

**IN THE CONSTITUTIONAL COURT OF SEYCHELLES**

**[Corum: Twomey CJ, Mckee J Akiiki-Kiiza J]**

**CP 1/2016**

**[2016] SCCC 17**

**CAPTAIN DAVID SAVY  
DEACON LOUIS AGATHINE  
MAJOR SIMON DINE  
COLONEL CLIFFORD ROSELINE  
BERYL BOTSOIE  
JAMES LESPERANCE**

**Respondents**

**Arising in:**

**WAVEL JOHN RAMKALAWAN**

**Petitioner**

**v.**

- 1. THE ELECTORAL COMMISSION**
- 2. JAMES MICHEL**
- 3. THE ATTORNEY GENERAL**

**Respondents**

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Heard: 28<sup>th</sup> June 2016,

Counsel: Mr. Kieran Shah for Captain David Savy  
Mr. Elvis Chetty for Deacon Louis Agathine, Major Simon Dine, Colonel Clifford  
Roseline, Beryl Botsoie, James Lesperance

Delivered: 6<sup>th</sup> September 2016

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**ORDER IN RE: SECTION 47 OF THE ELECTIONS ACT 68A**

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**ORDER OF THE COURT**

[1] Section 47 of the Elections Act (the Act) provides in relevant part:

*“(1)At the conclusion of the trial of an election petition, the Constitutional Court shall report in writing to the Electoral Commission—*

*(a)...*

*(b)the names and descriptions of all persons who have been proved at the trial to have been guilty of an illegal practice.*

*(2)Before making any report under subsection (1) (b) in respect of a person who is not a party to an election petition the Constitutional Court shall give the person an opportunity to be heard and to call evidence to show why the person should not be reported.”*

[2] Section 51 (3) defines the commission of an illegal practice inter alia as follows:

*For the purposes of this section and sections 44, 45 and 47, a person commits an illegal practice where the person—*

*(a) directly or indirectly, by that person or by any other person on that person’s behalf, gives, lends or agrees to give or lend, offers or promises to procure or to endeavour to procure, any money or valuable consideration to or for any voter or to or for any other person on behalf of a voter or to or for any other person, in order to induce the voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at an election.*

*(b) directly or indirectly, by that person or by any other person on that person’s behalf, gives or procures or agrees to give or procure or to endeavour to procure, any office, place or employment to or for a voter, or to or for any person, in order to induce the voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of the voter having voted or refrained from voting at an election;*

*(c) directly or indirectly, by that person or by any other person on that person’s behalf, makes any gift, loan, offer, promise, procurement, or agreement referred to in paragraph (b) to or for any person in order to induce such person to procure or to endeavour to procure the vote of a voter at an election;*

*(d) upon or in consequence of any gift, loan, offer, promise, procurement or agreement referred to in paragraph (a), (b) or (c), procures or engages or promises or endeavours to procure the vote of a voter at an election;*

...

*(f) before or during an election directly or indirectly by that person or by any other person on that person's behalf, receives, agrees to receive or contracts for any money, gift, loan or valuable consideration, office, place or employment, for that person or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at the election;*

*(g) ...*

*(h) corruptly, directly or indirectly, by that person or by any other person on that person's behalf, either before, during or after an election, gives, or provides, or pays, wholly or in part, the expense of giving or providing food, drink, entertainment or provision to or for any person for the purpose of influencing that person or any other person to vote or refrain from voting at the election;*

*(i)...*

*(j) directly or indirectly, by that person or by any other person on that person's behalf, makes use of or threatens to make use of, any force, violence or restraint, or inflicts or threatens to inflict by that person or by any other person, any temporal or spiritual injury, damage, harm or loss, upon or against a voter, in order to induce or compel the voter to vote or refrain from voting, at an election or who, by abduction, duress or any fraudulent contrivance, impedes or prevents the free use of the vote by a voter either to give or refrain from giving the vote at an election;*

..."

