**The Honourable Attorney General v Jeremy Decide (also known as Nono)**

**2023 PL2 92**

**CN 1604/23**

**THE DISTRICT COURT OF PORT-LOUIS (SECOND DIVISION) (MAURITIUS)**

**In the matter of :-**

**The Honourable Attorney General**

**Applicant**

**v/s**

**Jérémy Decide (also known as Nono)**

**Respondent**

**JUDGMENT**

**Introduction**

1. The present case deals with an application made under ***Section 18 of the Extradition Act 2017***, by the Honourable Attorney General, to have Mr Jérémy Decide (also known as Nono) extradited to Reunion Island, where the latter has been sentenced to seven years imprisonment, by virtue of a judgment delivered *in absentia* by the "*tribunal correctionnel de Saint Denis de la Reunion*." The Applicant was represented by Mr Y Jean-Louis, together with Mr A Putchay, instructed by Mr V Nirsimloo whilst Mr S Moloye, together with Mr Bandhu, appeared for the Respondent, instructed by Mr Fulena.

2. The application was made by way of *proecipe* and affidavit, whereby the Applicant informed this Court that a request was made by the authorities in Reunion Island for the extradition of the Respondent to Reunion Island to face the seven years imprisonment sentence pronounced in their absence. Certain assurances were also provided, by the French authorities, to ensure that the Respondent be granted the right to a re-trial.

3. The Respondent was arrested on the 31st March 2023 in virtue of a warrant of arrest under ***section 15 of the Extradition Act 2017*** under the hand of the Senior District Magistrate of the District Court of Port-Louis (Second) Division (*Case bearing C/N 1605/23 refers*). After his arrest, he was brought to this Court where he was remanded in custody. A bail motion was made on behalf of the Respondent, which motion was set aside, by this Court on the 11th April 2023. He has been remanded in custody since then.

**The case for the Applicant**

4. Mr Rajnish Shyamal Lovelesh Seetohul, First Secretary at the Ministry of Foreign Affairs, was called in support of the Applicant's case. He stated that, on the 22nd February 2023, by virtue of a "*note verbale*", the French authorities sent a request for the extradition of one Jérémy Decide, to the Ministry. A copy of the "*note verbale*" was produced and marked as **Doc A**.

5. He confirmed that there exists a Treaty between France and Mauritius, which is, at present, a binding extradition treaty. The Treaty was, in fact, between the United Kingdom and France, which makes it a successor Treaty, a copy of which, together with the subsequent amendments, was produced and marked as **Doc B**.

6. When Mauritius acceded to Independence on the 12th March 1968, there was a letter sent to the Secretary General of the United Nations, by the then Prime Minister and Minister of External Affairs, Sir Seewoosagur Ramgoolam, stating that it be presumed that each Treaty signed between the United Kingdom and another country would have been legally succeeded to by Mauritius. A certified copy of the letter was produced and marked as **Doc C**.

7. The Witness further confirmed that both France and Mauritius are signatories to the Single Convention on Narcotics Drugs of 1961, a certified copy of which was produced and marked as **Doc D**.

8. It came out that, by way of a "*note verbale"*, dated the 17th March 2023, the French Authorities have given assurances to ensure that Mr Jérémy Decide

will have the right to a retrial, a copy of which was produced and marked as **Doc E**.

9. The Witness was duly cross-examined by Learned Counsel for the Respondent and the case was closed for the Applicant.

**The case for the Respondent**

10. No evidence was adduced on behalf of the Respondent and the case was closed for the Respondent.

**Submissions**

11. Both Counsel duly submitted on the matter.

**The Law**

12. **Section 18 of the Extradition Act 2017**:

***Application for extradition***

*(1) Where the requirements referred to under this Act are met, the Attorney-General shall apply for an order from a Magistrate that the person sought is eligible for extradition.*

*(2) Subject to subsection (3), the Magistrate shall order that the person sought is eligible for extradition where he is satisfied that –*

*(a) the requirements of the relevant extradition treaty are met;*

*(b) the offence is an extraditable offence;*

*(c) the person brought before the Magistrate is the person sought;*

*(d) in case extradition is requested for the purpose of prosecution in the requesting State, there is admissible evidence considered sufficient to justify the committal of the person sought for trial for the relevant offence if that offence had been committed in Mauritius; and*

*(e) any other requirement specified in this Act is met.*

*(3) The Magistrate shall not order that the person sought is eligible for extradition where –*

*(a) mandatory grounds for refusal specified in the relevant extradition treaty have been established; or*

