**IN THIS ISSUE:**

<table>
<thead>
<tr>
<th></th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Editorial</td>
<td>1</td>
</tr>
<tr>
<td>Safe Justice</td>
<td>2-3</td>
</tr>
<tr>
<td>2nd Global Small Island Developing States (SIDS) Conference on Anti-Corruption Reforms</td>
<td>4-5</td>
</tr>
<tr>
<td>Training on Prosecuting Domestic Violence</td>
<td>6-7</td>
</tr>
<tr>
<td>Two-Day Training Programme for Prosecutors and Enquiring Officers</td>
<td>8-9</td>
</tr>
<tr>
<td>The Birth Of The Juvenile And Family Unit (JFU) In Rodrigues</td>
<td>10</td>
</tr>
<tr>
<td>The Annual Football Tournament</td>
<td>11-12</td>
</tr>
<tr>
<td>List of newly appointed Senior Counsel and Senior Attorney</td>
<td>13</td>
</tr>
<tr>
<td>List of new appointments at the ODPP</td>
<td>13</td>
</tr>
<tr>
<td>The Mauritius Criminal Law Review (1st and 2nd Editions)</td>
<td>13</td>
</tr>
<tr>
<td>Case summaries</td>
<td>13-17</td>
</tr>
</tbody>
</table>

**EDITORIAL TEAM**

Miss Anusha Rawoah, State Counsel
Ms Zaynah Essop, State Counsel
Mrs Pooja Autar-Callichurn, State Counsel
Mrs Sshaheen Inshiraah Dawreeawoo, State Counsel
Miss Neelam Nemchand, Legal Research Officer
Miss Pooja Domun, Legal Research 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 61st issue of our monthly newsletter. In this edition, the Director of Public Prosecutions, Mr Satyajit Boolell, SC reiterates the issue of ‘prosecutorial discretion’ on which our criminal justice system hinges, encapsulating the two-fold test to be satisfied before a decision is taken on case files sent to this office: sufficiency of evidence and public interest.

On another note, the Office of the DPP has, through its Training Unit, carried out two riveting trainings during the month at the Rajsoomer Lallah Lecture Hall. The first one was a 2-day training for prosecutors and enquiring officers of the Ministry of Health and Quality of Life and the second one entitled ‘Prosecuting Domestic Violence’, dealt with the recent amendments brought to the Protection from Domestic Violence Act (‘PDVA’) and their ramifications on the duties of police officers. It is to be noted that the Training Unit of the Office of the DPP will be carrying out more trainings to enforcement officers and prosecutors of Ministries at regular intervals to grapple with issues faced by officers during investigation and prosecution.

Moreover, we cover in this issue the setting up of the Juvenile and Family Unit (JFU) in Rodrigues on the 06th of August 2016. The JFU is mandated to facilitate the supervision and rehabilitation of children who are victims of abuse as well as juvenile offenders. Readers will also have an insight of the football tournament organised by the Bar Council with the assistance of the Young Bar Committee on 31st July 2016. The Office of the DPP’s team included the DPP himself, his law officers as well as guest players.

Furthermore, it is with immense pleasure that we extend our congratulations to the newly appointed Senior Counsel and Senior Attorney. In the same breath, we also congratulate Mrs Veronique Kwok on her promotion to the post of Puisne Judge and Mr Rashid Ahmine on becoming the Deputy DPP. The list of new appointments of some of our law officers is found at page 13. Also, we wish to inform our readers that the two editions of the Mauritius Criminal Law Review are available for sale at the office of the DPP, details of which are provided in this edition.

Finally, in our usual endeavour to keep our readers abreast with the recent Supreme Court judgments, summaries of these decisions for the month are also provided in this edition. We wish you a pleasant and fruitful reading.

Miss Anusha Rawosh,
State Counsel
Prosecutorial discretion demands that a two-fold test be satisfied before a decision can be taken on the case file: (i) sufficiency of evidence and (ii) public interest.