1. On the 31<sup>st</sup> May 2016, this Court in its decision on whether illegal practices had been found to have been committed prior to and during the presidential elections of 2015 determined that six third parties to the election petition, namely the six respondents

above-named may have on the face of it and on evidence adduced during the hearing of the petition committed acts of illegality in terms of the provisions section 51 (3) of the Act (supra).

2. Although no finding of illegality was made at that time, the Court, pursuant to section 47(2) of the Act caused the six respondents named above to be summoned so as to be given the opportunity to be heard and to call evidence to show why they should not be reported to the Electoral Commission.
3. All the Respondents elected to file affidavits in their defence but not to call further evidence.
4. The Court proceeded to examine the evidence adduced at trial and the averments of the Respondents in their affidavits. Our findings are as follows:

***Captain David Savy***

[3] Mr. Wavel Ramkalawan, in his case before the Constitutional Court produced evidence of Facebook posts by Mr. David Savy, the Chairman of the Seychelles Aviation Authority. The contents of these posts as led in the evidence, on the face of them, threaten temporal loss in terms of section 51 (3) (j) of the Act to the staff of Air Seychelles (“HM”)if Etihad Airlines was to pull out of its partnership with Air Seychelles.

[4] In his affidavit dated 25th July 2015, Mr. Savy refuted the charges brought against him and provided context to the Facebook posts submitted as evidence against him by Mr. Ramkalawan. He deponed that that he did not start the discussion on Facebook as had been alleged. In support he provided copies of the Facebook thread showing that one Nicole Mancienne had initiated the post on 8<sup>th</sup> December 2015 with the following statement:

*Friends, ex colleagues at Air Seychelles I know some of our colleagues are telling you that if there is a change of government you will lose your job. This is just a scare tactic.*

*Father Wavel said that no one will lose their job so that includes you too. Keep doing what you do best and keep the Creole Spirit flying high. God bless.*

[5] Captain's Savy's response in the thread was as follows:

*It is imperative that HM [Air Seychelles] survives irrespective of who runs it or owns it. I strongly believe that without HM tourism will be badly hit. The most important thing is that NO small airline in a liberalised airspace like ours will survive unless they have a strategic partner with deep pockets. The crux of the question ETIHAD's willingness to continue if its partner the Govt is not sympathetic. Sad to say that the opposition has stated that Arabs are not welcome. Unless this position has changed. We need the Arabs more than they need us. I for one pray HM survives whatever as most of my working life has been there like you Nicole.*

[6] He clarified that his intention was not to convince people to change their vote in favour of *Parti Lepep* but rather to avoid offending the Emirates and Etihad so that Air Seychelles could continue their beneficial relationship with these foreign airlines. He stated that given his position as an aviation specialist he felt qualified to make those recommendations and refuted the idea that his statements were politically motivated.

[7] Having examined the twenty eight pages of the thread posted on Facebook and seen the overall context of Captain Savy's statements, we are not of the view that he has violated section 51(3)(j) of the Act or any other provisions of section 53 of the Act. We are satisfied that Mr. Savy's comments were meant within the context of the discussion at hand, and we cannot see evidence that his statements were intended to influence persons to vote for *Parti Lepep* under the threat of the loss to them if they were not to. We do not find therefore that he has committed an act of illegality to warrant a report to the Elections Commission.

**Deacon Louis Agathine**

[8] Mr. Wavel Ramkalawan, in his case before the Constitutional Court produced a recording from Facebook in which Chief Military Adviser Roseline, in a meeting with the soldiers at the Coast Guard base, advises the soldiers on how to vote in the presidential elections.

Deacon Louis Agathine was also present and addressed the soldiers. In reviewing the tape recording we note that Deacon Agathine suggests that a change in government might destabilise the country.

[9] Deacon Agathine states in his affidavit dated 27<sup>th</sup> July 2016 that he believes it to be his duty to provide this type of guidance to soldiers but states that, at no point in time, attempted to sway their votes. He emphasized that he always respects people's right to vote for their chosen candidate and asks merely that they analyse the entire scenario.