*(b) any other requirement specified in this Act is not met.*

*(4) Where the Magistrate orders that the person sought is eligible for extradition, he shall –*

*(a) remand that person in custody; and*

*(b) inform the person sought of his right to seek judicial review of his order.*

*(5) Where the Magistrate orders that the person sought is not eligible for extradition, he shall order the discharge of that person, unless that person sought had been the subject of simultaneous applications for extradition and a fresh application is made pursuant to this section.*

**Analysis based on the law, evidence adduced and submissions of both Learned Counsel**

13. The test to be applied in the present case, when deciding whether the person whose extradition is sought, that is, Mr Jérémy Decide (the Respondent), is eligible for extradition or not, is clearly set out in ***section 18(2) of the Extradition Act 2017***.

14. **The first limb of the test – whether the requirements of the relevant extradition treaty are met**:

14.1. First and foremost, this Court needs to determine whether there is or not a valid and binding extradition Treaty between France and Mauritius. Mr Seetohul, the Witness called on behalf of the Applicant, has produced **Doc B**, which is an extract from the United Nations Library, of the extradition Treaty between France and the United Kingdom. It consists of the main Treaty together with the subsequent amendments to the Treaty. Learned Counsel for the Respondent, during cross-examination, questioned Mr Seetohul as to the provenance of **Doc B**, to which the Witness candidly replied that it

was downloaded from the United Nations Website and the "*certified true copy*" stamp was affixed to it. There is absolutely nothing on record to suggest that **Doc B** is not the very Treaty between the United Kingdom and France. This is where the presumption of regularity kicks in. In the same way, in any case before any court of law, for example, a copy of any Act can be downloaded from our Supreme Court Website and produced to Court. It does not mean that it is not a true copy just because it has been downloaded from the Internet, in so far as it is from an official website.

14.2. The original Treaty, between the United Kingdom and France, was signed in Paris on the 14th August 1876 and the subsequent amendments were signed in Paris on the 13th February 1896, 17th October 1908 and 16th February 1978 respectively. I shall now address the relevance of such a Treaty to Mauritius.

14.3. Relevance of the Treaty to Mauritius and the purport of **Doc C**

(a) **Doc C** is a letter sent to the Secretary General of the United Nations by the then Prime Minister and Minister of External Affairs of Mauritius, Sir Seewoosagur Ramgoolam, whereby it was stated that *"It is desired that it be presumed that each treaty has been legally succeeded to by Mauritius and that action be based upon this presumption until a decision is reached that it should be regarded as having lapsed. Should the Government of Mauritius be of the opinion that they have legally succeeded to a treaty but subsequently wish to terminate its operation, they will in due course give notice of termination in the terms thereof."*

(b) The importance of **Doc C** was addressed in the case of **Danche v The Commissioner of Police**[1]. The Court had to decide on the validity of an extradition Treaty between Mauritius and the United States. I find it essential to refer to the following extracts from that judgment, although lengthy, as the said judgment is of utmost importance to the case at hand:

[1] 2002 SCJ 171

- *"It is not in dispute that prior to, and on the attainment of, the independence of Mauritius in 1968, the United Kingdom Extradition Acts 1870 – 1935 and the implementation of the extradition treaty signed between the United Kingdom and the U.S.A continued to be part of the law of Mauritius."*

- *"Doc B1 is a letter sent on 12 March 1968 by the then Prime Minister and Minister of External Affairs of Mauritius to the Secretary General of the United Nations for circulation among all States Members of the United Nations and the United Nations Specialised Agencies whereby the latter were informed that –*

  (a) *the Government of Mauritius acknowledged that "many treaty rights and obligations of the Government of the United Kingdom in respect of Mauritius were succeeded by Mauritius upon independence by virtue of customary international law;*
  (b) *It is desired that it be presumed that each treaty has been legally succeeded to by Mauritius and that action be based upon this presumption until a decision is reached that it should be regarded as having lapsed. Should the Government of Mauritius be of the opinion that they had legally succeeded to a treaty but subsequently wish to terminate its operation, they will in due course give notice of termination in the terms thereof."* (the emphasis is theirs)

  - *"It is abundantly clear that Doc. B1 is a declaration of succession which applies to all treaties, bilateral or multilateral, and is not limited to any period of time, least of all to that of two years, as incorrectly stated in* ***Heeralall****, cited above, at page 73 which refers to* ***Browlie****,* ***Principles of Public International Law (4th edition)*** *at page 671."*