(i) Sufficiency of evidence

Once a law officer receives a case file, he will have to consider whether there is enough admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by an identifiable person. In other words, there must be enough evidence to provide a reasonable prospect of securing a conviction. If there is no reasonable prospect of conviction, the case must not go ahead, no matter how serious or sensitive it may be. If there is a reasonable prospect of conviction, the prosecutor will then address the issue of ‘public interest’.

(ii) Public Interest

If the evidence is sufficient to justify prosecution, the law officer will then need to assess whether there are public interest factors tending against prosecution which outweigh those tending in favour.

The public interest factors that can affect the decision to prosecute vary from case to case. The more serious the offence or the offender’s record of criminal behaviour, the more likely it is that a prosecution will be required in the public interest. On the other hand, a prosecution is less likely to be required if, for example, a court would be likely to impose a nominal penalty or the loss or harm connected with the offence was minor and the result of a single incident.

Addressing the public interest issue in fact, involves a balancing exercise to be carried out. Examples of public interest factors would include the prevalence of the alleged offence, the need for deterrence, the use of weapons in assault cases, offences carried out on children, offences committed by a group, the fact that a potential accused may have already been the subject of disciplinary proceedings at work.
The office of the DPP is composed of law officers who are provided with a Guideline on Prosecution together with a Schedule of Duties. In very complex and high profile cases, the file will be dealt with by the scheduled law officer as well as his Supervising Officer. Opinions of other senior officers as well as ultimately that of the DPP himself are also sought before advice on prosecution is tendered in such high profile cases.

Ultimately, the court will provide a check on whether the decision was the right one, inasmuch as the charge will be dismissed if the evidence is insufficient. On the other hand, should the DPP decide to refuse consent to a prosecution, there is always a possibility of remedial action by way of judicial review, as enunciated by the Judicial Committee of the Privy Council in *Jeewan Mohit v DPP [2006] UKPC 20*.

Prosecutors need therefore to strike a balance that takes into account the concerns of the State to protect its citizens and the right of a suspect to safe justice. They should never allow themselves to be swayed by the media or other pressure groups. Should anyone consider that all police cases must be prosecuted and in addition prosecution must win all of its cases, he may consider moving to North Korea.

---

Satyajit Boolell, SC

The Director of Public Prosecutions
The 2nd Global SIDS Conference on anti-corruption reforms was held at the InterContinental Resort Mauritius, Balaclava from the 2nd to 4th August 2016. The conference was organised by the Ministry of Financial Services, Good Governance and Institutional Reforms in collaboration with the Independent Commission against Corruption and the United Nations Office on Drugs and Crime. A representative from the Office of the DPP, Mrs Moutou-Leckning, attended the conference.

Pre-contractual stages are usually prone to corruptive practices owing to the lack of necessary safeguards. In an endeavour to address this issue, the theme of the conference was “Preventing Corruption in the Public Procurement Process”. This conference served as a platform for exchange of views and practices.

On the first day, the session started with an introduction to the requirements concerning public procurement, in accordance with Article 9 of UNCAC. Presentations were then oriented towards the role of anti-corruption agencies in abating corruption in small island states. Transparency, independent and diligent monitoring were highlighted as being quintessential to curtailing corruption. Reinforcing the integrity of people, systems and procedures will pave way towards an anti-corruption culture. Moreover, a collaboration between the private and public sector is deemed to be pivotal in corruption risk management during procurement processes. The establishment of the Public/Private Platform Against Corruption in 2013 has enabled identification of the high risk areas. This collaboration not only improves transparency but also enables more effective input in formulation of policies and procedures for a national anti-corrupt procurement process. The session ended with a group discussion on Article 9(1) – Transparency Principle. This discussion was facilitated by UNDOC and UNDP and it enabled us to assess the current practices and challenges faced by different small islands.

The second day started with an interactive plenary discussion on the outcomes of the group discussion held on the previous day. A resource person from the UNDP pointed out that use of information systems will help minimise corruption risks by eliminating unnecessary direct contacts among stakeholders.
There was a presentation on the advances made in Jamaica in E-procurement in order to improve the efficiency and quality of public procurement. The afternoon was dedicated to group discussions on issues pertaining transparency, competition and objective criteria in decision making processes.

