

SUPREME COURT OF SEYCHELLES

Reportable
[2025] SCSC
CR 04/2022

In the matter between:

In the matter between:

THE REPUBLIC
(rep. by Steven Powles and ors)

Republic

and

MUKESH VALABHJI
(rep. by J Lewis and ors)

1st Accused

LAURA VALABHJI
(re. by R Scott and ors)

2nd Accused

LESLIE BENOITON
(rep. by B Hoareau)

3rd Accused

FRANK MARIE
(rep. by J Camille)

4th Accused

Neutral Citation: *Mukesh Valabhji & Anor v Republic* (CR 04/2022) [2025] SCSC (23rd May 2025)

Before Govinden, CJ

Summary: *Voire Dire* on authentication of Item D13

Heard: Submissions

Delivered: 22nd May 2025

ORDER

I find that the prosecution has proven beyond a reasonable doubt that Item D13 is not authentic, was not made by President France Albert Rene, and does not originate from him.

RULING

GOVINDEN CJ

The Objection

- [1] This is a Ruling on an objection raised by the prosecution, objecting the admissibility of Item D13 into evidence on the ground that it is not made or came from its purported maker, as alleged by the 1st accused. The 2nd accused supported her position in this case and , reference to “ the defence” , hereinafter relates to their common position.
- [2] During his testimony-in-chief in the main trial, the 1st accused attempted to introduce into evidence a letter purportedly issued to him by the late President Albert Rene, authorizing him to have an armoury at his private residence at Morne Blanc, Mahe. The said letter is referred to as the Letter of Authorisation or Item D13 hereinafter. The prosecution objected to the admissibility of this document and challenge its authenticity, as revealed by the proceedings of this Court of the 10th of March at 2:00 p.m.:

Mr Powles: My Lord the author of the document is not there, it was purportedly signed by the President and we are not in a position to establish whether or what basis he signed the document, whether it is in fact an authentic document – My Lord we are not in a position to cross examine the President as to whether it is a genuine document, as to whether it is his genuine signature, it is only a copy of what is purported to be an original. The provenience of the document is we would respectfully submit passed and no proper foundation has been laid for it to be admitted for the truth of its contents.

Court: So you are disputing the authenticity of the document?

Mr Powles: My Lord yes. My Lord we do objection to the truth of the contents and the authenticity of it, how this document was created is plainly hearsay evidence as well in terms of the contents of it. We do respectfully submit that a voire dire is the best value to determine these issues, my learned friend indicates that the defence is in a position to call expert forensic evidence as to the authenticity of this document. We would plainly want to have an opportunity to check the authenticity of it as well in terms of that the copy that has allegedly been made and whether the original - whether that and there are already details

or indications on the face of the copy that indicates it is authentic. There is in our respectful submission the history or practice of documents being –

Court: So you are challenging the whole document, the signature and the content of the document?

Mr Powles: The content and authenticity my Lord yes.

- [3] It is abundantly clear from the above excerpts that Learned counsel was objecting to the authenticity of the entirety of Item D13, and not just a part of it. The objection encompasses its provenance and content. Also linked to the objection is the fact that the document is a copy and not the original. Accordingly, the objection raised relates to the entirety of the document, including the fact that the signature does not match known samples from the deceased; issues of provenance regarding how and when the document was obtained; and whether it has been altered or fabricated by someone other than its purported maker. The issue to be determined in this trial-within-a-trial is, accordingly, whether the document was made by the late President Rene and whether its provenance is as alleged by the 1st accused.

[4] **The evidence**

- [5] In an attempt to discharge its evidential burden, the defence has called a number of witnesses who are familiar with signature of President Rene, including a witness who said that she drafted the authorisation letter. The prosecution in order to discharge its burden of proof has called a Handwriting expert; chain of evidence witnesses and witnesses who made available their comparator documents to their expert Below is a summary of witnesses' testimony.

Bernadette De Commarmond

- [6] Marie Bernadette De Commarmond worked for President Rene from 1974 to 2006, initially as a secretary and later in his private office. She was responsible for typing, filing, and handling classified documents for President Rene. Ms De Commarmond was shown Item D13 and confirmed she typed this specific letter on President Rene's instruction, recognizing his signature on it. She stated that classified documents were given directly to

her by the President for typing. The letter in question was believed to have been given to Mr Mukesh Valabhji, although she did not witness this.

- [7] After leaving the President's office in 2006, she moved to Australia but returned for the court case. Ms De Commarmond was contacted by Ms May De Silva and Ms Aglae regarding her testimony. She confirmed that sensitive documents were sometimes stamped under the President's direction. The format of documents she typed was consistent with her personal settings and style. She admitted to typing multiple copies of letters but did not know their final disposition. Ms De Commarmond acknowledged preparing end-user certificates and other sensitive documents under the President's orders without questioning them. She identified several documents with the President's office letterhead and stamps as ones she prepared.
- [8] The prosecution questioned her about the authenticity and handling of these documents. She maintained that she followed orders without questioning their legality or purpose. The court examined her role in managing classified information and document filing systems.

David Savy

- [9] Mr Lewis proceeded to question Mr Savy about a document Item D13 purportedly signed by France Albert Rene. Mr Savy confirmed that he recognized the signature on the document as belonging to France Albert Rene and expressed no doubt about its authenticity based on his knowledge and memory. However, during cross-examination by Mr Powles, it was established that Mr Savy was not present when the document was signed and could not confirm whether France Albert Rene had actually signed it himself. No re-examination followed, and Mr Savy was excused from the court.

Sylvette Joan Pool

- [10] Mrs Sylvette Joan Pool testified that she is familiar with President France Albert Rene's signature due to her work experience. Mrs Pool began working for President Rene at the age of 23 at the SPUP party headquarters. Her role involved secretarial duties, including typing documents for President Rene to sign. She served as a minister for 18 years, during

which she personally witnessed President Rene's signature on documents. Mrs Pool confirmed that she recognized the signature on Item D13 as that of President Rene. During cross-examination, she acknowledged that she is not an expert in determining if a signature is a photocopy. The court questioned whether the signature was a photocopy or original. Mrs Pool stated it is difficult to distinguish between a photocopy and an original without expertise. She reiterated her recognition of the signature but could not confirm whether it was a photocopy. Mrs Pool admitted she was not present when the signature on the document in question was made.

Ambassador Bernard Francis Sham-Laye

- [11] Ambassador Bernard Francis Sham-Laye testified in court regarding his familiarity with the signature of former President Rene. He confirmed that he was familiar with the signature of former President Rene and stated that he would recognize it if shown. When presented with a document labelled Item D13, Ambassador Sham-Laye identified the signature on it as belonging to President Rene. He explained that during his tenure as Secretary to the Cabinet (1998–2004), under President Rene's administration, he frequently saw the President's signature. In cross-examination by Mr Powles Ambassador Sham-Laye acknowledged that the document shown to him contained a photocopy of President Rene's signature, not an original. He admitted that he was not a handwriting expert. He confirmed that he had not seen the specific document before and was not present when it was reportedly signed. Furthermore, he clarified that he would not have been present for such matters.

Sarah Rene

- [12] Sarah Rene confirmed she was married to the former President Rene and is familiar with his signature. She identified a signature on Item D13 as that of President Rene, asserting it is widely recognized in the country. During cross-examination, she clarified that the signature is original but on a photocopied document. Sarah Rene stated she had not seen the document before but was confident it was typical of President Rene's actions. She emphasized her knowledge of President Rene's thorough and protective nature in his decisions. Sarah Rene acknowledged she was not present when the letter was signed and

had not seen it previously. She reiterated her familiarity with President Rene's signature from past experiences. Sarah Rene confirmed that her late husband was a lawyer, qualified in England. She indicated he likely used British English in his writings. The cross-examination focused on the authenticity and origin of the signature on the photocopied document. Sarah Rene expressed confidence in her understanding of President Rene's character and decision-making process. The court concluded her testimony without any re-examination from Mr Lewis.

Christina Medina

- [13] Christina Medina, is the sister of Laura Valabhji. According to her testimony, she was asked to retrieve an important document from a flat in London. The document was a letter from the President allowing Mukesh Valabhji to keep an armory for the SPDF. Ms Medina picked up the keys from an estate agent and accessed the flat on February 25, 2023. She found the document in a closet and made two copies before hiding the original in the flat. Ms Medina reported being followed and harassed in London, leading her to report stalking incidents to the Met Police. She believed that someone was trying to obtain the document or keys she had. Ms Medina left the UK for the French Caribbean in April 2023 due to feeling unsafe. She returned to Seychelles in July 2023 and informed her sister about the events during a prison visit. In December 2023, she signed an affidavit and handed over the original document to Varun Zaiwalla. Ms Medina denied fabricating or planting the document and stated she was telling the truth about her actions. The court questioned her about her movements between Seychelles, UK, and France from September 2022 to December 2023. Ms Medina's mother initially informed her about retrieving the document, which was later confirmed by family members. Ms Medina described various incidents of being followed and harassed, including people attempting to find out where she lived.

Mukesh Valabhji

- [14] The testimony of Mukesh Valabhji primarily addresses the origin, handling, and dissemination of a key document, Item D13, which is a purported photocopy of a letter of authority from President Rene authorizing the storage of weapons at his residence at Morne

Blanc. Mr Valabhji explained that he made the photocopy from the original signed document handed to him by President Rene in the President's office. He detailed how he kept the original in a file at his residence, and how he made several copies, of which Item D13 is one of the copy that he made at his office from the original, which he stored in a safe in London during a long holiday around 2010. Mr Valabhji maintained that he did not disclose the existence of the original or copies to authorities due to distrust stemming from alleged illegal searches, theft, destruction of evidence (including CCTV cameras and his laptop), and obstruction by police and security agencies. He claimed the original document and a copy were stored in various places—his study, a safe in his bedroom, and on a pen drive—which he said were stolen or tampered with. He stated that he only realized the significance of the document later and that his reasons for withholding it included security concerns and fear of destruction.

[15] During cross-examination, Mr Valabhji admitted to making multiple copies and explained that many of his actions were taken to safeguard these documents from being destroyed by authorities. He also discussed his limited trust in the police and prosecution, explaining that he believed disclosure could lead to the documents being concealed or destroyed. He confirmed that he first saw the authority in 2003 and that he had a copy on a pen drive stored safely in his bedroom safe, which was subsequently taken. He referenced a prior affidavit where he only addressed documents related to his laptop, not the copies stored elsewhere. When questioned, he asserts that he would have disclosed the document earlier if he trusted the authorities, but due to ongoing theft, destruction, and surveillance, he chose to keep them secret. He also mentioned that his legal counsel was aware of his authority claim

[16] Mr Powles cross-examined Mr Valabhji, suggesting that blank end-user certificates were used to create forgeries. Ms Scott re-examined Mr Valabhji about files in his study, highlighting that many documents were taken by the ACCS and not returned. The defence argues that the selection of documents presented by the prosecution is only a small fraction of what was seized. Mr Lewis questioned Mr Valabhji about the spelling of words in Item D13 to determine its origin. Photos of "Hide 2" were examined to verify where Item D13 was allegedly stored, with discrepancies noted in the presence of a plastic bag. Ms Scott

raised concerns about missing documents from Mr Valabhji's files that could support the defence's case.

- [17] In summary, Mr Valabhji's testimony revolves around the creation, safeguarding, and non-disclosure of the authority document, Item D13, citing distrust of authorities and fear of evidence being destroyed as key reasons for his secrecy. Mr Valabhji asserted that a copy or the original of Item D13 was probably seized by the ACCS or the police.
- [18] Having been granted leave to lead rebuttal evidence the following witnesses were called by the defence to produce their comparator documents, in respect of the Crest, which were used to cross examined the prosecution expert with.

Eddy Belle

- [19] Eddy Belle, a former government official, was shown letters received from President Michel and Vice President Belmont regarding Board appointments. The letters were confirmed as original by Mr Belle, who had kept them in his personal briefcase. The Court admitted these letters as exhibits after verifying their authenticity and signatures.

Mr Ernesta

- [20] Mr Ernesta, a former cabinet minister, was shown a letter of appreciation from President Rene. Mr Ernesta confirmed the letter's authenticity and provided it to the defence upon request. The Court admitted Mr Ernesta's letter as evidence despite objections regarding its absence from the State House records. He also produced an itemised Official Diary of 2003.

Laura Valabhji

- [21] Laura Valabhji testified about receiving a letter from President Michel appointing her to the Seychelles International Business Authority Board. Mrs Valabhji explained the standard practice of keeping multiple copies of government documents in different offices. The Court admitted Mrs Valabhji's letter as evidence, overruling objections based on its absence from the State House records.

- [22] The defence raised concerns about the authenticity of documents due to differences in crests and potential for forgery.
- [23] During cross-examination, these witnesses were questioned about their ability to verify document crests and signatures. Witnesses acknowledged they were not experts in document verification but recognized signatures based on personal experience. Witnesses provided explanations for document storage practices and potential reasons for missing copies at the State House. The Court focused on the weight of evidence rather than objections related to document availability at the State House.
- [24] On the other hand the prosecution, to prove the non- authenticity of Item D13 has called witnesses, including some produce comparator documents; a custodian of official document of the cabinet of Minister and that of a Handwriting Expert;
- [25] Marie-Angele Barbe, the Deputy Registrar of the Supreme Court, testified that she was responsible for transporting Item D13 from the Supreme Court in Seychelles to the UK. She received the document from a court orderly on March 18, 2025, sealed it in an evidence envelope, and signed the chain of custody form. She flew to the UK on March 19, handed the envelope to Eurofins Forensic Laboratory on March 20, and later received it back from Mr Oliver Thorne on April 11, 2025, after it was unsealed, checked, resealed, and signed again. She then travelled from Heathrow to Seychelles, arriving on April 12, 2025, and returned the item to the court orderly at the Supreme Court. The document and envelope, along with the chain of custody forms, were presented as exhibits during the trial. The cross-examination clarified the dates and confirmed that the chain of custody was maintained throughout the process.

