

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2024] SGHC 23

Magistrate's Appeal No 9194 of 2023

Between

Public Prosecutor

... Appellant

And

Gumede Sthembiso Joel

... Respondent

GROUND OF DECISION

[Criminal Procedure and Sentencing — Appeal — Acquittal]

[Criminal Law — Offences — Endangered species — Assisting another to
retain benefits from criminal conduct]

[Statutory Interpretation — Penal statutes]

TABLE OF CONTENTS

INTRODUCTION.....	1
FACTS.....	2
THE STATUTORY PROVISIONS.....	4
THE ELEMENTS OF THE CDSA CHARGE.....	6
THE DECISION BELOW	7
THE PARTIES' CASES.....	8
DECISION	8
INTERPRETATION OF S 51(1)(A) OF THE CDSA	8
APPLICATION TO THE PRESENT CASE	12
CONCLUSION.....	17

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Public Prosecutor
v
Gumede Sthembiso Joel

[2024] SGHC 23

General Division of the High Court — Magistrate Appeal No 9194 of 2023
Hoo Sheau Peng J
15, 17 January 2024

29 January 2024

Hoo Sheau Peng J:

Introduction

1 This was an appeal by the Prosecution against the decision of the learned District Judge acquitting the respondent, Mr Gumede Sthembiso Joel (“the Respondent”), of one charge of facilitating another in the control of his benefits from criminal conduct, under s 51(1)(a) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (2020 Rev Ed) (“the CDSA” and “the CDSA charge” respectively).

2 The CDSA charge reads:

...you, on 4 October 2022, in Singapore, were concerned in an arrangement, knowing that by the arrangement the control by Jaycee Israel Marvatona (“Jaycee”) of his benefits from criminal conduct, namely, 20 pieces of rhinoceros’ horns concealed in two bags weighing a total of approximately 34.7kg, which were the benefits of an offence against the law of the South African National Environmental Management: Biodiversity Act 10 of

2004, s 57(1), which, if the conduct had occurred in Singapore would have constituted a serious offence under s. 4 of the Endangered Species (Import and Export) Act 2006, would be facilitated by transporting the said horns from South Africa to Laos through Singapore, and knowing that Jaycee is a person who engages in criminal conduct, and you have thereby committed an offence under s 51(1)(a), punishable under s 51(5)(a) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992.

3 Essentially, the District Judge decided that the 20 pieces of rhinoceros horns (“the horns”) did not form the “benefits from criminal conduct”. His grounds of decision are furnished in [2023] SGDC 268 (“the GD”). On appeal, the issues which arose for determination were the interpretation of the phrase “that other person’s benefits from criminal conduct” within s 51(1)(a) of the CDSA, and whether the horns formed Mr Jaycee Israel Marvatona’s (“Jaycee”) benefits from his criminal conduct.

4 Having considered the parties’ written and oral submissions, I dismissed the appeal with brief reasons. I now provide the full reasons for my decision.

Facts

5 The material facts are largely set out in the Statement of Agreed Facts (“SOAF”). Additional crucial facts are also set out in a statement provided by Colonel Johan Jooste pursuant to s 74 of the CDSA, made on behalf of the Government of South Africa, in his capacity as a National Commander with the Wildlife Trafficking Serious Organised Crime of the Directorate for Priority Crime Investigation of the South African Police Service (“Col Jooste’s statement”). Col Jooste’s statement is an exhibit attached to the SOAF.

6 Prior to 4 October 2022, the Respondent had been acquainted with Jaycee for two to three years. In July 2022, the Respondent became aware of Jaycee’s involvement in the illegal rhinoceros horn trade as Jaycee would often

send the Respondent images and videos relating to the sale of rhinoceros horns (SOAF at [16]). Around September 2022, Jaycee requested the Respondent to transport the horns, weighing a total of approximately 34.7kg, from South Africa to Laos through Singapore in exchange for return air tickets and cash (SOAF at [9] and [19]).

7 The South African investigations revealed that Jaycee had acquired the horns illegally from poachers in South Africa. The horns came from 16 individual rhinoceros, comprising of 15 white rhinoceros, which are a protected species, and one black rhinoceros, which is an endangered species as classified under the South African National Environmental Management: Biodiversity Act 10 of 2004 (“NEMBA”) (Col Jooste’s statement at [2(c)]).

