

SUPREME COURT OF SEYCHELLES

Reportable

CR 65 of 2024

In the matter between

THE REPUBLIC
(rep. by Ms K Marie)

Prosecution

and

DEWAPPU HETTI THANTHINGE PRIYARDASHA
(rep. by C Andre)

Accused

Neutral Citation	<i>The Republic v Dewappu Priyardasha</i> (CR 65/2024) (27 February 2025)
Before:	Govinden CJ
Summary:	Fishing without a Foreign Vessel License, contrary to section 11(1) read with section 69 of the Fisheries Act 2014 and punishable under section 58(a) of the said Act
Heard:	03 February 2025
Delivered:	27 February 2025

SENTENCE

GOVINDEN CJ

The Convict stands charged with the following offence;

Statement of offence

Fishing without a Foreign Vessel Licence, contrary to section 11(1) read with section 69 of the Fisheries Act 2014 (Act 20 of 2014) and punishable under section 58(a) of the said Act.

Particulars of Offence

Dewappu Hetti Thanthinge Priyardasha, 42 years old Sri Lankan national, skipper of the vessel, SAMPATH IMULA-A-A0857KLT, which is not licensed or authorised, along with crew, on the 5th October 2024 at position of 04 47'53'S 35'04'E, which is approximately 40 NM East of Fregate island, within the Seychelles EEZ, used the said foreign vessel for fishing in Seychelles waters in contravention of the Fisheries Act 2014.

- [2] The Accused pleaded guilty to this charge and was convicted on his own guilty plea. The facts of the case were read out, interpreted and explained to the Convict and were admitted by him.
- [3] Counsel for the Convict then proceeded to make submissions in mitigation. He pleaded to the Court to show leniency. It was submitted that the Convict has pleaded guilty at the very first opportunity and is a first-time offender. Counsel further submitted that the Convict's wife is suffering from cancer. He has two children, one of whom is suffering from a mental illness and that he is the sole provider for his family. Learned Counsel also submitted certain sentencing precedents when it comes to sentences in similar cases.
- [4] In this case the facts of the case shows that the vessel is below 24 meters hence the applicability of the mandatory provisions of section 58 (a) of the Act. Section 58(a) of the Fisheries Act provides:

"Where a fishing vessel that is not licenced in accordance with section 11 is used for fishing or fishing related activity in Seychelles waters or for sedentary species on the continental shelf, the owner and Master each commits an offence and is liable on conviction where the foreign vessel is –

(a) A length overall not exceeding 24 meters, to a fine of not less than SCR2,500,000.00;

(b)

(c)

- [5] Having scrutinized the Fisheries Act of Seychelles, I find that it is designed to regulate fishing activities within its waters, ensuring sustainable practices and the protection of marine resources. Section 11(1), in conjunction with section 69, outlines the requirements for obtaining a foreign fishing vessel licence, emphasizing the importance of compliance

for both conservation and economic reasons. Violation of these provisions undermines regulatory efforts aimed at preserving fish stocks and maintaining ecological balance.

- [6] It is abundantly clear that the nature of the sentence provided under the Act for the offence is of a deterrent nature. Any sentences, albeit discretionary, must reflect this deterrence, especially when it comes to unlicensed foreign fishing vessels. Deterrence serves as a critical function of sentencing, aiming to prevent future offences by the convict and others who might consider similar illegal activities. Such a sentence sends a clear message that violations of the Fisheries Act will not be tolerated, thereby reinforcing the rule of law. The rationale behind this approach is grounded in both general deterrence (discouraging the public from committing similar offences) and specific deterrence (preventing the individual offender from reoffending).
- [7] Illegal fishing activities can have significant negative impacts on marine ecosystems, including overfishing, habitat destruction, and loss of biodiversity. By imposing a deterrent sentence, the judge acknowledges these potential harms and emphasizes the need for responsible stewardship of marine resources. This aligns with international commitments to sustainable development goals and conservation efforts.
- [8] This court takes judicial notice that the fisheries sector is vital to Seychelles' economy, providing livelihoods for many local communities. Illegal fishing undermines legitimate businesses that operate within legal frameworks, potentially leading to economic losses and job insecurity for those who depend on lawful fishing practices. A deterrent sentence can help protect these economic interests by discouraging unlawful competition.
- [9] Sentencing decisions must also reflect societal values and expectations regarding lawful behavior. By imposing such a sentence, the judge reinforces community standards that prioritize legal compliance and respect for regulations designed to protect shared resources. This fosters trust in legal institutions and promotes community safety by discouraging further illegal activities.
- [10] However, whilst it is essential to impose a sentence that deters future offenses, it must also be proportionate to the crime committed. The judge should consider factors such as

the severity of the offense, any prior criminal history, and mitigating circumstances surrounding the case when determining an appropriate deterrent sentence. The position in regard to mandatory minimum sentences was settled in the case of Ponoo v R [2011] SLR 424. It is quite clear that the Court has to grant some latitude in imposing such a sentence.

[11] Moreover, in meting out a sentence, courts have to bear in mind that the classic principles of sentencing includes also, prevention, rehabilitation, reformation and retribution; see Lawrence v Republic [1990] SLR 47. I shall also take into consideration the principle of proportionality of sentence and those set out in the case of Dilesh v R ((SCA CR 02/2024) [2024] (Arising in CR 99/2023) (19 August 2024)) [2024] SCCA 27 (19 August 2024).

[12] After considering all mitigating factors, the law, and the facts and circumstances of this case, I therefore sentenced the convict as follows;

(1) The convict is ordered to pay a fine of SCR500,000/- within one month from this decision, and in default, I impose a sentence of imprisonment for eighteen months.

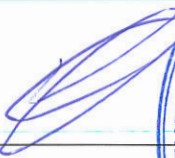
(2) I order the forfeiture of the fishing vessel SAMPATH IMULA-A-A0857KLT to the Republic of Seychelles together with any of its gear, articles and equipment.

(3) I order that the proceeds of the sale of the fish and fish products seized from the SAMPATH IMULA-A-A0857KLT be forfeited to the Republic.

[13] The convict has a right of appeal against both his conviction and sentence and any time spend on remand shall be taken into consideration if the defaulting sentence of imprisonment becomes operational.

Signed, dated and delivered at Ile du Port on 27th February 2025

Govinden CJ

The seal of the Seychelles Supreme Court is circular. It features a central emblem with a tree and a bird, surrounded by a wreath. The words "SEYCHELLES SUPREME COURT" are inscribed around the perimeter of the seal, with a small star at the bottom.