[10] The Constitutional Court found in its judgment of 31<sup>st</sup> May 2016 that Deacon Agathine identified himself on the tape by implication. Additionally, he did not deny that this was a recording of the meeting he had attended with Colonel Clifford Roseline, and Mr. Simon Dine, the Commander of the Coast Guards.

[11] Nevertheless having considered the statements of Deacon Agathine in the context in which it was made on tape and the explanations given in his affidavit we are not satisfied that the overall tone and content of his address would cause someone to perceive a threat sufficient to induce them to vote a certain way. We note in this regard the confusing and rambling nature of Deacon Agathine's address. We are not of the view that their import would have been to induce or threaten the members of the armed forces with temporal or spiritual injury, damage, harm or loss, in order to induce or compel them to vote a certain way. It is our finding therefore, that Deacon Agathine's statements made in the recording does not violate section 51(3) of the Act.

### **Major Simon Dine**

[12] Mr. Wavel Ramkalawan, in his case before the Constitutional Court produced the same recording from Facebook in which Chief Military Adviser Roseline and Deacon Louis Agathine, in a meeting with the soldiers at the Coast Guard, advise the soldiers on how to vote in the presidential elections. Major Dine was also present and addressed the soldiers. The following are excerpts from his address:

1. "I would like to put emphasis on what our candidate said regarding the issue of security for tomorrow. ... If change happens and the opposition comes to power

maybe there will be instability in our small country Seychelles. It will no longer be stable...

2. An important point is to note that when a government comes to power after there is change; the new government will have to dissolve the National Assembly. When it does that where will it get the money to go to the Electoral Commission to organize new elections? ... the country will know total darkness and with change we will be like Africa if we are not careful...
3. We have achieved a lot and what [the President] has promised he has delivered. There is more to come, but because of certain difficulties this will take time. We have to wait and understand these things. Progress and development will continue. I take the example of the CMA, based on the conviction that the Commander-in-Chief has given us and which you will judge for yourselves. I believe we need to honour our loyalty for the force, for our lives, for the system that is in place so that we can continue to give all our ability..."

[13] Commander Dine claims that it was never his intention to tell people how to vote and that he believes that it was his duty to provide the soldiers with advice and guidance.

[14] It is our view however that the Commander's statements made in the recording violate 51(3)(j) of the Act in that it threatens temporal loss in the form of instability, violence and political uncertainty. The only feasible intention behind these threats could be to induce the soldiers to vote or refrain from voting in a certain way. We so find.

**Chief Military Adviser Colonel Roseline**

[15] Mr. Wavel Ramkalawan, in his case before the Constitutional Court produced a recording from Facebook in which Colonel Roseline, in a meeting with the soldiers at the Coast Guard base, advises the soldiers on how to vote in the presidential elections. In the recording produced by Mr. Ramkalawan, Colonel Roseline made the following statements:

1. “The only common ground that they [*Linyon Sanzman*] have is to remove James Michel from power. That’s all – remove James Michel from power. It is therefore important that we vote for the man who has a manifesto that is taking us forward...
2. [The Opposition] drive by, they see people, they look at them and they say ‘on the 19th we are coming to get you to hang you.’ ... It is therefore important that we do serious reflection. Think well, just in case there are some of us who made a mistake in the first round. God has given us a chance...
3. Right if ever these people come to power next week and there is a change in Government, they will never be able to work with this assembly. Yes or No? They will never be able to work so what will happen? They will need to dissolve the assembly. Listen to me well. When they dissolve the assembly you need to go through the process for another Assembly. How long will this take? In principle, between one to three months. Soldiers, in January, February, March and April, from where will you get your salary? ... [Y]ou will not have a salary. This is what I mean when I say that the budget has not been approved, it has not been voted. If *Lepep* comes to power, the budget is there, parliament is there and the budget will be approved and your January salary will be there. With another Government it will take on average three months to prepare themselves because they will not be able to use the assembly that is there...
4. President Rene has come and gone. His mandate was there and according to the constitution it is normal. He handed power but then were there not elections? Then they say 38 years is too long. During 38 years, he has led progress, he has brought stability and he is still maintaining stability and peace in the country. With change there will be no stability and peace. We will be like Hutus and Tutsis. My brothers, we do not have to go far in history, just look at what is happening in Kenya. If we want this it is your choice. Would you like to see a situation tomorrow where defence forces which are used to live well together, finds itself in a situation, where we have to fight each other and lose colleagues?