8 Jaycee had sold the horns to a person known only as “Jimmy”, and Jaycee was also assisting Jimmy to export the horns out of South Africa without any of the required permits under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”) (SOAF at [25(a)]). Jaycee’s conduct, *ie*, the illegal sale and export of the horns, constituted offences under s 57(1) of NEMBA, as well as offences under s 4 of the Endangered Species (Import and Export) Act 2006 (“the ESA”) (SOAF at [27]).

9 Having considered Jaycee’s request, the Respondent agreed to assist. On 3 October 2022, the Respondent met Jaycee at the O. R. Tambo International Airport in Johannesburg, South Africa, and took possession of the horns (which were packed in two separate bags and then placed in two separate boxes) from Jaycee (SOAF at [20]). A critical fact – highlighted only at the hearing before me by the Respondent Counsel – was that on 3 October 2022 itself, prior to meeting the Respondent, Jaycee had “received the rhinoceros horns which were already packed in boxes from Jimmy” (Col Jooste’s statement at [2(f)]). The

parties did not dispute this critical fact, which was not mentioned by the District Judge in the GD. The Respondent then checked in the two boxes containing the horns for his flight, and flew to Singapore.

10 On 4 October 2022, following the discovery of the horns, the Respondent was arrested at Changi Airport Terminal 1 Arrival Hall (SOAF at [8] and [14]–[15]). Apart from the CDSA charge, two other charges under s 5(1) of the ESA (“the ESA charges”) were also brought against the Respondent. The ESA charges relate to the horns being in transit in Singapore without the requisite permits. The ESA charges had been stood down, and before me, the Respondent indicated his intention to plead guilty to them.

11 The Respondent claimed trial to the CDSA charge. The Prosecution’s case comprised the SOAF (which as I mentioned earlier exhibited, *inter alia*, Col Jooste’s statement). No witnesses were called. At the close of the Prosecution’s case, the parties made submissions before the District Judge. Having considered the parties’ positions, as stated at [1] above, the District Judge acquitted the Respondent.

The statutory provisions

12 At this juncture, I set out the relevant statutory provisions. Section 51 of the CDSA reads:

(1) Subject to subsection (3), a person who enters into or is otherwise concerned in an arrangement, knowing or having reasonable grounds to believe that, by the arrangement —

(a) the retention or control by or on behalf of another (called in this section that other person) of that other person’s benefits from criminal conduct is facilitated (whether by concealment, removal from jurisdiction, transfer to nominees or otherwise);

...

and knowing or having reasonable grounds to believe that that other person is a person who engages in or has engaged in criminal conduct or has benefited from criminal conduct shall be guilty of an offence.

13 For the purposes of these grounds of decision, I shall refer to “that other person” as the “primary offender”, and at times, I shall refer to the primary offender’s criminal conduct loosely as “the predicate offence” (as the term has been used by the District Judge, as well as the parties, particularly, the Respondent). I should also set out some other terms defined in s 2 of the CDSA as follows:

...

“criminal conduct” means doing or being concerned in, whether in Singapore or elsewhere, any act constituting a serious offence or a foreign serious offence;

...

“foreign serious offence” —

(a) means an offence (other than a foreign drug dealing offence) against the law of a foreign country or part thereof that consists of or includes conduct which, if the conduct had occurred in Singapore, would have constituted a serious offence; ...

...

“serious offence” means —

(a) any of the offences specified in the Second Schedule;

...

14 The Second Schedule specifies both ss 4 and 5 of the ESA as serious offences. Briefly, s 4 restricts, *inter alia*, the sale, import and export of any scheduled species without the requisite permits, while s 5 controls the transit of scheduled species (by imposing requirements for permits for such transit).

15 For completeness, I should add that s 57(1) of NEMBA provides that “[a] person may not carry out a restricted activity involving a specimen of a

listed threatened or protected species without a permit”. As defined in s 1 of NEMBA, restricted activity includes, *inter alia*, “killing”, “importing”, “exporting”, “selling or otherwise trading in”, “buying”, “receiving” and “in any way acquiring” the listed threatened or protected species. By way of observation, compared to the ESA, it appears that a wider range of activities is controlled by NEMBA.

The elements of the CDSA charge

16 Based on the above, the elements of the CDSA charge are as follows:

- (a) the Respondent was concerned in an arrangement with Jaycee;
- (b) knowing that by the arrangement, Jaycee’s control of his benefits, namely, the horns, from his criminal conduct would be facilitated by transporting the said horns from South Africa to Laos through Singapore;
- (c) that the horns formed Jaycee’s benefits of his offence in contravention of s 57(1) of NEMBA, which, if the conduct had occurred in Singapore, would have constituted a serious offence under s 4 of the ESA; and
- (d) knowing that Jaycee was a person who engaged in criminal conduct.

