

# THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS



**"TO NO ONE WILL WE SELL, TO NO ONE DENY  
OR DELAY RIGHT OR JUSTICE"**

**-Chapter 40, Magna Carta**



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## The E-Newsletter

# Editorial Team

**Mrs. Meenakshi Gayan-Jaulimsing, Ag. ADPP**

**Mrs. Audrey Stephen-Sunglee, Principal State Counsel**

**Ms. Anusha Sheila Aubeelack, State Counsel**

**Ms. Neelam Nemchand, Legal Research Officer**

**Ms. Pooja Domun, Legal Research Officer**

**Mrs. Genisha Raudhay Nayekoo, Communication/Liaison Officer**

*The views expressed in the articles are those of the particular authors and should under no account be considered as binding on the Office.*

# Editorial

Dear Readers,

Welcome to the first issue of 2023 in which we have the absolute pleasure to congratulate Mr. Abdool Rashid Ahmine, who rose through the ranks of our office, to become the Director of Public Prosecutions of Mauritius! His appointment was made by the Judicial and Legal Service Commission in December 2022, following the retirement of his predecessor, Mr. Satyajit Boolell, SC. Mr. Rashid Ahmine brings to this constitutional post exceptional skills, honed over nearly three decades at the Mauritian Bar, during which time he has also built a solid reputation, especially as an expert in white-collar crime. We, who have worked with Mr. Rashid Ahmine across the years, are confident that he will continue to lead reforms both within the ODPP, and more widely, in the criminal justice system; the Office of the Director of Public Prosecutions being a critical participant in the administration of justice and responsible for providing an independent and fair criminal prosecution service to the country. To know more about the new DPP, scroll down to page 6.

We also invite you to travel the African continent, from Egypt to Kenya, with two articles written by our law officers who have recently attended The UN International Organisation for Migration and the Africa Prosecutors' Association Symposium and The 16<sup>th</sup> Annual General Meeting and Conference of the Africa Prosecutors' Association. Of the two other articles which you will discover, one has been authored by Bhamini Prayag-Rajcoomar, Senior State Counsel, and deals with our domestic laws regulating unexplained wealth and money-laundering while the second, written by Deepti Thakoor, State Counsel, invites us to reflect on the importance and the role of the law in society.

Some say that the new year provides a fresh start- a chance to look back and reflect on our past and a time to plan for the future. In the same vein, we will be bringing a few changes to the E-Newsletter! To start, this month, we are introducing a new feature- the *Case Commentaries* which will consider particular court decisions, either local or international ones, and provide a brief description and analysis of them. Stay tuned as more changes will be coming over the next issues to breathe new life into this publication.

I wish you a pleasant read!



Anusha Sheila Aubeelack  
State Counsel



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# LAW & HISTORY

# THE ELEVENTH DPP

As the year 2022 ended to pave way to a promising 2023, Mauritius welcomed its 11<sup>th</sup> Director of Public Prosecutions, Mr. Rashid Ahmine, who needs no introduction.

Through different winds of change and never without a good hair day, he had been building a rich career. After being called to the Mauritian Bar in 1994, he joined the then State Law Office as State Counsel in February 1995 and went on to occupy the posts of Senior State Counsel, Principal State Counsel, Assistant Parliamentary Counsel, Senior Assistant DPP, Deputy DPP, Acting DPP and finally, became the Director of Public Prosecutions on the 1<sup>st</sup> of December 2022.

He is a member of the Association of Certified Fraud Examiner (ACFE) and of the International Association of Prosecutors. Mr. Ahmine is notably known for his excellent prosecutorial skills and was designated Prosecutor of the Year by the International Association of Prosecutors (IAP) in 2012 for his outstanding performance in the fight against crime, both domestically and internationally, and for successfully promoting international cooperation and human rights.

His professional achievements have also been recognized through the International Fellowship Award by the National Attorneys General Training & Research Institute (NAGTRI), Washington. He was also attributed the ARINSA (Asset Recovery Inter-Agency Network Southern Africa) Award for his significant contribution in the field of asset recovery both in Mauritius and the region.

As former head of the Asset Recovery Unit at the Office of the DPP, and former UNODC consultant on the implementation of an asset recovery network in Western Africa, now known as ARINWA (the Asset Recovery Inter-Agency Network for West Africa) and currently part-time lecturer to prospective barristers and attorneys enrolled for the Law Practitioners & Vocational Course at the University of Mauritius, Mr. Ahmine's contribution to the legal profession is remarkable.



