

**ICAC v Boutanive**

**2012 INT 240**

Cause Number: 859-2009

**In the Intermediate Court of Mauritius**  
**(Criminal Division)**

In the matter of:

**Independent Commission Against Corruption**

**v**

**Jean Roland BOUTANIVE**

**Judgment**

The Accused stands charged under three counts with ‘Corruption of agent’ in breach of section 16(1) and 83 of the Prevention of Corruption Act (POCA) and he pleaded Not Guilty to all three counts.

He was assisted by Counsel. The case for the Prosecution was also conducted by Counsel.

Mr. Goodoory read and produced two statements from the Accused (Documents A and A1 refer) as well as a racing calendar for the 2003 season (Document B refers). He also confirmed during cross-examination that the present case started after the Financial Intelligence Unit (FIU) received a suspicious transaction report (STR) from Hong Kong Bank under the Financial Intelligence And Money Laundering Act (FIAMA).

Mr. Benoit Halbwachs, Secretary at the Mauritius Turf Club (‘MTC’) since 1994, confirmed that the Accused was a freelance jockey in 2003. He also confirmed that the different races subject matter of counts 1, 2 and 3 took place and were all won by horses mounted by the Accused. He further produced an extract of the MTC rules 53 B (Document C refers).

During cross-examination, it was elicited from the said witness that as a freelance jockey, the Accused was allowed to ride for whomsoever he wished and that there was no contract of employment in respect of the Accused and any stable filed with the MTC in 2003. He also confirmed that Mr. Sailesh Ramdin (witness no.4) was the stable trainer of Mahesh Ramdin

stable in 2003 whilst Mr. Mahesh Ramdin was the stable manager of said stable. He admitted that Mr. Mahesh Ramdin was responsible towards the MTC as stable manager.

Mr. Saileshsing Ramdin, deponed to the effect that he is the trainer at the Mahesh Ramdin stable which is managed by Mr. Mahesh Ramdin. He was then confronted with his statement dated 31-10-08 wherein he stated the stable was managed by him, to which he agreed having said so but added that he only meant by 'managed' the training of the horses and the reporting of jockeys to him. He agreed that from July 2003 to 15-11-2003, the Accused was riding horses for the Ramdin stable as well as helping in the training of horses. But he clarified that the Accused did not necessarily ride all the horses of the stable. He also stated that there was a gentleman's agreement between the Accused and the stable and no contract of employment as such between the two parties. He added that the Accused was paid for the expenses incurred as a result of the training which took place at Floreal. He confirmed that the horses 'Best of British' and 'Sporting Gamble' were horses running under the Ramdin stable in 2003 and that 'Best of British' won the race on 31-08-03 whereas 'Sporting Gamble' won the race on 18-10-03. He also confirmed that the Accused mounted both of these horses. He explained that the Accused was paid by the MTC a riding fee.

The Prosecution then closed its case and so did the Defence without adducing any evidence.

Both Counsel made their respective submissions.

Whilst perusing the Accused's statements (Documents A and A1 refer), it is clear that he admitted having received gift from owners of horses and family members. However, it is also clear that the present charges under the present information with all its elements were not put to the Accused so that there is no admission as such to the present charges against him in his statements. Further, there is no admission from him in his statement as to whether he was allowed to accept gift from family members (vide folio 8518 of Documents A1). He in fact did not reply to the said question so that for all intents and purposes there is no admission to any of the charges against him today in his statements to Police.

The offence for which the Accused is being prosecuted is common under all three counts and has been provided under section 16(1) of the Prevention of Corruption Act as follows:

***(1) Any agent who, without the consent of his principal, solicits, accepts or obtains from any other person for himself or for any other person, a gratification for doing or abstaining from doing an act in the execution of his functions or duties or in relation to his principal's affairs or business, or for having done or abstained from doing such act, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.***

Now, the elements which constitute the present offence in the light of the said provision and which should be proved beyond reasonable doubt by the Prosecution are as follows:

1. An agent
2. without the consent of principal
3. Accept a gratification
4. For having done an act
5. In relation to his principal's business

It is also essential to understand the definition to be given to the different terms used under this offence, particularly:

1. Who is an agent?
2. Who is a principal
3. What is a gratification?

Section of POCA gives the interpretation of all these words as follows:

***"agent" -***

***(a) means any person employed by or acting for another person;***

***(b) includes a member or an officer of a public body, a trustee, a sub-contractor, and any person employed by or acting for such trustee or sub-contractor;***

***"principal" includes an employer, a beneficiary under a trust, a person beneficially interested in the succession of a person, and, in the case of a person serving in or under a public body, the public body;***

***"gratification" -***

***(a) means a gift, reward, discount, premium or other advantage, other than lawful remuneration;***

***and***

***(b) includes -***

***(i) a loan, fee or commission consisting of money or of any valuable security or of other property or interest in property of any description;***

***(ii) the offer of an office, employment or other contract;***

***(iii) the payment, release or discharge of a loan, obligation or other liability; and***

***(iv) the payment of inadequate consideration for goods or services;***

***(c) the offer or promise, whether conditional or unconditional, of a gratification;***

Since there is no qualm that the sums of money received by the Accused under all three counts were gifts, it goes without saying that they are encompassed within the definition given under section 2 of POCA.

