IN THE COURT OF APPEAL OF SEYCHELLES

Reportable
[2026] (27 April 2026)
SCA MA 01/2026 and
SCA MA 09/2026
(Arising in SCA 11 & 12/2025)

The Estate of the Late Andre Delhnomme **Applicant**
(rep. by Mr. Frank Elizabeth)

And

The Attorney General **Respondent**
(represented by Ms. Ria Alcindor)

Neutral Citation:	*The Estate of the Late Andre Delhomme v The Attorney General* (SCA MA 01/2026 And SCA MA 09/2026) [2026] (Arising in SCA 11 & 12/2025) (27 April 2026)
Before:	Robinson, André, De Silva, JJA
Heard:	15 April 2026
Summary:	Court of Appeal - Jurisdiction – Power – Inherent Jurisdiction – Inherent Power - Reopen Case – Constitution – Courts Act
Delivered:	27 April 2026

ORDER

1. The application is dismissed in its entirety.

JUDGMENT

DE SILVA JA

(André JA, concurring)

1. The Applicant claims this to be a constitutional application brought under Article 130(1) of the Constitution of the Republic of Seychelles (Constitution). The Applicant seeks a declaration that its constitutional right to a fair hearing, as guaranteed by Article 19(7) of the Constitution, has been contravened by the judgment of the Court of Appeal delivered on 15 December 2025 in SCA 11/2025 and SCA 12/2025 (Judgment).

2. The Applicant complains that the Court of Appeal relied decisively on an interpretation of Section 75 of the Seychelles Code of Civil Procedure (SCCP) that was never pleaded or addressed by the parties and thereby deprived the Applicant of the opportunity to engage on the very legal question upon which the outcome of SCA 11/2025 and SCA 12/2025 hinged, reducing the constitutional guarantee of a fair hearing to an empty formality.

3. The Applicant seeks an order quashing, reversing, and setting aside the Judgment, and directing that the consolidated appeals in SCA 11/2025 and SCA 12/2025 be reheard *de novo* before a differently constituted bench of the Court of Appeal. The Applicant relies on the decision in ***Vijay Construction (Pty) Ltd v. Eastern European Engineering Limited*** **[(SCA MA 24/2020) (2022) SCCA 5 (21 March 2022)]** where the Court of Appeal held that it may, in exceptional cases, reopen a concluded appeal to safeguard the integrity of the judicial process. It was submitted that in the present case, procedural injustice has been so plainly inflicted that invocation of the inherent jurisdiction of Court to set aside its own judgment is both necessary and proper.

Factual Matrix

4. The late Andre Delhomme and Madeline Hery sold Coetivy Island to the Government of Seychelles for a sum of SCR 4,000,000/=. Parties admit that the vendors were paid a sum of SCR 2,500,000/= at the time of the sale. The balance sum of SCR 1,500,000/= was to be paid by the Government in five equal instalments of SCR 300,000/= each between January and May 1980.

5. The Applicant contends that the Government failed to pay the balance sum of SCR 1,500,000/= and proceedings were brought in the Supreme Court in CS 79/2020 seeking *inter alia* payment of the outstanding amount with interest.

6. The Supreme Court by judgment dated 28 March 2025 held in favour of the Applicant and ordered the Attorney General to pay SCR 1,500,000 with interest at 4% per annum from 24 August 2020.

7. There were cross appeals against the judgment of the Supreme Court. The Applicant filed SCA 11/2025 raising five grounds of appeal including the refusal of recission and the rate of interest. The Attorney General appealed in SCA 12/2025 raising four grounds of appeal impugning the finding that the Applicant had proved its case on a balance of probability.

8. The Court of Appeal allowed the appeal by the Attorney General in SCA 12/2025 and dismissed the appeal by the Applicant in SCA 11/2025.

9. The Applicant in the Notice of Motion dated 6 January 2026 has identified the following grounds for this application:
    a. The Court of Appeal *inter alia* determined the appeal against the Applicant on the basis of the interpretation of Section 75 of the SCCP which was a novel ground that was not raised by the Respondent in their grounds of appeal in SCA 12/2025;
    b. The Court of Appeal did not afford the Applicant any opportunity to be heard and address the Court on the issue of Section 75 of the SCCP before making its decision on this point, thereby violating the Applicant's constitutional right to a fair hearing;
    c. The interpretation of Section 75 of the SCCP was a major deciding factor in the appeal, particularly in relation to the issue of burden of proof;
    d. The Applicant's appeal in SCA 11/2025 was not adjudicated upon at all, but was simply dismissed as "otiose" without any consideration of the merits of their grounds of appeal.

10. The question that arose for determination in ***Vijay Construction*** **[supra]** is whether the Court of Appeal has the authority to set aside its own judgment. Two grounds were urged in support of the contention that the Court of Appeal did possess such authority. Firstly, it was submitted that there is ***inherent jurisdiction*** conferred by the Courts Act, as transposed to the Court of Appeal by force of the Constitution. Secondly, that the Court of Appeal has ***inherent power*** to set aside its judgment.

11. The Court was divided. Robinson JA with Andre, JA. agreeing [Majority] held (at paragraph [76]) that the Court of Appeal has the ***authority*** to reopen its judgment and rehear it. They concluded that "*this **authority emanates from its inherent, implied, implicit or residual jurisdiction** or **inherent, implied, implicit or residual power***."

12. Dodin JA [Minority] held (at paragraph [11] of the dissent) that "*the Court of Appeal has not been conferred with unlimited original jurisdiction in all matters as the Supreme Court and cannot invoke for itself unlimited inherent powers or the same inherent powers of the Supreme Court.*" He went on to hold (at paragraph [13] of the dissent) that *"the powers that are not conferred upon the Court of Appeal and the law are limited to only such **inherent jurisdiction** and **powers** which is necessary to the exercise and discharge of its appellate jurisdiction and other than its original jurisdiction under Article 130(6) of the Constitution, it cannot assume any **jurisdiction** and **powers** outside of and not necessary for the discharge of its appellate jurisdiction."*

Fresh Evidence

13. A preliminary matter requires to be disposed before examining the merits of this application.

14. On 9 April 2026, just four days before the date set for hearing of this application, the Applicant filed a Notice of Motion seeking leave to adduce further evidence, of an Inscription of Privilege dated 18 December 1979 inscribed against the Island of Coetivy, pursuant to Rule 31(2) of the Seychelles Court of Appeal Rules (Rules).

15. Rule 31(2) is found under *Powers of the Court of Appeal*, and reads as follows:

> *"Upon appeals from a judgment, decree or order, after trial or hearing of any cause or matter upon the merits, such further evidence, save as to matters which have occurred after the day of the decision from which the appeal is brought, shall be admitted on special grounds only and not without leave of the Court"*

16. I have no hesitation in rejecting leave to adduce further evidence. Rule 31(2) grants *power* to allow fresh evidence when the Court of Appeal exercises its powers in *appeal*. The appeal has now been heard and determined. As admitted by Mr. Elizabeth during the hearing, the Rules do not contain any provision in respect of adducing fresh evidence when there is an application which complains that the right of fair hearing has been violated under Article 19(7) of the Constitution. However, Mr. Elizabeth sought to frame this application as one invoking the inherent powers of the Court. This is not a course open to the Applicant after having specifically made it under Rule 31(2). In any event, inherent power cannot be invoked where a statutory procedure is provided to make an application to adduce further evidence. As Lord Dyson held (at para. [18]) in ***Al Rawi v. The Security Service*** **[(2011) UKSC 34; (2012) 1 AC 531]**, a Court cannot exercise its inherent jurisdiction in contravention of legislation or rules of court.

