

IN THE DISTRICT COURT OF RIVIERE DU REMPART

In the matter of:-

CN: 1313/23

Police

v.

Marie France Anique MARQUANDT

JUDGMENT

1. The accused stands charged with the offence of *'Carrying on a tourist enterprise without a valid licence'* in breach of sections 26 (1), (8) and 29 of the Tourism Authority Act 2006. The body of the information avers that that the accused on 01.07.19 *'... did unlawfully carry on a tourist enterprise without being the holder of a valid tourist enterprise licence.'*
2. The accused pleaded not guilty to the charge and was represented during the trial.

**The Case for the Prosecution**

3. The prosecution called witness no.1, Mrs M.F Veerasamy, Tourism Enforcement Officer at the Tourism Authority. The latter's testimony is to the effect that on the material day, she was on monitoring duty in the region of Cap Malheureux following complaints received of illegal tourism enterprises operating in the region. Accompanied with her 2 colleagues, she proceeded to the bungalow of the accused, entered the premises and identified herself and her colleagues as enforcement officers to the accused. The latter was informed of the purpose of their presence and asked whether the house was being rented to which accused replied that she had started to rent the bungalow to tourists and to friends and family as well. The accused was not the holder of any licence for the renting of her bungalow to tourists. The accused was subsequently issued with a 'Fixed penalty notice' [marked as Doc D] and same has remained unpaid. In the course of her testimony, witness no.1 also identified and produced a photo of the bungalow in question and several screenshots of an account on an online booking engine [marked collectively as Doc B]. According to witness no.1, the photograph and the screenshots formed part of the complaint received and depict the renting of the bungalow of the accused to tourists.
4. Witness no.1 was thoroughly cross-examined. She admitted in cross-examination that she did not find any tourist on the premises at the time of her inspection nor did she find any property or belonging of any tourist in the bungalow which could

suggest that the bungalow was being rented out as a tourist enterprise. Witness no.1 further admitted that there was no evidence disclosed of any kind of payment received by the accused from tourists or friends and relatives for the renting of the bungalow. According to the said witness, the photograph and the screenshots are different, the former being of the bungalow of the accused and the latter being photographs on the booking engine only. The witness further admitted that no enquiry was carried out to verify whether the alleged account on the booking engine belonged to the accused herself, no enquiry was carried out as to the identity of the account holder which appears as one 'Jan' on the screenshots produced as evidence, nor was any enquiry carried out as to whether the accused had received any payment through this account on the booking engine.

5. The witness was not re-examined.

#### **The case for the defence**

6. The accused elected to give evidence under oath. She denied the charge. She deponed to the effect that she did not rent her bungalow to tourists at any time, her husband is a German national and she had relatives and friends over at her bungalow but she did not rent out her bungalow as a tourist enterprise. She denied knowledge of the contents of the screenshots produced and denied having any account on same. She further denied having allegedly replied that she was renting out the bungalow to tourists and relatives at the material time of the inspection. She maintained her version throughout cross-examination.

#### **Assessment of the evidence**

7. The Court has duly considered all the evidence on record and the submissions of defence counsel.
8. It is not disputed that the accused was not the holder of any tourist enterprise licence. What has to be determined is whether the prosecution has established that the accused was carrying on a tourist enterprise at the material time.
9. The definition of a 'tourist enterprise' under the **Tourism Authority Act 2006** (the Act), is as follows:-

*'An establishment or activity specified in the First Schedule or as may be prescribed;'*

10. In the First Schedule of the Act, an establishment is specified as including tourist accommodation- domaine, guest house, hotel or tourist residence. A guest house is defined in section 2 of the Act as 'any premises where lodging or sleeping facilities and breakfast are provided against payment' and a tourist residence is defined as 'any premises, other than a hotel or guest house which offers sleeping accommodation to tourists, with or without meals for a fee'.
11. It was therefore incumbent on the prosecution to adduce evidence of the premises in question being an establishment within the meaning of the Act, that is premises where there were lodging or sleeping facilities with or without meals for a fee.