No. this is not normal. Seychelles will sink, it will be finished. So in order to maintain peace and stability, we have to give Mr. Michel his mandate. Decide and give him another five-year mandate for him to continue to bring progress with his program, for him to maintain peace, stability, harmony in the country, and for us to continue living as brothers and sisters or else we will be like Hutus and Tutsis. Ok...

5. There are some manifestos that say they will disband the army, they will close the army. There are manifestos and some politicians who, on behalf of their party have said they will close the army. What will happen to us...?"

[16] In his affidavit, Colonel Roseline does not deny that he is the person in the recording, although he claims that it was never his intention to “dictate and/or order them to exercise their democratic right in the manner [he] wished.” He also apologises for any inconveniences that his actions may have caused.

[17] It is our view that the explanations of Colonel Roseline in regards to the extracts above from the tape do not suffice to negate a finding of illegality in terms of section 51(3) of the Act. It is clearly apparent that Colonel Roseline is directing those soldiers under his influence to vote for *Parti Lepep* and is making his case by threatening that they will suffer violence and instability if they were not to vote accordingly. This violates section 51 (3) (j) of the Act.

### **Beryl Botsoie**

[18] Mr. Wavel Ramkalawan, in his case before the Constitutional Court also produced a video from Facebook of Beryl Botsoie, Head Teacher of the La Rosiere School, giving a lecture to the other teachers during working hours in which inter alia she stated the following:

1. “We are seeing someone [Wavel Ramkalawan] who is proposing himself as a President with arrogance. ... I can never see him becoming a good President. ... He said that as an Opposition (sic) he makes a lot of noise and attack. Is that

really what we want as President for Seychelles? Is this what you really want in future?...

2. With a new government there will be no salaries since there isn't any budget. And when there is no salary, whoever comes in power will not have a minister of finance to provide control and they will go to the Central Bank and do whatever they want.
3. I am friends with all of you whether you wear the green colour, or yellow or in blue, I will always wave hello to you, when I see you wearing the red colour, I will shout in joy, the decision is yours ...”

[19] Beryl Botsoie has not denied either that she was the speaker in the video or the veracity of the statements. In her affidavit she merely states that she had no intention of “garnering support” for any candidate and that this was a friendly conversation amongst colleagues. She concludes by offering an apology for any inconvenience that she may have caused.

[20] We do not find that her explanations in any way excuse what we find as a violation of section 51(3)(j) of the Elections Act, that is, the threat of temporal loss should one vote for the Opposition.

### **James Lesperance**

[21] Mr. Wavel Ramkalawan, in his case before the Supreme Court produced evidence about Mr. James Lesperance. He stated that some men had made a complaint to him about their ID cards. He then called Mr. Lesperance concerning these complaints and following that conversation he called Mr. Quatre, the Commissioner of Police. The Police took up the matter and the ID cards were returned to the men.

[22] Mr. Adolph Jason Dubel, a casual labourer who is hired for casual labour on a day-to-day, or job-to-job basis, gave testimony that on the 9<sup>th</sup> of December he was waiting for work in Providence as is his usual custom, and was approached by Mr. James Lesperance. Mr. Lesperance gave the men SR500 for lemonade and refreshments, and

invited them to come to his office, in Lesperance Complex for a meeting later that morning. Mr. Dubel went along with several others. They had a discussion and Mr. Lesperance paid each of the persons two thousand rupees and in exchange they were to leave their ID's with him. Mr. Dubel signed a document confirming that he had received the money. He stated that he had been promised a further SR3000 after the initial SR2000. Twenty four hours later he was again contacted and his identity card returned.