- *"We wish to point out that **Browlie** in fact referred to the specific case of the Government of the then Tanganyika but did make the point that the declaration of that government was adopted "with variations" by many Commonwealth countries, including Mauritius. Indeed, Mauritius, Zambia, Guyana and Barbados, among others, instead of maintaining all their treaty relationships for a fixed period after independence, on the contrary "affirmed a general succession in international law, but qualified this by stating that after examination of each treaty other parties might be notified that the treaty was not considered as having been succeeded to in international law", as is made clear in **International Law**, **Vol. 1 (second edition) by D.P.O'Connell** at page 370."*

- *"Doc B1 clearly shows, in our opinion, that, as correctly submitted by learned Counsel for the respondents, the extradition treaty signed between the United Kingdom and the U.S.A, under the United Kingdom Extradition Acts 1870 – 1935 was succeeded to by Mauritius after its independence."*

- *"Moreover, the reasonable meaning of Doc. B1 is that, so far as concerns all treaties, multilateral or bilateral, "they are to continue in existence and to be considered as binding" on Mauritius "until such time as decisions could be made in regard to them and as to which of them should be terminated and what should be continued", to borrow the words and reasoning of **Lord Morris** to suit the Mauritian context – vide **J.S.P. Molefi v Principal Legal Adviser and Ors** **(1970) 3 WLR 338** at page 345."*

- *"Having succeeded to the extradition treaty signed between the United Kingdom and the U.S.A, as indicated already, it was open to Mauritius from 1968 onwards to give notice of termination of the treaty, pursuant to the terms of Doc. B1. However, this was neither done either before or after The Extradition (Foreign States) Act was passed in 1970. Indeed this has never been done, as confirmed before the committing court by Mr R Jahangeer, an ambassador and head of the multilateral political directorate at the Ministry of Foreign Affairs and Regional Cooperation who gave evidence to the effect that neither Mauritius nor the U.S.A. has ever given any notice of termination of the extradition treaty existing between them and that the treaty is still binding on both countries."*

- *"It is precisely because Mauritius has succeeded to various binding treaties, including extradition ones, as mentioned in Doc. B1, that –*

  (a) *section 2 of the Act defines "extradition treaty", as including a treaty or agreement made before 12 March 1968 which extends to, and is binding, on Mauritius;*
  (b) *section 3(1) of the Act preserves the application of the Act to a state which had already been specified under an Order in Council made in the United Kingdom, under the United Kingdom Extradition Acts 1870 to 1935, namely the U.S.A. in relation to which there is no dispute among the parties; and*
  (c) *section 3(3) of the Act provides in substance that the Minister of External Affairs may, by regulations, provide that section 3(1) above shall cease to apply to a particular state."*

- *"That is why in* ***Shearer, Extradition in International Law****, mention is made that "extradition treaties have*

*been given special consideration in some Commonwealth successor States, and continuity in the municipal law sphere has been contrived by a legislative declaration that pre-independence extradition treaties continue in force", as in the case of Mauritius – vide pages 49 – 50."*

(c) In **Heeralall v The Commissioner of Prisons**[2], it was held that *"whether an International Treaty is binding or not is a matter of expert evidence. There was none before the Magistrate. Everyone in the court below would seem to have been concerned with the question of whether a treaty existed as such rather than with the question whether it was still binding. Since there was evidence before the lower Court, as pointed out earlier in relation to the request made by Parquet of the "Tribunal de Grande Instance" of Paris, that France did not seem to consider that an extradition treaty was in force between the two countries, it would have been necessary for an appropriate official of the Government to give evidence of the continued existence of the treaty and of its continued binding character. It would then have been possible for the applicant to cross examine that official and test what was an essential issue of fact."*

(d) It is clear that the case of **Heeralall (supra)** can be distinguished from the present case as **Docs A, B** and **C**, which have been produced by Mr Seetohul, show that both Mauritius and France have accepted that there is still a binding Extradition Treaty between the two states.

(e) Applying the rationale in the case of **Danche (Supra)** to the present case at hand, there is absolutely no evidence that has been ushered in to show that Mauritius has signified to France of any intention of renouncing to the Treaty, or vice versa. As such, the Treaty is still valid and the source from which **Doc B** was obtained, by Mr Seetohul, is a public one, that is, the online

[2] 1992 SCJ 140

library of the United Nations. In line with the case of **Danche (supra)**, the extradition Treaty signed between the United Kingdom and France, under the United Kingdom Extradition Acts 1870 to 1935 was succeeded to by Mauritius after its Independence. The original treaty of 1876 and the amendment made in 1908 have been succeeded to, but not the amendment made in 1978 as Mauritius acceded to its Independence in 1968.