On the third day, Mr. S. Tahalooa from the Procurement Policy Office made a presentation on public procurement from a Mauritian perspective and explained the functioning of the public procurement system in Mauritius which is in line with the international best practices for anti-corruption reforms. Mr M.R. Lauloo, the Chairperson of the Independent Review Panel talked on the efforts made to detect and prevent corruption during the review process and explained about the function of the review board. He mentioned that his team is working towards improvement in the monitoring and control procedures to repress any corruption activity. Miss Hollie Webb of the Washington & Lee University conducted her presentation on SIDS Research platform on Public Procurement in respect in compliance with the COSP Resolution 6/9. She showed the facts and figures relating to SIDS and exhibited the procurement framework. She mentioned that technical assistance and affordable and sustainable anti-corruption reforms should be adapted to the needs and characteristics of the Small Island developing States.

The conference was extremely enriching and enabled us to grasp the challenges involved in abating corruption in the public procurement stages. There were various proposals made to the areas specific to small island developing states such as protection of whistle-blowers and initiation of an e-procurement system.
A Training on Prosecuting Domestic Violence was organized by the Office of the Director of Public Prosecution, in collaboration with the police force, on the 10th of August 2016 at Rajsoomer Lallah Lecture Hall in Port Louis. The objective of this training was to explain and clarify the amendments which had been brought to the Protection from Domestic Violence Act (PDVA), in addition to make the police force aware of their role and responsibilities in cases of domestic violence. Mrs. Madhub-Dassyne, the Director of Forensic Science Laboratory, was present as guest speaker. Also, Mr Mario Nobin, Commissioner of police made an introductory remark in relation to the policy of the police in relation to Domestic violence.

The training started with a welcome speech by Ms Zaynah Essop, State Counsel. She mentioned that the Office of the Director of Public Prosecution (“ODPP”) is actively involved in the fight against domestic violence and the ODPP has a victim and witness support unit which is dedicated to cases falling under the purview of domestic violence.

Mr Mario-Nobin appreciated the initiative taken by the ODPP to provide a training on the subject matter. He mentioned that a new process has been adopted by introducing powers of arrest in cases of Domestic violence. He believes that a successful prosecution of a Domestic Violence case can be life-saving and could bring serenity to a family. He appreciated the proposition that digital evidence could be used in order to expedite matters and concluded by urging the police officers to make the training session interactive.

The first presentation was on the protocol of action: CP’s Circular no. 12/2016 and support to victims of cases of Domestic Violence which was presented by Mrs Johan Moutou-Leckning, Senior Assistant DPP. Mrs Moutou-Leckning brought her international perspective on domestic violence to the discussion by quoting articles from the Committee on the Elimination of Discrimination against Women (“CEDAW”), Universal Declaration of Human Rights and The International Covenant on Civil and Political Rights. She displayed the statistics on the number of reported cases of domestic violence through the Police Family Protection Unit for the years starting 2010 to October 2015 and commented that the trend is downwards, which is a good sign. Finally, she explained the procedures to be followed by Police Officers posted to Police Stations and Police Officers at the Police Family Protection Unit (PFPU) respectively. She stressed the importance in following these procedures in order to ensure that adequate support is provided to victims of Domestic violence.