[23] Mr. Ron Philip Laporte similarly testified that he was also a casual worker. On 9<sup>th</sup> December he was in Providence, with about 14 others. He had never done any work for Mr. Lesperance, but he knew who he was. Mr. Lesperance offered him money in return for his identity card. This occurred at Lesperance Complex. He confirmed that Mr. Lesperance had also given them SR500 for drinks and snacks before they went to Mr. Lesperance's office. He was invited along with the group. He was paid SR2000 specifically from Mrs. Elizabeth Lafortune, Mr. Lesperance's secretary. Each of them were paid SR2000 and were promised to be paid SR3000 which would be paid one day before the 2nd round of elections. He was told to sign a document which stated that the money was being given as a loan for casual work. He recorded a video to reveal the truth about what had happened to his ID card and those of his friends. He reported what had happened to the SNP and to Mr. Ramkalawan. He was advised by Mr. Ramkalawan to go to the police to report the payment for the ID cards. The next day his ID card was returned to him by Adolph Dubel. On 16th December he was again contacted by Mr. Lesperance. He was offered SR3000 and invited to the office to discuss another arrangement, however, Mr. Laporte was unwilling to attend the meeting.

[24] Ms. Lydia Jumeau testified that she had been present in a shop in Providence on 9<sup>th</sup> December 2015 and saw Mr. Lesperance with a person seeking casual labour. She confronted Mr. Lesperance thereafter and discovered that he had several ID cards in his pocket.

[25] Mr. Ramkalawan's evidence was corroborated by Adolph Dubel and Ron Laporte that on 9<sup>th</sup> December fifteen casual labourers had been accosted by Mr. Lesperance who had given them money for food and refreshments and asked them to meet him at his office. In

the office they were paid two thousand rupees in exchange for their identity cards with a promise of a further 3000 rupees, the assumption being that without those cards voters could not vote. Although complaints were made eventually to the police and the identity cards returned, Mr. Ramkalawan alleges that the actions of Mr. Lesperance was to induce the voters not to vote.

- [26] James Lesperance denies the accusations in his affidavit and states that he has been “the victim of politics.” He claims that the nature of his business causes him to hire casual labourers on a daily basis and that he pays them at the end of every 2-3 days. As part of that process he collects the workers’ identity cards, note their national identity number and the amount of hours worked, and then return the cards to the workers. Finally, Mr. Lesperance apologises for any inconvenience that this has caused.
- [27] We are not satisfied with the explanations of Mr. Lesperance. Two witnesses attested to him paying in return for the ID cards, a mere two days before the election. Both of these witnesses regularly work as day labourers and were clear that this was not normal practice for the recruitment for day labour. The fact that he retained the identity cards on that day is problematic. The gentlemen did no work for Mr. Lesperance and received money and the promise of money, this too is problematic. Furthermore, the proximity to the elections is concerning. In Mr. Ramkalawan’s evidence it was adduced that Mr. Lesperance is a known *Parti Lepep* activist and in the totality of the circumstances we cannot resist the inference that Mr. Lesperance’s motives were improper and to prevent those persons from voting.
- [28] It is our finding that Mr. Lesperance’s actions violate sections 51(3) (h) of the Act in that he directly gave money, food and drinks to the workers in order to influence them to refrain from voting at the election.
- [29] In light of our findings above we find that it is proved that Major Simon Dine, Colonel Clifford Roseline, Beryl Botsoie and James Lesperance are guilty of illegal practices under the Act.
- [30] Section 45(4) of the Act provides in relevant part:

*(4) Where it appears to the Constitutional Court on an election petition -*

*(a) that an act or omission of a candidate or the agent of a candidate or any other person, which, but for this section, would be an illegal practice under this Act, has been done or made in good faith through inadvertence or accidental miscalculation or some other reasonable cause of a like nature; or*