17. This brings me to the alternative point based on merits. Assuming that this application is permissible under inherent powers, the requirements to be fulfilled for the grant of leave to such applications have not been met by the Applicant.

18. The Applicant has by filing dated 14 April 2026 submitted copies of the decisions in ***General Insurance Company of Seychelles v. Bonte*** **[SCA 6/1994 (12 August 1994)]**, ***Parcou v. Laporte*** **[SCA 63/2019, (2022) SCCA 13 [29 April 2022]** and ***Petrescu v. Iliescu*** **[(2023) SCCA 5 (13 April 2023)]** as authorities relied upon in support of its application to lead fresh evidence. These authorities state that the following conditions must be satisfied for fresh evidence to be lead:
    a. The evidence must not have been obtainable at trial despite reasonable diligence;
    b. The evidence must have an important influence on the result of the case;
    c. The evidence must be prima facie credible;
    d. Whether or not the new evidence will be prejudicial to the other party.

19. However, in the Notice of Motion, the Applicant relies on the decision in ***Vijay Construction (Pty) Ltd v. Eastern European Engineering Ltd*** **[(MA 24/2020) (2022 SCA 5)]** which identifies that the following grounds must be fulfilled:
    a. The Applicant could not have, by the exercise of reasonable diligence, have

adduced the proposed evidence at the trial.

b. The proposed evidence is cogent and likely to be decisive of the appeal or at least of one of the main issues therein.

c. The application has been made at the earliest reasonable opportunity.

20. The Notice of Motion stands against any claim of reasonable diligence. Paragraph 3 therein claims that the Inscription became directly material only after the testimony of the witness for the Government Mr. Lablasche. This was clearly not the correct position as the Applicant knew the position taken by the Government upon being served with the Statement of Defence. Assuming this to be the case, the Applicant could have still made the application to the Court of Appeal during the appellate proceedings which was not done. Clearly, the Applicant did not show due diligence is attempting to obtain and making available evidence which he seeks to lead as fresh evidence.

21. For all the foregoing reasons, I reject the application made to adduce fresh evidence.

Dichotomy between Jurisdiction and Power

22. In ***Vijay Construction*** **[supra]**, the Court of Appeal uses the legal terms *jurisdiction*, *power*, *inherent jurisdiction* and *inherent power*. It is not clear to me upon a plain reading of both the Majority and Minority, whether the Court proceeded on the basis that these terms are synonymous. Hence, I shall begin my analysis by examining the meaning of these legal terms before proceeding to examine the issues that arose for determination in ***Vijay Construction*** **[supra]** and the reasons and conclusions of the Court thereon.

23. Although legal terms may have a general meaning that can be ascribable to them, their true meaning must be examined in their statutory setting.

24. Article 120 of the Constitution deals with the establishment and jurisdiction of the Court of Appeal. Article 120(1) states that there shall be a Court of Appeal which shall, subject to the Constitution, have *jurisdiction* to hear and determine *appeals* from a judgement, direction, decision, declaration, decree, writ or order of the Supreme Court and such other

appellate jurisdiction as may be conferred upon the Court of Appeal by the Constitution and by or under an Act. Here the Constitution confers the Court of Appeal with specific appellate *jurisdiction.*

25. Article 120(2) states that the Court of Appeal shall, when exercising its *appellate jurisdiction*, have all the *authority*, *jurisdiction* and *power* of the Court from which the appeal is brought and *such other authority, jurisdiction and power* as may be conferred upon it by or under an Act. This establishes that where the Court of Appeal sits in appeal, it has all the *authority*, *jurisdiction* and *power* of the Court from which the appeal is brought.

26. Article 120(3) states that subject to the Constitution and any other law, the *authority, jurisdiction* and *power* of the Court of Appeal may be exercised as provided in the Rules of the Court of Appeal.

27. These provisions appear to *prima facie* indicate that the drafters of the Constitution were of the view that the terms *jurisdiction* and *power* are not synonymous.

28. This is fortified by Article 125 of the Constitution which deals with the establishment and jurisdiction of the Supreme Court. Article 125(1) states that there shall be a Supreme Court which shall, in addition to the ***jurisdiction*** and ***powers*** conferred by the Constitution, have (a) original ***jurisdiction*** in matters relating to the application, contravention, enforcement or interpretation of the Constitution; (b) original ***jurisdiction*** in civil and criminal matters; (c) supervisory ***jurisdiction*** over subordinate courts, tribunals and adjudicating authority and, in this connection, shall ***have power*** to issue injunctions, directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto ***as may be appropriate for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction***; and such other original, appellate and other ***jurisdiction*** as may be conferred on it by or under an Act. The dichotomy between jurisdiction and power is clearly established in the Constitution recognising that ***power*** can be exercised for the purpose of enforcing or securing the enforcement of its supervisory ***jurisdiction***.

29. A similar pattern is found in the Courts Act of Seychelles (Chapter 52). Part II therein defines the ***Jurisdiction*** and ***Powers*** of the Supreme Court. Section 4 spells out its ***General Jurisdiction***. It states that the Supreme Court shall be a Superior Court of Record and, in addition to any other ***jurisdiction*** conferred by this Act or any other law, shall have and may exercise the ***powers, authorities and jurisdiction*** possessed and exercised by the High Court of Justice in England.

30. Section 12(1) of the Courts Act states that subject as otherwise provided in the Act or in any other law, the Court of Appeal shall, in civil matters, have ***jurisdiction*** to hear and determine appeals from any judgement or order of the Supreme Court given or made in its original or appellate jurisdiction. Section 12(3) states that for all the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the ***powers, authority and jurisdiction*** of the Supreme Court of Seychelles and of the Court of Appeal in England.

31. Accordingly, it is clear that the drafters of both the Constitution and the Courts Act did not use ***jurisdiction*** and ***power*** synonymously. This approach is consistent with comparative jurisprudence.

32. In ***Lee Lee Cheng (f) v. Seow Peng Kwang [CA]*** **[(1960) 26 MLJ 1 at 3]**, the Malaysian Supreme Court considered the provisions in the Courts Ordinance, 1948 where the words "jurisdiction" and "power" were used. Court held that it is axiomatic that when different words are used in a statute they refer to different things and this is particularly so where the different words are used repeatedly. It was further held that this leads to the view that in the Ordinance there is a distinction between the jurisdiction of a Court and its powers, and this suggests that the word "jurisdiction" is used to denote the types of subject matter which the Court may deal with and in relation to which it may exercise its powers.

33. In ***Muhd Munir v. Noor Hidah*** **[1990] 2 S.L.R.(R.) 348 (Singapore High Court)** it was held that the jurisdiction of a court is its authority, however derived, to hear and determine a dispute that is brought before it. The powers of a court constitute its capacity to give

effect to its determination by making or granting the orders or reliefs sought by the successful party to the dispute.