Moreover, since the Accused acted for another person as jockey to ride the horses, it is obvious that he was an agent as interpreted by section 2 of POCA.

However, the same conclusion as the two above terms may not be reached in respect of 'principal'. Whilst perusing the evidence on record, it is clear from Mr. Saileshsing Ramdin that there was no contract of employment between the stable and the Accused but merely a gentleman's agreement. It is also clear from Mr. B. Halbwachs who is the secretary of MTC that there was no such contract of employment between the Accused and the Ramdin stable which was filed at the Club. It is highly relevant to also note here that as per Mr. B.Halbwachs, the Accused as a freelance jockey in 2003 could ride for whomsoever he wished.

Now, would the above evidence fit the interpretation given to 'principal' given by section 2 of POCA? The answer should definitely be in the negative since it lacks the certainty needed to be sure that Ramdin stable, not to say Mr. Saileshsing Ramdin was the employer of the Accused at that time. True, it is that the Accused mentioned in his statement (Document A refers) that he used to work for the Mahess Ramdin stable and earned 7,000 rupees. But in the light of the evidence of witness no.4 who specifically clarified that he was only the stable trainer of the Ramdin stable and the fact that there is no contract of employment between them as confirmed both by witnesses no.3 and 4, could it be said with certainty that the Prosecution has proved beyond reasonable doubt that Mr. Saileshsing Ramdin, as averred in the information under all three counts, was the principal? It is to be recalled that both witnesses no.3 and 4 are witnesses for the Prosecution and instead of proving this element, both of them only created confusion which in the given circumstances cannot be said beyond reasonable doubt that this element of 'principal' has been proved beyond reasonable doubt.

If there is confusion as to whether Accused was employed by witness no.4, it is obvious that the definition of 'principal' as provided by section 2 of POCA has also not been satisfied since the other possible definitions provided do not simply fit in the picture of this case as

there is no question of any trust, succession or a person working in a public body, at least in the light of facts adduced before me in this case.

Counsel for the Prosecution has relied on the definitions given to principal under Concise Oxford English dictionary and that of Black's Law dictionary, eighth dictionary so as to submit that the witness no.4 qualified as principal. However, she missed the target wholly and failed to consider the definition of 'principal' under POCA itself. It is trite rule of interpretation that when a term used under a piece of legislation and when the interpretation is duly provided under the said legislation, then there is no need to look elsewhere. This was further confirmed recently by the Supreme Court when one of the parties sought to import interpretation of words from other legislation. The following extract from **Meajun v The State 2011 SCJ 141** is very relevant here:

***10. In argument, learned counsel referred to the words "cash dealer," "foreign exchange dealer" and "money changer" in the Banking Act to make the point that what the financial institution concerned does is "buying and selling foreign currency" so that when Shibani Finance money Changer was "buying foreign currency" from the appellant while the appellant was only receiving payment and not making payment as such.***

***11. That looks to us an ingenuous argument which we are not prepared to accept. First, each legislation is to be read independently of the other, unless such reference is specified. So should each section, all the more when the law we are concerned with is a penal section.***

Thus, when the interpretation to 'principal' has been given under POCA and since it lacks no uncertainty, then this is the interpretation that needs to be used.

There is yet another major unsurmountable hurdle in this case in the evidence adduced by the Prosecution. As stated above and as submitted by the Prosecution, it is an essential element of the offence to prove 'without the consent of principal'. Yet, there is no such evidence of lack of consent from the alleged principal who according to Prosecution understanding is witness no.4. The latter was examined in chief but at no point in time was he ever examined as to whether the Accused received those gifts without his consent. Nor did he say any such thing during his deposition in Court. There is also no such evidence forthcoming from the Accused's statement. This element is in fact the crux of the matter and that essential puzzle in the jigsaw which would make the acts and doings of the Accused an offence under section 16(1) of POCA. But for some reasons, no such evidence was elicited from the said witness nor obtainable from any other source before this Court.

Since there is no such evidence of such an essential element of the offence as 'without consent of principal' under all three counts, it is clear that the Prosecution has not been able to prove its case under all three counts beyond reasonable doubt.

I therefore dismiss the charge under all three counts of the present information against the Accused.

**Neerooa M.I.A (Mr.)  
Magistrate, Intermediate Court.**

**This 31 October 2012.**