17 On appeal, it was not disputed that elements (a) and (d) were made out by the facts set out in the SOAF and Col Jooste’s statement. Where parties diverged was whether elements (b) and (c) were made out. The specific dispute was whether the horns formed Jaycee’s benefits from his criminal conduct of illegal sale and export. Broadly, this was also the case below.

The decision below

18 In the GD, the District Judge reasoned that the horns did not form the benefits from Jaycee’s criminal conduct. Applying the purposive approach, the District Judge interpreted the phrase “that other person’s benefits from criminal conduct” within s 51(1)(a) of the CDSA to mean “the advantage, profits or gains resulting from the criminal conduct” (GD at [43]), as such would accord with the ordinary meaning of the phrase and the legislative intent of the CDSA (GD at [46] and [63]).

19 Based on this interpretation of the phrase, the District Judge held that the following propositions raised by the Respondent in relation to the benefits are “logical and consistent” with the ordinary meaning of the phrase “benefits from criminal conduct” (GD at [44]–[45]):

- (a) The benefit must be something extraneous that is gained, acquired or obtained by the primary offender and cannot originate from him (“the source requirement”);
- (b) The benefit must be gained, acquired, or obtained after the predicate offence has been carried out, and not before (“the timing requirement”); and
- (c) The benefit is gained, acquired, or obtained as a result of the predicate offence (“the causal requirement”).

20 The District Judge noted that according to the Prosecution’s case, Jaycee’s criminal conduct was the sale and export of the horns without CITES permits (GD at [66]). However, he found that the horns could not represent the benefits of such criminal conduct as they had come into Jaycee’s control *before* the illegal sale to Jimmy had taken place. In fact, Jaycee had obtained the horns

from poachers before he sold them to Jimmy (GD at [68]). The illegal sale of the horns, therefore, did not cause Jaycee to acquire the horns. On the contrary, the sale resulted in Jaycee “having to part possession” with the horns. Thus, the horns could not be said to be the benefits from Jaycee’s criminal conduct (GD at [69]). To hold that the horns formed the benefits from Jaycee’s criminal conduct “would do violence to the plain language of the words in the legislation and did not accord with the legislative purpose of the CDSA” (GD at [70]).

21 Accordingly, the District Judge found that the CDSA charge had not been established.

The parties’ cases

22 On appeal, the Prosecution submitted that there were two main issues. First, the legal issue as to the interpretation of the phrase “that other person’s benefits from criminal conduct” found in s 51(1)(a) of the CDSA. Second, the factual issue as to whether the District Judge erred in focusing on the sale (and not the export) of the horns as forming Jaycee’s criminal conduct, and thereafter, in finding that the horns did not form his benefits from criminal conduct. The Prosecution argued that the CDSA charge had been made out, and that the acquittal should be reversed, with the Respondent to be convicted on the CDSA charge. In response, the Respondent submitted that the District Judge did not err on either issue, and that the appeal should be dismissed.

Decision

Interpretation of s 51(1)(a) of the CDSA

23 The law on statutory interpretation is clearly set out in the three-step framework outlined in *Tan Cheng Bock v AG* [2017] 2 SLR 850, a point which neither party disagreed on.

24 As set out above, the Prosecution contended that the District Judge’s interpretation of the phrase “that other person’s benefits from criminal conduct” was erroneous. That said, it is worth highlighting that at the hearing, the Prosecution confirmed that there was no disagreement with the District Judge on five main points. First, that based on the Oxford English Dictionary, a “benefit” means an “advantage, profit or gain”, and “benefits” refer to “advantage, profits or gains” (GD at [42]–[43]). Second, the benefits *must* result from the criminal conduct. In other words, there must be a causal link between the primary offender’s criminal conduct *and* the benefits. As the District Judge put it, the “benefits” must be “a result of”, “in consequence of” or “be gained, obtained and/or acquired by the primary offender as a result of” the criminal conduct (GD at [43]–[44]). Third, and closely intertwined with the second point, the benefits must be gained, obtained and/or acquired *by* the primary offender (GD at [65]). Taken together, in my view, these three points formed the District Judge’s interpretation of the phrase.

