SUPREME COURT OF SEYCHELLES

Reportable/ Redact
(CO 09/2024)

In the matter between:

THE REPUBLIC — **Republic**
(rep by Ms Sophie Vel)

and

JAHMAL AL-HASHIM — **Accused**
(rep by Ms Freminot)

Neutral Citation:	Republic v Jahmal Al-Hashim (CO09/2024) 16 July 2026
Before:	D. Esparon
Summary:	Sentence
Heard:	22 June 2026
Delivered:	16 July 2026

ORDER

I accordingly impose a term of 5 years imprisonment against the accused in respect to Count 1 of which this is without remission in view that I have already found that there is an aggravating factor present in the present matter.

SENTENCE

ESPARON J

Introduction

1. The accused has been charged in Count 1 with the offence of Cultivation of a controlled drug contrary to section 6(2) of the Misuse of Drugs Act 2016. The particulars of the offence reads as follows;

'Jamal Salif Al- Hashim, bearer of NIN 988-0551-1-1-16 and resident of Bougainville, Mahe, on the 5th April 2023 was found cultivating 2126 Cannabis plants at his residence at Bougainville, Mahe.

2. The accused pleaded guilty to Count 1 and was convicted on his own guilty plea after admitting the facts of the prosecution case.

Mitigation by counsel for the accused

3. Counsel for the accused put forth in mitigation before the Court that the accused is 38 years old and prior to his detention he was working as a mechanic and mason on casual basis and earning SCR 8000/-. The accused has 2 daughters one aged 16 and the other aged 13 and that the accused maintains them and has a close relationship with them. That the offence was committed in 2023 and at the time the accused was a drug user and consumed cannabis and claims that it helps him with his migraines. That the drugs in this case is a class B drug.

4. According to counsel, the accused planted these plants for personal consumption and according to him, any excess was given to the animal on the farm as according to him there was a shortage at the time of animal feed in the Country. That most of the plants seized on that day were small young plants. That the accused although not a 1st offender that the offence was committed around the same time since the accused was arrested for possession which led to the search and seizure of those plants.

5. Furthermore according to counsel, the accused has cooperated with the police during the investigation and has also pleaded guilty to the charge thereby saving the precious time of the Court and as such he has been remorseful.

6. Counsel for the accused relied on the case laws namely the case of **R V Mambe CO 46/2024 (24 March 2024, R V Fostel, R V Servina Cr 94/2019 {2020] SCSC 658 (14 September 2020) and R v Lailam CR 86/2019) [2020] SCSC (09 November 2020)**.

Analysis and determination

7. At this stage, this Court has to draw its attention to section 47 of MODA which makes provision for the following;

   (1) "in sentencing a person convicted of an offence under part of this Act, whether upon a guilty plea or following a trial, the Court shall have regard to;

      (a) the objectives of the Act

      (b) the degree of control to which the relevant control drug is subject; and

      (c) the general objectives of transparency or proportionality in sentencing.

   (2) Where an aggravating or mitigating factor identified in section 48 or section 39 applies to the circumstances of an offence, the Court shall expressly identify that factor and give weight to it in considering the appropriate sentence..."

8. Section 49 of the Misuse of Drugs Act reads as follows;

   'Mitigating factors (factors that support a reduction in sentence) for offences under this Act include;

      (a) The offender's admission of the truth of the charge through a guilty plea, particularly an early guilty plea;

      (b) The offender's acceptance of responsibility for harm or potential harm associated with his or her offence;

      (c) Any substantial assistance given by the offender to law enforcement authorities, as an informer or otherwise, in prevention, investigation or prosecution of any other offence under this Act;

      (d) The absence of any commercial element in the offence;

(e) The presence of element of coercion, for example from a family member or employer;

(f) The absence of prior convictions or prior formal cautions under this Act; and

(g) The fact that no other person was involved in or directly harmed by the offence'

9. This Court also draws its attention to section 47(4) of the Misuse of Drugs Act which states as follows;

'In sentencing a person convicted of an offence under section 8 of this Act, the Court shall not impose a sentence of imprisonment unless satisfied that a non-custodial sentence is inappropriate in all circumstances'.

10. At this stage, this Court would like to expound on the principle of sentencing as laid down in decided cases. In the case of Ponoo V/S Attorney General (2011) SLR, the Court of Appeal held that;

'Sentencing is an intrinsic judicial power which involves the human deliberation of the appropriate conviction to be given to the particular offender in the circumstances of the case. It is not a mere administration of a common formula standard or remedy'.

11. In the case of **Savy v/s R (1976) SLR 54, the** Court held that;

'In sentencing, the Court should consider the necessity of punishing crime, the deterrent effect on others of the appropriate punishment, and the need to protect the public from offences especially in at the hands of those entrusted with the enforcement of the law, the previous good character of the accused, the motive for the offence and the loss of usefulness to the state by a prison sentence'.