Mrs Madhub-Dassyne made a constructive presentation on Forensic Evidence in cases of Domestic Violence. She encouraged the collaboration between the police, FSL and ODPP in cases of Domestic Violence. She explained the importance of physical evidence and listed several examples of same. She added that physical evidence is used for identification and comparison purposes. Mrs Madhub-Dassyne also elaborated on the golden rule of crime scene investigation and crime scene reconstruction and how forensic evidence helps investigations. She also stressed that for the evidence to have any legal value and substance, it is important that the chain of custody is maintained for documentation purposes. It is essential to prevent contamination of evidence. She finally urged that evidences should be handled with utmost precaution.
The topic of presentation of Mrs A. Purryag-Ramful, Senior state counsel was the duties and Powers of Police Officers and Enforcement Officer. She presented the evolution of the domestic violence legislation and listed the parts of the legislations which have been amended, replaced and repealed. She stressed that the duty of the police force is to act with due diligence. She explained the rationale behind introducing section 11A of PDVA. She explained that in the past there were several instances whereby complaints were not registered because they were considered private matter. Consequently, she highlighted that, with the present amendment to the law, a police officer not below the rank of Assistant Superintendent may now arrest the accused and bring him before a Magistrate at the earliest opportunity. She also mentioned the duties of police where medical assistance and counselling are required by victims. She explained that where a victim intends to apply for a protection, occupation or tenancy order, the police should apply the PDVA. She also mentioned that an enforcement officer may apply for protection order on behalf of the victim.

The subject matter of the presentation of Mrs Najiyah Jeewa involved gathering of evidence for successful prosecution for Domestic Violence. She indicated that, in some domestic violence cases, the police may require a search warrant in order to collect evidence for successful prosecution. She acknowledged that there is a pressing need to train prosecutors in order to extend the exercise of evidence gathering by finding supporting and independent evidence. She added that the police can gather, real, physical and verbal evidence. She listed examples of physical or real evidences. Where sample were required, the police needed to ensure that there is a chain of custody and they should record all handling of exhibits. She further explained about the admissibility of oral evidence in court and discussed about competency tests on people with low intelligence. She mentioned that the police have to caution a person if they have reasonable ground to believe that he/she is a suspect and when a person starts making any form of admission. She suggested that the best way to obtain a statement is in the form of questions.

The training was very lively and interactive, with constructive discussions, sharing of ideas and experience.
Two-Day Training Programme for Prosecutors and Enquiring Officers

On the 28th and 29th July 2016, the Office of the Director of Public Prosecutions held a 2-day training for Prosecutors and Enquiring Officers from the Ministry of Health and Quality of Life, at the Rajsoomer Lallah Lecture Hall.

Day 1 of the training started with a welcome speech by Mrs Kwok, Deputy Director of Public Prosecutions, who encouraged the participants to make the most of the training.

Seven (7) participants from the Ministry of Health were present, all of them experienced Prosecutors required to attend court as and when needed.

The training was conducted by the law officers from the ODPP on various topics such as the Origins of the Food Act; Overview of the Food Act & Food Regulations and The Information, including a case study prepared by the law officers.

The first part of the training focused on the important sections of the Food Act relevant to the participants such as their powers to seize food sample; analysis of the sample and the time limit of ninety (90) days for lodging their case. The participants were then explained how to draft the information and the elements that it needed to contain so as not to prejudice their case. They were given advice from our law officers on how to break down the offence so as to know what they needed to prove and adduce. They were also explained the procedure for amending the information in case they make a mistake.

On Day 2, The topic on 'Information' was continued with an explanation given to the participants of the steps to take whenever they are prosecuting body corporates as opposed to prosecuting a person. The participants then took part in a case study where they were each given a role to play, i.e. prosecution counsel, defence counsel, complainant or defendant.
The case study was an interactive exercise for the participants so they could learn about court procedures and refine their skills as Prosecutors.

During the training, the participants and law officers shared experiences of the problems they encountered during their enquiry or trial and how these could be avoided.

The day ended with the law officers responding to questions that the participants had during those two days of training and they were each given a certificate of attendance.
The core purposes of the JFU are:

a) to serve as a waiting area for child witnesses, juveniles and victims of domestic violence,

b) to follow up juveniles and complainants in need of support until the determination of their cases,

c) to focus on offenders and not offences,

d) to provide individualized assessments, to rehabilitate and prevent further delinquency behaviour,

e) to serve as an information centre for children, juveniles and victims of domestic violence,

f) to provide privacy, secrecy and confidentiality to victims of domestic violence who attend court for their cases, and

g) to serve as a no conflict zone for parents to drop their children in the exercise of right of visit in appropriate cases before the Court.