25 The two remaining points are as follows. Fourth, “benefits” may be in the form of cash or money, as well as other forms of property (GD at [59]). Fifth, depending on the facts and circumstances, the *subject matter* of criminal conduct, *ie, cash, money or property in respect of which a predicate offence is committed*, may also be the benefit of the criminal conduct (GD at [61]–[62]). To illustrate, I consider a scenario where a director (A) misappropriates his company’s property for personal gain, and then hands the property to a friend (B) for safekeeping. The property is both the subject matter of A’s criminal conduct, *ie*, an offence of criminal breach of trust under s 409 of the Penal Code 1871 (2020 Rev Ed), which is a serious offence within Schedule 2 of the CDSA, *and* A’s benefit from the criminal conduct, *ie*, a gain by A, for the purpose of an offence against B under s 51(1)(a) of the CDSA.

26 Indeed, I agreed with all five points made by the District Judge, particularly his interpretation of the phrase “that other person’s benefits from criminal conduct”. When reading the text of s 51(1)(a) of the CDSA in its grammatical and ordinary sense and in the context of the act as a whole, it is self-evident that the phrase “benefits from criminal conduct” requires the “benefits” (*ie, advantage, profits or gains*) to be gained, obtained or acquired by the primary offender *as a result* of the criminal conduct of the primary offender. In other words, there must be a causal link between the benefits gained by the primary offender and his identified criminal conduct.

27 Such an interpretation is further supported by the provisions surrounding s 51(1)(a) of the CDSA, which also concern benefits from criminal conduct, and thus form the context within which it is to be read. As raised by the Respondent, ss 7, 11 and 51(4)(a) of the CDSA all use the phrase “derived from criminal conduct”. The Oxford English Dictionary’s definition of “derive” is to “come from something as its source”, and an ordinary understanding of the phrase “derived from criminal conduct” imports a causal component.

28 Both the Prosecution and the Respondent referred to a wide range of materials in arriving at the purposes and objectives of the CDSA. These included the long title of the CDSA, case law such as *Yap Chen Hsiang Osborn v Public Prosecutor* [2019] 2 SLR 319, as well as various parliamentary debates surrounding the CDSA and predecessor acts.

29 Despite relying on different materials, it appeared to me that the parties were in broad agreement about the overarching purposes of the CDSA. Both parties recognised that its chief purpose is to ensure that criminals are deprived of the ability to enjoy the fruits of their criminal conduct. Additionally, the CDSA aims to combat and criminalise the laundering of ill-gotten gains and

benefits derived from criminal conduct into other property to avoid detection, and to preserve Singapore's reputation as an international financial hub.

30 These purposes affirm the ordinary meaning of the phrase “that other person's benefits from criminal conduct” as referring to the benefits gained by a primary offender as a result of the primary offender's criminal conduct. Since the key objective of the CDSA is to deprive offenders from reaping the fruits and rewards of their criminal conduct, it follows logically that the benefit must *result* from the criminal conduct. No other interpretation was offered by the parties, and I could think of no other that may further the purposes and objectives of the CDSA.

31 Consequently, I affirmed the District Judge's purposive interpretation of s 51(1)(a) of the CDSA as requiring the “benefits” (*ie, advantage, profits or gains*) to be gained, obtained or acquired *by* the primary offender *as a result of* the primary offender's criminal conduct (which accords with the causal requirement set out at [19(c)] above). Indeed, as pointed out above at [24] and confirmed at the hearing, the Prosecution did not seriously take issue with this.

32 Instead, the Prosecution's main complaint was that the plain and ordinary language of the phrase within s 51(1)(a) of the CDSA does not impose the source requirement (see [19(a)] above). It is possible, said the Prosecution, for the benefits to *originate* from the primary offender himself, and the benefits need not be *extraneous* to the primary offender. In response, the Respondent argued that the plain reading of the phrase requires the benefits to be something extrinsic to the primary offender (and which were not in his possession or control).

33 I agreed with the Prosecution that s 51(1)(a) of the CDSA does not impose the source requirement. More fundamentally, I found the source requirement unclear. What does it mean to say that a benefit is *extraneous* to a primary offender, and that it does not *originate* from the primary offender? The Respondent seemed to suggest that *property* in the primary offender's possession or control originates from him. But what if the criminal conduct affects the legal or beneficial ownership of the property within the primary offender's possession or control? As framed, the source requirement was not entirely helpful. In agreeing with the Respondent's broad proposition as "logical and consistent" with the meaning of the phrase in the portion of the GD that dealt with the plain reading of the phrase, the District Judge seemed to have endorsed this to be a requirement to be established in every case. With due respect, this went too far. In so far as the source of a benefit is concerned, I had no doubt that this would be an important aspect which goes towards a finding of whether the causal link is established, *ie*, whether the benefit results from criminal conduct. In my view, this is part and parcel of the factual inquiry into the causal requirement. I took the same view with respect to the timing requirement. The question of *when* a benefit is gained, acquired or obtained goes towards the factual inquiry of whether it is causally *linked* to the criminal conduct.