34. Joseph (*Inherent Jurisdiction and Inherent Powers in New Zealand*, (2005) 11 Canterbury L Rev 220 at 221) states that the terms "jurisdiction" and "powers" are separable by arguing that jurisdiction is a substantive power to hear and determine a matter whereas powers, in contrast, are simply incidental, procedural devices that are used by the Court to effect its jurisdiction.

35. The dichotomy between *jurisdiction* and *power* was accepted in the Australian case of ***Harris v. Caladine*** **[(1991) HCA 9; (1991) 172 CLR 84]** where Toohey, J. held (at paragraph 26):

> *"The distinction between jurisdiction and power is often blurred, particularly in the context of "inherent jurisdiction". But the distinction may at times be important.* ***Jurisdiction is the authority which a court has to decide the range of matters that can be litigated before it; in the exercise of that jurisdiction a court has powers expressly or impliedly conferred by the legislation governing the court and "such powers as are incidental and necessary to the exercise of the jurisdiction or the powers so conferred"****: Parsons v. Martin [1984] FCA 408; (1984) 5 FC.R. 235, at p 241; see also Jackson v. Sterling Industries Ltd. [1987] HCA 23; (1987) 162 CLR 612, at pp 630-631".* (emphasis added)

36. In ***Connelly v. DPP*** **[(1964) 2 All ER 401 at 409]** Lord Morris of Borth-Y-Gest appears to adopt this dichotomy in holding that *"there can be no doubt that a Court which is endowed with particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction"* and went on to characterise them as powers which are inherent in its jurisdiction.

37. The issue then is determining the meaning that should be ascribed to the legal terms *jurisdiction* and *power* appearing in the Constitution and Courts Act. In the absence of any definition of these two terms in the Constitution or the Courts Act, guidance can justifiably be found in comparative jurisprudence.

38. In the Sri Lankan case of ***Basil Rohana Rajapakse v. His Lordship Preethi Padman Surasena and Others*** **[C.A. Writ Application No. 89/2017, C.A.M. 24.05.2019 at page 5]**, I quoted with approval Sansoni, C.J., in ***Anthony Naide v. The Ceylon Tea Plantation Co. Ltd. of London*** **[68 N.L.R. 558 at 560]** where it was held that ***jurisdiction*** is the authority of a Court to exercise judicial power in a specific case and is, of course, ***a prerequisite to the exercise of judicial power***, which is the totality of powers a Court exercises when it assumes jurisdiction and hears and decides a case.

39. In the Indian case of ***Sukh Lal v. Tara Chand*** **[33 C.68 :C.W.N. 1046:2 C.L.J. 241:2 Cr. L.J. 618]** the Supreme Court held that jurisdiction may be defined to be the power of a Court to hear and determine a cause, to adjudicate or exercise any judicial power in relation to it; in other words, by jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. In ***Ashutosh Sikdar v. Behari Lal*** **[11 C.W.N. 1011:6 C.L.J. 320:35 C. 61 (F.B.)]** and ***Gurdeo Singh v. Chandrika Singh*** **[1 Ind. Cas. 913:36 C.193: 5 C.L.J. 611]** it was held that the jurisdiction of a Court may be qualified or restricted by a variety of circumstances by classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject-matter. This classification was confirmed in ***Harshad Chiman Lal Modi v. Dlf Universal & Anr*** **[AIR 2005 SUPREME COURT 4446, 2005 (7) SCC 791]**.

40. The English case of ***Garthwaite v. Garthwaite*** **[(1964) 2 W.L.R. 1108]**, provides a similar definition of jurisdiction of a Court. Diplock, L.J. held (at page 1120):

> *"[...] in its narrow and strict sense, the 'jurisdiction' of a validly constituted court connotes the limits which are imposed upon its power to hear and determine issues between persons seeking to avail themselves of its process by reference (1) to the subject-matter of the issue or (2) to the persons between whom the issue is joined or (3) to the kind of relief sought, or to any combination of these factors."*

41. Accordingly, in general, the ***jurisdiction*** and ***power*** of a Court are not synonymous. ***Jurisdiction*** is the authority of a Court to exercise its power in a specific case. The ***Jurisdiction*** of a Court may be qualified or restricted by a variety of circumstances by classification into territorial jurisdiction, pecuniary jurisdiction, subject-matter jurisdiction and other specific jurisdiction. The source of ***Jurisdiction*** in this sense is statutory especially in countries having a written constitution.

42. On the hand, ***Powers*** of a Court is the settled practice of the Court as to the way in which it will exercise its power to hear and determine all matters which fall within Jurisdiction, including its settled practice to refuse to exercise such powers, or to grant such relief in particular circumstances. The source of ***Powers*** in this sense is again statutory especially in countries having a written constitution. A Court cannot exercise any ***Powers*** in matters over which it has no ***Jurisdiction***.

Inherent Jurisdiction and Inherent Power

43. In ***Vijay Construction*** **[supra]**, parties presented arguments in the alternative. Firstly, it was submitted that the Court of Appeal had ***inherent jurisdiction*** to reopen the case. Secondly, it was submitted that the Court of Appeal had ***inherent power*** to set aside its judgment. In this context I must examine whether *inherent jurisdiction* is the same as *Jurisdiction* as expounded above and similarly, whether *inherent power* is the same as *Power* as expounded above.

44. The starting point of this examination must be the seminal work of Jacob (*The Inherent Jurisdiction of the Court*, Current Legal Problems, Volume 23, Issue1, 1970, 23) where he states that the term *"inherent jurisdiction of the court"* does not mean the same thing as *"the jurisdiction of the court"* used without qualification or description: the two terms are not interchangeable, for the "inherent" jurisdiction of the Court is only a part or an aspect of its general jurisdiction.

45. In ***Taylor v. Lawrence*** **[(2002) 2 All ER 353 at 361]** Lord Woolf CJ provided some clarity to the distinction between *jurisdiction*, in the sense I have sought to explain above, and *inherent jurisdiction* in stating:

> *"Accordingly, it is accepted that the Court of Appeal does not have any inherent jurisdiction in respect of appeals from the county court but only that which is given by statute. However,* ***the use of the word "inherent" in this context means no more than that the Court of Appeal's jurisdiction depends on statute and it has no originating jurisdiction.*** *The position is very much the same in relation to other appeals to the Court of Appeal. Its jurisdiction is to be determined solely by reference to the relevant statutory provisions."* (emphasis added)

46. The Supreme Court of Ireland in **G. *McG v. D.V. (No.2)*** **[(2000) 4 I.R. 1 at 26]** held that:

> *"The concept of inherent jurisdiction necessarily depends on a distinction between jurisdiction that is explicitly attributed to the courts by law and those that a court possesses implicitly whether owing to the very nature of its judicial function or its constitutional role in the administration of justice. The interaction between the express jurisdiction of the courts and their inherent jurisdiction will depend in each case according to the scope of the express jurisdiction, whether its source is common law, legislative or constitutional and the ambit of the inherent jurisdiction which is being invoked. Inherent jurisdiction by its nature only arises in the absence of the express"*

47. Jacob [supra. at page 51] defines *"inherent jurisdiction"* as follows:

> *"[...] the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression, to do justice between the parties and to secure a fair trial between them."*