The JFU is contiguous to the Court of Rodrigues and has a separate entrance from the main Court area. The security of the JFU is ensured by an officer of the Brigade des Mineurs and it operates during normal hours of operation of the Court, i.e. on week days and Saturdays.

Mrs Shaaheen Inshiraah Dawreeawoo
State Counsel
The Annual Football Tournament

The Bar Council, with the assistance of the Young Bar Committee, organised the annual football tournament which took place on the 31st July 2016 at the CNFF football ground in Reduit. The participants included members of the bar, pupils as well as law officers from the Office of the Director of Public Prosecutions. There were 6 teams for the tournament (DPP’s Office, Legal Panelka, Devil’s Advocate, Constitution, ‘R NU NON’ and the Reunion team), with one team consisting of a majority of Barristers from the Barreau de Saint Pierre, Reunion. As per the rules of the tournament, every team included a minimum of one female player.

The players for the Office of the DPP were the DPP himself, Mr Satyajit Boolell, SC as well as law officers (Mr Sanjeev Baungally, Mr Roshan Santokee, Mr Rahim Tajoodeen, Mr Yudish Bisnatsingh). The guest players for the DPP’s team were Mr Yahia Nazroo, Mr Hemant Adhin, Mr Yohan Rajabally, Mr Nikhil Boolell and Ms Deena Boyroo. The DPP’s team won two matches to reach the semi-final.
The Young Bar Committee (YBC), which is a sub-committee of the Bar Council, is composed of young members of the bar committed to organise events for the benefit of members of the legal professions. As such the YBC has successfully organised several lunch events during this year at the seat of the Bar Council for all members of the legal professions. Currently, the YBC is providing a helping hand to the Bar Council to organise the first Annual Bar Lecture of the Mauritius Bar Association which will be held on the 23rd September 2016 at the Westin Turtle Bay Resort & Spa Mauritius. The said lecture will be delivered by Professor Ian Cram, Professor of Comparative Constitutional Law from the University of Leeds on the very interesting subject of “The Constitutional protection for speech on the Internet” (with particular attention to section 46 of the Information and Communication Technology Act & section 12 of our Constitution).

The winning team was the ‘Constitution’ team, headed by Mr Bertrand Cheung and consisting of the following players: Mr A. Dayal, Mr D. Boolauley, Mr H. Rawat, Mr S. Kaliapen, Ms B. Bagwan, Mr V. Cheong Leung, Mr Y. Hamuth, Mr S. Ramdoo and Mr N. Jeelan. The winning team was awarded the Mauritius Bar Association Football Trophy and a medal for each player.
THE MAURITIUS CRIMINAL LAW REVIEW (1st and 2nd Editions)

The Office of the DPP has recently launched the second edition of the Mauritius Criminal Law Review (MCLR), which is a compendium of legal articles and case commentaries on pertinent legal issues.

The two editions of the MCLR are available for sale at the office of the DPP at the following price:
- One Edition - Rs 500
- The first and second editions - Rs 800

Kindly contact us on 4055673 (Ext. 314 or 318 or 339) for more information.

SUMMARY OF SUPREME COURT JUDGMENTS:
July 2016

AUDIT V THE STATE & ANOR [2016] SCJ 282
By Hon. S. Peeroo, Acting Senior Puisne Judge and Hon. G-Jugessur-Manna, Judge

FIAMLA – Money Laundering – predicate offences – objective test and subjective test of the mental element of the offence

The Appellant was charged and found guilty on five counts of the offence of money laundering in breach of Sections 3(1)(b), 6(3) and 8 of the Financial Intelligence and Anti Money Laundering Act (FIAMLA). She was sentenced to pay fines of Rs 100,000 under Count 1, Rs 50,000 under each of counts 2 and 3, Rs 25,000 under count 4 and Rs 10,000 under count 5.