(f) Learned Counsel for the Respondent laid a lot of emphasis, during the cross-examination of Mr Seetohul, as to domestication of the Treaty. This is neither here nor there.

- **Section 2 (1) of the Extradition Act 2017** provides the following:

  *"Extradition treaty" –*
  *(a) means an agreement, an arrangement or a bilateral treaty between Mauritius and a foreign State, or a multilateral treaty to which Mauritius is a party; and*
  *(b) includes a treaty made before 12 March 1968, which extends to, and is binding on, Mauritius,*

  *which contains provisions governing the extradition of persons from Mauritius;*

- We are in the realm of succession of Treaties and the moment **Doc C** was sent to the Secretary General of the United Nations, it is a recognition by the State and it is acknowledged in our body of case law that any Treaty from Independence onwards, which has not been renounced, that is, that has not been terminated, is binding and has effect in Mauritius. This is perfectly in line with the case of **Danche (Supra)**.

14.4. At submission stage, Learned Counsel for the Respondent referred to a number of authorities, Conventions and extracts of Parliamentary debates, which I shall address each in turn:

(a) **Fletcher Goodluck v The Superintendent of Prisons and The Attorney General**[3]:

- At paragraph 10, it was stated that *"The Learned Director of Public Prosecutions in response submitted that the 1876 Treaty was terminated both by the United Kingdom and France who are now parties to the European Convention on Extradition";*

- Paragraph 30: *"The United Kingdom and France have by mutual consent terminated the treaty when they became a Party to the European Convention on Extradition. The United Kingdom gave effect to the Convention by the European Convention on Extradition Order 1990 which came into effect on May 14, 1991."*

- Reference was also made to paragraphs 31 and 32, which refer to Article 28 of the Convention. Learned Counsel for the Respondent, in the case at hand, submitted that based on the European Convention on Extradition Order 1990, the application under ***section 18 of the Extradition Act 2017*** and the averment that the Applicant is satisfied that the Treaty between France and the United Kingdom has not been terminated by either country is erroneous and the present application is flawed. And that based on **Fletcher and Goodluck (supra)**, the present application should be set aside and the Respondent discharged forthwith.

- I do not agree with Learned Counsel for the Respondent. The United Kingdom and France have, by mutual consent, terminated the Treaty when they became a party to the European Convention on Extradition. This is purely and strictly between the United Kingdom and France. It has no bearing on Mauritius, which is a sovereign state. Neither Mauritius nor France have expressly stated that they no longer wish to be bound by the extradition Treaty between France and the United Kingdom, to which

[3] The Eastern Carribean Supreme Court, In the High Court of Justice, Saint Vincent and the Grenadines, High Court Civil Claim No. 125 of 2011

Mauritius succeeded when it gained Independence. As such, the case of **Fletcher and Goodluck (supra)** has no bearing on the case at hand.

(b) **The Republic of Mauritius v Nandanee Soornack**[4] : Learned Counsel for the Respondent referred extensively to this case, where it was stated, amongst other things, that the letter sent by then Prime Minister on the 12th March 1968, to the Secretary General of the United Nations, in relation to the succession of existing Treaties, *"cannot be considered to be legally binding on the Italian Republic."* The issue of succession of Treaties, was extensively addressed by the Italian court, in that case and reference was made to the Vienna Convention 1969.

- The case of **Soornack (supra)** can be distinguished from the case at hand on the ground that the Italian Court considered the existing Treaty between Italy and Mauritius, to which Mauritius succeeded after Independence. I agree with Learned Counsel for the Applicant that this is a decision of the Italian Court where they have decided that the extradition Treaty between Mauritius and Italy is of no effect, but this is not a principle of law. It is a question of fact. The evidence adduced in the case at hand relates to the extradition Treaty between France and Mauritius and this Court has to decide whether there is such an existing treaty and whether it is binding. Therefore, the case of **Soornack (Supra)** has no bearing on the case at hand.

(c) **Kindler v Canada (Minister of Justice)**[5]. Learned Counsel for the Respondent only referred to page 87 of that judgment, where it was held that *"Extradition procedure, unlike the criminal procedure, is founded on the concepts of reciprocity, comity and respect for differences in other jurisdictions."* In so doing, he submitted that this has not been the case between Mauritius and France by specifically relying on the case of one Mr Caterino.