Mr. Rashid Ahmine, DPP

## Former DPPs:

1. Sir Maurice Latour-Adrien
2. Mr. Jacques Vallet
3. Mr. Cyrille de Labauve d'Arifat KC
4. Mr. Emmanuel Leung Shing KC
5. Ms. Anne-Marie Chung
6. Mr. Doorgesh Ramsewak KC
7. Ms. Ah Foon Chui Yew Cheong
8. Mr. Abdurrafeek Hamuth
9. Mr. Gerard Angoh
10. Mr. Satyajit Boolell, SC



## The Eleventh DPP (Cont'd)

Mr. Rashid Ahmine is a man with vision. He undertakes to bring changes towards a faster and more efficient system of justice. His wish is to see a reduction in delays in criminal investigation by law enforcement agencies and prosecution of cases in Court. He also thinks it important that reforms be brought to the Criminal Code and in the law of evidence in areas where the need is felt for. He is a fervent believer in the integrity and independence of the position which he occupies and he also intends to promote a relationship of cooperation among various institutions to further the ends of justice.



The Office of the DPP wishes to congratulate Mr. Ahmine on his appointment as the Director of Public Prosecutions of Mauritius. We wish him a long and fruitful career. We know that with great power, comes great responsibility and we pledge to stand by him as he shoulders the responsibilities that come with the post.

DPP, this is only the beginning. The best is yet to come!

Article by the ODPP



# ARTICLES





Article by:

**Bhamini Prayag-Rajcoomar**

**Senior State Counsel**

## **Unexplained Wealth and Money Laundering in Mauritius- The Current Situation**

Mauritius, commonly known for its stunning beaches, rich culture, and diverse landscape, is also a hub for financial activities. The country is considered a tax haven for its attractive tax policies, making it an ideal destination for individuals and businesses seeking to park their wealth in a secure and confidential location. However, this system has made Mauritius vulnerable to the illicit activities of money laundering and unexplained wealth.

Money laundering can be explained in simple terms as the process of disguising the proceeds of illegal activities as legitimate funds. It is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities. Money launderers use a variety of methods to clean their dirty money, including transferring funds through shell companies, investing in real estate, and using other financial instruments. The impact of money laundering is significant, as it distorts the financial system, undermines economic stability, and supports criminal activities such as human trafficking, drug trafficking, and terrorism. Therefore, it is vital in the fight against crime that criminals be prevented from legitimising the proceeds of their criminal activities.

The local legal framework relating to money laundering in Mauritius is contained in The Financial Intelligence and Anti-Money Laundering Act 2002, The Prevention of Corruption Act 2002, The Asset Recovery Act.

Unexplained Wealth, on the other hand, refers to assets that cannot be accounted for by legitimate sources of income. This wealth may have been obtained through illegal activities such as corruption, fraud, and money laundering. Unexplained wealth can also result from a failure to report the source of the wealth or to declare it to the relevant authorities.

The presence of unexplained wealth in a country is a clear indication of a weak regulatory regime, poor enforcement, and lack of transparency in the financial system. The legislator has taken several steps to combat illicit activities, including the implementation of anti-money laundering laws and the establishment of a financial intelligence unit to name a few. Collaboration with international organisations such as the Financial Action Task Force (FATF) has been strengthened in order to enhance the ability of authorities to detect and investigate money laundering and unexplained wealth cases.

Recently under an “unexplained wealth order”, Mrs. Bibi Nazoolbee Bolaki made the headlines when she appealed to the Supreme Court to dispute the order obtained by the Integrity Reporting Services Agency in relation to the seizure of her property worth Rs. 52 million. Another case which is currently hogging media attention is the “Franklin Affair”. Through it, it is becoming clear that Mauritius has a need for more collaboration among relevant institutions and various stakeholders to

## Unexplained Wealth and Money Laundering in Mauritius (Cont'd)



Unexplained Wealth  
Image Source: abvsolicitors.com

spot money-laundering and unexplained wealth cases. As it is, Mauritius has very good laws as far as financial services are concerned. However, debates persist with regards the applicability of the laws. Where there are abuses, strict sanctions need to be taken.

Another challenge in the fight against both anti-money laundering and unexplained wealth remains the lack of effective enforcement despite the existence of anti-money laundering laws and regulations. There are difficulties involved when the offshore sector is involved. It remains a fact that only a few cases have successfully been investigated. Collaboration with international organizations should be strengthened to enhance our ability to detect and investigate money laundering and unexplained wealth.