The learned Magistrate also ordered the forfeiture of:

List of newly appointed Senior Counsel and Senior Attorney

Senior Counsel
1. Mr Raymond Marie Marc Hein, SC
2. Mrs Urmila Banjyandhub Boolell, SC
3. Mrs Narghis Bundhun, SC
4. Mr Nand Kishore Ramburn, SC
5. Mr Rajesh Sharma Ramloll, SC
6. Mr Anwar Abdool Hamid Moollan, SC
7. Mr Louis Charles Denis Hervé Duval, SC

Senior Attorney
1. Ms Zubeida Ismael Salajee, SA
2. Mr Bhooneswur Sewraj, SA
3. Mr Jaykar Gujadhu, SA
4. Mr André Joseph Roussett Robert, SA

List of new appointments at the ODPP

1. Mrs Veronique Kwok Yin Siong Yen – Puisne Judge
2. Mr Rashid Abdool Ahmine – Deputy DPP
3. Mrs Asha Jankee Ramano Egan – Acting Senior Assistant DPP
4. Mr Denis Claude Nelson Desire Mootoo – Acting Senior Assistant DPP
5. Mr Rajkumar Baungally – Acting Assistant DPP
6. Mrs Rehnu Karuna Gowry Bhurrut – Principal State Counsel
7. Mrs Sharon Audrey Sandra Sunglee – Senior State Counsel
8. Mrs Kevina Poojay Mootien – Senior State Counsel
9. Mrs Najiyah Nuha Jeewa – Senior State Counsel
10. Mr Medaven Armooogum – Senior State Counsel
11. Mr Ram Rammaya – Senior State Counsel
(a) A portion of land to the extent of 423 m² comprising of a concrete house,
(b) 2 private cars,
(c) A sum of Rs 141,025.53 and a sum of Rs 18,630.82 held in bank accounts.

The Appellant is now appealing on the following grounds namely:

1. The learned Magistrate was wrong in law to amend the element of the information concerning “directly” and “indirectly” without giving the opportunity to the defence, as he was bound in law to:
   (a) plead anew to the amendment counts,
   (b) present its defence in line with the amendment made,
   (c) give the opportunity to the defence to further cross examine the prosecution witnesses and following the amendment made or to call evidence, and
   (d) fundamentally change the case the appellant had to answer before the lower court. 2. The test of the “reasonable bystander”, the objective test, as applied by the learned Magistrate was the wrong test applied. Instead she should have applied a subjective test with regards to the marriage of the appellant.

3. The learned Magistrate was wrong to have applied Bholah v The State [2009 SC 432] when the judgment was reversed by the Judicial Committee of the Privy Council in DPP v Bholah [2011] UKPC 44.

4. The prosecution’s case was an abuse of the process and the learned Magistrate was wrong to allow the trial to proceed because:
   (a) There has been a selective and discriminatory prosecution as Appellant was being prosecuted as a successor of her late husband,
   (b) The Appellant could not call her late husband in her defence as he had passed away and was never prosecuted before his death, and
   (c) The information speaks of 2003, the case was completed before the Intermediate Court in 2014 and hence there was grossly inordinate delay.

5. The learned Magistrate was wrong in law to have confused the appellant with her late husband who was not the legal representative of the latter especially as the funds deposited in the account of the Appellant’s son were not attributable to her.

6. The learned Magistrate was wrong in law to rely on the evidence of witness Malik.

7. The learned Magistrate was wrong in holding that the prosecution has proved the mental element of the offence.

8. The prosecution had failed to prove the predicate offences as particularized in the information.

9. The learned Magistrate failed to take into consideration the fact that there is a third party and heir to the succession.

The facts of the case are to the effect that the Appellant’s husband was an employee of the Development Bank of Mauritius for the period of 1995 to 2004. From 2003 to 2004 whilst being in employment he committed fraudulent transactions at the bank and benefitted from a sum of Rs 612,350.

After their marriage in 2001 they purchased a plot of land for the sum of Rs 450,000 and in May 2013 constructed a house which cost over Rs 800,000.

