

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 488

CR 62/2021

REPUBLIC

(rep. by Joshua Revera)

versus

Mahalingam Kanapathi

(rep. by Clifford Andre)

Neutral Citation: *Republic v Mahalingam Kanapathi* (CR 62/2021) [2020] SCSC (4 August 2021). ⁴⁸⁸

Before: Govinden CJ.

Summary: Fishing without a foreign fishing vessel license; imposition of the minimum mandatory sentence.

Heard: 30th July 2021

Delivered: 4th August 2021

ORDER

- [1] For committing the offences of Fishing without a Fishing Vessel Licence, contrary to Section 11(1) as read with Section 58 and Section 69 of the Fisheries Act, 2014 (Act 20 of 2014) and punishable under Section 58 (a) of the said Act I imposed a fine of SCR 2,500,000. In default of paying this fine within 14 days of this sentence, the accused shall undergo 2 years imprisonment.
- [2] I order that the vessel "SAMPATH 7", together with its gears and articles used for commission of the offence be forfeited to the Republic of Seychelles in accordance to Section 70 of the Fisheries Act.
- [3] The case would be called on the 18th of August 2021 in order to ascertain the payment of the fine.

- [4] The convict is not to leave the Republic of Seychelles until the 18th of August 2021 at 9.30 am or until the further orders of this court.
- [5] The Principal Secretary of the Department of Immigration is to be informed of this Court Order.

SENTENCE

GOVINDEN CJ.

- [6] The accused, Mahalingam Kanapathi, pleaded guilty to and was convicted for the following offence under the Fisheries Act:

Count 1

Statement of offence

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

Particulars of offence

In that, Mahalingam KANAPATHI a 32 years old skipper and Master on board fishing vessel SAMPATH 7, Sri Lanka, on the 1st day of June 2021, in between 99 to 100 Nautical

Miles South East of Mahe Plateau, Seychelles, was found on board foreign fishing vessel SAMPATH 7, Registration no. IMUL-A-0850-KLT, that is not licensed or authorised for fishing in Seychelles waters, used the said foreign vessel for fishing in Seychelles waters.

- [7] The convict is 32 years old. He pleaded guilty at the very 1st opportunity. He has two minor children. He is the sole breadwinner in the family. He is a 1st time offender. Learned counsel moved the Court to impose a non -custodial sentence and to release the vessel. As to the vessel, the Learned defence counsel submitted that as the vessel “SAMPATH 7” has only come to Seychelles for the 1st time, that the court considers imposing a fine so that the boat, the tool of trade of the convict, can be released and he would be able to provide for his family.
- [8] I have given careful consideration to the mitigating factors in this case. I am satisfied that the vessel of the accused, which is not more than 25 meters in length, was engaged in a fishing operation at the time that it was first spotted in the Seychelles Economic Exclusive Zone and that all items and equipment found on board were seized by the law enforcement authorities. I note that Section 58 of the Fisheries Act provides for a minimum fine of SCR 2,500,000 for the offence of fishing in Seychelles waters without a licence for a vessel, which is not more than 25 meters in length.
- [9] There has been a long list of unauthorised fishing in Seychelles waters cases over the years in which following convictions the Supreme Court had imposed fines with default of payment of fines being the forfeitures of the fishing vessels; their fishing gears and their catch. In those sentences the court had also invariably ordered for the repatriation of the convicts. The resulting effect have been the fines being intentionally left unpaid by the convicts allowing the fishing vessels to be forfeited and the accused walking free from the court.

This list of cases includes the following cases; *Republic vs Bacar, CO102/15; Republic v Eddine, CO 107/15; Republic vs ABDELA , CO103/15; Republic vs Mohamed, CO 106/15; Republic v Nahanon, Co 104/15; Republic vs Kaluharath Chamil Nirashan Keerthirathna,*

CO 65/18; The Republic vs Kostawatta Muhamdirange Thomas Meril Thamel, CO 16/19; The Republic vs Ben Attoomani, CR 19/19; The Republic vs Toubo Mochidy, CO 26/19; The Republic vs R.W Suresh Kumara CO43/19; The Republic vs Kuru Wallge Wijerathna CO 2/20; The Republic vs Mohammed Fais Mohamed Falil CO 1/20; The Republic vs Ramesh Nilanga, CR23/20; The Republic vs M. A. Shan Madushanka CO 25/20; The Republic vs E. Ajith Samantha CO 68/20.

[10] It is clear that this existing sentencing pattern and sentences imposed by this court is not acting as a deterrent to offenders who sees Seychelles as an El Dorado for illegal fishing and they keep coming in throve. They have kept plundering our limited fisheries resources over the years, whilst at the same time I feel that we have not been sending the right signal back to their home state. This is happening whilst the fishermen of this country who depends on fishing activities see their catches decreasing on a daily basis and their fishing zones reducing. Accordingly, I intend to depart from the existing sentencing practices with the hope that our jurisdiction is seen as one that takes illegal and unauthorized fishing seriously.

[11] Section 58 of the Fisheries Act provides as follows;

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

(a) of a length overall not exceeding 24 metres, to a fine not less than SCR2,500,000;

(b) of a length overall exceeding 24 metres but not exceeding 50 metres, to a fine not less than SCR12,500,000; or

(c) of a length overall exceeding 50 metres or more, to a fine not less than SCR18,750,000 and not exceeding SCR31,250,000.

- [12] An analysis of Section 58 in the light of past sentences for similar cases rendered by the court shows that sentencing precedents has clearly cut across the provisions of the law, with cases of accused being made to pay fines which were considerably lower than the minimum mandatory fines that should have been inflicted under Section 58 given the sizes of their vessels. In this case the vessel "SAMPATH 7" is of a length not exceeding 24 metres and the law calls for a minimum mandatory fine of not less than SCR2,500,000 to be imposed.
- [13] Taking the totality of the circumstances and the facts of the case, including the mitigation of Learned Defence counsel and the necessity for there to be a deterrent sentence, I find it fit to impose a sentence that would discourage the future commission of this offence both by the accused and potential offenders.
- [14] I therefore impose the following sentence on the accused in respect of the conviction;
- [15] For committing the offences of Fishing without a Fishing Vessel Licence, contrary to Section 11(1) as read with Section 58 and Section 69 of the Fisheries Act, 2014 (Act 20 of 2014) and punishable under Section 58 (a) of the said Act I imposed a fine of SCR 2,500,000. In default of paying this fine within 14 days of this sentence, the accused shall undergo 2 years imprisonment.
- [16] I order that the vessel "SAMPATH 7", together with its gears; articles used for commission of the offence and any catch found on board be forfeited to the Republic of Seychelles in accordance to Section 70 of the Fisheries Act.
- [17] This case would be called on the 18th of August 2021 at 9.30 am in order to ascertain the payment of the fine.
- [18] The accused has a right to appeal against this sentence within 30 working days.
- [19] The convict is not to leave the Republic of Seychelles until the 18th of August 2021 at 9.30 am or until the further orders of this court.

[20] The Principal Secretary of the Department of Immigration is to be informed of this Court Order.

Signed, dated and delivered at Ile du Port Victoria on¹² August 2021.



Govinden CJ