Banks to increase their transparency  
Image Source: forbes.com



Article by:  
**Deepti Thakoor**  
State Counsel

## Is Legislation the Answer to Any Social Ill?

Imagine a world without laws. A world where you can do anything you want. Where there is no control over what you can do and cannot do. Does that sound idyllic?

Now let's look at the other side of the coin. Imagine that your neighbour enters in your house, without your permission, and takes away your expensive personal belongings, such as your jewellery. A classic case of theft, you would say? Well, in this world, there are no laws. Is there anything you could do about it?

You would agree that a world without laws would lead to anarchy. In a modern democratic state, legislation is required *"to accomplish certain political objectives and certain particular policies."* In a narrow sense, legislation refers to *"Acts of Parliament, Orders, Regulations, Orders-in-Council, Statutory Instruments and Rules."* Broadly, legislation covers different types of normative rules and practices of professional, social or religious groups and societies. In this article, we shall refer to the narrow definition of legislation.

Without legislation, a government would not be able to govern. It is a means of transforming policies into enforceable laws. Some laws bring about a new condition, while others change existing laws for the better. Some laws generate revenue for the government while others address social ills or problems. However, as Crabbe rightly points out there are *"certain social ills and problems which a government cannot solve by legislation."* Should a government adopt a "wait-and-see approach"?

The reflection in this article was prompted by the recent events last week, following the death of two pilgrims who were returning from Grand Bassin. Their *kanwar* caught fire and, unfortunately, they did not survive. It is a very sad and tragic event for the country, not just for people of the Hindu faith. When someone leaves their home to do a pilgrimage, there is an expectation that they will come back. In this instance, two persons did not come back to their family.

Mauritius is a diverse and multicultural island where certain festivals have national status, like *Maha Shivratri*, Chinese New Year, Christmas and *Eid-UI-Fitr*. The safety of the pilgrims is not an issue for the pilgrims alone but for all road users.

It is not a time to play the blame game, as Vinod Boollel rightly says in his article dated 23 Feb 2023, published in *L'Express*. It is a time to come together and to reflect.



## Is Legislation the Answer to Any Social Ill? (Cont'd)

There have been discussions as to whether there should be legislation to address the safety of kanwars on our roads. While legislation may be one solution, the question is whether it is the solution.

Let us consider what laws can be enacted by Parliament. **Section 45(1) of the**

**Constitution**, empowers Parliament to make laws for the “*peace, order and good government of Mauritius.*” These are very wide powers and laws regarding the safety of pilgrims on the road would fall under this category.

Parliament must also make laws which are in accordance with the Constitution. **Section 11(1) of the Constitution** guarantees the freedom to practise one’s religion which includes “*freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.*”

Of note is **Section 11(5)(a) of the Constitution** which allows Parliament to make laws for public safety and this is a lawful derogation to the right to practise one’s religion. In that respect, legislation aiming to ensure the safety of pilgrims and road users would be permissible.

We are also aware that laws do not operate in a vacuum. Laws, which do not consider *the “cultural, economic, political and social conditions of the society within which it is intended to operate”* might not be very effective. Having laws imposed on pilgrims, without consideration of their core beliefs, concerns and needs, could lead to frustration and an utter disrespect of the laws. The idea behind having laws to regulate the safety of pilgrims should not be punitive; the idea is to ensure that the pilgrimage is safe for all road users, irrespective of faith.

Legislation should not be used as a quick-fix solution to resolve any social ill. The issues surrounding the death of the two pilgrims are deep and multi-layered. Given that the safety of road users during the *Maha Shivratri* pilgrimage is a matter of national concern, there should be nationwide consultation and the voices of those, most impacted by the issue, to be heard. There have been a lot of focus on Hindu socio-cultural groups but they are not the only parties involved. People, who live on the pilgrimage path, who experience yearly safety issues with the pilgrimage, should be heard. The pilgrims must also have a say. Other citizens, who feel deeply about the issue, should be given an opportunity to express their views. What about having religious leaders

## Is Legislation the Answer to Any Social Ill? (Cont'd)

of other faiths come to the table and share their views on how to best make the pilgrimage safe? There should be a conscious effort to have a diverse panel, consisting of women, young, old and people of different faiths.

Maybe legislation alone would not ensure the safety of pilgrims and other road users during a time of pilgrimage. Maybe there should be education campaigns. Maybe there are other solutions which a collective and fair mind can conceive of.