In addition to the above, for the period of 2005 to 2008 whilst in employment, the Appellant’s husband stole money to the prejudice of his employer, Ivy Leathers Ltd and credited it in his bank account, the bank accounts of his wife and minor son. He also used the money to purchase the above mentioned cars for himself.

Under Ground 1 the Appellate Court held that the words “directly” and “indirectly” do not create two distinct ways of
committing the offence of money laundering but are simply designed to convey that it is immaterial whether the property was in whole or in part derived directly or indirectly from a crime. What is important is that the property was derived from the proceeds of a crime. Whether the property was the direct proceeds of the crime or that the property was indirectly the proceeds of a crime is not important.

The Appellate Court therefore held that they were satisfied that the Appellant was alive of the offence she had to meet and there was no obligation on the part of the Magistrate to make the Appellant plead anew. Ground 1 was dismissed. Ground 2 was also dismissed because the evidence shows that there are reasonable grounds for the Appellant to have suspected that her late husband had been getting money more than what he had been earning in terms of salaries. Based on the background of the Appellant, the Appellate Court decided that the Appellant ought to have known that when funds were being credited in her personal bank account and the late husband was withdrawing money from her account her husband was committing a criminal activity.

Grounds 3 and 8 were taken together as they deal with the predicate offence. Even though the learned Magistrate did not refer to the case of DPP v Bholah [2011] UKPC 44, the learned Magistrate rightly applied the law in respect of the predicate offence and at no time departed from the findings of the Privy Council in the case of DPP v Bholah.

As far as ground 4 was concerned, the Appellate Court referred to the case of Boolell v The State [2005 PRV 39] and held that there was no evidence that the hearing was unfair or it was unfair to try the Appellant. It was further held that the death of the husband of the Appellant cannot be a bar to the prosecution of the Appellant for the offence of money laundering. Ground 4 was dismissed.

Ground 5 was also dismissed because there was no evidence on record before the trial court that the Appellant renounced the inheritance of the late husband. On the contrary the evidence showed that the Appellant was an active money launderer and was part and parcel of the money laundering arrangement.

As far as witness Malik was concerned the Appellate court held that the learned Magistrate took into consideration all the inconsistencies before relying on his evidence. In fact the testimony of Witness Malik was also supported by independent evidence.

Under ground 9, the appellant claims that the learned Magistrate failed to take into account the fact that the son was a third party and heir to the succession. That ground was dismissed because there was sufficient evidence on record that the account of the son was credited regularly and several withdrawals were made. It was therefore clear that the late husband was using the account of their child to hide the tainted sum of money and the Appellant was in possession of the tainted property after the death of the husband. That ground was dismissed.

As far as the fines were concerned the Appellate Court took into consideration the time the case has taken until its completion and therefore substituted them with a fine of Rs 50,000 under Count 1, under Counts 2 and 3 Rs 25,000 and under Counts 4 and 5 Rs 5,000.

BHUUTOO N V THE STATE 2016 SCJ 289
By Hon. N. Devat, Judge and Hon. N.F. Oh San Bellepeau, Judge
Opportunity to Offer Mitigation – Fresh Hearing – Sentence harsh and excessive

The Appellant pleaded guilty before the District Court for unlawfully driving a motor vehicle on a road whilst having consumed alcohol in a quantity exceeding the permissible limit, in breach of Sections 133 F (1)(a)(3) of the Road Traffic Act. He was inops consili at the time of the hearing.

He was sentenced to undergo imprisonment for six months and to pay a fine of Rs 20,000. He was disqualified from holding and or obtaining and applying for any driving license for all types of vehicles for 18 months. His driving license was
endorsed and cancelled.

The Appellant appealed on the single ground that the sentence was unreasonable, manifestly harsh and excessive and wrong in principle.

At the hearing of the appeal, counsel for both the Appellant and the Respondent agreed that it appeared that the Appellant was not given an opportunity to offer further mitigation once the learned Magistrate had ascertained that his previous conviction of 2006 was one under the Road Traffic Act of 2003.

The sentence imposed was therefore quashed and the case was remitted back to the lower Court for a fresh hearing on sentence.