48. This definition has received wide acceptance in the highest courts of United Kingdom (***Grobbelaar v. News Group Newspapers Ltd* [2002] 1 WLR 3024 at 3037** where Lord Bingham of Cornhill opined that this definition "has never perhaps been bettered"), Canada (***R. v. Caron* [2011] 1 SCR 78 at [24] (SCC)**) and New Zealand (***Siemer v Solicitor-General* [2010] 3 NZLR 767 at [29] (SCNZ).**

49. Nevertheless, the problem with the definition of Jacob is that he, as well as many judges and jurists, have conflated *"inherent jurisdiction"* with *"inherent powers"*. Although related, the two terms are not identical. In ***Watson v. Clarke* [(1990) 1 NZLR 715, 720 (NZHC)]** it was held that there is an:

> *"[...] important distinction between "inherent power" and "inherent jurisdiction". The latter connotes an original and universal jurisdiction not derived from any other source, whereas the former connotes an implied power such as the power to prevent abuse of process, which is necessary for the due administration of justice under powers already conferred."*

50. Liang [*The Inherent Jurisdiction and Inherent Powers of International Criminal Courts and Tribunals: an Appraisal of Their Application*, (2012) 15 New Crim. L. Rev. 375, 379-380] acknowledges the distinction between these legal terms in stating that whereas *"inherent jurisdiction"* indicates some sort of substantive authority based on the original and unlimited jurisdiction superior courts received from the sovereign, *"inherent powers"*, are instead a type of procedural authority incidental to a court's statutory authority.

51. In my view inherent jurisdiction and inherent powers are not synonymous. Similar to the distinction between Jurisdiction and Power they connote different concepts. ***Inherent jurisdiction*** is the authority of a Court to exercise its power in a specific case, the source of which is not statutory.

52. In that sense the total jurisdiction of a Court is its *Jurisdiction* plus its *Inherent jurisdiction* in the sense explained above. I shall hereinafter refer to this total jurisdiction as ***General Jurisdiction***.

53. ***Inherent Power*** of a Court is the settled practice of the Court as to the way in which it will exercise its power to hear and determine all matters which fall within its ***General Jurisdiction***, including its settled practice to refuse to exercise such powers, or to grant such relief in particular circumstances. The source of ***Inherent Power*** is not statutory.

54. In that sense ***General Powers*** of a Court is its ***Powers*** plus its ***Inherent Power*** in the sense explained above. I shall hereinafter refer to this total power as ***General Powers***.

55. Accordingly, ***a Court must have General Jurisdiction in order to enable it to exercise any of its General Powers***. Having set down my views on the dichotomy between *jurisdiction, power, inherent jurisdiction and inherent power*, let me now proceed to examine the ratio in ***Vijay Construction*** **[supra].**

Analysis of judgment in Vijay Construction [supra]

56. The Majority began by examining whether or not the Supreme Court has an inherent jurisdiction (para. [22] of the judgment). However the Majority thereafter, from paragraphs [23] to [32], proceeds to examine whether the Court of Appeal has inherent jurisdiction. Nevertheless, the Majority does not arrive at any conclusion on this issue up to that point.

57. However, the Majority then abandons that exposition and from paragraphs [33] to [38] examines different sources to ascertain the meaning of the terms *jurisdiction* and *inherent jurisdiction*. They conclude that courts of unlimited original jurisdiction possess inherent jurisdiction. Thereafter the Majority hold (at paragraphs [39] and [43]) that the combination of Article 125 of the Constitution and Sections 4 to 10 of the Courts Act undisputedly grants the Supreme Court unlimited original jurisdiction and accordingly it possesses inherent jurisdiction. The Majority sought to fortify this conclusion by reference to the decisions in ***DF Properties (Proprietary) Ltd. and Fregate Island Private Limited*** **(SCA 56/2018 and SCA 63/ 2018)** and ***Finesse v. Banane*** **[(1981) SLR 103, 108/9]**.

58. The Majority (at paragraph [51]) concludes that Articles 120(1) and 120(3) of the Constitution *"give to the Court of Appeal to hear and determine an appeal, all the jurisdiction and powers of the Seychelles Supreme Court and the English Court of Appeal"*

and that *"this authority is not simply "incidental to the hearing of an appeal", but it is to hear and determine it."*

59. Notwithstanding this conclusion, the Majority held (at paragraph [53]) that it is not clear whether or not the Constitutional provisions and the Courts Act assist in creating the *jurisdiction* or *inherent jurisdiction* and that they state no more about this ground.

60. Accordingly, the Majority did not come to any conclusion on whether or not the Court of Appeal has ***jurisdiction or inherent jurisdiction*** to set aside its own judgment.

61. The Majority then proceeded to examine whether the Court of Appeal has the ***inherent power*** to set aside its own judgment. This exposition begins at paragraph [54] and proceeds up to paragraph [75].

62. They begin by referring (at paragraph [55]) to Halsbury's Laws of England, Vol. 24A (2019) which states that a Court exercising judicial functions has an inherent power to regulate its own procedure, save in so far as its procedure laid down by the enacted law and that it cannot adopt a practice or procedure contrary to or inconsistent with rules laid down by statute or adopted by ancient usage.

63. Having thus begun an exposition of the *inherent power* of Court, the Majority discusses various authorities which seek to explain this inherent power.

64. At paragraph [56], the Majority discusses the decision in ***Axiom Rolle PRP Valuation Services Ltd. v. Rahul Ramesh Kapadia and others NZAC, 43/06***. An examination of the extract quoted by the Majority shows that the Court in that case was of the view that:
    a. Inherent *power* is a procedural tool to hear and decide a cause of action within *jurisdiction*.
    b. Inherent powers attach where a Court has already been granted jurisdiction.
    c. Inherent *jurisdiction* is substantive whilst inherent *powers* are procedural.

65. A similar conclusion was reached in the next decision referred to by the Majority (at paragraph [57]), ***DJL v. Central Authority*** **[(2000) HCA 17 201 CLR 226]** where it was held that inherent powers are implied from Courts jurisdiction as its *powers* are defined by its *jurisdiction*.

66. Up to this point, the Majority refers to authorities which make a distinction between *jurisdiction* and *power*. The next decision referred to by the Majority (at paragraph [58]) ***Paul Chen-Young & Anors v. Eagle Merchant Bank Jamaica Limited & Anors and the Attorney General of Jamaica – Interested Party*** **[(2018) JMCA App 7]** fortifies this distinction in emphasising the need to distinguish between questions which relate to the jurisdiction of an appellate court and questions which relate to how that jurisdiction may, or is to be, exercised. It goes on to explain that a superior court of record has residual jurisdiction, *described variously as an inherent, implicit or implied jurisdiction, or an inherent power within its jurisdiction*, to do such acts as it must have power to do, in order to maintain its character as a court of justice and to enhance public confidence in the administration of justice.