*Source:*

1. *Crabbe on Legislative Drafting (LexisNexis, 2nd edition), 1 -11*



## The UN International Organisation for Migration and the Africa Prosecutors Association Symposium

With war, famine, drought, poverty and other calamities shaking the world, people are more and more on the move. Some use legal means but others use unlawful ways. People are smuggled in countries to be sold for sexual or other benefits, illegal migrants ship or fly to other lands in the hope of a better life, parents sell their offspring for a little money, to name but a few of the manifold ramifications. Countries on the continents are mostly affected by this state of affairs as cross-border movements are easier. The category most at risk is inevitably the children.

In that context, UN International Organisation for Migration (IOM), the Africa Prosecutors Association (APA), the Ministry of Foreign Affairs of Denmark, and the Egyptian Arab Republic have organised a symposium on *“Enhancing and Expanding the Cooperation on the Rule of Law and Investigation on the Protection of Unaccompanied and Minor Children Against Migration Related Crimes”*. It was held at the St. Regis Hotel in the New Administrative Capital of Egypt between the 22<sup>nd</sup> to the 24<sup>th</sup> of November 2022.

The persons who were present literally came from all over the world: there were interveners from USA, Bangladesh, Denmark and Egypt of course; delegates from Kenya, Tanzania, Zambia, Mozambique, DRC, Namibia and Angola but also from Morocco, Algeria, Palestine, Tunisia, Portugal, Lebanon and Indonesia.

The numerous excellent interventions spanned over the three-day conference. It started off with the listing of all the legal international obligations set out in the different conventions and protocols to which the countries present were signatories by Mr. Mohamed Khalaf, Director of International Cooperation and Human Rights at the Egyptian Prosecutor’s Office.

Amongst the notable interventions was the one on the Missing Migrant Project where Ms Andrea Garcia explained the project with its objective of providing statistics of children which go missing with the movement of people. We were also exposed to the reality of children on the move and how the government and NGOs had to provide legal, medical assistance, education, housing and food. How in some jurisdiction foster care systems and guardianship systems that have been put into place for unaccompanied and separated children, was shared by Arnout Debucquoy from IOM Belgium. Dr Kamal Ahamed and Nafisa Siddique, Clinical Psychologists from Bangladesh shared their experience with some young girls victims of human trafficking for sexual gratification. They exposed all the psychological, physical impacts as well as mental health and psychosocial support needed.

Article by:

Audrey Sunglee

Principal State Counsel



Image Source: infomigrants.com



Image Source: blogs.iadb



Image Source: APNews

Another insightful presentation was on the Interpol actions against online child sexual exploitation by Ms Gabriela Chamorro and how Interpol builds up the data base, how to share and get access to information. Interpol, we were made to understand favours a victim-centered approach and is prepared to help countries in assisting the victims. MS Chamorro emphasised on the need for collaboration worldwide and gave examples of networks dismantled through such collaboration.

The experience of countries represented was sought for. Our host country, through its Chief Prosecutor, Mr Mohamed Habib and his colleagues, shared their experience on the different cases of trafficking in person; on the Egyptian approach to investigating trafficking in person through the use of technology and digital evidence and on the protection of the children all through the legal process and even after.

With organised crime in this digital era, collaboration is the key to fruitful investigations and successful prosecutions. International cooperation is primordial. However, it faces numerous challenges, inter alia, the difference in the legal systems of the different countries, delay in the process of evidence gathering, admissibility of formal/informal cooperation.

The aim of the symposium, as expatiated by many intervenors was precisely and basically to expand judicial cooperation and build a bond of trust between the different countries. So that despite the challenges, collaboration will be speedy and efficient be it at the level of investigation or prosecution of the crime. The signing of memorandums of Understanding was proposed between the African and Arab countries. The conference ended with the launching of the APA website.

Over and above the symposium, our hosts took the delegates to the heart of Old Cairo and its well-known market and a tour and dinner on the Nile River. We were invited by the Prosecutor General of Egypt to visit the Prosecutor's office in the brand-new building. The aim was to create bonds among African, Arab and European countries in order to facilitate cooperation between them and their agencies in the fight against illegal migration, in general, and abuse against children specifically. Although Mauritius at the moment is not involved in any major case of trafficking in person and/or people smuggling involving children, we are the subject matter of a few cases which nonetheless call for concern. Besides at the local level our country is faced with manifold issues regarding the placement of minors, be it offenders or victims, their welfare and safety in institutions and/or foster families and/or shelters and/or care centres.

I had the pleasure and privilege to be part of a delegation of three people, with Ms W. Rangan, then Ag. SADPP, and Ms A. Hamuth, ADPP, to fly to Egypt to attend this symposium which proved to be a rich, intense and fulfilling experience.