Steven Radcliffe

- [26] Steven Radcliffe testified that he is the senior investigating officer for the Operation Black Iron, which is an investigation into corruption and money laundering allegedly committed by Mukesh Valabhji and Sarah Rene. He confirmed that he was asked to see whether Item D13 was ever found during searches related to that operation. Mr Radcliffe confirmed that the search for documents included specific phrases and the word “armory”, but not

standalone searches for words like “president” or “authorized”. The search involved both electronic and physical examination of documents, with thousands of pages reviewed. Mr Radcliffe clarified that he personally looked at some documents, while another person was tasked with reviewing all documents on his behalf. The physical search took about a week to a week and a half, starting shortly after the request from the Attorney General’s office. Two people in total were involved in the document review process.

- [27] Cross-examination revealed that the witness statement did not include details about the extensive physical search of hard copy materials. There was an allegation regarding missing CCTV systems from Mont Blanc, which Mr Radcliffe acknowledged but did not have direct knowledge of. The Attorney General’s office requested searches specifically for an authorization document, with no request to search for presidential letters. Correspondence seized by the ACCS included letters to and from President Rene, but there was no directive to look for documents with the Presidential crest. The ACCS’ digital system became fully operational in late 2022 or early 2023, affecting when documents could be searched electronically. Documents were scanned and uploaded at various times; some were not initially scanned but were later added to the system. Mr Radcliffe had limited personal knowledge of the handling of documents between seizure and scanning/uploading. The term “armoury” was searched as a test to ensure OCR functionality was working properly, resulting in 351 hits. No relevant communications or documents were found among those 351 hits related to the term “armoury”. Ultimately, the sought-after document did not exist within the ACCS systems according to Mr Radcliffe’s testimony.

Sub-Inspector Marianna Eulentin

- [28] Sub-Inspector Marianna Eulentin testified about handling evidence in the case and receiving documents from Mrs. Margaret Moumou and Sub-Inspector Davis Simeon. SI Eulentin received three documents from Mrs. Moumou on April 1, 2025, and seven documents from SI Simeon the same day. The documents were sealed in evidence bags, which SI Eulentin personally transported to the UK for analysis by Mr Oliver Thorne at Eurofins. SI Eulentin handed over the evidence bags to Thorne on April 3, 2025, and

collected them back with a report on April 11, 2025. Upon returning to Seychelles, SI Eulentin stored the documents in a safe at the Seychelles Police Station. The court admitted those exhibits including evidence bags and their contents as well as Mr Thorne's report and appendices.

[29] Cross-examination revealed that SI Eulentin was not aware of specific requests for Presidential letterheads with a 1996 crest. SI Eulentin confirmed she did not search for documents but collected them directly from Mrs. Moumou without knowing how they were selected. The defence questioned the authenticity of certain documents and whether police had verified them with the State House records. An email between SI Eulentin and Mr Thorne discussed verifying comparison material for analysis, but SI Eulentin was unaware of specific tasks related to the Presidential crests. In cross-examination the defence highlighted potential discrepancies in document handling and questioned if further inquiries were made regarding Presidential letterheads. SI Eulentin confirmed she was not tasked with finding original documents or making additional inquiries beyond collecting from Mrs. Moumou.

[30] The court admitted an email as Exhibit D1 during cross-examination by Mr Lewis. Ms Scott's cross-examination focused on whether relevant lines of inquiry were followed regarding document authenticity and expert requests. SI Eulentin acknowledged her duty as an investigating officer to follow relevant inquiries but stated she was not instructed on specific tasks related to the case.

Margaret Moumou

[31] Margaret Moumou, the Cabinet Secretary at the President's Office since January 2025, testified about her role and duties. She was contacted by SI Simeon to verify a document allegedly signed by President Rene in 2003. Ms Moumou searched the archives for documents from 2003 but could not find the document in question. She provided samples of documents signed by President Rene and letterheads used by different presidents to the police. Ms Moumou confirmed providing ten documents to officers Mariana and SI Simeon.

[32] During cross-examination, it was clarified that security-related documents are not held in the Cabinet Office. There is no written policy for archiving documents in the Cabinet Office; both hard copies and e-copies are maintained. On April 1st, she handed over two sets of documents to different police officers at different times. The earliest document provided was from July 1993, and the latest from March 2003, all bearing President Rene's signature. Ms Moumou confirmed that she rubbed out Vice President Faure's name on a letterhead used by him as interim president. She was asked to verify a signature of President Faure on a document but needed time to check her database for authenticity. Ms Moumou agreed to check files for authenticity of additional documents presented during cross-examination. She stated she did not receive a letter from the defence due to an incorrect email address but agreed to check files for attached documents. The court allowed time for Ms Moumou to verify documents and scheduled her return on Thursday morning for further examination. The court reserved rights for further examination based on new findings from Ms Moumou's verification process.

[33] Margaret Moumou was cross-examined by Mr Lewis regarding documents signed by various Presidents and given to the Investigating Officer. In this case Ms Moumou found two documents signed by Presidents Ramkalawan and Faure but none by Presidents Rene or Michel. Several documents, purportedly signed by past Presidents, were presented and marked as items for identification. Ms Moumou confirmed she did not find any corresponding documents in the State House files from 2002 to 2006. Ms Scott attempted to introduce an Official Gazette as evidence but faced objections regarding its authenticity. The Court required a certified original copy of the Gazette for it to be admitted as evidence. The Government Gazette as eventually produced. She confirmed that she only search for and retrieved documents from the Cabinet Office and not the President's Office.

Sub-Inspector Davis Simeon

[34] Davis Simeon, a Sub-Inspector with the CID of Seychelles Police Force, was involved in retrieving documents from the State House for an investigation. On April 1st, 2025, Simeon collected seven documents from Margaret Moumou, Cabinet Secretary at the State House, related to a document (D13) purportedly authorizing Mukesh Valabhji to keep an armoury

at his home. The documents were handed over to SI Marianna Eullentin to be taken to the UK for further examination. SI Simeon confirmed that he could identify the exhibit envelope and the signatures on it.

[35] During cross-examination, SI Simeon was questioned about the request for comparison documents by the forensic examiner Oliver Thorne on March 26, 2025. SI Simeon admitted he did not recall specific requests for documents with the 1996 Presidential Crest and had not read Mr Thorne's report. He stated that two out of the seven documents collected were originals; the rest were copies due to unavailability of originals. SI Simeon did not personally search government offices for additional documents and relied on instructions from superiors. He acknowledged that some items went missing from Morne Blanc after Mr Valabhji's arrest, including CCTV footage. The search at Morne Blanc was described as chaotic and not following standard police procedures. SI Simeon confirmed that foreign soldiers participated in the search but did not inquire about finding Item D13. The accused were not present during the search at Morne Blanc due to security reasons, which is against normal police procedure. There was an issue about who requested additional documents from Madam Moumou later on April 1st; neither SI Simeon nor SI Eullentin claimed responsibility. SI Simeon did not investigate additional documents sent by the defence without orders from the Commissioner of Police. He confirmed that ten boxes of documents were seized from ex-President Rene's house but had not been thoroughly examined for Item D13.

[36] The prosecution produced all the comparator documents used by their handwriting expert through those three witnesses.

Oliver Thomas Scott Thorne

[37] Oliver Thomas Scott Thorne, a Forensic Document Examiner with over 31 years of experience, testified about his role in examining a document labelled Item D13. Mr Thorne works at Eurofins Forensic Services as the team leader of the Question Documents Unit, which provides forensic services to all 43 Police Forces in the UK. He explained that since 2011, forensic services in the UK have been privatized, with Eurofins being the largest provider. Mr Thorne's examination involved handwriting and signature comparisons, as

well as analysing printing, copying, indented impressions, and ink alterations. He described the process of creating non-genuine documents using cut and paste methods and demonstrated this by producing a document similar to Item D13 (OTST1). Mr Thorne found that Item D13 was printed using a colour inkjet printer despite appearing black and white, indicating it was produced with colour capabilities. The document D13 had physical folds and images of punch holes and fold marks, suggesting it was copied from a document that had been hole-punched. Mr Thorne noted that Item D13 appeared slightly enlarged compared to standard sizes, indicating possible borderless printing or enlargement during copying. He conducted open-source internet searches and found similar documents on Facebook groups, suggesting potential non-genuine origins for Item D13. Mr Thorne emphasized that while he demonstrated how non-genuine documents could be produced, he did not claim this was how Item D13 was made. His examination included ensuring chain of custody for Item D13 and comparison materials received for analysis. Mr Thorne's report contained opinions on how Item D13 compared to reference documents and detailed his findings on its production method. He highlighted the importance of understanding genuine versus non-genuine elements in documents to identify potential forgery or anachronisms. The testimony included discussions on the significance of punch holes for filing documents and how they relate to document authenticity. Mr Thorne's analysis aimed to provide clarity on whether Item D13 was genuine by examining its features against known standards and examples.

- [38] Under cross-examination he stated that there is no evidence to suggest that the paper of D13 is significantly younger than its purported age, but it cannot be excluded that it might be older. No cut and paste marks or internal discrepancies were found in Item D13 to indicate it is non-genuine. The Crest on D13's letterhead is from the 1996 design, differing from other genuine examples which use the 1976 design. If President Rene never used letterhead paper with the 1996 Crest during his tenure, it suggests Item D13 might be non-genuine. The possibility of a cut and paste manufacture using genuine materials cannot be excluded for Item D13. Mr Thorne's findings align with another expert, Ellen Radley, who also supports the authenticity of the signature on Item D13. The prosecution did not provide Mr Thorne with certain documents or explanations he requested regarding presidential letterheads. Factors affecting paper aging include humidity, heat, light exposure, and paper

composition; these factors were considered in analysing Item D13. A discrepancy exists due to the use of the 1996 Crest on D13 when other documents from President Rene's tenure use the 1976 crest. Mr Thorne produced several demonstration charts comparing signatures and crests to assess authenticity. The testimony includes discussions about potential document manipulations like folding patterns and foxing marks indicating age. The defence raised concerns about not being provided with certain comparator documents and reports during the examination process.

[39] Mr Thorne emphasizes that his conclusions are based on the briefing note and information supplied by the prosecution, acknowledging that inaccuracies in that information could affect his findings. He discussed his examination of multiple documents, noting that he did not receive original wet ink documents with the 1996 Crest, but rather copies with signatures and crests that may not be confirmed as genuine. Mr Thorne pointed out inconsistencies and similarities in the crests and signatures, indicating that some documents show the 1996 Crest, while others display the older 1976 Crest used concurrently. He expressed a desire to perform detailed forensic examinations, which were limited in Court due to equipment constraints. He also highlighted that some documents were seized from locations not under his direct control, raising questions about their provenance. Furthermore, Mr Thorne states that the prosecution had not provided him with certain relevant documents, including examples of President Rene using the 1996 Crest, which could influence his independent assessment. He discusses the differences in printing methods, signatures, and document features, and affirms that, based on his examination, some letters bearing signatures from President Rene could be genuine, though he emphasizes the need for further detailed analysis for definitive conclusions.

[40] Mr Thorne was questioned about the authenticity of documents, specifically focusing on signatures and letterheads. The discussion centred on whether the 1996 Crest was in use during the time of the documents in question. Mr Thorne confirmed that forensic indicators were consistent with the document being genuine but acknowledged the possibility of forgery. The prosecution's request for comparison documents included original presidential letterheads and signatures from around 2003. There was a lack of sufficient original documents provided for comparison, with only two originals initially received. Mr

Thorne requested further samples of letterheads with the 1996 Crest but did not receive them from the prosecution. Communication issues were highlighted between Mr Thorne, the UK National Crime Agency (NCA), and Seychelles authorities regarding document procurement. The NCA described the case as urgent and critical, affecting communication timelines and expectations. Mr Thorne's analysis included examining printing techniques and physical characteristics like rust marks and paper folds.

- [41] According to the witness, Item D13 shows signs of aging such as discoloration, foxing, and ragged edges. Despite these signs of aging, it is possible that the document was created more recently using old paper. The letterhead on the copy permission paper matches the design of other documents from the same period, but it cannot be confirmed if it was transposed from another document. The witness, Mr Thorn, cannot definitively determine whether the copy permission paper was created years ago or more recently. Mr Thorne requested comparable documents from the office of the president of Seychelles to verify features like letterhead and signatures. There were discussions about email communications between Mr Thorn and the prosecution regarding document requests and responses. Mr Thorn mentioned a change in the national Crest occurred in 1996 based on information that the new crest was prescribed in the National Symbols Act. The Court allowed Mr Thorn to express his impression that efforts were being made to locate requested documents.