67. However, the Majority then (at paragraph [59]) quotes Halsbury's laws of England Volume 11 (2015) paragraph 23 which describes the *inherent jurisdiction* of a court as an undefined source of civil procedural law. Moreover, the Majority (at paragraphs [61] and [62]) discusses *inherent jurisdiction* and quotes the dictum of Lord Diplock in ***Bremer Vulkan Schiffbau und Maschinenfabrick v. South India Shipping Corpn Ltd.*** **[(1981) AC 909, 977]** where *"he opined that it would be conducive to legal clarity if the use of these two expressions were confined to the doing by the court of acts which it needs must have power to do in order to maintain its character as a court of justice."*

68. To me, it appears that the Majority has at this point of time overlooked the distinction that they made at the beginning of their analysis between *inherent jurisdiction* and *inherent power* particularly in view of their definitive statement (at paragraph [53]) that it is not clear whether or not the Constitutional provisions and the Courts Act assist in creating the *jurisdiction* or *inherent jurisdiction* and that they state no more about that ground.

69. The Majority proceed to (from paragraphs [63] to [68]) examine the decision of the Court of Appeal of England in ***Taylor and another v. Lawrence and another*** **[(2002) 2 All ER 353]**. It appears that the final conclusions of the Majority are based upon this decision. There the trial judge informed the parties that he had been a client of the claimants' solicitors but that it had been many years since he had instructed them. Nobody objected to him continuing to hear the case. After judgment was given for the claimants, the defendant appealed on the ground, *inter alia*, that there was an appearance of bias because of the judge's relationship with the claimants' solicitors. Before the hearing of the appeal, it was disclosed to the defendant that the judge and his wife had used the services of the solicitors to amend their wills the night before he had delivered judgment. The appeal was dismissed in 2001. Subsequently, the defendants learnt that the judge had not paid for the services of the solicitors. The defendants applied to reopen the appeal on the basis that the judge had received a financial benefit from the solicitors which he had failed to disclose, and that the earlier appeal had been dismissed in ignorance of that fact.

70. The Court of Appeal of England began its analysis (at paragraph [1]) by stating that the application raised two important issues, the first of which relates to the ***jurisdiction*** of the Court which was whether the Court of Appeal has the ***power*** to reopen an appeal after Court has given final judgment. This indicates that the Court approached the issue without making a distinction between the two terms in the sense identified earlier.

71. Thereafter Court referred to the decision in ***Ladd v. Marshall*** **[(1954) 3 All ER 754, (1954) 1 WLR 1489]** as an example of a fundamental principle in English common law – that the outcome of litigation should be final. In this connection, reference was made to the speech of Lord Wilberforce in ***Ampthill Peerage Case*** **[(1976) 2 All ER 411 at 417-418, (1976) AC 547 at 569]** where he held as follows:

> *"English law, and it is safe to say, all comparable legal systems, place high in the category of essential principles that which requires that limits be placed upon the right of citizens to open or to reopen disputes. The principle which we find in the Act of 1858 is the same principle as that which requires judgments in the courts to be binding, and that which prohibits litigation after the expiry of limitation periods.*

Any determination of disputable fact may, the law recognises, be imperfect: the law aims at providing the best and safest solution compatible with human fallibility and having reached that solution it closes the book. The law knows, and we all know, that sometimes fresh material may be found, which perhaps might lead to a different result, but, in the interest of peace, certainty and security it prevents further inquiry. It is said that in doing this, the law is preferring justice to truth. That may be so: these values cannot always coincide. The law does its best to reduce the gap. But there are cases where the certainty of justice prevails over the possibility of truth (I do not say that this is such a case), and these are cases where the law insists on finality. For a policy of closure to be compatible with justice, it must be attended with safeguards: so, the law allows appeals: so the law, exceptionally, allows appeals out of time: so the law still more exceptionally allows judgments to be attacked on the ground of fraud: so limitation periods may, exceptionally, be extended. But these are exceptions to a general rule of high public importance, and as all the cases show, they are reserved for rare and limited cases, where the facts justifying them can be strictly proved."

72. Nevertheless, the Court proceeded to state that the creation by the Supreme Court of Judicature Act 1873 of the Court of Appeal and the right of appeal to the House of Lords recognised that justice required some qualification to the principle that the outcome of litigation should be final.

73. The Court began its examination of the contours of this qualification, by stressing that the Court of Appeal was established with two principal objectives (at paragraph [26]). The first is a private objective of correcting wrong decisions so as to ensure justice between the litigants involved. The second is a public objective, to ensure public confidence in the administration of justice not only by remedying wrong decisions but also by clarifying and developing the law and setting precedents.

74. The Court of Appeal held that (at page 368) that an appellate court has the *implicit powers* to do that which is necessary to achieve the dual objectives of an appellate court identified above. The Court then went on to explain such implicit powers by reference to the speech

of Lord Diplock in ***Bremer Vulcan v. South India Shipping*** **[(1981])AC 909 at p.977C-H]** where he held:

> *"The High Court's power to dismiss a pending action for want of prosecution is but an instance of a general power to control its own procedure so as to prevent its being used to achieve injustice. Such a power is inherent in its constitutional function as a court of justice. Every civilised system of government requires that the state should make available to all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights. The means provided are courts of justice to which every citizen has a constitutional right of access in the role of plaintiff to obtain the remedy to which he claims to be entitled in consequence of an alleged breach of his legal or equitable rights by some other citizen, the defendant. Whether or not to avail himself of this right of access to the court lies exclusively within the plaintiff's choice; if he chooses to do so, the defendant has no option in the matter; his subjection to the jurisdiction of the court is compulsory. So, it would stultify the constitutional role of the High Court as a court of justice if it were not armed with power to prevent its process being misused in such a way as to diminish its capability of arriving at a just decision of the dispute. The power to dismiss a pending action for want of prosecution in cases where to allow the action to continue would involve a substantial risk that justice could not be done is thus properly described as an "inherent power" the exercise of which is within the "inherent jurisdiction" of the High Court. It would I think be conducive to legal clarity if the use of these two expressions were confined to the doing by the court of acts which it needs must have power to do in order to maintain its character as a court of justice."*

75. The Court of Appeal also referred to the speech of Lord Morris of Borth-Y-Gest in ***Connelly v. DPP*** **[(1964) A.C. 1254, 1301]** where he held that:

> *"There can be no doubt that a court which is endowed with particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to*

suppress any abuses of its process and to defeat any attempted thwarting of its process."

76. In conclusion, the Court held that the earlier English authorities referring to the limits on the jurisdiction of the Court of Appeal preventing it from reopening a case in which it has delivered judgment must be read subject to this qualification. However, it was emphasised that this residual power of the Court of Appeal to reopen proceedings must be used only in exceptional circumstances.

77. In ***Taylor*** **[supra]** the Court accepted that bias on the part of the judge who heard the case amounts to exceptional circumstances justifying the Court of Appeal reopening the case. However, the Court took the view that the circumstances of the case did not establish that the test for bias has been made out. The *ratio decidendi* in this case is limited to recognising the ability of the Court of Appeal to reopen a case where it has already pronounced judgment if the test of bias is established against the judge who delivered the judgment or a judge who was part of the bench which did.