*(b) that upon taking into account all the relevant circumstances it would be just that the candidate, agent of the candidate or the other person should not be subject to any of the consequences under this Act for such act or omission,*

*the Court may make an order allowing the act or omission, which would otherwise be an illegal practice under this Act, to be an exception to this Act and the candidate, agent or other person shall not be subject to the consequences under this Act in respect of the act or omission and the result obtained by the candidate shall not, by reason only of that act or omission, be declared to be void.*

[31] We have found above that Major Dine, Colonel Roseline, Mrs. Botsoie and Mr. Lesperance have committed practices which would be illegal practices under the relevant provisions of the Act. It was for them to raise the excuses offered in section 45(4) (a) of the Act namely that the actions had been done or made in good faith, and that the good faith was qualified by inadvertence or accidental miscalculation or some other reasonable cause. These four respondents have failed to satisfy this Court that there are good reasons to excuse their actions under section 45(4) (a) of the Act. Nevertheless, the Court is still empowered to consider whether in the circumstances it would be just for the consequences of the actions of the respondents to be waived.

[32] We note that it was also our finding that Wavel Ramkalawan on his own admission had also committed an act of illegality by his promises and procurement of the votes of Tamils in Seychelles. The Court of Appeal in its judgement (*Ramkalawan v Electoral Com & Ors* [2016] SCCA 17) found that the leaflet Mr. Ramkalawan circulated to the Tamil community “unhappily convey[ed] the clear message of bargaining for votes, an undertaking to the community that they w[ould] obtain Deepavali as a public holiday and places in the Cabinet and senior posts in the civil service against their votes... To us, that

is clearly driven home by the design at the end of the document which shows a tick against his name in a simulated ballot paper...”

The Court of Appeal therefore endorsed our finding that Mr. Ramkalawan’s acts were illegal but they then proceeded to exercise their discretion under section 45(4) of the Act to state that Mr. Ramkalawan’s “acts and omissions arose in a one-off incident through inadvertence or misapprehension of the law.” They so exercised their discretion.

[33] We could obviously do the very same in the case of Major Simon Dine, Colonel Clifford Roseline, Beryl Botsoie and James Lesperance. If a potential leader of a country advised by senior counsel commits an illegal practice through “inadvertence or misapprehension of the law” who is to say that lesser mortals may not have done the same. We cannot, however, see any good faith in the actions of these four individuals.

[34] Moreover, we are unwilling to exercise our discretion with regard to section 45(4)(b) in relation to the actions of Major Dine, Colonel Roseline and Mrs. Botsoie and Mr. Lesperance. The first three named individuals are all in positions of authority and who attempted to influence voters during working hours and to persons under their employ or command. These actions are particularly reprehensible and an abuse of their positions. In any case, members of the armed forces or the police and indeed officers or employees of the civil service should not engage, directly or indirectly, in any electioneering or partisan political activity, except to vote.

[35] We therefore resist the temptation to defeat our clear findings of acts of illegality by the application of section 45(4)(b) of the Act. As a Constitutional Court, our duty is to preserve and protect the Constitution and its laws. Illegal acts of those big and small in our small country should be censored. This was a golden opportunity to draw a line in the sand against all acts of illegality and election fraud in Seychelles. It may have been missed.

[36] Pursuant to sections 47(1) of the Act we therefore, by a copy of this Order served on the Electoral Commission, hereby report to the Electoral Commission that Major Simon Dine, Colonel Clifford Roseline, Beryl Botsoie and James Lesperance have committed

acts of illegality, which finding results in their disqualification from voting for a period of five years from the date of this Order.

[37] We so Order.

Signed, dated and delivered at Ile du Port on

**M. TWOMEY**  
Chief Justice

**C. McKEE**  
**Judge**

**D. AKIIKI-KIIZA**  
**Judge**