Submissions of Learned counsel for the 1st Accused

- [42] Mr Lewis argues that the admissibility of a document depends on its relevance and compliance with statutory or common law rules. He emphasizes that authenticity should be determined at the main trial, not during a *voire dire*. The defence presents multiple purposes for introducing document D13, including supporting the state of mind of the accused and proving truth of contents. Mr Lewis asserts that if a document is relevant, it should be admissible unless it violates specific legal rules. The defence claims that D13 is an official document signed by President Rene, granting permission for an armoury at Morne Blanc. Mr Lewis argues that authenticity is not a precondition for admissibility and should be assessed at the end of the trial. The Evidence Act's Section 14 is cited as a basis

for admitting documentary evidence if preconditions are met. Bernadette De Commarmond's testimony supports the authenticity of D13, stating she typed it under President Rene's direction. The prosecution challenges the document's authenticity, suggesting it may be a forgery. Mr Lewis contends that the prosecution must disprove the document's authenticity to the criminal standard.

- [43] The defence argues that D13 serves as evidence of lawful authority or reasonable excuse under Section 44B of the Firearms Act. Mr Lewis highlights that all forensic indicators are consistent with D13 being genuine, with no evidence of forgery found. The defence presents evidence from multiple witnesses recognizing President Rene's signature on D13. Mr Lewis points out that documents like D13 were not typically filed in the Cabinet Office due to their classified nature. The defence argues that missing documents from Mont Blanc could explain why D13 wasn't found there by authorities. Mr Lewis suggests alternative routes to admissibility, including judicial notice and Section 1 of the 1845 Evidence Act. The defence challenges any inference of forgery based on D13's late production, citing explanations from Mr Valabhji and others. Mr Lewis emphasizes that authenticity issues should be resolved by considering all evidence at trial, not just *voire dire* findings.
- [44] The defence maintains that D13 was in possession of legal counsel and not disclosed earlier due to mistrust in authorities. Mr Lewis argues against equating admissibility with authenticity, stating they serve different purposes in legal proceedings. The prosecution's failure to find a copy of D13 in certain locations does not prove its non-existence or forgery, according to the defence. Mr Lewis asserts that forensic expert testimony supports the genuineness of D13 without indicating forgery. The defence contends that any burden on them regarding authenticity should only require raising an evidential issue, not proving it conclusively. Mr Lewis concludes by summarizing various legal arguments and evidence supporting D13's admissibility and authenticity claims.
- [45] In his reply to the submission of the prosecution Mr Lewis further added that the primary issue discussed is the difference between evidential and legal burdens in determining the authenticity of a document, with the evidential burden on the defence and the legal burden remaining on the prosecution. Mr Lewis argues that admissibility is based on relevance,

not authenticity, and that authenticity is a trial issue to be determined at the end. Section 14 of the Evidence Act allows documentary hearsay to be used as truth if preconditions are met, requiring a *voire dire* for authenticity. He emphasizes that once some evidence of authenticity is presented, the burden remains on the prosecution to prove beyond a reasonable doubt that it is not authentic.

- [46] Mr Lewis critiques his opponent's misunderstanding of witness testimony and argues that Bernadette De Commarmond was a reliable witness whose statements were misinterpreted. The defence contends that Section 16 allows for copies of documents when originals are lost, countering claims about missing original documents. Mr Lewis refutes claims of forgery by highlighting inconsistencies in the prosecution's arguments and lack of evidence supporting forgery allegations. The discussion includes references to legal precedents and statutory provisions, such as the Case of *Wayte* and the UK Evidence Act 1845, which it submitted support admissibility without *voire dire* on authenticity.

Submissions of Learned counsel for the 2nd Accused

- [47] Ms Scott adds six points to the submissions, adopting Mr Lewis's arguments. The Republic's objection to a document was based on authenticity, not forgery. The prosecution never asserted D13 as a forgery during submissions or cross-examinations. Authenticity should not bar admissibility; it is determined in the main trial. Absence of authorization is for the prosecution to disprove once raised. Mr Thorne's evidence did not require forensic analysis for genuine features of letters. Forensic comparison of crests on documents would not prove or disprove authenticity. Lack of forensic comparison is due to the Republic's own actions and does not alter the case. She further submitted that Mr Thorne's mock-up OT ST1 could not have been created in 2003 due to content availability. OT ST1 was admitted as an obvious forgery during cross-examination by Ms Scott. No superimposable signature was found on D13, supporting its authenticity. She stated further that spelling of "armory" in D13 matches independent SDF emails, countering prosecution claims. Evidence comparing foxing on D13 with clean copies is irrelevant without knowing copy dates. Exhibit D7, a similar aged document from the same house as D13, shows similar

foxing marks. Ms Scott emphasizes comparing like with like for forensic value in age marks on documents.

- [48] She submitted that the Republic did not provide grounds for disputing document authenticity during proceedings. Ms Scott argues that absence of authorization is an element of the offense for prosecution to disprove. Mr Thorne accepted that his mock-up OTST/1 would be easily debunked by experts. The prosecution's reliance on US spellings in cross-examination is deemed a red herring by Ms Scott. Mr Thorne agreed that no two signatures are absolutely identical, supporting authenticity claims for D13. Ms Scott highlights that further forensic comparison would be neutral in determining authenticity. The absence of a superimposable signature on D13 is consistent with it being genuine. Exhibit D7 provides a fair comparison for age marks due to its similar conditions and age as D13. Ms Scott concludes her additional submissions without further assistance needed from the court.

Submissions of the Prosecution

- [49] Mr Thatchett argues about the admissibility of a document purportedly signed by President Rene, questioning its authenticity. A *voire dire* was conducted to determine the document's authenticity, with the burden of proof on the defence. The defence relied heavily on Bernadette De Commarmond's testimony, which Mr Thatchett claims is unreliable. Bernadette initially confirmed typing and witnessing the signing of the document but later contradicted herself under cross-examination. Mr Valabhji testified that the document was unsigned when first given to him and was signed in front of him by President Rene. Mr Thorne's forensic analysis suggested that D13 might have been manufactured using old paper and modern printing techniques. The report highlighted discrepancies such as punch holes and fold marks inconsistent with Mr Valabhji's testimony. It is argued that the defence failed to establish a clear chain of custody for D13 from its alleged recovery to court submission. Mr Thorne found no evidence of cut and paste but did not rule out the possibility of document fabrication. The defence did not produce an expert report or call witnesses to verify the document's authenticity. The Crest used in D13 differs from those on genuine documents from President Rene's era, raising further doubts. Mr Thorne noted

that even subsequent presidents used pre-1996 Crests, contradicting the defence's claims about D13's Crest.

- [50] The defence suggested multiple purposes for introducing D13, but admissibility remains the primary hurdle. Section 44(b) of the Firearms and Ammunitions Act was cited by the defence but deemed inapplicable by Mr Thatchett. The defence referenced UK law and past cases, but Mr Thatchett argued these were not applicable or distinguishable from this case. Section 12 of Seychelles' Evidence Act was discussed, with emphasis on existing local provisions over UK law references. Section 42 of Seychelles' Interpretation and General Provisions Act outlines how presidential acts can be authenticated, countering reliance on UK law by the defence. He argued that Public documents can be proved under Section 7 of Seychelles' Evidence Act without needing to call their maker. The prosecution contends that no steps were taken by the defence to prove an original existed or was lost.
- [51] He went on to submit that allegations were made about a forensic expert analysing D13 without clear evidence or chain of custody presented in court. Mr Thorne's report indicated aging features inconsistent with Mr Valabhji's storage claims for D13. The prosecution challenges the reliability of witnesses who confirmed signatures without witnessing the signing event. Discrepancies in font size and printing technology were noted in Mr Thorne's analysis, suggesting possible document manipulation. The prosecution maintains that without forensic examination, there is no certainty regarding Crests on documents produced by rebuttal witnesses. Ultimately, Mr Thatchett argues that the defence has not met its burden to prove D13's authenticity for admissibility purposes.

Analysis and determination

The court will first address certain procedural issues of law that has arisen before proceedings on the merits.

Procedural issues

The procedure of voire dire adopted for authentication

- [52] Mr Lewis submitted that authenticity should be determined at the main trial, not during a *voire dire*, something that receives the support of Ms Scott. He further submitted that authenticity is not a precondition for admissibility and should be assessed at the end of the trial and that provided “some evidence” adduced shows relevancy of Item D13, it should be admitted, with the issue of authenticity being determined together with totality of the facts of the case. This submission is being objected to by the opposing party.
- [53] The Court has thoroughly considered the issues addressed by both sides regarding this specific objection and has determined as follows. In the context of Seychelles law, the concept of a “trial within a trial” has to be applied when the authenticity of evidence, such as a document purportedly signed by a deceased person, is challenged. This process allows the Court to assess the admissibility of that evidence without disrupting the main trial’s proceeding. In the other trial, the main issue is the criminal liability of all the accused. Allowing the procedural issue to be tried during the main trial, instead of focusing on the elements of the offences charged, would divert the Court’s attention away from its primary purpose during the main trial.
- [54] Secondly, the Court notes that similar objections were not raised by counsel when this Court previously adopted such a procedure during the prosecution’s case with respect of a prosecution document, albeit that it was not directly relevant to their client’s case. Specifically, during that phase, objections were made regarding the authenticity of a document purportedly created by an individual whose credibility was also questioned. This inconsistency of approach raises concerns about potential double standards in how procedural fairness is perceived and applied. The principle of consistency in legal procedures is paramount in ensuring fairness and justice in judicial proceedings. The failure to raise an objection when similar procedures were utilized undermines the credibility of the current objection. If one party accepts, even by implication, certain procedural mechanisms when they are advantageous but contests them when they are not, it creates an appearance of opportunism rather than adherence to principles of justice.
- [55] Thirdly, the Letter of Authorization is central to the defence strategy for the first two accused individuals. Its authenticity directly impacts their claims and defences against the

charges brought forth and is therefore strongly relevant to their defences and reciprocally to the prosecution. Given that the alleged author of the letter has since passed away, and that only a copy of the original is available, establishing its factual accuracy therefore becomes very critical for the Court, particularly as it is common knowledge that its purported maker has passed away. Accordingly, allowing this document to be introduced into evidence without prior meticulous examination of a *voire dire* risks depriving both parties—and ultimately, the court—of essential information necessary to make an informed determination regarding its validity. Conducting this trial within a trial therefore enables an independent assessment of the evidence, including expert opinions, related to document authenticity, especially through the test of cross-examination, without prejudicing either party's case. This concentrated focus on Item D13 would not have been possible if its relevancy was to be determined together with all the other evidence, most of which probably had no relevancy to this item if it was summarily adduced as proposed by the defence.

- [56] Upon receiving a challenge to the authenticity of the document, the Court could have done one of three things. First, it could hear the legal submissions of parties on the authenticity of the Letter of Authorization, and then take a decision with regards to its authenticity based on “some evidence”, subsequently considering its relevance and weight in its judgment. The Court is of the view that this procedure would not have been adequate because at this juncture the only evidence would have been that of the accused's testimony in examination-in-chief only, with no opportunity for a rebuttal evidence from the prosecution.
- [57] Secondly, the court could have let the Letter go into evidence based on its relevant, relying on the numerous “purpose” grounds suggested by the defence (subject to arguments on its content), and determine the issue of authenticity as part of its final consideration of the case at the judgment stage. This option suffers the same faith as the first option. Moreover, a further deficit in both options is also self-evident, given that the prosecution, having been denied the opportunity to adduce vital evidence regarding the authenticity or relevancy of the document, it can only apply for rebuttal evidence under section 185 of the Criminal Procedure Code. This carries the risk of the Court ruling against it on the ground that the issue does not arise *ex-improviso* and whilst at the same time Item D13 having been

adduced as evidence. To have itemized it, subject to the prosecution discretion to seek a rebuttal would have, on the other hand, left this important defence document at the mercy of the prosecution.

[58] The third option and the one that the Court finds to be beneficial to the right of fair hearing of all parties, whilst allowing the document to stand the scrutiny of testimonial evidence, was to conduct a trial within a trial. A decision taken by the Court after an assessment as to whether the document is relevant to any factual issue, which is clearly the case here.

[59] Accordingly, this Court finds no merits in the argument of the defence that *voire dire* was not procedurally correct. To the contrary, this Court is of the view that it was the best legal avenue in the circumstance.

[60] Authentication vs admissibility

[61] At trial, a document can be put into evidence to prove that it exists and/or to prove its contents. To prove that a document is real (to “authenticate” it), the person who created the document can be called as a witness to give evidence about it. Alternatively, the document’s authenticity can be admitted. The common law rule of admissibility requires that before a document is received in evidence its authenticity must be shown by evidence extrinsic to the document itself. The indications or features on the face of the document alone are not regarded as sufficient to establish its authenticity. In this case the Letter of Authorization was made by a person who is now deceased and hence cannot be called to produce it, while its authenticity is being challenged. Hence, its provenance has to be proved through evidence other than that of its maker. To this extent, I also reject the defence’s submission that the test for a document’s authenticity cannot be a separate test from the test of the hearsay rule.

