view of the justices of appeal, that the imposition of the maximum fine of SCR 2,500,000.00 on the convict, was amongst other things, disproportionate. Although it was acknowledged, that in general the Court of Appeal would not interfere with the sentence of the trial court, they did substitute the sentence to a fine of SCR 400,000.00 and a default sentence of forfeiture of the vessel should the fine not paid within one month of the date of

the new sentence imposed. The Court of Appeal in Kanapathi (*supra*) did not make it law that forfeiture of the vessel should only be ordered in the event of the failure to pay the fine within the time period so ordered, correctly so, because that would be tantamount to encroaching on the legislature legislative functions in that it would have been an amendment to Section 70 (a) of the Fisheries Act by case law, rendering Section 70 (a) obsolete.

- [14] In the case of *the Republic vs Mawalla Kattadilage Padmasiri, CO 45/2024*, before this court, the court was guided by the discussion of the law in the Court of Appeal in the case of Kanapathi (*supra*). This court, after considering all the principles of sentencing and taking all the relevant factors into account, sentenced the convict to pay a fine of SCR 400,000 with a default sentence of forfeiture of the vessel, (FV) Sampath 16, its gears, equipment, should the fine not paid within two months of the date of the sentence. The proposition that forfeiture of the vessel should only happen in the event that the fine is not paid has never been a proposition made by the Court of Appeal nor by this court, because arguably such proposition would be a hindrance to the statutory provisions of Section 70 (a) of the Fisheries Act, 2014.
- [15] An application under Section 70 (a) of the Fisheries Act, 2014 operates in “*addition to any penalty*” so imposed on a convict by the Court. Therefore, the sentence imposed on a convict is only relevant for the purpose of determining whether an application for forfeiture of the vessel should succeed or not in so far as it proves that a sentence was imposed after conviction. It doesn’t matter what the sentence was and in the instant case, whether the convict has paid the fine or not. The fact that in the instant case the convict paid the fine doesn’t render the provisions of Section 70 (a) of the Fisheries Act, 2014 inoperative and doesn’t mean that the remedy of forfeiture is extinguished. The judgment of the Court of Appeal in Kanapathi (*supra*) did not indicate otherwise.
- [16] In my considered opinion, the fact that forfeiture of the vessel IMULA 1549 MTR FV SUNSHINE was not part of the sentence in CR 60/2024, the only option that was available to the Republic if forfeiture of the vessel had been contemplated, was to commence a separate legal proceeding under Section 70 (a) of the Fisheries Act, 2014 for an order of

forfeiture which has been the case. There is, in support of the application, an affidavit deposed by one detective police sub-inspector Brian Dogley who through the averments therein, alluded the facts and circumstances that led to the arrest, prosecution, conviction and sentence of the Respondent for the offences of Fishing without a Foreign Vessel License contrary to Section 11 (1) read with Section 69 of the Fisheries Act, 2014, and Interfering with the Vessel Monitoring System contrary to Section 64 (1) (c) of the Fisheries Act, 2014.

CONCLUSION

- [17] In the final analysis, on account of the affidavit evidence of Detective Police Sub-inspector Brian Dogley in support of the application for an order of forfeiture of the vessel IMULA 1549 MTR FV SUNSHINE, I am satisfied, that one Samarasinghe Kamkanamge Ranjan Priyantha, a 45 year old Sri Lankan national, a skipper and master, has been convicted and sentenced before this court on his guilty plea to one count of Fishing without a Foreign Vessel License and one count of Interfering with the Vessel Monitoring System. I therefore order forfeiture of the vessel IMULA 1549 MTR FV SUNSHINE its gear and articles used in the commission of the two offences to the Republic, being the Applicant in this matter.

Signed, dated and delivered at Ile du Port 20 March 2025.