Article by:

**Bhamini Prayag-Rajcoomar**  
**Senior State Counsel**

and

**Leela Jeewon-Neeraye**  
**Ag. Senior State Counsel**  
**(below)**



## **The 16th Annual General Meeting & Conference of the Africa Prosecutors' Association**

We had the opportunity to attend the 16th Annual Africa Prosecutors' Association (APA) Conference and Annual General Meeting which was held at Sarova Whitesands, Mombassa, Kenya from the 29th January to 2nd February 2023. The Honourable. Dr. William Samoi Ruto, the President of the Republic of Kenya, and Mr. Noordin M.Haji, the Director of Public Prosecutions of Kenya, addressed and welcomed the delegates from the different Member States.

The theme of the conference was "*Strengthening Coordination and Cooperation Towards Effective Cross-border Prosecution of Transnational Organized Crime*" and its aim was to bring together Attorney Generals, Prosecutor Generals and Directors of Public Prosecutions in order to develop networks and regional cooperation among the national prosecuting authorities in Africa. It also aimed to develop joint strategies for national prosecuting authorities in Africa on effectively prosecuting transnational organized crimes such as economic and Environmental crimes.

There was a real need for this conference which was fueled by the reality of organized criminal groups establishing networks across Africa and the globe coupled with advancements in technology which had enhanced the complex nature of emerging and transnational organized crimes.

Prosecutors from Africa recognized the need to improve collaboration, networking, cooperation, mutual legal assistance among the Prosecuting Authorities and Agencies and thus the conference offered a platform for all of them, having come together from different jurisdictions to formulate a common response to ensure support as well as promote the establishment of effective collaboration networks, both informal and formal to enhance capacity building and support criminal justice to the people of our respective regions.

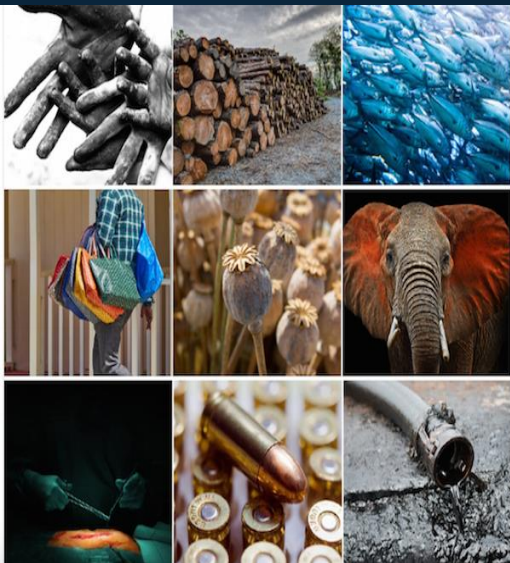
The conference further addressed how to up and improve our game as prosecutors in order to fight against environmental crimes (deforestation), wildlife crimes (poaching), terrorism and economic crimes such as money laundering, corruption, drug trafficking, cybercrimes, with online sexual exploitation of children and tax evasion using e-currencies such as Bitcoin which contribute to illicit financial flows.



# The 16th Annual General Meeting & Conference of the Africa Prosecutors' Association (cont'd)



Image Source: OSCE.com



Organised crime  
Image Source: occrp.org

Several distinguished personalities namely Ms. Shamila Batohi, the DPP of South Africa, Mr. Kennedy Ogeto, The Solicitor General of the Republic of Kenya, H.K Dr Moulay El Hassan Daki, Attorney General at La Cour de Cassation of the Kingdom of Morocco, Mr. Satyajit Boolell, SC and Chairman of Temple Group in Mauritius, to name a few, delivered presentations on topics such as:

- *Repatriation of proceeds of crime;*
- *Use of Technology in Combating Transnational Organized Crime;*
- *Cybersecurity;*
- *Understanding the Trends of illicit Financial Flows;*
- *Money laundering and Asset Recovery: Strategies and Challenges;*
- *Terrorism and Terrorism Financing in the 21st Century; and*
- *Environment and Wildlife Crime as Transnational Crimes.*

Participants then deliberated on strategies that could be adopted to enhance cooperation in the recovery of proceeds of crime among African Countries. Much emphasis was placed on encouraging informal cooperation amongst the member States to facilitate the exchange of information on money trails and criminals as formal requests through Interpol took much time.

Through the Mombasa APA Conference Declaration 2023 members of the Africa Prosecutors' Association resolved to engage with international and regional bodies that are aimed at facilitating the confiscation and repatriation of criminal assets across borders. They also resolved to encourage member countries to develop and implement robust asset recovery mechanisms that uses both conviction and non-conviction based measures. The members further resolved to encourage member countries to adopt and ratify relevant regional, continental and international conventions and other instruments that may aid international cooperation in the investigation and prosecution of transnational crimes.