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4 Sect. 6 No. 14237 Year 2017 - Italy

5 [1991] 2 S.C.R. 779

- Learned Counsel for the Respondent could not confirm whether there has been any request made for the extradition of Mr Caterino and simply stated that *"we have tried our best to do research on that matter."*[6] For the concept of reciprocity to kick in, this Court needs to be provided with concrete evidence in order to make such a comparison. In the absence of such evidence, I can only find that reference to the case of Mr Caterino is irrelevant as far as the present case is concerned.

(d) **Philippe Alain Hao Thyn Chuan Ha Shun v Police**[7]. This is a ruling delivered by the Learned Magistrate of the District Court of Port-Louis (Third Division), in relation to a variation of the prohibition order, so that the Applicant could travel to Reunion Island. Learned Counsel for the Respondent drew this Court's attention to paragraph 9.6 of that ruling, which states: *"…the fact that Reunion Island is a French jurisdiction, and in case he absconds, the possibility to trace and extradite the applicant will be almost impossible as there is no extradition treaty between Mauritius and France."*

- This has absolutely no bearing on the case at hand and is certainly not binding on this Court. Learned Counsel for the Applicant stated that the Learned Magistrate, by mere adumbration stated there was no extradition Treaty between Mauritius and France, and that no one knows from where this was obtained. I agree with Learned Counsel for the Applicant and I will simply disregard this Ruling as it is not a binding precedent on this court.

(e) Extensive reference was made to the Vienna Convention on Succession of States in respect of Treaties 1978, the Vienna Convention on the Law of Treaties 1969 and the Geneva Conventions Act 1970. Learned Counsel for the Respondent made

6 Page 21 of the transcript of the proceedings of the court sitting on the 2nd June 2023 refers

7 2021 PL3 32

reference to some particular articles in these Conventions, to which Learned Counsel for the Applicant replied.

- All of these came into effect after **Doc C** was sent to the Secretary General of the United Nations. It remains trite law that these cannot have a retroactive effect. It is a well-established legal principle that a law can only be applied to an act that occurs after the law was adopted.

- **Article 28 of the Vienna Convention on the Law of Treaties** states that the general principle is that a Treaty shall not be applied retroactively *"unless a different intention appears from the treaty or is otherwise established."* If such a contrary intention is absent, a treaty cannot apply to acts or facts, which took place, or situations which ceased to exist, before the date of its entry into force.[8]

- **Article 24 of the Vienna Convention on Succession of States in respect of Treaties** provides that:

  1. *A bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when:*
     *(a) they expressly so agree; or*
     *(b) by reason of their conduct they are to be considered as having so agreed.*
  2. *A treaty considered as being in force under paragraph 1 applies in the relations between the newly independent State and that other State party from the date of the succession of States, unless a different intention appears from their agreement or is otherwise established.*

[8] Source – www.wto.org - Temporal application of rights and obligations. T.5.1 SCM Agreement. (WT/DS22/AB/R)

- I agree with Learned Counsel for the Applicant that the reasoning in **Danche (supra)** and **Heeralall (supra)** that it is a matter of fact and I have already addressed this at paragraph 14.3 above.

(f) Learned Counsel for the Respondent also referred to the Parliamentary Debates of the 30th June 2017 concerning the ***Extradition Bill***, which was being passed.

- Whatever was said in Parliament or any political discourse cannot be binding on this Court. We should not turn a blind eye to the doctrine of separation of powers, which is enshrined in our Constitution and which requires that the principal institutions of the State, that is, the executive, legislature and judiciary, should be clearly divided. As such, this Court will disregard such Parliamentary Debates.

14.5. **Based on paragraph 14.3., it is clear that there is a valid and binding extradition Treaty between Mauritius and France, which enables persons to be extradited from Mauritius to France, as far as the present case is concerned**.

14.6. **Article II of the Treaty (as amended on the 17th October 1908)** provides the following: *"Each of the two High Contracting Parties shall be at liberty to refuse to the other the extradition of its own nationals. In the case, however, of a person who, since the commission of the crime or offence of which he is accused, or for which he has been convicted, has become naturalized in the country where the surrender is sought, such naturalization shall not prevent the pursuit, arrest and extradition of such person, in conformity with the stipulations of the present Treaty."* According to this Article of the Treaty, some leeway is given to the State when deciding on the extradition of its own citizens, but it does not prevent the State from doing so *per se*, as it used to be in the original Treaty, prior to the amendment made in 1908.