[62] It is trite law that if an out-of-court document, such as Item D13, is introduced into evidence to prove the truth of its contents, it will be considered hearsay, and therefore not admissible, unless it falls within one of the exceptions to the hearsay rule. However, admitting the document for the truth of its contents under an exception to the hearsay rule is secondary to first establishing that the document is what it purports to be. If the very existence of a

document is being questioned, any question as to whether the content is true becomes irrelevant under any exception to hearsay. At this juncture of the trial, we are still at the stage of proving that the document is real or genuine. It is principally for this reason that I stopped cross-examinations on its content in this *voire dire*, as its content is irrelevant at this stage. Hence, proving the genuineness of the document should not to be confused with the admitting the truth of its content.

- [63] Moreover, the use of documents as evidence is covered by the “best evidence” rule, which generally requires that the original document be submitted in order to prove its contents. If the original document cannot be produced, the party producing it may explain to the court its reasons for submitting a copy, such as the original being lost, or destroyed, or held by another party. Therefore, the rule requires any party seeking to prove the content of a document to produce the original document before the court through the testimony of its author. The original document can be presented before the Court through the author, who created the document and can verify it (*G. Subbaraman vs. State*, 2018 Cri. LJ 2377 (Mad)).
- [64] In this case the best evidence rule is relevant for both the issue of authentication and the content of D13, for both parties. The defence argues that only a copy can be produced since the original was kept by the maker and its original is not available; and therefore a copy should be admissible. It also argues that the original copy of D13 which was kept at Morne Blanc is not available. The prosecution alleges that the fact that it is a copy is a further sign of fabrication. It is for these reasons, evidence was led by the 1st accused regarding the whereabouts of the original document, and in the course of the *voire dire* the prosecution cross-examined the accused on the proof of genuineness of the copy.
- [65] As I have stated above the common law rule of admissibility requires that, before a document can be admitted into evidence, its authenticity must be shown by evidence extrinsic to the document itself. The indications on the face of the document alone are not regarded as sufficient to establish its authenticity or relevance. In many commonwealth jurisdictions, such as New Zealand the operation of the rule is seen in the requirement that documents that are not part of an agreed bundle must be introduced through a witness who testifies to the authenticity of the document (Eichelbaum (ed), *Mauet’s Fundamentals of*

Trial Techniques (NZ ed, Oxford University Press, Auckland, 1989) 152; Halsbury's Laws of England (4 ed) vol 17, paras 124-126; and for the US position see McCormick on Evidence (Strong, 4 ed, West Publishing, St Paul, Minn 1992) vol 2, 34-5.) The rule imposes, as a precondition for admissibility, a requirement that goes beyond demonstrating relevance.

- [66] The common law has a number of rules concerning proof of execution and attestation of private documents, as well as rules for proving handwriting and signatures. These are specific aspects of authentication, around which special rules have developed. The authorship as well as due execution and attestation of private documents is often of importance. These matters may be proved in several ways, including: by the admissible testimony of the writer; by the admissible hearsay statement of the writer; by the testimony of a person who saw the document written or signed; by the testimony of an expert witness based on a comparison between the handwriting in the document and a handwriting sample; by the testimony of a witness familiar with the handwriting of the writer; by use of the presumption of authenticity of ancient documents produced from proper custody. In this case we have seen parties adduce proof in three ways, namely: by testimony of executorship; by testimony of familiarity with the signature; and testimony of an expert witness.
- [67] Handwriting experts and witnesses familiar with a person's handwriting may also give opinion evidence that a document was written or signed by that person. This is known as expert comparison evidence of handwriting. Under the law, evidence may be offered comparing the document in question with one known to have been written by the relevant person. This comparison is typically conducted by a handwriting expert, as it was done in this case, whose evidence is often helpful to the court. In *R. v. Megill* (Ont CA, 2021) the Court of Appeal of UK set out the ways in which handwriting may be proven.
- [68] This Rule would also apply to public documents, authenticity of which are being questioned and of which there is no copies or other originals available on Government or public records, such as the one before the Court. The test of admissibility under the head

of public document of which its maker is deceased is therefore subject to the common law rule on the proof of execution in order to prove its authenticity.

[69] Accordingly, contrary to the submissions of both defence counsels, I find that the process of proving the authenticity of the Letter of Authorization prior to decision being made on its content is trite law in this jurisdiction.

[70] In this jurisdiction, whilst the prosecution has a duty of disclosure before the start of the trial, the defence does not bear a similar duty, exception being to the defence of alibi, which if it is being preferred, requires a notice of alibi to be given to the prosecution. Hence, occasionally and as it has happened in this case, the prosecution would become aware of a relevant defence document only upon attempt being made to introduce it in the defence case. This affords the prosecution little opportunity to independently assess the document's genuineness, in whole or part, or to raise any issues with the defence in order to consider its legal position in relation to the document, this makes establishing authenticity of documents even more significant.

Expert Evidence

[71] At common law, proof of handwriting could be established through testimonial or circumstantial evidence. For example, a witness might testify that they observed the act of writing, or they might give evidence of the circumstances leading up to or pointing back to the act of writing. Similarly, a qualified witness may testify regarding the style of the handwriting, based on a comparison between known sample and the disputed writing (VII *Wigmore on Evidence* (Chadbourn Rev. 1978), §1991, at pp. 252-57).

[72] Opinion evidence concerning handwriting is also admissible at common law if the witness has had sufficient opportunity to become familiar with the handwriting of the person in question. In general, it seems that the level of familiarity required is low (Cross (Mathieson) para 20.16). As to the testimony of the actual execution by the maker of the document, the common law provides that where a witness sees a person sign a document in a particular name, that is sufficient evidence it was signed by the relevant person, unless, perhaps, the name is very common (Cross (Mathieson) para 20.15); and see *Jones v Jones*

(1841) 9 M & W 75; 152 ER 33; and Roden v Ryde (1843) 4 QB 626; 114 ER 1034)).

However, it is trite law that the weight given to such opinion evidence is less than if the opinion had come from an expert.

- [73] The common law also permits the trier of fact, without the aid of experts, to compare handwriting samples when a proved or admitted standard used for comparison with the disputed writing was already properly admitted as evidence for other purposes. No document was admissible merely as a standard of comparison with the disputed writing (R. v. Abdi (1997), 1997 CanLII 4448 (ON CA), 116 C.C.C. (3d) 385 (Ont. C.A.), at para. 15, citing VII *Wigmore on Evidence* (Chadbourn Rev. 1978), §§1992-1994, at pp. 257-64)).

- [74] However, often times the trier of fact is allowed to rely on expert opinions when making a decision on questioned documents. The provisions of the Seychelles law that would allow the admissibility of the truth of such expert evidence is found in the Evidence Act:

17. Expert opinion

(1) In any trial a statement, whether of fact or opinion or both, contained in an expert report made by a person, whether called as a witness or not, shall, subject to this section, be admissible as evidence of the matter stated in the report of which direct oral evidence by the person at the trial would be admissible.

- [75] Expert opinion evidence is admissible where it will be of assistance to the court by providing the information, which is likely to be beyond a judge's or a jury's knowledge and experience. However, it must also be evidence that gives the court the help it needs in forming its conclusions. The role of the expert is to give their opinion based on their analysis of the available evidence. The Bench or jury is not bound by that opinion but can take it into consideration in determining the facts in issue. If an expert seeks to offer an opinion that is not relevant to the issue in the case, or concerns a matter of common sense on which the jury can reach its own conclusions, then the opinion of an expert will be inadmissible. For instance, in R v Turner (1975) 60 Cr App R 80 the issue as to the credibility of a witness was a matter for the jury. Psychiatric evidence as to how an ordinary person who was not suffering from a mental disorder would react to a given situation was held to be inadmissible.

- [76] The expert must also have relevant expertise. The individual claiming expertise must have acquired, through study or experience, sufficient knowledge in the relevant field to render their opinion of value. The court is concerned that evidence should not be given by experts who are, patently unqualified or little more than ‘enthusiastic amateurs. More commonly, it is vital to ensure that an expert does not give evidence in relation to matters outside of their expertise. In R v Clarke & Morabir [2013] EWCA Crim 162 an expert in fractures and bone disease gave an opinion as to cause of death, in circumstances where the Court of Appeal held that he “*did not have the experience or expertise to consider all of the causes of death*” in the way that a Home Office registered forensic pathologist would. The Court is satisfied that the Handwriting Expert in this case, Mr Thorne, possess sufficient expertise and is sufficiently qualified in his field of expertise.
- [77] However, if there is evidence that a witness, including that of an expert, has been discredited, the court may need to examine this undermining material to determine whether the witness’ testimony can still be relied upon, or whether the witness is so discredited that the evidence should be ruled inadmissible.
- [78] The expert must be able to provide impartial, unbiased, objective evidence on the matters within their field of expertise.
- [79] The reliability of the opinion evidence will also take into account the methods used in reaching that opinion. The expert must provide the court with the necessary scientific criteria against which to judge their conclusions. The methods of analysis used by the expert was not contested and are taken as reliable method by the Court.
- [80] Accordingly, this Court has to consider these principles before relying on the expert evidence to assist in determining the provenance and authenticity of Item D13.
- [81] In this case the handwriting expert, Mr Thorne, gave evidence that was clearly outside the knowledge and experience of the Court and therefore his forensic testimony was relevant and valuable. His expertise was also admitted by parties, and his methods and protocol of examination were not put into issue. The independence of Mr Thorne was not put directly in issue by the defence, although he admittedly failed to refer to some of the defence

material in his laboratory examination. Mr Thorne, on the other hand, admits that, had the materials been made available, he would have readily referred to them. Accordingly, his independence and professionalism remain unimpeachable.

[82] There was also no conflict of interest in this case. Mr Thorne testified that he received instructions from the National Crime Agency of the United Kingdom, and therefore, the fact that the Seychelles case was assigned through this agency does not raise any conflict of interest.

[83] Accordingly, I find his evidence highly reliable, and it will greatly assist the Court in reaching its decision, although the Court is not bound to follow it in whole or in parts. I also warn myself of the dangers of an over-reliance on expert evidence without giving due consideration to the significance of the other evidence in the case – this is a factor that the Court needs to consider in coming to its determination.

[84] The Court further finds that, although the defence handwriting expert did not produce her report and did not testify, despite having the time and opportunity to do so during the defence case, the content of her report was extensively referred to during the cross-examination and re-examination of the prosecution expert witness, some of which was admitted to by prosecution expert. Accordingly, to that extent, the content of her report is also relevant.

Burden and standard of proof

[85] Much has been said regarding who bears the burden of proof and what weight of that burden in this *voire dire*. Mr Lewis contends that the prosecution must disprove the document's authenticity to the criminal standard. The defence contends that any burden on them concerning authenticity should only require raising an evidential issue, not proving it conclusively. On the other hand, the prosecution argues that the burden of proof rests with the defence. This is a pivotal issue that needs to be carefully analysed by the court.

[86] The cornerstone of this legal framework is the presumption of innocence, which is enshrined in Article 19(2) (a) of the Constitution of Seychelles. This principle dictates that an accused person is considered innocent until proven guilty by the prosecution. It is not

merely a procedural formality but a substantive right that shapes the entire criminal trial process. This presumption places the ultimate legal burden squarely on the prosecution to prove every element of the offence charged, and consequently, the accused's guilt.

- [87] Flowing directly from the presumption of innocence is the prosecution's comprehensive burden of proof. In any criminal trial, the prosecution must establish the guilt of the accused beyond a reasonable doubt. This is the highest standard of proof in law, reflecting the gravity of depriving an individual of their liberty. This general principle is a universal concept in adversarial legal systems. It aligns with the well-settled principle that, in a criminal context, the prosecution asserts the accused's guilt and therefore bears the burden of proof.
- [88] When the defence introduces a document that, if authentic, could create a reasonable doubt about the accused's guilt or support a defence, this directly challenges the prosecution's narrative and its ability to meet the overall burden of proving guilt beyond a reasonable doubt. If the prosecution wishes to neutralize the impact of this potentially exculpatory or doubt-creating document by claiming it is not authentic, it is, in essence, asserting a new fact – the fact that the document is non authentic. This assertion becomes critical to the prosecution's case if the document, particularly where acceptance of the document's authenticity would undermine a finding of guilt, as in this case. Hence, aligning it with its burden of proof.
- [89] The reason why the burden rests with the prosecution to prove the document's *non-authenticity* in such circumstances, rather than the defence having to prove its *authenticity* beyond a reasonable doubt, is a direct consequence of the presumption of innocence and the prosecution's unyielding overall burden. If the defence were required to prove the authenticity of an exculpatory document to a high standard, it would effectively dilute the presumption of innocence. The accused would be in a position of having to prove elements that could lead to their acquittal, rather than the state having to prove accused's guilt. The prosecution's duty is not just to present evidence of guilt but also to dispel any reasonable doubt. A document relied upon by the defence, if potentially authentic and exculpatory, inherently raises the possibility of such a doubt. To secure a conviction, the prosecution

must eliminate this doubt. Proving the document's non-authenticity is the means to achieve this.