12. In the case of **R V/S Aden (2011) SLR *41*** the Court held that;

'In sentencing, one relevant factor is the seriousness of the offence.'

13. In The case of ***Njue v R (2016) SCCA 12, (at para 14)*** set out the principles a Court should consider when sentencing which includes public interest; the nature of the offence and the circumstances it was committed. The Court at the same time must consider whether there is a possibility of the offender to be reformed; the gravity of the offence; the prevalence of the offence; the damage caused; any mitigating factors; the age and previous records of the accused; the period spent in custody; and the accused's cooperation with law enforcement

14. It is trite law that sentencing is a discretion of the trial Court. In the case of **Suki V/S R SCA 10 of 2019**, prof Tibatemwa- Ekirikubinza JA, stated the following at paragraph 25 of the Judgment;

'In exercising discretion to arrive at a sentence, the Judge should balance the mitigating factors with the aggravating factors and then consider the cumulative effect thereof. It may be that in the opinion of the Judge, the aggravating factors outweigh the mitigating factors even to the extent that the-would be mitigating factors have little or no effect on the sentence. In such circumstances, the factors cited in mitigation will necessarily recede into the background. It is only if the mitigating factors carry sufficient weight to tip the scale in favour of the accused that a lenient sentence would be given'.

15. In the case of ***Suki v R SCA 10 of 2019***, prof Tibatemwa-Ekirikubinza JA, stated the following at paragraph 30 of the of the Judgment;

'Guarding against unjustifiable sentencing disparity is one of the ways in which Judges avoid the injudicious exercise of their discretion. And I opined that the requirement for consistency in sentencing is one of the underpinning principles of equality before the law enshrined in Article 27 of the Constitution. It is for this reason that I would consider the reference to prior decided cases on sentence a useful aid or tool to assist a Court in determining an appropriate sentence. In the final analysis however, each case must be decided on its own merits since no two cases are the same'.

16. Her Ladyship further stated at paragraph 33 of her judgment, the following;

'From the foregoing it is clear that consistency of sentences does not mean arithmetic exactness. It cannot therefore be argued that a particular sentence is necessarily wrong merely because it is disparate from previous sentences'.

17. This Court has considered the following mitigating factors in the present matter namely that the accused has 2 daughters of which both are minors, one aged 16 and the other aged 13 and that the accused maintains them and has a close relationship with them. That the offence was committed in 2023 and at the time, the accused was a drug user and consumed cannabis. That the drugs in this case is a class B drug. That most of the plants seized on that day were small young plants. That the accused has cooperated with the police during the investigation and has also pleaded guilty to the charge thereby saving the precious time of the Court and as such he has been remorseful.

18. However, this Court is of the view that such an offence is serious in view that the maximum sentence prescribed by law for such an offence is 20 years imprisonment. This Court has taken into account the amount of plants of which the accused has cultivated namely 2126 Cannabis plants of which this Court finds it to be on the high side compared to the cases cited by counsel for the accused namely the case of **R V Mambe CO 46/2024 (24 March 2024, R V Servina Cr 94/2019 {2020] SCSC 658 (14 September 2020**) and R v Lailam **CR 86/2019) [2020] SCSC (09 November 2020)** which appears to be on the low side and hence I accordingly distinguish the present case with the cases cited by learned counsel for the accused. Furthermore, although the Court has taken into account that the accused consumes drugs, in view of the high amount of plants being cultivated by the accused, this Court is of the view that such was not only for his personal consumption.

19. It is not in dispute that the accused has a previous conviction for a similar offence which has been admitted by counsel for the accused. As a result, this Court draws its attention to section 48(1) (g) of the Misuse of Drugs Act whereby prior convictions for similar offences are taken as aggravating factors. In view that there is a previous conviction for a similar offence against the accused, this Court finds that there is an aggravating factor present in this matter of which this Court has to take into account in deciding the appropriate sentence for the accused. This Court takes note that the indicative minimum sentence for an

aggravated offence for a class B drug for the offence of Cultivation is 8 years imprisonment.

20. In weighing in the balance the mitigating factors in favour of the accused with the aggravating factor present in the matter, this Court is of the view that a custodial sentence is most appropriate in the circumstances of the case. As a result, I accordingly impose a term of 5 years imprisonment against the accused in respect to Count 1 of which this is without remission in view that I have already found that there is an aggravating factor present in the present matter.

21. The time spent on remand by the accused should be taken as part of the sentence.

22. The accused has a right of Appeal within 30 days from the date of this sentence.

Signed, dated and delivered at Ile du Port on the 16 July 2026.

D. Esparon J.