The members pledged to encourage the development of legislations as well as related mechanisms in order to deal with illicit financial flows, through sharing best practices regionally and internationally. Engagement was also taken to co-operate to address the growing threat of terrorism, including terrorist financing and violent extremist that are posing and increasing threat in several African countries.



## The 16th Annual General Meeting & Conference of the Africa Prosecutors' Association (cont'd)



The members in addition also resolved to engage in the enhancement of formal and informal cooperation among the member states as well as in recognising that in addition to climate change, environmental crime such as illegal logging, illicit mining, wildlife poaching, and trafficking are used by organised criminals as part as transnational crimes, thereby making it necessary for member countries to strive to actively combat this growing criminal phenomenon.

It is worth noting that the members recommended that member countries resolve to establish and strengthen existing witness protection agencies and mechanisms within their respective countries including enacting witness protection legislation to promote regional cooperation and coordination. The member states recognised and accepted the request of the following 14 countries; Burkina Faso, Benin, Cameroon, Gambia, Mauritania, Mali, Republic of Congo, Guinea Bissau, Somalia, Sudan, Central Africa Republic, Madagascar, Sierra Leone, and Niger to be members of the Africa Prosecutors Association; and they encouraged all Prosecution Authorities in Africa who are non-members to join the Africa Prosecutors Association.

[We also attended the Meeting of the Executive Committee of the Africa Prosecutors Association on the 31st January 2023 which comprises of the following Member States Egypt (President), Mozambique (Secretary General), Zambia (Treasury General), Kingdom of Morocco (Vice President), Mauritius (Vice President), Rwanda (Vice President), Senegal (Vice President), Tanzania (Vice President), Kenya (Member), Uganda (Member), South Africa (Member), Namibia (Member), Angola (Member).]





# CASE COMMENTARIES

## Rujuballee F. K & Anor (2023 SCJ 25)

*Judgment: Hon S B A Hamuth-Laulloo, Puisne Judge and Hon K D Gunesh-Balaghee, Puisne Judge*

### Appeal outside delay

Applicant in this case, moved for an order allowing him to appeal outside delay against the decision of the Learned Magistrate of the Intermediate Court (Financial Crimes Division) dismissing the case against the Respondent. Respondent resisted the motion on the ground that procedural requirements in appeals should not be disregarded.

### Facts of the case

The relevant circumstances of the present case are:

- a. The Information against the Respondent was lodged in August 2015 and it contained 23 counts.
- b. A Judgment of 26 pages was delivered on 21<sup>st</sup> April 2022.
- c. The Co-Respondent sent the file to the Office of the Director of Public Prosecutions (ODPP) on 10<sup>th</sup> May 2022 at 1 p.m.
- d. After perusing the file, on 11<sup>th</sup> May 2022, the ODPP decided that an appeal would be lodged against the said Judgment.
- e. On 12<sup>th</sup> May 2022, the Co-Respondent sent additional documents to the ODPP.
- f. The delay to lodge the appeal had expired on 11<sup>th</sup> May.

### Points raised by Applicant

Applicant argued that the delay was not due to the laches of the applicant or his legal officers and that he has shown utmost diligence in dealing with the bulky casefile, the more so since the co-respondent took 18 days to refer the file to the ODPP. In addition, according to the applicant, the grounds of appeal are substantiated such that there exists sufficient justification for the exercise of our discretion to allow the applicant to appeal outside delay.

### Points raised by Respondent

Respondent submitted that, in principle, procedures governing appeals should not be disregarded although the court retains a discretion in

Commentary by:

Sannidi Paupoo-Nallee

State Counsel

exceptional circumstances. He added that the judgment was a well-reasoned and motivated one.

### **Principles of law applied by Court**

In deciding whether to grant the extension of time, the Supreme Court considered the authority of **Ramtohum v The State [1996 MR 207]** where it was observed that it has a discretion to allow an appeal to proceed outside delay. The Court may do so exceptionally, where there is sufficient justification for such exercise of discretion such as in cases where the delay is not attributable to the appellant or his legal advisers and where the appeal is based on solid grounds.

### **Commentary**

Pursuant to **Section 93 of the District and Intermediate Courts (Criminal Jurisdiction) Act 1888**, any person wishing to lodge an appeal shall do so within 21 days of the adjudication.

The principles laid down in **Ramtohum** [Supra] have been followed in foreign jurisdictions as well.