Application to the present case

34 With the above in mind, I now turn to the facts of the case, to address the Prosecution's contentions on appeal that the horns themselves, or any increase in the intrinsic value of the horns, and/or any intangible benefits relating to the horns, would properly represent Jaycee's benefits from criminal conduct. It is necessary, however, to begin with a close examination of what Jaycee's criminal conduct was.

35 To reiterate, as set out at [20] above, the District Judge found that the element of causation was not satisfied as the horns were not obtained by Jaycee as a result of his criminal conduct of illegally selling the horns. He found that the horns had come into Jaycee's control before the illegal sale to Jimmy (pursuant to the purchase of the horns from poachers), and that the illegal sale resulted in Jaycee parting possession with the horns. The Prosecution argued that the District Judge had incorrectly limited Jaycee's criminal conduct to the sale of the horns and failed to consider his export of the horns. In this connection, the Prosecution focused on the export of the horns, primarily to lay the groundwork for its contention that *the intrinsic value of the horns increased and/or intangible benefits relating to the horns were gained* in the course of the export of the horns away from South Africa. Unfortunately, the focus on the export of the horns was not to address the critical fact that on 3 October 2022, for the purpose of exporting the horns, Jaycee received the horns from Jimmy (see [9] above).

36 In this regard, this critical fact was not properly dealt with below. Presumably, after selling the horns to Jimmy, Jaycee had relinquished possession of the horns to Jimmy. Thereafter, on 3 October 2022, Jaycee had to collect the horns from Jimmy to be exported out of South Africa by the Respondent. This sequence of events is important because although the District Judge was right to note that the horns came into Jaycee's control *before* the sale to Jimmy, and that Jaycee had to "part possession" of the horns pursuant to his sale to Jimmy, the District Judge did not clearly deal with the *return* of the horns to Jaycee's possession for the purpose of the illegal export. Moreover, it is not entirely clear to me whether the District Judge was aware of this fact, given that the fact was only stated in Col Jooste's statement, and neither party seemed to have specifically relied on it. Based on this fact, it appeared to me that Jaycee had obtained the horns from Jimmy as a result of his criminal conduct in relation

to the illegal export of the horns (see Col Jooste's statement at [2(e)]–[2(f)]). Given the state of the evidence, the relevant question before me became a different one from what was dealt with by the District Judge. It was whether, given Jaycee's receipt of the horns for the purpose of the illegal export, the horns could be considered benefits to him, *ie, whether the horns represented advantage, profits or gains to Jaycee.*

37 As I have established at [24] above, a primary offender's benefit from his criminal conduct must be an advantage, profit or gain to him. Contrary to the Prosecution's arguments, I was of the view that this was not satisfied here. At the end of the day, the horns merely formed the subject matter of Jaycee's criminal conduct of illegal export. While I have accepted that depending on the facts and circumstances, the subject matter of an offence *may* also constitute the benefit to a primary offender at [25] above, here, the Prosecution had not shown me that the horns represented any sort of advantage, profit or gain to Jaycee. When Jaycee collected the horns for the purpose of export, the sale to Jimmy would have been concluded. There was nothing to point to the contrary. Consequently, Jaycee had merely regained physical possession and control of the horns which he had already sold off to Jimmy (and presumably delivered to Jimmy's possession as Jaycee subsequently needed to receive them from Jimmy). To put it another way, the only reason Jaycee came into possession and control of the horns once more was – as highlighted by Respondent Counsel – merely as a means of facilitating their export as per his agreement with Jimmy to assist in the export of the horns. Thus, the horns could not be regarded as Jaycee's benefits from his criminal conduct of illegally exporting them.