- [90] The standard of proof required for the prosecution to demonstrate that the document is *not* authentic is "beyond a reasonable doubt". This high standard is maintained because the issue of the document's authenticity, in this context, is directly linked to the ultimate question of the accused's guilt or innocence. If the prosecution fails to prove, beyond a reasonable doubt, that the document is not authentic, then the possibility remains that the document *is* authentic. If an authentic (or potentially authentic, due to the prosecution's failure to meet its burden) document supports the accused's innocence or creates reasonable doubt about their guilt, the prosecution cannot satisfy its overall burden of proving guilt beyond a reasonable doubt.
- [91] The defence, in contrast, bears only an "evidential burden" to raise a reasonable doubt concerning the document. This means the defence must introduce the document and provide sufficient grounds or context to suggest that it is *prima facie* relevant and could be authentic, thereby making its authenticity a live issue in the trial. The defence is not required to prove the document's authenticity to the same rigorous standard as the prosecution must prove guilt (or, in this specific instance, non-authenticity). Once the defence meets this evidential burden – essentially putting the document into play as a credible piece of evidence worthy of consideration – the legal burden then falls upon the prosecution to disprove its authenticity if it wishes to nullify its exculpatory effect. If the prosecution cannot discharge this burden, the document (and the doubt it creates) remains for the court's consideration in assessing the overall guilt of the accused
- [92] One argument raised by the defence in their submissions is that placing these burdens on both the prosecution and the defence, through a *voire dire* would, in effect, displace the ultimate burden of proof at a premature stage of the proceedings, as this should be decided at the end of the case. I consider this argument to be misguided. This case will ultimately be decided on the totality of the evidence, regardless of whether Item D13 is ultimately admitted or not. While the document can be consequential, its admissibility or non-admissibility at this stage, does not affect the principle that the prosecution must prove its

case beyond a reasonable doubt at the end of the trial. The Court is therefore of the view that the *voire dire* proceedings do not shift or diminish the prosecution's ultimate burden of proof.

- [93] In fact Professor Rosemary Pattenden, in her Paper "*Authenticating 'Things' in English Law: Principles for Adducing Tangible Evidence in Common Law Jury Trials*", produced by the defence, makes a compelling point when she writes the following:

The legal admissibility of a 'thing' (relevance aside) may yet falter because of an exclusionary rule or discretion. Where there is both a legal admissibility and an authenticity issue, different considerations may apply to each issue. Consider a letter allegedly written by someone who has disappeared. It will satisfy the authenticity hurdle if there is some evidence of authorship and it bears on an issue in the case, but even so it will be inadmissible if offered to prove what it states unless a hearsay exception applies. Section 116 of the Criminal Justice Act 2003 admits a written statement by an identified, competent declarant who is unable to testify. Preconditions include that the witness is dead or cannot be found. The judge must decide whether the relevant preconditions are satisfied before admitting the letter. Before this happens, the opponent must be given the opportunity to present contrary argument and evidence and cross-examine the proponent's witnesses and in reaching a decision the judge will reflect on the credibility and weight of the evidence from both sides. If the trial judge is not persuaded to the requisite standard of proof that witness testimony is unavailable, the document is inadmissible vis s. 116.

- [94] Hence Mr Lewis submissions on this issue makes perfect sense.

Defence submissions – purposes of Item D13

- [95] Mr Lewis argues that the admissibility of a document depends on its relevance and compliance with statutory or common law rules. In line with this, the defence presents multiple purposes for introducing document D13, including supporting the state of mind of the accused and proving truth of contents. Mr Lewis asserts that if a document is relevant, it should be admissible unless it violates specific legal rules. Hence, it is his view that the issue of authenticity of Item D13 cannot be divorced from its relevance.

- [96] As the Court has previously stated, it does not share this opinion as the authenticity, which relates to the very truth of the existence or provenance of a document cannot be decided together with its content or the truth of its content. The latter relates to the hearsay rule, which is clearly a secondary stage that has to be considered after consideration has been given on the genuineness of the document. The consideration of relevance involves a factual assessment of the document in the light of the exceptions to the hearsay rule, something that cannot be done if, as in the case of Item D13, the very existence of the document is being questioned.
- [97] The first purpose suggested by Counsel is that the document is supporting evidence of the state of mind of the first accused. He submitted that the accused believed the document to be true and believed it to be signed by President Rene. He argues that this supports the defence that the accused did not possess in his mind a terrorist purpose or a purpose prejudicial to the public. In those circumstances, Counsel contends, no exception to the hearsay rule is engaged here because the document's purpose is to demonstrate the accused's state of mind. Counsel is thus linking the issue of the document's genuineness to its use as evidence of the 1st accused's non-culpable state of mind. In the view of this Court, this line of argument is premature, as we are still very far from events that may give rise to this argument. We are still at the stage of deciding whether the document, which may or may not have given rise to this state of mind, is real or not.
- [98] The third purpose advanced by Learned counsel to establish relevance of Item D13 is a statutory one, founded in section 14 of the Evidence Act. Counsel relied of section 14(1) and (2), which states the following:

"14. Evidence from documentary record

(1) Subject to this section, a statement contained in a document shall be admissible in any trial as evidence of any fact stated therein of which direct oral evidence would be admissible if

(a) the document is or forms part of a record compiled by a person acting under a duty from information supplied by a person, whether acting under a duty or not, who had, or may reasonably supposed to have had, personal knowledge of the matters dealt with in that information; and

(b) the person who supplied the information

- (i) is dead or by reason of his bodily or mental condition unfit to attend as witness;*
- (ii) is outside the Republic and it is not reasonably practicable to secure his attendance;*
- (iii) cannot be identified and all reasonable steps have been taken to identify him;*
- (iv) his identity being known, cannot be found and all reasonable steps have been taken to find him;*
- (v) cannot reasonably be expected, having regard to the time which has elapsed since he supplied or acquired the information and to all the circumstances, to have any recollection of the matters dealt with in that information; or*
- (vi) having regard to all the circumstances of the case, cannot be called as a witness without his being so called being likely to cause undue delay or expense.*

(2) Subsection (1) applies

- (a) whether the information contained in the document was supplied directly or indirectly, but if it was supplied indirectly, only if each person through whom it was supplied was acting under a duty; and*
- (b) whether or not the person compiling the record is himself the person by whom the information is supplied."*

[99] It is submitted that once admitted under this statutory exception to the hearsay rule, the document is admitted for the truth of its content. Counsel submitted that the evidence given by the Secretary of President Rene proves all the prerequisite of section 14, and hence item D13 should be admitted as this purpose has been established. Again, this Court finds that counsel misses the critical point as the Court cannot go into a statement contained in a document when the very authenticity of that document is in dispute. This argument for admissibility is therefore premature.

[100] The second purpose for which Item D13 as adduced—namely, as written evidence supporting the first accused's oral evidence that the late President Rene gave him permission for him to have an armoury at Morne Blanc—also suffers from the same faith.

[101] The other purpose advanced relates to Item D13 being evidence in writing that, according to the defence, could grant an exemption granted by a sitting President from the requirement of a license, thereby creating lawful authority for the possession of firearms and ammunition under the Firearms and Ammunition Act. It is argued that it would give

lawful permission to the 1st accused to have an Armoury at Morne Blanc. This submission, however, again invites the Court to make a factual determination on the content of a document and its legal effect, when the very existence and authenticity of the document are in question. The Court is of the view that this cannot be done at this stage. The same reasoning will apply to the arguments with respect to section 1 of the Evidence Act 1845 regarding certificate, official or public document that comes under section 1 of the Act.

[102] The defence further relies on the authority of R v Ernesta & Ors (CO 22 of 2016) [2017] SCSC 838 (20 September 2017) where it was held by Burhan J:

“[8] In the case of R v Wayte 1983 76 Cr App R 100, the Court gave the following guidelines on the procedure to be adopted when it was sought to produce in evidence photostat copies of documents, in cases where admissibility was in question.

(a) Documents should not be handed to nor seen by the jury until questions of admissibility have been determined.

(b) Warning should be given to Counsel in advance so that they may have a fair chance of considering admissibility.

(c) Where the accused is unassisted by counsel the guidance of the Court should be sought before the document is put before the jury.

(d) On exceptional occasions there would be a trial within a trial on the issue of admissibility.

[9] The Court similarly held that the photostat copies of documents were admissible as evidence where they were relevant and the original had been lost. The fact that the documents were merely copies went to the weight and not admissibility of the document. The genuineness or authenticity of the document (includes alleged fabrication of a document) is left to the Jury or Judge to decide at the end of the case on considering the evidence led.”

[103] From the above excerpt, it is abundantly clear to this court that the Learned trial judge relied on the case of *R v Wayte* as authority regarding the procedure to be followed when the admissibility of a photostat copy of a statement under caution is in question. In this case, *Wayte* is not an authority in respect of admissibility of questioned document being relied upon by the defence. Moreover, the case of *Wayte* itself allows for the possibility for a *voire dire*, such as this one, to happen, though it notes that it would occur in rare case and goes on to state that ordinarily such matters would be left to the jury as the trier of fact, which in this case is a Judge.

[104] **The merits**

[105] This leads the Court to consider the evidence with a view to determine whether the prosecution has disproved the document's authenticity to the criminal standard. Mr Lewis's other submissions, which summarise various legal arguments and evidence supporting the admissibility and authenticity of Item D13; as well as the alleged lack of grounds to draw inferences from the facts of the case will also be address here. The same applies to Ms Scott's submissions regarding the absence of any clear allegation of forgery in relation to Item D13, the evidence with respect to the Presidential Crest, and Mr Thorne's mock-up exhibited as OTST/1.

[106] The prosecution adduced the evidence of Mr Thorne. He has extensive experience spanning over 31 years in forensic document examination, including handwriting comparison, printing analysis, and document authentication. His methodology involves both visual and microscopic examination, comparison of reference and questioned documents, and consideration of the contextual features such as paper aging, ink properties, and printing techniques.

[107] Mr Thorne examined Item D13 and provided a detailed analysis, including features such as signature consistency, paper condition, print quality, crests, fold marks, punch holes, and other physical and structural characteristics. The chain of evidence as to the circumstances that he came to analyse the item and prosecution comparator materials was not put into issue by the defence. The court will examine his testimony and report on the subject headings that has significant relevance to the case.

The Presidential Crest

[108] At the heading of Item D13 appears the Presidential Crest of the President of the Republic of Seychelles. Given that the entirety of Item D13 is in issue, the Crest was the subject of the prosecution expert's analysis.

[109] From the Court's examination of the expert's report, it is evident that the analysis proceeds through several stages to determine whether the Crest is consistent with the document's date and to consider the implications for the document's genuineness.

- [110] The expert initially examined the Crest on Item D13 and concluded that it represents the 1996 version of the Crest. This conclusion was based on specific visual characteristics observed in the Crest, namely the presence of five colour bands within the torse (the twisted roll of fabric shown supporting the crest); and the observation that the first of these bands is dark, rather than white. The document D13 itself is explicitly dated 12/11/2003 on its face. The expert found that the identification of the Crest as the 1996 version is consistent with the date of the document, 12/11/2003, as the 1996 version would presumably be in use at that time.
- [111] However, the expert's investigation did not stop at this initial consistency check. The expert proceeded to examine genuine letterheads that were reportedly used by President Rene at the purported time, as well as letterheads used by the two presidents who succeeded him, President Michel and President Faure. These genuine samples were provided to the expert by the Republic and were referenced as REF 1, 4, 6, 8, and 13. Upon examining the letterheads from President Rene's successors, President Michel and President Faure, the expert made a significant finding: only the 1976 Crest was being used on their genuine letterheads, even after the introduction of the "new one," which is understood to be the 1996 Crest. This finding led the expert to a crucial conclusion regarding the use of the 1996 Crest during President Rene's tenure. Based on the available evidence from the successor presidents' letterheads, the expert concluded that it is unknown as to whether the 1996 Crest was ever used in the Presidential Crest Letter paper during President Rene tenure.
- [112] The expert witness further testified that the copy nature of Item D13 is such that, even if no discrepancies are found, it does not prove that the document is genuine. He explained that the possibility of "cut and paste" manufacture where genuine materials have been used, cannot be excluded.
- [113] The expert then presented a conditional analysis regarding the genuineness of Item D13 based on this uncertainty. If it were definitively established that the 1996 Crest was never used on Presidential letterhead paper during President Rene's time in office, then the presence of the 1996 Crest on Item D13 would strongly suggest that Item D13 is non-genuine. Conversely, the expert stated that if it were found that President Rene did use

letterhead paper featuring the 1996 crest, and if that genuine letterhead was found to be identical in its Crest design and potentially other characteristics to the letterhead in D13, then there would be no discrepancy based on the Crest design alone.

- [114] Despite the importance of resolving this uncertainty, the expert further stated that they had requested additional samples of genuine Presidential letterhead paper specifically featuring the 1996 Crest from President Rene's tenure. However, these requested samples had not been provided to the expert. Consequently, the expert was unable to comment definitively on whether the 1996 Crest design actually came into use during President Rene's tenure. Furthermore, without comparable genuine versions of the 1996 Crest letterhead, the expert was also unable to comment on the genuineness or otherwise of the source of the letter within Item D13.
- [115] In a quest to show that indeed 1996 Crest was being used in President Rene tenure of office Mr Thorne was cross-examined on a number of documents purportedly signed by President Rene which showed that he also used the 1996 Crest.
- [116] In his court testimony Mr Thorne emphasized that he could only base his report on the materials provided to him and acknowledged that he did not have access to all relevant documents. The defence presented several documents purportedly showing the use of the 1996 Crest by President Rene, which Mr Thorne examined in court. Mr Thorne noted that while some documents appeared genuine, he needed more time and equipment for a detailed forensic examination. The defence argued that if genuine, these documents would negate any discrepancy regarding D13's use of the 1996 Crest and Mr Thorne accepted. Mr Thorne acknowledged that different letterheads were used over time, some with gold text and others in colour. The defence sought to establish that both 1976 and 1996 Crests were used concurrently during certain periods. However, Mr Thorne agreed that without a detailed comparison, he could not conclusively determine if D13 matched other genuine documents. The Court admitted several items as evidence for further examination but noted limitations due to lack of original documents and equipment for analysis. Ultimately, Mr Thorne acknowledged that based on what he had seen, it was plausible that the 1996 Crest was in use during the relevant period. The documents shown to the expert in cross-

examination by the defence, being items were introduced in evidence by witnesses for the prosecution as evidence in rebuttal.