15. **The second limb of the test – whether the offence is an extraditable offence**

15.1. **Section 5 of the Extradition Act 2017 – offences punishable under laws of Mauritius**

*(1) (a) An offence shall be an extraditable offence where –*

*(i) it is punishable under the laws of the requesting State by imprisonment or other deprivation of liberty for a term of not less than two years; and*

*(ii) the act which constitutes the offence would, if committed in Mauritius, constitute an offence which is punishable under the laws of Mauritius by imprisonment or any other deprivation of liberty for a term of not less than 2 years.*

*(b) In determining whether an offence is an offence punishable under laws of Mauritius or those of the requesting State, it shall not matter that –*

*(i) the laws of Mauritius and those of that State do not place the act constituting the offence within the same category of offences, denominate the offence by the same terminology, or define or characterise it in the same way; or*

*(ii) the constituent elements of the offence are different under the laws of Mauritius and those of that State, subject that the totality of the act constituting the offence as presented by that State shall be taken into account.*

15.2. The **first element**, as per ***section 5(1)(a) of the Extradition Act 2017*** is that the offence must be punishable under the laws of the requesting state by imprisonment or other deprivation of liberty for a term of not less than two years.

- **Doc A**, which is the request from the French authorities, state the following at page 1, in relation to what constitutes the offence:

*"pour des faits de complicité de transport, exportation, détention et acquisition de stupéfiants et complicité d'exportation en contrebande de marchandise dangereuse pour la santé publique."*

- The question which now arises is what is the penalty associated to that offence? **Doc A** contains extracts from the French Code Pénal and Articles 222-36 and 222-37, amongst others, provide the following:

  **Article 222-36:** *"L'importation ou l'exportation illicites de stupéfiants. Sont punies de dix ans d'emprisonnement et de 7,500,000 euros d'amende. Ces faits sont punis de trente ans de réclusion criminelle et 7 500 000 euros d'amende lorsqu'ils sont commis en bande organisée."*

  **Article 222-37:** *"Le transport, la detention, l'offre, la cession, l'acquisition ou l'emploi illicites de stupéfiants sont punis de dix ans d'emprisonnement de 7 500 000 euros d'amende…"*

- The penalty is ten years, which is above the minimum of two years imprisonment required by ***section 5(1)(a)(i) of the Extradition Act 2017***.

15.3. The **second element** is whether under the laws of Mauritius we have a similar offence that is punishable by a term of imprisonment.

- **Section 30 (1)(d) of the Dangerous Drugs Act 2000** provides the following:

  *Any person who unlawfully –*

  *(d) offers, offers for sale, distributes, sells, brokers, delivers or transports on any terms whatsoever, dispatches, or dispatches in transit any dangerous drug;*

  *…*

  *shall commit an offence and shall, on conviction, be liable –*

(i) *where the offence is in respect of a dangerous drug specified in Part I of the First Schedule, Second Schedule or Third Schedule, to a fine not exceeding one million rupees and to penal servitude for a term not exceeding 25 years;*

(ii) *where the offence is in respect of a dangerous drug specified in Part II of the First Schedule, to a fine not exceeding one million rupees together with penal servitude for a term which shall not be less than 5 years and not more than 25 years.*

- The penalty provided for under the laws of Mauritius for a similar offence is well above the minimum period of two years imprisonment provided for by ***section 5(1)(a)(ii) of the Extradition Act 2017.***

15.4. The list of extraditable offences set out at pages 334 and 335 of the Extradition Treaty (**Doc B**), under Article III, does not include drugs offences. However, **Doc D**, which is the **Single Convention on Narcotic Drugs 1961**, was produced and the following extracts are relevant:

- **Article 36 (1)**

(a) *Subject to its constitutional limitations, each party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.*

*(b) Notwithstanding the preceding subparagraph, when abusers of drugs have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of Article 38.*

- **<u>Article 36(2)(a)</u>**

*Subject to the constitutional limitations of a Party, its legal system and domestic law,*

*(i) Each of the offences enumerated in paragraph 1, if committed in different countries, shall be considered as a distinct offence;*

*(ii) Intentional participation in, conspiracy to commit and attempts to commit, any of such offences, and preparatory acts and financial operations in connexion with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;*

*(iii) Foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism; and*

*(iv) Serious offences heretofore referred to committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offence was committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the Party to which application is made, and if such offender has not already been prosecuted and judgement given.*

- **<u>Article 36(2)(b)</u>**

*(i) Each of the offences enumerated in paragraphs 1 and 2 (a)(ii) of this article shall be deemed to be included as an extraditable offence in any extradition treaty existing*

*between Parties. Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.*

*(ii) If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may at its option consider the Convention as the legal basis for extradition in respect of the offences enumerated in paragraphs 1 and 2 a) (ii) of this article. Extradition shall be subject to the other conditions provided by the law of the requested Party.*