**HOSSENA S V THE STATE 2016 SCJ 259**

*By Hon. R. Teelock, Judge and Hon. Hon. N.F. Oh San Bellepeau, Judge*

**Sentence – Fresh Hearing – Standard of Care**

The Appellant pleaded guilty to involuntary homicide by imprudence and to causing involuntary wounds and blows by imprudence whilst driving in breach of Section 239(1)(a) of the *Criminal Code*. The learned Magistrate sentenced the appellant to 3 years’ imprisonment and Rs 150,000 as fine under the first count and one year imprisonment and Rs 100,000 under the second count. The appellant was further disqualified from holding, obtaining or applying for any driving licence for all types of vehicles for 24 months. His driving licence was cancelled and endorsed.

The Appellant appealed on the single ground that the sentence was unreasonable, manifestly harsh and excessive and wrong in principle.

The case was remitted for a fresh hearing because of the following reasons:

a) The learned Magistrate did not provide her reasoning and the basis for the imposition of a custodial sentence,

b) she also failed to make a clear pronouncement as to the particular degree of imprudence which led her to impose a custodial sentence of three years and one year respectively,

d) she also did not state the standard of care that was required of the Appellant as the latter was driving a van of passengers, and it was not clear as to which count the disqualification,

e) order imposed applied.

**THE STATE V TENGUR N 2016 SCJ 291**

*By Hon. G. Jugessur-Manna, Judge*

**Sentence – Penal Servitude for life**

The accused was charged before the Court of Assizes with the offence of murder for having criminally, wilfully and with premeditation, killed one Khairoonessa Tengur in breach of sections 216, 217 and 222(1)(a) of the *Criminal Code*. The accused was assisted by counsel and he pleaded guilty after the Jury was empanelled but prior to the opening speeches being made. He was therefore found guilty as charged.

The Court took into consideration the following factors:

(a) the aggravating circumstances:

- the accused knew the victim was an unmarried 58 years old woman and was living alone and on the night of 21 December 2008, she was attending a prayer and would return home late;

- the deceased was the accused’s aunt and they bear the same surname; - the accused knew that the victim was in a vulnerable position and he took advantage of same;

- the accused and one of his confederates were masked;

- the deceased was brutally assaulted by Souval and the accused, such that and in the medico-legal report, the injuries are referred to as follows: black eyes both sides; bruises on the inner lips, face, chest and ear; 2nd to 5th ribs fractured on right and left anterior; bruise at both sterno hyoid muscles and platysma muscles lateral wall of the vagina and hymen were lacerated and bruise and abrasion in
the anal region among others;
- the victim was raped by accused’s confederate in his presence;
- the accused violently thrust a pointed iron bar in the vagina of the deceased when the latter was still alive, leading to a jet of blood oozing out of her private part;
- a degree of sadism and sexually motivated act were inflicted on the deceased prior to strangulating her;
- the injuries inflicted in the genital part of the deceased must have been excruciatingly painful;
- the mental and physical suffering inflicted on the deceased before death, was barbaric;
- the accused removed the iron bar from the vagina of the deceased, washed it and placed it in his workshop to conceal the weapon used to torture the deceased;
- the deceased was dragged and was strangled with her “tchous”; and
- after committing a barbarous crime, the accused hid himself believing that he would get away with murder.

(b) the fact that the accused was the mastermind,
(c) the violence used upon the deceased who was in a vulnerable situation,
(d) the previous convictions of the accused which show that he has a propensity to rob and has no respect to human life. More specifically the fact that the Accused has committed two murders within a period of 6 months. In relation to that factor, the Court referred to the case of Jean Alain Lindor v The State [215 SCJ 14] in which case the Court agreed that the antecedents of the appellant tended to show his deviant character,
(e) the fact that the Accused pleaded guilty and also the fact that such plea should not operate as a veil when the crime is a heinous one.

Having regard to all the above mentioned factors, the Accused was sentenced to penal servitude for life.

“Miracles come in moments. Be ready and willing”

-Wayne Dyer