- [117] Having assessed the totality of the evidence regarding the Crest, I ultimately find that there is a possibility that the 1996 version of the Crest was in use at the time that item D13 was pointedly made by the expert. The documents produced through evidence, along with the expert's testimony of the expert on them, albeit conducted not under laboratory conditions, nonetheless persuaded me that such a possibility exists. Accordingly, I find that this doubt operates in favour of the defence.
- [118] Moreover, to categorically assert that there could not have any possibility of President Rene using both versions of the Presidential Crest concurrently, following the enactment of the National Symbols Act, would not be reasonable. The possibility that he may have done so, either intentionally or unintentionally, cannot be ruled out. This is particularly so given that the custodian of the Cabinet records, Mr Moumou, does not rule out such possibility, and no exhaustive effort has been undertaken by the Republic to definitely rule out this possibility.
- [119] The Court also takes judicial notice of the fact that it takes a discerning eye to notice differences between the two versions of the Crest, which rests mostly in colour of the torse. A President, engaged in the highest affairs of the State, at any rate might not have been visibly concerned with such nuanced distinction.

The signature comparison

- [120] The court finds from the report that the expert was provided with comparison material containing nine known signatures of France Albert Rene. This material included four original ink signatures and five copy signatures. The expert found sufficient similarities among these nine signatures to be satisfied that they were all written by the same person, thus establishing them as reliable reference signatures for France Albert Rene.
- [121] The expert then compared the questioned signature on D13 to these established reference signatures. The comparison revealed a "*pictorial resemblance*" between the questioned

signature and the reference signatures, which the expert considered unlikely to have occurred by chance.

- [122] Further detailed comparison led the expert to find a “*wide range of similarities*” between the questioned signature and the reference signatures. Crucially, the expert found “*no significant differences*” that would suggest the questioned signature was not authentic. Additionally, the expert found “*no evidence of poor pen line fluency or other signs of tracing or simulation,*” which are often indicators of a forged signature.
- [123] Considering the nature of the questioned signature (it was a copy) and the expert’s assessment of the signature’s complexity as “*moderate,*” the expert concluded that his findings provide “*strong support*” for the proposition that the original signature from which the copy on D13 was made was indeed written by France Albert Rene, rather than by another person.
- [124] The expert also produced a demonstration chart (OTST/3) illustrating images of the questioned signature on D13 alongside images of the reference signatures of France Albert Rene for visual comparison.
- [125] Finally, the expert noted that after examining the provided reference signatures and signatures found through open-source internet searches, none of the France Albert Rene signatures were superimposable on the signature in D13, even when resized appropriately. This finding is relevant as superimposition can sometimes indicate tracing, which the expert had already ruled out based on pen line fluency.
- [126] The prosecution expert also did not find any evidence of cut and paste around the signature which may have been created by physical or digital collaging elements from different documents put together. He however subject this finding to his opinion on non-genuine documents.
- [127] In examination-in-chief the witness refer to his conclusion on the signature issue as follows: “*But basically I’m saying that there’s that the findings that I have made are likely if that if the originating signature was genuine rather than that it was a simulation by some*

other person, much more likely. So that's, that's what the strong support for that proposition means. It's not conclusive, but it points in that direction."

[128] Consequently, I am of the opinion that there is strong evidence to support the proposition that Mr Rene was the author of the original signature appearing on Item D13. In reaching this opinion, I have considered the alternative proposition – namely, that the questioned signature on Item D13 is a simulation, such as freehand simulation of an authentic signature of Mr Rene by another individual. Due to the nature of the similarities observed between the known and questioned material, I consider this proposition, that the signature is a written by a different hand, to be unlikely. It is to be noted, that this is something also concluded upon by the defence expert, who supports Mr Thorne's position with regards to his finding and stated that *"no evidence of poor pen line fluency or other signs of tracing or simulation, which are often indicators of a forged signature."*

[129] Numerous witnesses who had had close personal and professional relationship with President Rene was also called to identify his signature. Each of them confirmed that the signature in question has strong resemblance to that of the former President Rene. These witnesses are Ms Bernadette De Commarmond, Mr David Savy, Mrs Sylvette Pool, Ambassador Bernard Sham-Laye and Mrs Sarah Rene. The Court will address the testimony of the other witness who came to identify the signature – namely, the 1st accused, later in this Ruling.

[130] Accordingly, based on testimonies of the witness and that of the expert's opinion, this Court finds the original signature from which the copy on D13 was made was indeed written by France Albert Rene, rather than by another person. However, this finding still leaves open the question of how, and under what circumstances, the original signature came to be placed on Item D13, as Mr Thorne himself relates to in his general consideration on his *"non-genuine document"* opinion.

The paper

[131] Similar to the above matters when it comes to the determination of the age a questioned document the opinion of an expert carries much weight. In this respect Mr Thorne's report

is to the effect that the features that he saw on the item are consistent with aged paper. He found no evidence of artificial aging. Though the features of aging of paper can vary significantly depending on the storage history of a document including humidity, temperature and exposure to light. Mr Thorne however concluded that he found that the aging features mentioned in his report are more extensive in D13 than other documents of a similar or even older known ages which he has seen in the reference documents from Seychelles and other documents from the UK. He noted that it appears that the document seems to have been stored both in Seychelles and the UK. Although exact dating is not possible, overall he found no evidence to support that the paper of D13 being significantly younger than its purported age, but cannot exclude the possibility of it being older than its purported age.

- [132] In his examination-in-chief Mr Thorne stated that Item D13 was printed using a colour inkjet printer, despite appearing black and white, indicating the use of coloured ink dots.
- [133] The document showed signs of being slightly enlarged, approximately 103%, which could result from borderless printing or copying processes. Item D13 exhibited yellowing and foxing marks, indicative of aging, but more pronounced than other documents of similar or older ages.
- [134] The analysis included comparisons with other documents (P5A-G and P6A-C), noting differences in yellowing and foxing features. The possibility of creating non-genuine documents through cut-and-paste methods was demonstrated by producing a mock-up similar to D13. Examination revealed slight angles in the parallel lines and text on D13, which could result from copying or manipulation. The document's aging features were more extensive than expected for its purported storage conditions in the UK since 2010. Factors affecting paper aging include humidity, heat, light exposure, and paper composition; these were considered in the analysis.
- [135] The analysis did not find evidence to support D13 being significantly younger than its purported age but couldn't exclude it being older. Non-genuine documents can be composed of genuine elements combined in ways that create an entirely new document without an original counterpart. The examination aimed to determine if D13 was genuine

or non-genuine by analysing its physical characteristics and comparing them with known examples.

- [136] During cross-examination Mr Thorne was cross-examined on the possibility of creating a document that appears genuine by using old paper with new content, highlighting the potential for forgery. The expert, Mr Thorne, maintained his findings in his report, which found no evidence to support that the paper of D13 is significantly younger than its purported age, but cannot exclude the possibility of it being older. He addressed issues with comparing aging features on copies versus originals and questions about when copies were made. Mr Thorne's examination included looking at UK documents for aging comparisons but did not disclose this in his report.
- [137] In legal proceedings where the authenticity of a document, such as D13, is contested, forensic analysis plays a crucial role in establishing document authenticity or identifying forgery. The prosecution alleges that document D13 is not authentic, implying it was created fraudulently, potentially on or after November 12, 2003. The defence, conversely, asserts the document's authenticity, suggesting it existed legitimately, presumably on or before that date.
- [138] The expert witness, Mr Thorne, a forensic document examiner, was tasked with examining the paper of D13, likely to assess its age relative to the purported date of creation or the date of alleged forgery. His finding that he "*finds no evidence to support that the paper of D13 is significantly younger than its purported age*" is not neutral. Rather, it definitively does not place the paper's creation at the alleged forgery date of 11th of November 2003 or significantly earlier. However, the critical point is his inability to "*exclude the possibility of it being older*" than November 12, 2003. The court finds that this inability to exclude the possibility that the paper predates the alleged forgery date is significant because it aligns with a known method of forgery which the expert himself testified on, using old paper with newly created content to make a document appear older and thus more authentic than it is. The cross-examination explicitly highlighted this potential for forgery by using old paper with new content.

- [139] If the prosecution's own expert can definitively state that the paper's age is inconsistent with the defence's claim of authenticity and consistent with the prosecution's claim of forgery (specifically, that the paper must be from after the alleged forgery date), this supports the prosecution's argument based on the physical characteristics of the paper.
- [140] The expert's testimony, as presented, does not provide affirmative evidence for the defence timeline based on the paper's age. Instead, it leaves open the possibility that the paper existed well before it was purportedly signed by its maker. This uncertainty regarding the paper's age, stemming from the prosecution's expert, can be leveraged by the defence to argue that the prosecution has failed to prove that the document is a forgery based on the fact that it does not prove definitely that it was not made in November 2003. However, on the other hand it does not serve to establish doubts in the prosecution burden of proof either, to the contrary, it supports inferences based on old age paper usage that is commonly used to fabricate questioned document, as is being alleged in this case this case. This aspect of the expert evidence would be further analysed below.

Forgery

- [141] The Defence consistently submitted that the prosecution is not asserting a case of forgery, and that this has not been raised in their cross-examination or in their submissions. Accordingly, this Court, when making its determination on the issue before it, should exclude forgery as something being relied upon by the Republic.
- [142] Having scrutinized the proceedings, however, the Court is of the view that this is far from the case. The Court observes that the prosecution is not alleging forgery of Item D13 by the 1st accused or any other persons involved, either in this case or outside this case, past or present. Rather, the Prosecution is asserting that the item is a forgery, in the sense that it is fabricated and hence not authentic. To that extent, this Court is of the opinion that all principles, to the extent that they are relevant to forged or fraudulent documents, can be considered in the evaluation of the arguments raised in this case.

OSTI/I

- [143] The prosecution's expert witness discusses the creation of a non-genuine document using cut and paste methods, combining elements from various sources. A demonstration document, OSTI/1, which is similar to D13, was produced using electronic graphic files and printed on old paper to mimic authenticity. The exercise shows that convincing documents can be created without obvious signs of forgery, potentially passing as genuine. The witness clarifies that this demonstration does not prove how D13 was produced but illustrates the possibility of creating non-genuine documents. According to him, open-source internet searches revealed images similar to D13, found on Facebook groups, indicating other versions of similar documents exist. Non-genuine documents can be composed of genuine material elements combined in a way that makes them non-genuine. Identifying the source of unique elements is crucial in determining a document's authenticity. The signature used in the demonstration document matches an image available on Wikipedia, rendering it non-genuine despite being a genuine signature. Mistakes or anachronisms in non-genuine documents can reveal their lack of authenticity compared to genuine examples.
- [144] Genuine elements from incorrect time periods or iterations can significantly impact a document's perceived authenticity. In referring this aspect of his report the expert witness highlights the challenges in distinguishing between original and genuine documents due to potential forgeries.
- [145] Accordingly, this mock-up demonstrates how non-genuine documents can be fabricated by using openly available source materials derived from genuine documents. The more restricted the source materials are, the more difficult it becomes to prove non-authenticity. Conversely, the more publicly accessible the sources are, the easier it is to identify that the document is non-genuine. In this case, the witness purposely used an open and easily available source material, being a signature of President Rene from the Wikipedia, making it readily apparent that the signature of OSTI/1 was extracted from that public source and put on the mock up. The creation of OSTI/1 and expert testimony regarding genuine and non-genuine documents is relevant insofar as it illustrates the possibilities of producing documents identical or similar to Item D13. The degree of resemblance to a genuine version would vary depending on how available and public its originating source material is.

Paper clips; punch marks and folds; evidence of the 1st accused and forgery not being raised and inferences

- [146] In its attempt to show that the document is a non-genuine one, the prosecution placed significant emphasis on certain pertinent aspects of Item D13, appearing in Mr Thorne's report. According to the prosecution, these aspects reveal inconsistencies with the version of the accused regarding the document's provenance.
- [147] This relates to what the expert stated to be folded marks; punch marks and paper clip marks on the item. Having seen those marks, Mr Thorne concludes that that such features are normally associated with a copy document where an originating document(s) has been hole-punched and folded and paperclipped. In his testimony he discussed the physical and image features of a document labeled D13, including punch holes and fold marks. Item D13 has images of punch holes and fold marks, suggesting it might be a copy of an original document that was FOLDED AND hole-punched. The document was received flat but showed physical folds, indicating it had been folded before receipt. Images of fold marks are present on D13, composed of inkjet ink, suggesting prior folding in its lineage. The punch holes are closer to the edge than ISO standards, indicating possible enlargement of the document. Physical folds prevent filing with punch holes; they are more suited for fitting into DL-sized envelopes. Borderless printing is evident on D13, achieved by slight enlargement to print right to the paper's edge. The parallel lines in the letterhead are at a slight angle compared to the paper's edges, possibly due to copying or manipulation. Reddish brown marks around were present at the top left corner of the document and according to Thorne it is likely to be rust marks from the paper clip.
- [148] The Prosecution submitted that this aspect of the report highlighted discrepancies such as punch holes and fold marks and paper clip marks; and it is inconsistent with Mr Valabhji's testimony and support the prosecution's position that the document was not authentic and was fabricated.
- [149] Mr Valabhji's testimony is that he made the photocopy from the original signed document handed to him by President Rene in the President's office at State House. He was shown the original before President Rene signed in his presence. He detailed how he thereafter

went to his office and made copies of the original that the President gave too him. He detailed how he kept the original in a file at his residence, and how he made several copies, which he stored in a safe in London during a long holiday around 2010, and later in a file at Mont Blanc.