*(iii) Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences enumerated in paragraphs 1 and 2 a)(ii) of this article as extraditable offences between themselves, subject to the conditions provided by the law of the requested Party.*

*(iv) Extradition shall be granted in conformity with the law of the Party to which application is made, and notwithstanding subparagraphs b) i), ii) and iii) of this paragraph, the Party shall have the right to refuse to grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.*

- **Article 36(1)(a)** clearly mentions that "*subject to its constitutional limitations, each party shall adopt measures as will ensure that … transport … of drugs contrary to the provisions of this Convention …shall be punishable by offences when committed intentionally*" whilst **Article 36(2)(b)(i)** mentions that "*each of the offences enumerated in paragraphs 1 and 2 (a)(ii) of this article shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties."* It remains undisputed that the transport of dangerous drugs is incorporated into the Treaty by reference to the **Single Convention on Narcotic Drugs 1961**, to which both France and Mauritius are signatories.

15.5. Based on the above analysis, it is clear that the offence is an extraditable one and **section 18(2)(b) of the Act** has been satisfied.

16. **The third limb of the test – whether the person brought before the Magistrate is the person sought**

16.1. The identity of the Respondent has never been made an issue since the start of the proceedings. It has remained unrebutted that the latter is the very person sought, so that the requirement of **section 18(2)(c) of the Act** has clearly been satisfied.

17. **The fourth limb of the test – in case extradition is requested for the purpose of prosecution in the requesting State, there is admissible evidence considered sufficient to justify the committal of the person sought for trial for the relevant offence if that offence had been committed in Mauritius**

17.1. This part of the test is of no application to the present case inasmuch as the Respondent has already been tried and sentenced *in absentia* in Reunion Island. The extradition of the person sought is not for prosecution but for serving sentence, as per the request received from Reunion Island.

18. **The fifth limb of the test – any other requirement specified in this Act is met**

18.1. This part of the test has been clearly satisfied and the provisions of the Act have been fully complied with.

19. **The bar to this Court ordering the extradition of the Respondent**

19.1. **Section 18(3) of the Extradition Act 2017** provides the following:

*"The Magistrate shall not order that the person sought is eligible for extradition where –*

*(a) mandatory grounds for refusal specified in the relevant extradition treaty have been established; or*

*(b) any other requirement specified in this Act is not met.*

19.2. As far as ***section 18(3)(a) of the Extradition Act 2017*** is concerned, with regards to mandatory grounds of refusal specified in the relevant extradition Treaty, this has not been established at all after **Doc B** has been meticulously considered:

- **Article 5** provides that *"no accused or convicted person shall be surrendered, if the offence in respect of which his surrender is demanded shall be denied by the Party upon which it is made to be a political offence, or to be an act committed with (connexe à) such an offence, or if he prove to the satisfaction of the police magistrate, or of the Court before which he is brought on habeas corpus, or of the Secretary of State, that the requisition for his surrender has, in fact, been made with a view to try to punish him for an offence of a political character".* This is clearly not applicable to the case at hand as the offence for which the Respondent has been sentenced in Reunion Island is not a political one.

- **Article 11** provides that *"the claim for extradition shall not be complied with if the individual claimed has been already tried for the same offence in the country whence the extradition is demanded, or if, since the commission of the acts charged, the accusation or the conviction, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of that country."* This also is not applicable to the case at hand.

19.3. As far as ***section 18(3)(b) of the Extradition Act 2017*** is considered, it is worth noting the following:

- The Act sets out non-extraditable offences as those of political nature and protection of human rights.[9] This is clearly not applicable to the case at hand and this has never been made an issue during the course of the proceedings.

[9] Sections 7 and 8 of the Extradition Act 2017

- **<u>Section 9 of the Extradition Act 2017</u>** provides the following:

**Other grounds for refusal**

*A request for the extradition of a person by a foreign State –*

*(a) may not be favourably considered where –*

*(i) in so far as it relates to the imposition or execution of a sentence –*

*(A) judgment has been rendered in absentia in that State; or*

*(B) that person has not had sufficient notice of trial or opportunity to prepare for his defence, and he has not had or will not have the opportunity to have the case retried in his presence unless –*

*(I) that State gives assurances which, in the opinion of the Attorney-General, are sufficient to ensure to that person the right to a re-trial which safeguards his rights of defence; or*

*(II) that person has been duly notified and has had the opportunity to appear and prepare for his defence and has elected not to do so;*