78. I observe that even in ***Taylor*** **[supra]**, there is a lack of consistency on the part of the Court in the use of the terminology *power*, *implicit power*, *residual jurisdiction* and *inherent jurisdiction* in holding that the Court of Appeal can reopen an appeal which it had already determined. This blurring no doubt contributed to the Majority in ***Vijay Construction*** **[supra]** concluding (at paragraph [76]) that the Court of Appeal of Seychelles has the authority to reopen its judgment and rehear it and that this authority emanates from its *inherent, implied, implicit or residual jurisdiction or inherent, implied, implicit or residual power.*

79. The Court in ***Vijay Construction*** **[supra]** did, from paragraphs [69] to [74] examine the decisions in ***R v. Smith*** **[3 NZLR 617 (Criminal Appeal)]**, ***R v. Bow Street Metropolitan Stipendiary Magistrate and Others, ex parte Pinochet Ugarte (No. 2)*** **[(1999) All ER 577] (Pinochet 2)**, ***Bain v. The Queen*** **[Privy Council Appeal No. 9 of 2006]** and ***Attorney-General v. Marzorcchi*** **[Civ App 8/1996 (9 April 1998)]**.

80. I have set out below my views on the utility of ***Marzorcchi*** **[supra]** to the issue before Court. ***Smith*** **[supra]** is of little assistance in establishing the interface between *jurisdiction* and *power*. ***Pinochet 2*** **[supra]** only establishes that the House of Lords has *inherent power*, where bias is established, set aside its own judgment. ***Bain*** **[supra]** states that the Privy Council has ***inherent jurisdiction*** to discharge or vary its orders in cases in which this is necessary for the purpose of justice.

81. Whether the Court of Appeal of Seychelles, can reopen a case where it has already delivered judgment depends on whether it has ***General Jurisdiction*** to do so. In view of the failure on the part of the Court in ***Vijay Construction*** **[supra]** to duly examine the statutory framework in Seychelles and to provide definitions of the terms *jurisdiction, inherent jurisdiction, power and inherent power*, I am not inclined, with the greatest of respect to my learned sisters, to adopt the reasoning and conclusions on this issue and prefer to set forth my independent reasoning and conclusions.

82. In doing so, I am prepared to proceed on the basis that ***Taylor*** **[supra]** establishes that the Court of Appeal of England has ***General Jurisdiction*** in exceptional circumstances to reopen a case which it had already determined. I am also prepared to proceed on the basis that bias on the part of one of the judges, if established, is a ground on which it can be done.

General Jurisdiction of the Court of Appeal of Seychelles

83. Section 12(3) of the Courts Act (Chapter 52) states that, for all the purposes of and incidental to the ***hearing and determination*** of any ***appeal***, and the amendment, execution and enforcement of any judgment or order made thereon, the ***Court of Appeal shall have*** all the ***powers, authority and jurisdiction*** of the Supreme Court of Seychelles and of the ***Court of Appeal in England***. (emphasis added).

84. In view of this provision, I am inclined to hold that the Court of Appeal of Seychelles has ***General Jurisdiction*** to reopen an appeal which it had already determined in exceptional circumstances. The challenge is to delineate the exceptional circumstances.

Scope of the Jurisdiction of the Court of Appeal to Reopen

85. The Court of Appeal of England did not, in ***Taylor*** **[supra]**, hold that fundamental errors in procedure, which have caused a failure of natural justice or denial of a right to a fair hearing fall within exceptional circumstances required to reopen a case in which it had delivered judgment. Rupert Cross on Precedents in the English Law (3rd Ed., 1977) offers the following formulations for *ratio decidendi* and *obiter dictum*:

> *"The ratio decidendi of a case is any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him, or a necessary part of his direction to the jury"* (page 76)
>
> *"Obiter dictum is a proposition of law which does not form part of the ratio decidendi"* (page 79).

The *ratio decidendi* in ***Taylor*** **[supra]**, is limited to establishing that the Court of Appeal of England can reopen a case where bias is established on the part of a judge and perhaps where fraud is established. These are the only jurisdictional principles that can transpose through Section 12(3) of the Courts Act to vest the Court of Appeal of Seychelles with the ***General Jurisdiction*** to reopen a case.

86. Nevertheless, in ***Vijay Construction*** **[supra]**, the Majority (at paragraph [124]) held that procedural irregularities explained therein were of sufficient importance to critically undermine the whole appeal and require that judgment to be set aside.

87. This was not a course open to the Majority for at least two reasons.

88. Firstly, if the ***General Jurisdiction*** to reopen a case should be expanded to areas other than bias and perhaps fraud, that must be done by extending the jurisdiction of the Court of Appeal of England through legislative action or judicial decisions by English Courts. Should that happen, Section 12(3) of the Courts Act will vest such expanded jurisdiction on the Court of Appeal of Seychelles.

89. Secondly, in terms of Article 85 of the Constitution, the legislative power of Seychelles is

vested in the National Assembly and shall be exercised subject to and in accordance with the Constitution. Article 5 proclaims that the Constitution is the supreme law of Seychelles and any other law found to be inconsistent with the Constitution is, to the extent of the inconsistency, void. Hence, when Section 12(3) of the Court Act (Chapter 52) brings in the *ratio decidendi* of ***Taylor*** **[supra]**, the scope of the **General Jurisdiction** thereby created in the Court of Appeal of Seychelles is limited to the position in English law. The scope of that jurisdiction cannot be changed or modified by a judgment of the Court of Appeal of Seychelles. Should there be a need to extend the principle to other areas, in addition to bias and perhaps fraud, it must be done by the National Assembly and not by Court.

90. In ***Al Rawi*** **[supra]** the issue was whether the Court was entitled in an ordinary civil claim for damages to order the adoption of a closed material procedure. The Supreme Court held that Parliament alone could introduce a closed material procedure and it was not open to the courts to do so.

Lord Dyson (at paragraph [69]) held as follows:

> *"As the Court of Appeal said at para 69 of their judgment, "never say never" is often an appropriate catchphrase to use in the context of the common law. Nobody can predict how the law will develop in the future. We are concerned with the position as it is now. But for the reasons that I have given, I agree with the Court of Appeal that* ***the issues of principle raised by the closed material procedure are so fundamental that a closed material procedure should only be introduced in ordinary civil litigation (including judicial review) if Parliament sees fit to do so.*** *No doubt, if Parliament did decide on such a course, it would do so in a carefully defined way and would require detailed procedural rules to be made (such as CPR Parts 76 and 79) to regulate the procedure."* (emphasis added)

Lord Hope of Craighead (at paragraph [74]) held:

> ***"The proposition that a closed material procedure should only be introduced in ordinary civil litigation if Parliament sees fit to do so*** *should not be seen as surrendering to Parliament something which lies within the area of the court's responsibility. Instead, it* ***is a recognition that the basic question raises such***

fundamental issues as to where the balance lies between the principles of open justice and of fairness and the demands of national security that it is best left for determination through the democratic process conducted by Parliament, following a process of consultation and the gathering of evidence. The detailed working out of any change to the procedure that Parliament may sanction would no doubt be left to the court in the exercise of its rule-making powers." (emphasis added)

91. I must quote with approval Dockray [*The Inherent Jurisdiction to Regulate Civil Proceedings*, (1997) 113 LQR 120 at 131] where he emphasised the need to recognise limits to the *inherent jurisdiction* of Court as follows:

"....a matter which is procedural from the position of an applicant may be constitutional in the eyes of the respondent. The fact that procedural law can be described as subordinate or adjectival because it aims to give effect to substantive rules should not conceal the truth that procedures can and do interfere with important human rights, while the means by which a decision is reached may be just as important as the decision which is made in the end. Where procedure is as important as substance, procedural change requires the same degree of political accountability and economic and social foresight as reform of an equivalent rule of substantive law. Major innovations in procedural law should therefore be recognised as an institutional responsibility, not a matter on which individual judges should respond to the pleas of particular litigants. ***Procedural revolutions should appear first in statutes or in the Rules of Court, not in the law reports.*** *"*(emphasis added)

92. Accordingly, I am of the view that the Majority erred in law in extending the ratio in ***Taylor* [supra]**, to establish that the Court of Appeal of Seychelles had the **General Jurisdiction** to declare the impugned judgment in that case to be null due to the procedural irregularities referred to therein.