[150] Given the importance of this evidence I will relate to the totality of Mr Valabhji's testimony with respect as to how received and photocopied Item D13:

"MUKESH VALABHJI (AFFIRMED)

EXAMINATION IN CHIEF BY MR LEWIS

Q: Mr Valabhji you are still under oath. And just so you understand this is a voire dire which is not part of the trial. This is a voire dire which deals only with the document which you've itemized as D13. So can you have a look at item D13? This is a photocopy document. Did you make that photocopy?

A: Yes, I did.

Q: What did you make the photocopy from?

A: From the original that was given to me by President Rene and signed in front of me.

Q: Where is the original?

A: The original was in the file where all the other or where the documents of the arms import invoices and what not where in my study on the shelf, retrieved by ACCS or the police? I'm not sure. That's where the original was. So ACCS or the police must have a copy of it.

Q: And have they produced that original to you?

A: No, they have not produced or disclosed it.

Q: So do you know if that original is any longer in existence?

A: I wouldn't know. It was there last time I put it in there. What happened after that only ACCS or the prosecution or the police can answer that.

Q: So luckily we have this photocopy. Can you tell us how or what you did with this photocopy?

A: Yes. I can't remember precisely.

Q: In fact, I'm sorry. I'll just take you back a little bit earlier. You told us that you saw the president sign this.

A: Correct.

Q: So can I take you back to that day. Tell us exactly what happened in the president's office?

A: When I went to president's office, he gave me a letter, this letter. He asked me to read it. I read it and I gave it straight back to him, no comments, and he signed it in front of me. He had two copies with him, two originals rather, he kept the other one and I can't

remember whether he made further copies, a couple of copies, or whether he ask the secretary to make copies, I can't remember. But a few copies were made which he kept and I took the original one of the original with me back to my office. I then made a few copies. I can't tell you how many two or three copies of it. I took all of them home when I went home and it was kept in a file at the house in my study.

Q: And how did we just heard from previous witness that this copy was in London? How did this copy get to London?

A: I can't quite remember as I was saying earlier, whether it was 2010, 2011, whatever it was or 2015 maybe, but probably 2010. We were going on a long, for the first time, we were going for a long for six weeks 'holiday to the UK and that's why I decided to take some of my documents that I deemed essential or confidential with me to keep. They were copies of documents and then I kept them in the flat in London. That was one of them. There was birth certificate, married certificate, KYC documents, that is utility bills, telephone bills. Probably there were also some trust documents, meant some, property ownership documents from what I remember. So there's some confidential documents that I'd kept there that I took with me there. And this was kept in the bedroom that I use in the flat in London in a closet. If I can describe the closet, there are 4 doors to the closets, a built in closet and all of them are locked. Keys are kept with me. I'll explain where the keys are kept a minute and it's the last door facing the windows is where I kept my files, my documents and some gadgets that I would not have used when I'm in London. That sort of thing is what I would keep in there. The keys to that closet is kept with me in Seychelles. I also keep a set of keys to those closet in my glove that I use in a drawer and that's where I keep so nobody will know.

Q: Where's the drawer?

A: The drawer is in a dressing-

Q: In which place you haven't explained.

A: Sorry, in the flat in London, in the bedroom.

Q: The spare key is in London.

A: Correct.

Q: And so item D13, you confirm is the photocopy which you made from the original which you saw was signed?

A: Absolutely.

Q: Yes, thank you.

CROSS EXAMINATION

MR POWLES CONTINUES

Q: Mr Valabhji if you look at the right left hand side of the document,

A: which one?

Q: As you look at it, D13,

A: The right?

Q: The left hand side of the document.

A: Okay,

Q: Can you see two faint hole punch marks?

Court: What's that?

MR POWLES CONTINUES

Q: Hole punch marks?

A: Yeah.

Q: Was the document you photocopied, did it have hole punches in them? You know what? Did the document you claimed you copied have hole punches in them?

A: The original one?

Q: yes.

A: Yes, because I filed them in a file in my house.

Q: What kind of file was that?

A: It's the file that has the springs.

Q: So just to understand, when did you copy it? How did the hole punches get on there?

A: Sorry,

Q: How did these hole punches get on this copy?

A: What do you mean how?

Q: How come there are hole punch marks on this copy?

A: I've just told you.

Q: So was this the copy that you made before you went home on the way from? Was this a copy that you made from President Rene's office?

A: From the original,

Q: Yes

A: Yeah.

Q: So that original was hole punch, was it?

A: No. When I filed them, that's where you put the punch. That's what you put the-

Q: right. So you took it from that file and then copied it? So you took it from a file and you claim you took it from a file in your study and copied it?

A: No. When I took the original, I brought it back to the office.

Q: Yes,

A: I made copies. I put them in and then I punched them, yes. And put them in the file. They were all punched,

Q: Yes. So how can you explain if you copied it before you punched it and put it in the file? How do you explain these whole punch marks?

A: But these are a copy. These is not the original.

Q: Yes, but you claim it's a copy of the original,

A: correct?

Q: That you copied the-

A: And the copy of the original had a punch?

Q: The original had a punch,

A: Yes,

Q: Before you-

A: How do I file it

Q: before you filed it?

A: Yes, I had to put a punch on it before I file it. I have to punch them before I file it.

Q: Yes, but I thought you said you copied it before you filed it.

A: I copied it and it was probably in a file in the office and then that's when I took it home. I may have put it in the file already in the office.

Q: Hang on. So you had it in the office in a file?

A: I would have put it in the file in the office,

Q: Which office?

A: My SMB office, and then take it home.

Q: And how long did you leave it at the office, at the SMB?

A: I wouldn't know hours.

Q: so for those hours you had it at the office, at the SMB, you put it in a file,

A: Yes, but I, I filed everything. Everything was in the file

Q: for a few hours before going home?

A: I file, I filed it when I'm at the office, I take it home. And I told you I put the file on the shelf at my house in the study. That's what I said to you this morning.

Q: So just to understand, finally you went to the office, you put it in a file, then you took it out of a file, then you copied it, and then you took it home.

A: Well, I can't remember whether I took it out the file or I or I copied it straight from the file.

Mr Powles: I've got no further questions. Thank you very much my Lord.

[151] Upon consideration of Mr Valabhji's testimony, this Court observes that Mr Valabhji, states that he photocopied the Item D13 in his SMB office from the original that was given to him, and that after photocopying, he punched the documents himself before filing it in his home. However, under cross-examination he was totally inconsistent as to whether he punched the copy or original before he photocopied it and whether this was at his home or office. The forensic expert observed faint punch hole marks on the photocopy (D13). The expert notes that punch holes and other markings often suggest the document was previously used or stored in a file, indicating it might not be a freshly created or untouched document. The Court observes the following contradiction in Mr Valabhji's testimony: he claims he added the punch holes during filing, implying the original was not punched. The expert's observation suggests the punch holes predates his copying, indicating the document was already punched or reused.

[152] I further observe the following contradiction regarding paper clip mark. Mr Valabhji's testimony does not mention paper clip marks explicitly. While the expert witness notes paper clip marks on item D13, which are typical signs of a paper that has been stored with a paper clip previously. Mr Valabhji's testimony does not acknowledge that the document shows signs of previous handling or storage, which the expert confirms through the physical marks. The absence of Mr Valabhji mentioning the paper clip suggests an inconsistency since these marks indicate prior handling, conflicting with his assertion that the photocopy is a new, directly copied document.

- [153] Further contradiction can be observed in relation to paper fold. Mr Valabhji does not mention during his testimony of any folds observed on item D13 or that he folded the document that he photocopied with a view to put it in an envelope, as testified by the expert. The expert, notes the presence of fold marks, which are indicative of an older document that has been folded and unfolded multiple times. Mr Valabhji does not acknowledge or explain the presence of fold marks. The existence of such folds suggests prior usage or handling, conflicting with Mr Valabhji's statement that the photocopy was made from a recent, signed original and was kept in a clean, formal setting.
- [154] All of the above the inconsistencies between Mr Valabhji's testimony regarding the photocopying of the original Item D13, the expert evidence (Mr Thorne's observations) of physical marks (folded marks, punch holes, paper clip marks) on a copy of Item D13 provides a significant basis for determining a lack of credibility and unworthiness of belief in Mr Valabhji's testimony specifically concerning the handling and timing of the photocopying of Item D13.
- [155] Courts consider inconsistencies as a key factor in assessing a witness's credibility. If a witness's account is contradicted by reliable physical evidence or the observations of an expert based on that physical evidence, the court may find the witness's testimony unreliable. The weight given to such an inconsistency depends on its nature and significance to the facts in issue. In this instance the unreliability of Mr Valabhji's evidence is clearly manifested.
- [156] In this case, the physical marks observed by Mr Thorne are objective characteristics of the document (or its copy). The court accepts Mr Thorne's observations as accurate and his interpretation of what caused these marks as reliable expert evidence. Accordingly, these physical facts directly challenge Mr Valabhji's narrative about the sequence of events. The marks suggest the document underwent handling consistent with folding, filing, and clipping *before* or *at the time* it was copied, not solely afterwards, being evidence of an old document being used to make Item D13.
- [157] The presence of physical marks on the copy of Item D13, as observed by Mr Thorne, which are inconsistent with Mr Valabhji's account of immediately photocopying the original

before later filing, serves as strong evidence that undermines the credibility of Mr Valabhji's testimony regarding the handling of that specific item. The court, in weighing all the evidence, finds his account on this point to be unreliable due to its direct contradiction with the physical evidence and contradictory with itself.

- [158] The Court, having considered the totality of the evidence of Mr Valabhji in the light of the expert report and testimony does not believe that he received the original of Item D13 from Mr Rene and proceeded to photocopy it straight away at his office. If that was the case it would not have been folded; so as to be enveloped; it would not have been punched with a punching machine and would not have been paper clipped. The only inference that the Court can draw from this fact is that it's a fabrication.

Late disclosure of item D13

- [159] According to his testimony, Mr Valabhji took various steps regarding the storage of the document and its copies over time. He stated that he kept the original document in a file at his residence. He also made several copies of the original. Around the year 2010, during a long holiday, he stored some of these copies in a safe located in London. Later, he stored copies in a file at Mont Blanc. Additionally, he claimed that the document and a copy were stored in various places within his residence, specifically mentioning his study, a safe in his bedroom, and on a pen drive. He further claimed that these specific locations (study, bedroom safe, pen drive) were subject to theft or tampering.
- [160] Mr Valabhji also stated that he only realized the significance of the document *later*. The Court here notes that storing a document in a safe, particularly in a foreign country, typically implies that the document is considered important or valuable *at the time it is stored*. If he only realized the document's significance at a point *after* 2010, his action of taking copies to London and placing them in a safe in 2010 appears inconsistent with the claim that he did not understand its importance at that time.
- [161] Mr Valabhji cited distrust of local authorities, fear of destruction of evidence, and security concerns stemming from alleged actions like illegal searches and theft of local items (CCTV, laptop, items from study/safe/pen drive) as his reasons for not disclosing the

document. However, his testimony also states that he stored copies securely in a safe in London and later in a file at Mont Blanc. If secure copies of the document existed in locations outside the immediate reach and alleged influence of the local authorities he distrusted, the reasons provided for completely withholding *any* information about the document or its existence become less compelling. The court is of the view that Mr Valabhji could have potentially disclosed the existence of the document or the location of the secure foreign copies through alternative means, such as via legal counsel or a third party, thereby mitigating the risks he associated with direct interaction with local authorities or the security of local copies. The explanation focusing on the compromise of local storage locations (study, bedroom safe, pen drive) therefore does not fully account for the non-disclosure of information related to the secure copies held abroad.

[162] Mr Valabhji emphasized that the local places where the document and a copy were stored (study, bedroom safe, pen drive) were stolen from or tampered with, implying this contributed to the non-disclosure or unavailability of those specific items. While this might explain why those particular copies or the original from those locations were not immediately available or disclosed, it does not explain why the existence of the document itself, or the location of the secure copy in London was withheld. The focus on the compromised local storage locations as a primary barrier to disclosure appears inconsistent with the simultaneous claim that secure copies were maintained elsewhere. If it is true that Mr Zaiwalla had a secured copy in his possession, nothing stopped Mr Zaiwalla from making at least a copy of this document and providing it to the law enforcement authorities or the court at the inception of the case.

[163] These points within Mr Valabhji's testimony regarding the timing of his realization of the document's significance, the existence of securely stored copy abroad, and the reasons provided for non-disclosure based primarily on risks associated with local authorities and storage locations, raise questions about the overall consistency and completeness of his explanation for withholding the document until his court testimony. This has led the court not to believe this aspect of his testimony.