*(ii) the offence for which extradition is requested is an offence under military law and is not an offence under the criminal law of that State; or*

*(iii) that person is a citizen of Mauritius; or*

*(b) shall not be favourably considered where –*

*(i) there has been a final judgment rendered and enforced against that person in respect of the offence for which extradition is requested;*

*(ii) at the time of the receipt of the request, prosecution or punishment against that person is barred under the laws of Mauritius or those of that State, by lapse of time, prescription or a statute of limitation;*

(iii) *the offence for which extradition is requested carries death penalty under the laws of that State, unless that State gives assurances which, in the opinion of the Attorney-General, are sufficient to ensure that death penalty will not be imposed or, if imposed, will not be carried out;*

(iv) *the offence for which extradition is requested has been committed outside the territory of that State and the laws of Mauritius do not allow prosecution for the same offence when committed outside the territory of Mauritius; or*

(v) *less than 6 months of the sentence of imprisonment of any other deprivation of liberty remains to be served.*

- The word "***shall***" may be read as imperative and the word "***may***" shall be read as permissive and empowering. "***Or***", "***other***" and "***otherwise***" shall be construed disjunctively, and not as implying similarity unless the word "similar" or other word of like meaning is added.[10]

- As far as ***section 9(a) of the Extradition Act 2017*** is concerned, it clearly stated "***<u>may</u>*** *not be favourably considered where*" [**emphasis is mine**]. Therefore, it is permissive and empowering and not mandatory.

- **<u>Doc E</u>**, produced by Mr Seetohul, clearly stipulates the following:

  *Les autorités françaises ont l'honneur d'assurer aux autorités mauriciennes que dans l'éventualité de l'extradition des nommés CELERINE Jean Hubert, alias "Franklin" et DECIDE Jérémy, alias "Nono", ces personnes auront la possibilité d'être rejugées et de presenter leur defense.*

  *Ils pourront tout d'abord, soit accepter la peine prononcée par le tribunal correctionnel prononcée le 02 juillet 2021, et pugeront alors leur peine dans un centre de détention dans des conditions dignes, soit, sur le fondement de l'article 498-1 du code de procedure*

[10] Section 5 of the Interpretation and General Clauses Act

*pénale, interjeter appel de cette décision dans un délai de 10 jours à compter de la notification à leur personne.*

*S'ils interjettent appel, ils seront rejugés sur les faits reprochés dans un délai de 4 mois, par la chambre correctionnelle de la cour d'appel de Saint Denis de la Réunion, composée de trois magistrats; jugés en leur présence, ils pourront présenter leurs moyens de défense en étant assistés d'un avocat, soit choisi et désigné par eux, soit commis d'office; l'avocat aura accès à l'intégralité de la procédure avant la tenue du procès et bénéficiera d'un temps suffisant pour s'entretenir avec les intéressés afin de preparer au mieux leur défense.*

*Les prévenus pourront, au cours de l'audience, faire le choix, à tout moment, de garder le silence, faire des declarations ou répondre aux questions qui leur seront posées.*

*Ils pourront également être assistés d'un interprète dans leur langue maternelle*

…

- The exception provided by ***section 9(a)(B)(I)(II) of the Extradition Act 2017*** in relation to assurances given by the requesting State is supported by **Doc E,** but it is clear from the wording of that section that it is for the Attorney-General to exercise his discretion and reach a decision on that. The delay mentioned in these assurances will start to run as from the date of physical notification.[11]

- Given that the present application has been lodged, it can safely be inferred, as stated by Learned Counsel for the Applicant at submission stage, that *"the decision of the Attorney General has been motivated, the decision to bring this case before Your Honour to decide whether Mr Decide is eligible for extradition has not been a light one, it's been well-motivated and well-reasoned."*[12]

11 Page 9 of the transcript of the proceedings of the court sitting on the 02nd June 2023

12 Page 10 of the transcript of the proceedings of the court sitting on the 02nd June 2023

- Based on the above analysis, I find that ***section 18(3) of the Extradition Act 2017*** does not apply to the case at hand.

**Conclusion**

20. For all the reasons set out above, I find that the test as set out in ***section 18(2) of the Extradition Act 2017*** has been fully satisfied and that the person sought, that is Jérémy Decide, **is eligible for extradition**.

21. In compliance with ***section 18(4) of the Extradition Act 2017***, I order that the person sought, that is **Jérémy Decide**, be **remanded in custody** and the latter is informed of his right to seek judicial review of this order.

**Shavina Jugnauth (Miss)**
**Senior District Magistrate**
**This 07th July 2023**