93. I must refer to the decision in ***Attorney-General v. Marzorcchi*** **[Civ App 8/1996 delivered on 9 April 1996]** which is also referred to by the Majority and relied upon by the Applicant

to contend that the Court of Appeal has **General Jurisdiction** to reopen a case. There the Respondents filed a notice of motion after judgment was delivered moving for a rehearing on the basis that the Respondent was not heard before delivery of judgment. The Court of Appeal referred to paragraph 556 of the Halsbury's Laws of England and held that the impugned serious procedural irregularity rendered the proceedings a nullity and set aside the impugned judgment. I am not inclined to accept this proposition as it does not provide any reasoning leading to the conclusion and in view of the detailed analysis made earlier on the **General Jurisdiction** of the Court of Appeal.

94. The Applicant contended that the present case falls squarely within the narrow exception recognised in ***Bristol v. Rosenbauer*****[(2022) SCCA 23 (29 April 2022)]**. It was submitted that there the Court clarified that reopening a judgment is permissible only where there is a serious procedural irregularity affecting the fairness of the proceedings. I am unable to agree with this position. Far from assisting the contention of the Applicant, the majority (Twomey-Woods, JA with Tibatemwa-Ekirikubinza, J. agreeing) held (at paragraph [40]) that ***Vijay Construction*** **[supra]** was decided *per incuriam*. Although the majority held that all procedural irregularities if severe would in any case amount to breaches of one's fair trial rights, they went on to hold that the proper forum for the determination of breaches of human rights is the Constitutional Court and this is so even if the issue of fair hearing arises in the Court of Appeal.

95. The Applicant also relied on the decision in ***Belmont & Anor v. Belmont*** **[(2020) SCCA 44 (SCA MA 19/2020)(18 December 2020]**. However, there the Court approved the decision in ***Taylor*** **[supra]** and held that the Court of Appeal of Seychelles as an appellate Court has *residual jurisdiction* or inherent power to set aside and rehear an appeal in cases of serious procedural unfairness or irregularities such that the judgment or order ought to be treated as a nullity. As I have explained earlier, the ratio of ***Taylor*** **[supra]** is limited to establishing that the Court of Appeal can set aside a judgment delivered by it where bias on the part of the judge or perhaps fraud is established. Moreover, even in ***Belmont*** **[supra]** Court failed to distinguish between **General Jurisdiction** and **General Powers**. Court (at paragraph [14]) states that the effect of Articles 120(3) and 120(4) as well as Sections 4 and 12(3) of the Courts Act does not confer any ***inherent jurisdiction*** upon the Court of

Appeal but then (at paragraph [21]) proceeded to state that the Court of Appeal of Seychelles, as an appellate Court, has ***residual jurisdiction*** or ***inherent power*** to set aside and rehear an appeal in cases of serious procedural unfairness or irregularities such that the judgment or order ought to be treated a nullity.

96. For all the foregoing reasons, I hold that the Court of Appeal of Seychelles has **General Jurisdiction**, in view of Section 12(3) of the Courts Act read with the *ratio* in ***Taylor* [supra]**, to reopen a case in which it has delivered judgment only where bias and perhaps fraud is established. Neither of these issues arises in the present application.

97. In view of this conclusion, there is no need to consider whether there was in fact a procedural irregularity in the Judgment. Nevertheless, for the sake of completeness, let me examine this point.

Procedural Irregularity

98. The Applicant alleges that the Court of Appeal, at paragraphs [30] to [33] in the Judgment, introduced and decided the appeal substantially on its own interpretation of Section 75 of SCCP. It was submitted that the Court had, at paragraph [32], held that "the learned Judge misdirected herself as to the meaning of section 75" and that this finding was pivotal to the Court's reversal of the Supreme Court judgment as it fundamentally altered the analysis of the burden of proof. It was further submitted that the trial judge, at paragraphs [51] to [53] of her judgment, had relied upon Section 75 in her analysis of the Attorney-General's statement of defence and that according to the rules of pleadings, what is simply denied is taken as admitted and this formed an integral part of the trial judge's reasoning on the burden of proof and standard of proof.

99. It was further submitted by the Applicant that the Court of Appeal had without any prior notice to the parties and without affording the Applicant any opportunity to address the point, overturned the trial judge's interpretation of Section 75 and held (at paragraph [33]) that it was "preposterous to conclude" that the Applicant's averment had been admitted. According to the Applicant, this finding was central to the Court's conclusion that it had failed to discharge the burden of proof.

100. Therefore it was contended that the conduct of the Court of Appeal in raising and deciding the appeal on Section 75 of the SCCP, *proprio motu*, without affording the Applicant any opportunity to be heard on that point, constitutes a fundamental breach of the *audi alteram partem* principle and contravention of Article 19(7) of the Constitution.

101. Let me examine this allegation by first considering the Judgment. Paragraphs [30] to [33] deal with Section 75 of the SCCP. In essence the Court held that the learned trial judge has misdirected herself on the interpretation of this section in concluding that the AG had failed to pay the sum of SCR 1.5 million when he had specifically denied that it had failed to pay the said sum.

102. The Notice of Appeal of the AG set out four (4) grounds of appeal. The first was prescription which has no bearing on this application. The second was whether the trial judge misdirected herself on Article 1315 of Civil Code of Seychelles (CCS) in holding that the Plaintiff had proved the case. The third was whether the trial judge erred in holding that the Plaintiff had proved the case, notwithstanding her contrary findings on the payment of the balance sum of SCR 1,500,000/=.

103. Admittedly the Notice of Appeal did not expressly raise Section 75 of the SCCP. Nevertheless, Section 75 was referred to by the trial judge in her judgment and she proceeded on the basis that it is intrinsically connected with Article 1315 of the CCS. Let me explain.

104. Article 1315 of the CCS, which is found under the heading "Proof of Obligations" reads as follows:

> *"A person who demands the performance of an obligation shall be bound to prove it.*
>
> *Conversely, a person who claims to have been released shall be bound to prove the payment or the performance which has extinguished his obligation."*

105. In ***Marengo & Ors v. Anderson*** **(SCA 9 of 2016 [2019] SCCA 6 (09 May 2019))** Twomey, JA interpreted Article 1315 as follows:

> *"It follows from the provisions above that a plaintiff in an action must support his claim by proof (actori incumbit probatio – the burden of proof is on the plaintiff). The* ***second limb of article 1315 imposes on the defendant a choice of either simply denying the obligation (in the expectation that the plaintiff will not be able to prove his claim) or countering the claim by disproving it.*** *Hence,* ***once the plaintiff has supported his claim,*** *the burden of proof then shifts back to the defendant who has countered the plaintiff's claim by an exception or explanation (reus is exipiendo fit actor - the defendant, by a plea, becomes plaintiff). Hence, throughout a trial, the burden of proof shifts from one party to the other (See Gopal & Anor v Barclays Bank (Seychelles) (2013) SLR 553, Kozhaev v Eden Island Development Company (Seychelles) Ltd (SCA 35/2013) [2016] SCCA 34)."* (emphasis added)

106. Thus the true position is that the Applicant had to support his claim that the Government failed to pay the balance sum of SCR 1,500,000/= by proof. Here proof means through evidence adduced at the trial. The AG had two options in terms of the second limb of Article 1315 of the CCS. One was to simply deny the obligation, in the expectation that the Plaintiff will not be able to prove his claim, which was done in the Statement of Defence. In the alternative, to lead evidence to counter the claim of the Applicant. The Respondent did seek to do this as well by leading evidence.