38 I turn to deal with the Prosecution's alternative argument that the benefit that was controlled on Jaycee's behalf by the Respondent was the increase in the intrinsic value of the horns as they moved in transit. The Prosecution

supported this with reference to a report from the Wildlife Justice Commission (“the Report”) which stated that the value of rhinoceros horns would increase along the supply chain from the origin point, through transit, and finally at the destination point. Such horns become more expensive in the course of transportation, as additional transportation costs, facilitation fees and handler’s profit margins are accumulated at every stage of the supply chain. Further, the Prosecution argued that gains in intangible benefits were controlled on Jaycee’s behalf, with such benefits being the increased difficulty in detection, tracing and enforcement. At the hearing, the Prosecution contended that the horns became “progressively more masked and unencumbered” as they moved away from South Africa. These constituted changes to the nature of the horns, which were encapsulated within the horns.

39 Having considered these arguments, I did not find that they aided the Prosecution’s case. First, the CDSA charge specified *the horns* as the benefits from criminal conduct, and not the increase in the intrinsic value of the horns or the gains in intangible benefits. As mentioned immediately above, the Prosecution sought to argue that after the export of the horns, the increase in intrinsic value and gains in intangible benefits were all encapsulated in the horns. I thought it quite clear, however, that the CDSA charge particularised the horns, *ie*, the items themselves, as the benefits from the criminal conduct, and as framed, I did not find that the charge encompassed the Prosecution’s alternative arguments.

40 Second, in relation to the increase in the intrinsic value of the horns, the Prosecution relied solely on the Report as to the general trend observed of a rise in market price of rhinoceros horns along the supply chain. Apart from this Report, the Prosecution did not adduce any further evidence evincing an increase in the intrinsic value of the horns involved in the present case. As the

Respondent Counsel argued, the Prosecution's position was unsubstantiated by any evidence. In relation to the gains in intangible benefits, this position was not part of the Prosecution's case below. Again, there was no clear evidence of the gains in intangible benefits. I was mindful that pursuant to s 390(4) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC"), an appellate court may frame an altered charge if satisfied that, based on the records before the court, there is sufficient evidence to constitute a case which the accused has to answer. However, I was not satisfied that the Prosecution had presented sufficient evidence to constitute a case, so as to warrant the framing of an altered charge to encompass its alternative positions, and thereafter to proceed under s 390(6) of the CPC to ask the Respondent if he would like to offer a defence to the altered charge.

41 Third, I noted that pursuant to s 390(1)(a)(i) of the CPC, in an appeal from an order of acquittal, the appellate court may reverse the order and direct that further inquiry is to be made or that the accused is to be retried, or remit the matter to the trial court. I did not, however, think there was any reason to do so. Even if I were to accept that any increase in the intrinsic value of the horns and any gains in intangible benefits, if substantiated by further evidence, could constitute benefits from criminal conduct, I had great difficulty in seeing how they could form *Jaycee's* benefits. It was entirely unclear on the facts how these represented any actual advantage, profit or gain to Jaycee. Given that the horns had been sold to Jimmy, and that any such benefits were encapsulated within the horns (see [38] above), these benefits would be reaped only by Jimmy as the owner of the horns. As such, I thought it very tenuous to argue that Jaycee would benefit from any change in the nature of the horns as articulated by the Prosecution. While the change in nature might matter to Jimmy in further dealing with the horns, I doubted that Jaycee would gain from such aspects in exporting the horns. It would be a stretch to find that such benefits, if any,

constituted Jaycee's benefits from criminal conduct. Since s 51(1)(a) of the CDSA requires the identified benefits to accrue to Jaycee, in my view, this provision would not be made out.

Conclusion

42 By the above, I affirmed the District Judge's interpretation of the phrase "that other person's benefits from criminal conduct" within s 51(1)(a) of the CDSA to mean advantage, profits or gains, to be gained, obtained or acquired by the primary offender as a result of the primary offender's criminal conduct. On the facts, I found that the horns did not, and any increase in their intrinsic value and/or any gains in intangible benefits connected to their export out of South Africa would not, constitute the primary offender's, *ie*, Jaycee's, benefits from criminal conduct. Thus, the CDSA charge against the Respondent, of facilitating Jaycee in the control of his benefits from criminal conduct, had not been made out. Accordingly, I dismissed the Prosecution's appeal against the acquittal of the CDSA charge. As mentioned at [10] above, there were two ESA charges against the Respondent which relate to the horns being in transit in Singapore without the requisite permits. As I understand it, these were dealt with by the District Judge after the conclusion of this appeal.

Hoo Sheau Peng
Judge of the High Court

Ivan Chua, Ng Shao Yan and Lee Da Zhuan (Attorney-General's
Chambers) for the appellant;
Wong Wan Kee Stephania (Rajah & Tann Singapore LLP) for the
respondent.