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However, witness no.1 who stated having been on the premises for inspection did not give any evidence of any lodging or sleeping facilities found on the locus nor is there any evidence of a fee being charged for same by the accused.

12. The prosecution relied on the photograph and screenshots [ Doc B] produced by witness no.1. As per the latter's testimony, the said photograph and the screenshots formed part of the complaint made of illegal tourist enterprises operating in the region at Cap Malheureux, and according to Doc B, the said complaint was anonymous.
13. The Court notes that no enquiry was conducted into the contents of the screenshots; the identity of the account holder on the booking engine was not verified nor was the accused linked to the operation of said account. In fact, contrary to what was stated in Doc B by the Tourism Authority, the matter was not referred for any police enquiry after the inspection exercise carried out by witness no.1 and upon the Fixed Penalty Notice served on the accused, remaining unpaid. As such, the complaint which included the screenshots and the photograph, and into which no enquiry was made, remains only a complaint made to the authorities outside Court and is not admissible evidence under oath from the maker of the said complaint. True it is that witness no.1 identified and produced these screenshots and the photograph in the course of her testimony. However, she admitted that no enquiry was conducted about the identity of the account holder on the booking engine. Moreover, there is no evidence of any enquiry carried out to ascertain the veracity of the contents of the screenshots, nor is there any evidence to link the accused to the alleged operation of the said account for rental payment or reward from tourists. In fact, the Court is left in the dark as to the very contents of the said screenshots at pages 2 and 3 of Doc B as same are in German language. As such, the Court finds that it cannot safely act on Doc B to make any finding for the prosecution's case.
14. The evidence of the prosecution against the accused rests essentially therefore of the testimony of witness no.1 and her evidence of the incriminating reply<sup>1</sup> made by the accused on being intercepted, namely her admission to having rented her bungalow to tourists and relatives. However, this was denied by the accused who gave evidence under oath. The Court finds that had there been an on-going tourist enterprise being carried out by the accused on the premises in question at the material time, one would reasonably expect to find some evidence on the locus suggesting such an activity as tourist accommodation. Yet, witness no.1 deposed that no tourist was found on the spot nor was there any property or belonging found on the premises to suggest a tourist enterprise.
15. The Court has assessed the demeanour for witness no.1 and found that she deposed in a diffident manner, especially under cross-examination. It also came out in cross examination that she only put up her statement about the outcome of the inspection carried out by her at the accused's bungalow more than eleven months later. Witness no.1 invoked having referred to her notes and report of inspection but did not explain when these were made, whether contemporaneously to the inspection or not. As such that one may reasonably question the correctness

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<sup>1</sup> *Chengebroyen v The State* 2010 SCJ 87 - out of court statement adverse to the party who made it is admissible, as an exception to the rule against hearsay, to prove the truth of the facts stated

of her recollection of the accused's alleged reply at the time of the inspection. It is further noted that there is no evidence that the accused was duly cautioned and informed of her constitutional rights prior to her making the alleged incriminating reply<sup>2</sup>. The Court notes that the accused has elected to give evidence under oath and deponed in a composed and straightforward manner, she denied having made any incriminating reply as stated by witness no.1. In the circumstances, the Court finds that it is not safe to rely on the evidence of witness no.1 as to the alleged incriminating reply made by the accused.

16. For all the reasons given above, the Court finds that the prosecution has not established that the accused did unlawfully carry on a tourist enterprise at the material time, and has failed to establish the charge against the accused beyond reasonable doubt. The case against the accused is accordingly dismissed.



**R. Segobin**  
**Ag. District Magistrate**  
**District Court of Rivière du Rempart**  
**This 17th of November 2023**

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<sup>2</sup> The State v Labonne 2009 SCJ 129- incriminating reply made after accused is duly cautioned and informed of his constitutional rights is admissible as evidence of the truth of its contents