In **Mitchell 65 Cr. App. R. 185**, it was held that the Court of Appeal would, in its discretion, grant an extension of time when the Court could not validly determine the correct sentence in respect of an offence which, by virtue of a new statutory interpretation by the Courts, the appellant would not have committed.

In **R v Ramsden (1972) Cr. L.R. 547**, the Court held: "Where a subsequent decision of a superior Court has produced an apparent change in the law, that coupled with other circumstances may be a factor which will induce the Court to grant leave to appeal out of time, nevertheless in the last analysis this must in every case be a matter of discretion."

In **R v Rhodes (1910) 5Cr. App. R. 35**, which was referred to in the present case, it was highlighted that for applications made outside delay, the court could disregard a short delay but that satisfactory reasons would have to be put forward where a considerable interval of time, a month or more, would have elapsed.

In **R v Marsh 25 Cr. App. R. 49**, it was held that it was the practice not to grant any considerable extension of time unless it appeared on the application that there were such merits that the appeal would probably succeed.

From the legal reasonings laid down in the aforesaid authorities, it can be noted that the stronger the ground of appeal appears to be, the more likely Courts will exercise their discretion in allowing an appeal to proceed outside delay. However, this does not suggest that time limits which are expressed in a mandatory manner by statute, are not to be adhered to.

In the context of appeals lodged outside delay, there may be cases where fairness would demand the exercise of Court's discretion in favour of an applicant. However, at the same time, there are compelling policy reasons to have finality in decisions of the Court. On one hand, should prescribed limits not be respected, this can prolong uncertainty and encourage abuses. On the other hand, when mandatory time limits are observed, this ensures timely executions of judgments which can reinforce faith in the judicial system. Therefore, each case must be decided on its own.





Commentary by:

Sharfa Paurobally

State Counsel

# Ramgoolam N. v Director of Public Prosecutions (2023 SCJ 55)

*Judgment: Hon M. Iqbal Maghooa, Puisne Judge and Hon P M T K Kam Sing, Puisne Judge*

## **Background**

Earlier this month, the Supreme Court of Mauritius set aside an application seeking leave of the Court to appeal to the Judicial Committee of the Privy Council against a Judgment delivered by the Supreme Court on the 30<sup>th</sup> of August 2022 in the case of **Ramgoolam N v DPP [2023 SCJ 55]**. The application was made as of right under **section 81(1)(a)** of the **Constitution** and with the leave of the Court pursuant to **section 81(2)(b)** of the **Constitution**, coupled with **section 70A** of the **Courts Act**.

## **Facts**

### *The Intermediate Court*

The applicant, then accused, initially stood charged before the Intermediate Court with the offence of wilfully and unlawfully accepting payment in cash in excess of an amount of Rs. 500,000, in breach of **sections 5, 7 and 8** of the **Financial Intelligence and Anti-Money Laundering Act 2002** (FIAMLA) under 23 counts. He had pleaded not guilty. **Section 5 of FIAMLA** creates the offence of limitation of payment in cash and stipulates that *any person who makes or accepts any payment in cash in excess of 500,000 rupees or an equivalent amount in foreign currency, or such amount as may be prescribed, shall commit an offence.*

The Information stipulated that the alleged offence purported to have been committed between the period of 31<sup>st</sup> of January 2009 and 7<sup>th</sup> of February 2015. The defence had moved for particulars of the exact dates on which the alleged 23 offences were committed which eventually culminated into a motion for the dismissal of the Counts. The Learned Magistrates held that the information was *vague and uncertain, in view of the inability by the prosecution to furnish the particulars of the other party in the transaction* and dismissed the information against the applicant accordingly.

### *The Supreme Court*

This office consequently turned to the Supreme Court and appealed against the ruling of the Learned Magistrates on 18 grounds. The grounds essentially raised the question of whether the Information was bad for being vague and uncertain despite containing all the elements of the offence under **section 5**. In a Judgment dated the 30<sup>th</sup> of August

2022, the Supreme Court found that the 18 grounds were well taken, quashed the ruling of the Learned Magistrates and remitted the matter to the Intermediate Court for the case to be heard on the merits before a differently constituted Bench.

In the application for leave to the Judicial Committee of the Privy Council, the Supreme Court was called to determine whether this Judgment was a final decision.