- [164] The Court has considered the testimony of Ms Marie Bernadette De Commarmond regarding her identification of Item D13. Ms De Commarmond served President Rene for a significant period, from 1974 to 2006, initially as a secretary and later in his private office. Her responsibilities included typing, filing, and handling classified documents. During her extensive tenure, she was responsible for typing hundreds of letters and preparing numerous sensitive documents under the President's orders.
- [165] Ms De Commarmond testified that she typed Item D13 on President Rene's instruction and recognized his signature on it. However, the Court notes the considerable passage of time between the period when Item D13 could have been typed (sometime before she left service in 2006) and her testimony in 2025, representing a gap of at least 19 years.
- [166] During her testimony, Ms De Commarmond acknowledged typing multiple copies of letters and stated she did not know their final disposition. She also admitted to preparing sensitive documents, such as end-user certificates, under the President's orders without questioning their legality or purpose. While she identified several documents with the President's office letterhead and stamps as ones she prepared, this general identification of document types and formats is distinct from the specific recall required to identify a single document typed decades prior.
- [167] Crucially, Ms De Commarmond had not seen Item D13 prior to being shown it in court for the purpose of her testimony, having returned from Australia specifically for the case after leaving the President's office in 2006. Given the sheer volume of documents she typed over her long career with President Rene, numbering in the hundreds, and the significant passage of approximately 21 years since she last worked in that capacity and potentially saw the document, the reliability of her specific recollection of typing this particular letter is significantly diminished. The human memory's capacity for precise recall of individual events, particularly routine tasks performed repeatedly over a long period, fades considerably over such an extended duration, especially without intervening opportunities to review the specific item in question. Her general familiarity with the President's office procedures, document formats, and signature is understandable given her long service, but

this does not automatically translate into a reliable specific memory of typing one particular letter among the multitude she produced.

[168] Therefore, based on the extensive period of time that has elapsed since Ms De Commarmond last worked for President Rene and potentially encountered Item D13, the large volume of similar documents she admittedly typed during her long tenure, and the fact that she had not reviewed Item D13 prior to her testimony, the Court finds that her outright identification of Item D13 after 19 years is unreliable and lacks sufficient weight to be considered conclusive evidence that she specifically typed this document.

[169] I have also carefully scrutinized the testimony of Christina Medina. Having done so, I have found the following. One significant contradiction lies in Christina Medina's decision to leave the original document, described as a letter from the President allowing Mukesh Valabhji to keep an armory and thus of crucial importance, hidden in the flat in London after retrieving it, despite simultaneously reporting feeling followed and stalked and suspecting the flat was being monitored. She made two copies of the document and gave a copy to the lawyer, Varun Zaiwalla, but chose to leave the original hidden in a kitchen shelf within the flat for safety, only handing it over to the lawyer in December 2023, months after the initial retrieval in February 2023.

[170] This sequence of actions appears contradictory. If Christina Medina genuinely suspected that the flat was being monitored or that she was being followed due to her retrieval of the document, and if the document was of such crucial importance that she felt the need to make copies and report her suspicions to the Met Police, then leaving the original document in the very location she suspected was compromised seems inconsistent with a reasonable attempt to ensure its safety and security. A more logical course of action, given the perceived risks and the document's importance, might have been to immediately remove the original document from the potentially compromised location and hand it over to the lawyer along with the copy, or secure it in a location she believed to be safe and not under surveillance. Her decision to leave the original behind, hidden in a kitchen shelf within the flat she suspected was monitored, while taking copies and expressing concerns about being

followed, presents a notable inconsistency in her testimony regarding her assessment of the risk and the appropriate measures to protect the crucial item.

- [171] Another point of potential contradiction relates to Christina Medina's handling of the envelope that originally contained the important document. She stated that the letter was initially kept in an envelope with dried glue, which she later discarded.
- [172] Given that the document was considered to be of crucial importance, and in a context where its authenticity or provenance might become relevant (especially as she was later questioned about fabricating or planting it), discarding the original envelope could be seen as contradictory to the careful preservation one might expect for an item of such significance. The envelope, as the original container, could potentially hold evidentiary value, such as postmarks, fingerprints, or other physical characteristics that might help corroborate the document's history or authenticity. Discarding this item, while preserving the document itself, appears inconsistent with a meticulous approach to handling a crucially important piece of evidence, particularly when the circumstances surrounding its discovery and retrieval were seemingly fraught with suspicion and concern for its safety.
- [173] These action appears inconsistent with the stated level of fear and the perceived importance and vulnerability of the document. The question that arises is, if she genuinely believed the flat was monitored and felt personally threatened, would she leave the original crucial item in that location for several months rather than immediately securing it elsewhere or handing it over to the lawyer for safekeeping? This inconsistency leads to doubts about the sincerity of her reported fears or the actual importance she attached to the document at the time, thereby weakening her credibility regarding the circumstances of the document's retrieval and initial handling. This action raises questions about her understanding of preserving evidence or potentially suggest an attempt, conscious or unconscious, to remove an item that might have provided further context or verification regarding the document's history. Such an inconsistency leads this Court to view her testimony about the document's provenance and handling with scepticism, thus diminishing her overall credibility.
- [174] Taken together, these contradictions create inconsistencies in Christina Medina's narrative regarding her actions and motivations in handling a document she described as crucially

important under circumstances she perceived as threatening. As a result of all this, the accuracy and reliability of her testimony is questionable, the Court will therefore attached little weight to her evidence.

- [175] Furthermore, with regards to the testimony provided by Steven Radcliffe, it can be concluded that an exhaustive search was conducted for the original of the Item D13 from documents seized at Morne Blanc. Mr Radcliffe, as the senior investigating officer for Operation Black Iron, confirmed that both electronic and physical searches were performed, including the review of thousands of documents for specific phrases such as “armoury.” The search process involved multiple parties and spanned a considerable duration, demonstrating a comprehensive effort. Despite these efforts, the sought document was not found within the ACCS systems, and no relevant information was extracted from the searches conducted. This indicates a thorough and diligent attempt by Mr Radcliffe and his team to locate Item D13. His testimony does not exclude the fact that Item D13 might have been missed or misplaced, but it does it also serves to show that had copies or the original been present, at least one should have been found.

Final determination

- [176] Under the laws of Seychelles, which follow the principles of English Common Law regarding evidence, the prosecution bears the burden of proving the authenticity of an item of evidence, such as Item D13, beyond a reasonable doubt if its authenticity is a fact essential to proving the charge against the accused. Authentication is the process by which the proponent of evidence demonstrates that the item is what it is claimed to be. While the standard for making the issue live is an evidential one and this the defence has done by adducing this item, the ultimate burden of proof in a criminal trial requires the prosecution to satisfy the jury of the authenticity of crucial evidence beyond a reasonable doubt.
- [177] The prosecution has sought to prove the non-authenticity of Item D13 beyond a reasonable doubt by circumstantial evidence, by presenting a combination of evidence that, when considered collectively, can lead this Court to the firm conclusion or irresistible inference that Item D13 was not made and did not come from France Albert Rene.

- [178] The Seychelles court of Appeal in the case of *Geers & Anor v Republic* (SCA 29 of 2019) [2020] SCCA 41 (18 December 2020) read from *Adrian Keane & Paul McKeown The Modern Law of Evidence Twelve Edition* at p. 14 on circumstantial evidence The following definition of circumstantial evidence was cited:

“[40] . . . *Circumstantial evidence*

General

Circumstantial evidence has already been defined as evidence of relevant facts (facts from which the existence or non-existence of a fact in issue may be inferred) and contrasted with "direct evidence", a term which is used to mean testimony relating to facts in issue of which a witness has or claims to have personal or first-hand knowledge. Circumstantial evidence may take the form of oral or documentary evidence (including admissible hearsay) or real evidence

'It is no derogation of evidence to say that it is circumstantial. [R V Taylor, Weaver and Donovan (1928) 21 Cr App R 20, CA]. Circumstantial evidence is particularly powerful when it proves a variety of different facts all of which point to the same conclusion [...]. Circumstantial evidence, it has been said, works by cumulatively, in geometrical progression, eliminating other possibilities [Per Lord Simon in [DPP v Kilbourne [1973] AC 729, HL at 758] and has been likened to a rope comprised of several cords

One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence — there may be a combination of circumstances, no one which raise a reasonable conviction or more than a mere suspicion; but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of [Per Pollock CB in R v Exall (1866) 4 F&-F 922 at 929]."

[41] *In the case of Teper v Queen [1952] AC 480 at p. 489, Lord Normand delivering the reasons of their Lordships for allowing the appeal, stated the following about circumstantial evidence —*

"Circumstantial evidence may sometimes be conclusive, but it must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another [...]. It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference."

- [179] This court will without a doubt follow this definition of circumstantial evidence in its determination as to whether it exist in this case. Circumstantial evidence is widely accepted in English Common Law for proving facts, including the authenticity of documents. Circumstantial evidence does not directly prove a fact but provides evidence of circumstances from which the existence of the fact can be reasonably inferred.

- [180] In assessing the evidence before it the Court notes that it is not bound by the expert's opinion but can take it into consideration in determining the facts in issue. The court assesses the weight to be attached to all evidence, including that of the expert. Factors influencing the weight include the expert's status. The court must also be provided with the criteria to assess the expert's evidence and conclusions. The Court would rely on expert's report where it assist the Court in coming to its decision.
- [181] In this case the prosecution has presented a range of such circumstantial evidence related to Item D13.
- [182] First of all, through the expert testimony it is shown that Item D13 can be fabricated by using materials that are available in open sources or private sources. The more restrictive be the source material, the more difficult it would be to show that it is non-genuine. OSTI/1 has been produced as one of those examples.
- [183] Secondly, the expert has proved that the paper used to make Item D13 is probably older than 2003, and that old paper is often used to fabricate documents, by transposition of materials on the old paper with the aim of making it look old. If Item D13 was purportedly made in 2003 it stands to reason that it cannot be much paper older than 2003.
- [184] Thirdly, the existence of paper clip mark, folded marks and punch marks on Item D13 as testified by the prosecution's expert contradict the testimony of the 1st accused as to how the original of the document was signed, issued to him, photocopied and stored. The irresistible inference that the Court draws here is that one or all of these impressions were on the original paper used to make Item D13; or at least one or more of them were on subsequent copy or copies of documents, from which Item D13 was photocopied. The fact that the paper used to make Item D13 being probably older than its purported age is also inconsistent with his testimony.
- [185] The fact that the signature is that of President France Albert Rene does not contradict the prosecution's case as the possibility of it being transposed onto Item D13 cannot be ruled out in the circumstances of this case.

- [186] As with regards to the Crest, contrary to what the expert has held this Court does not find it clear to what extent the difference between the 1996 Crest and that of 1976 would make on the overall conclusion as to its authenticity. The only way of this happening would have been through irrefutable evidence that only one crest could have been used in November 2003 and that this was not the one on the item. Given this is a factual, as opposed to a legal, impossibility, this factor becomes almost irrelevant.
- [187] The reasons given by Mr Valabhji for secretly holding on to Item D13 and not disclosing until his testimony is seen as not creditworthy and from this finding of untruthfulness the Court infers that he knows that the documents is not authentic.
- [188] The fact that Mr Mukesh Valabhji, Mrs Christina Medina and Mrs Bernadette De Commarmond have been discredited by the prosecution significantly weakens the defence's evidence regarding President Rene purportedly signing Item D13. On the other hand, the testimony of witnesses who allege the signature on the document is that of France Albert Rene does not add doubts to the prosecution case as they were witnesses to the signature compared to the document itself. The Court, having found that the signature being superimposed on the item, therefore make them witnesses of truth as to the signature but not as to the truth of the Item. Moreover, the Court have assessed the credibility and reliability of these witnesses, considering factors such as their relationship to the parties, their opportunity to observe the signing of the signature, and the consistency of their testimony and have come to the conclusion which it did.
- [189] This Court finds that in order to prove the authenticity of Item D13 beyond a reasonable doubt, the prosecution has presented a body of evidence (including expert testimony and circumstantial evidence) that is so strong and convincing that it leaves this Court with the irresistible inference that D13 is not made by its purported maker and leaves no reasonable doubt as a result as to the non-authenticity of Item D13. The combination of circumstances, taken together, lead to a conclusion of guilt with as much certainty as human affairs can require. Guilt here relating to the lack of authenticity of the document only. The Court also considers that there are no other co-existing circumstances which would weaken or destroy this inference.

[190] The prosecution's objection regarding the inadmissibility of the document on the ground that it is not an original but a copy is founded on the assumption, that the process has passed the 1st stage and that it is authentic. It follows, therefore, that this issue does not requires further consideration.

[191] I accordingly, find that the prosecution has proven beyond a reasonable doubt that Item D13 is not authentic, was not made by President France Albert Rene, and does not originate from him.

Signed, dated and delivered at Ile du Port on 22nd May 2025.


Govinden C.

The image shows a blue circular seal of the Seychelles Supreme Court. The outer ring contains the text "SEAL OF THE SEYCHELLES SUPREME COURT" and a small star at the bottom. The inner circle features a coat of arms with a palm tree and a book. A handwritten signature in black ink is written over the seal.