### ***Points raised and observations***

The application was resisted and objected to by this office and one of the grounds of objection was that the decision of the Supreme Court dated the 30th August 2022 was not a final decision. Therefore, the crux of the issue to be determined before the Supreme Court in deciding whether to grant leave was whether the Judgment delivered by the Supreme Court dated the 30<sup>th</sup> of August 2022 remitting the case to the Intermediate Court was a final decision within the meaning of **section 81 (1) (a)** of the **Constitution** and **section 70 A** of the **Courts Act**.

Counsel for the applicant argued that the ruling of the learned Magistrates of the Intermediate Court dismissing the 23 counts of the amended information was commensurate to an acquittal. However, this argument was not retained by the Court which held that decision of the Supreme Court (the appeal) did not dispose of the trial inasmuch as criminal proceedings are still pending *quoad* the applicant.

Consequently, the Court concluded that the decision of the Supreme Court does not bear the characteristics of finality and an appeal cannot lie against it to the Judicial Committee of the Privy Council. The application was thus set aside.

In reaching its conclusion, the Supreme Court observed that there had been no trial before the Intermediate Court and consequently, there was no finding of guilt or otherwise and rejected the arguments of counsel for the applicant that there was an acquittal. Indeed, in the present matter, the information had been dismissed against the applicant after his counsel had moved that the information be dismissed prior to start of the trial. The Intermediate Court did not hear any evidence and made no finding. The Court also pertinently observed that the decision of the Supreme Court, that is, the appeal did not determine the outcome of the trial nor did it dispose of the trial against the applicant.

### ***Points of the law emerging***

The focal point of issue before the Supreme Court therefore was whether the decision came within the purview of **section 81 (1) (a)** of the **Constitution** and **section 70** of the **Courts Act**, that is, whether

the decision in question bore an element of finality and had the characteristics of a final decision. The relevant sections are reproduced below:

### **Section 81(1)(a) of the Constitution**

*(1) An appeal shall lie from decisions of the Court of Appeal or the Supreme Court to the Judicial Committee as of right in the following cases –*

*(a) final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution ...*

### **Section 70A of the Courts Act**

*Appeals to Judicial Committee in criminal matters*

*An appeal shall lie from final decisions of the Court of Appeal or of the Supreme Court to the Judicial Committee in criminal cases where, in the opinion of the Court, the question involved in the appeal is one that, by reason of its great general public importance or otherwise, ought to be submitted to the Judicial Committee.*

According to both sections above, one of the evident prerequisite of an appeal to the Judicial Committee of the Privy Council is that the appeal in question should be made against a final decision. The principle of finality, as enshrined in the Constitution, has been and remains at the core of determining whether leave to an appeal to the Judicial Committee of the Privy Council should be granted. In the aforementioned case, the Supreme Court highlighted that neither the Intermediate Court nor the Supreme Court made any determination as to the charges which had been preferred against the applicant and thus, criminal proceedings are still pending against the applicant.

Parenthetically, in civil proceedings, a decision is “final” if it puts the Plaintiff in the impossibility of moving further and this was echoed as far back as a century ago in the case of **C. Rassool v D Gungadass [1922 MR 26]** wherein the Court observed that: *in the view of this court a “final” judgment is one which disposes finally of a suit; one which puts the Plaintiff in the impossibility of moving further or proceeding with the hearing of his action on the merits; one which finally determines or concludes the rights of the parties; one which puts an end to the main dispute.* This principle enunciated in this case remains the threshold for determining whether a decision is a final one for the purpose of appealing to the Judicial Committee of the Privy Council and was more recently considered in the case of **C-Care (Mauritius) Ltd v Employment Relations Tribunal (2021 SCJ 12)** which was an application as of right under **section 81(1)(b)** of the **Constitution**.

Therefore, prior to turning to the final court of appeal, that is the Judicial Committee of the Privy Council, applicants have to satisfy the court that the decision they are seeking to appeal to bears an element of finality both in criminal and civil proceedings. As a matter of fact, this

requirement is not privy to Mauritius. An appeal to the Judicial Committee of the Privy Council also lies from the independent Republic of Trinidad and Tobago within the commonwealth and its Constitution sets out under **section 109** that an appeal shall only lie from *final decisions*.

*NB: the Court process may not be over as other legal avenues in the case of Ramgoolam V DPP, including special leave applications, can be explored.*





# FOR THE FUN OF IT



Image Source: vectorstock.com

**Q:** What do lawyers wear to work?

**A:** Law suits

When a lawyer speaks for a long time, there is usually an **extended sentence.**

A lawyer walks into a bar and instead of ordering a drink, he orders just-ice!

Source: [keeplaughingforever.com](http://keeplaughingforever.com)

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The price of power is the responsibility  
for the public good.



- Bill Vaughan