107. The learned trial judge began her analysis by asking the question whether the Plaintiff has proved its case. This is examined from paragraphs [39] to [69].

108. In seeking to apply Article 1315 of the CCS, the trial judge invoked (at paragraphs [52] and [53]) Section 75 of the SCCP which reads as follows:

> *"The Statement of Defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. A mere general denial of the plaintiffs claim is insufficient. Material facts alleged in the plaint must*

be distinctly denied or they will be taken to be admitted."

109. Accordingly, the trial judge proceeded on the basis that Section 75 of the SCCP is a provision that can be considered in applying Article 1315 of the CCS. She concluded (at paragraph [69]) that:

> *"I find that the plaintiff having proved the debt of the defendant, and the latter having failed to prove that it has paid that debt in accordance with Article 1315, the plaintiff has made out its case on a balance of probabilities."*

110. Therefore, Section 75 of the SCCP was considered by the trial judge to be an intrinsic element in the application of Article 1315 of the CCS. During the hearing, the Court questioned Mr. Elizabeth as to whether this position is correct and his answer was not consistent. My learned sister Andre, J. questioned him on whether Article 1315 of CCS and Section 75 of SCCP corelate and Mr. Elizabeth responded that *"it was also considered as part of the burden of proof and standard of proof."* Shortly thereafter he submitted that it was an "issue independent of the burden of proof under 1315".

111. Nevertheless, it matters not whether this is true of false as it is how the trial judge approached the issue. In these circumstances, there was no error in the AG raising only Article 1315 of the CCS in the Notice of Appeal as Section 75 of the SCCP was considered by the trial judge to be intrinsically connected with Article 1315 of the CCS.

112. For all the foregoing reasons, there was no need for the AG to have specifically raised Section 75 of the SCCP as a ground in the Notice of Appeal. There was no procedural irregularity in the Court of Appeal addressing Section 75 in the Judgment notwithstanding it not forming part of the submissions. The failure on either party to address Section 75 is an error on the part of both parties.

113. In view of these conclusions, the Applicant's appeal in SCA 11/2025 had to be necessarily dismissed and I see no error in Court dismissing it as "otiose".

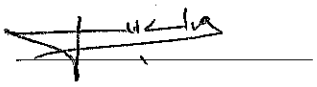
114. In view of the reasons more fully adumbrated above, I hold that the Applicant has failed to establish any grounds which requires the Judgment in SCA 11/2025 and SCA 12/2025

to be quashed, reversed, and set aside.

115. I have not had the benefit of reading the opinion of my learned sister Robinson, JA prior to finalising my views.

Orders

116. This application is dismissed in its entirety.



De Silva JA

Signed, dated and delivered at Ile du Port on 27 April 2026.

ANDRÉ JA, (concurring):

1. I have had the advantage of reading in draft the judgment of De Silva JA. I agree that the application must be dismissed, and I concur in the orders proposed.

2. I also agree with the refusal of the application to adduce further evidence and with the conclusion that no basis has been established for the setting aside of the judgment of this Court delivered on 15 December 2025.

3. I write separately only to set out my brief observations on the jurisdiction of this Court to reopen its own final judgments in the context of the present application.

4. The jurisdiction of an appellate court to revisit a final judgment is necessarily exceptional. It exists within a system that accords significant weight to the principle of finality of litigation, which underpins legal certainty and the proper administration of justice.

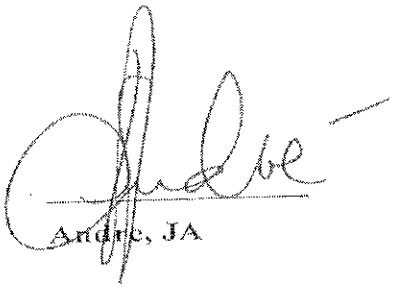
5. It is neither necessary nor appropriate in the present case to enter into any reconsideration of the principles discussed in ***Vijay Construction (Pty) Ltd v Eastern European Engineering Ltd*** **[(SCA MA 24/2020) (2022) SCCA 5].** The present application does not, on any view, raise circumstances which would engage the exceptional jurisdiction there contemplated.

6. On the facts of this case, the matters relied upon by the Applicant do not disclose any basis upon which this Court's exceptional jurisdiction could properly be invoked.

7. The complaint advanced concerns the manner in which a legal issue was addressed in the reasoning of the Court. Even if it were assumed that the parties did not specifically address Section 75 of the Seychelles Code of Civil Procedure, that circumstance does not, without more, amount to a defect of such gravity as to warrant the reopening of a final appellate judgment.

8. In these circumstances, the application falls to be dismissed without the need to consider any broader questions concerning the scope of the jurisdiction referred to in ***Vijay Construction*** **[supra]**.

9. For these reasons, I concur in the dismissal of the application and in the orders proposed by De Silva JA.



Signed, dated and delivered at Ile du Port on 27 April 2026.

ROBINSON JA

DISSENTING JUDGMENT

1. I have had the opportunity to read in draft the Judgment prepared by De Silva JA, which has been concurred with by Andre JA, leading to the dismissal of the application seeking to quash and set aside the Judgment and direct that the consolidating appeals in SCA 11/2025 and SCA 12/2025 be reheard *de novo* before a differently constituted Bench of the Court of Appeal.

2. With all due respect to the Judgment, I believe this is a case which the Court of Appeal has an inherent power to entertain the application. I also conclude that the Judgment should be declared null and the hearing set aside.

3. I will briefly set out my reasons, as time constraint do not allow for a more detailed discussion. The factual matrix is contained in the Judgment of De Silva JA.

4. First, I would like to note that the Judgment of De Silva JA contains about 30 pages. Nearly 21 of those pages are dedicated to discussing the majority Judgment in the Court of Appeal case of **Vijay Construction (Pty) Ltd** *[supra]*. This case is a key precedent relied upon by both parties to support their arguments. De Silva JA expressed the opinion that aspects of the majority Judgment are incorrect for reasons contained in his Judgment.

5. It is important to emphasise that the fundamental issue with respect to the jurisdiction of this Court to entertain this application raised in the analysis of De Silva JA were never raised and discussed in Court during the long and arduous hearing. In my view, this approach does not promote justice and fair dealings between parties and contradicts the principle of natural justice and the right to fair hearing which the Court is concerned with in this application. In this jurisdiction, it is not permissible under the Constutition of the Republic of Seychelles, The Court of Appeal of Seychelles Rules 2023, and/or the inherent power of this Court for the Court to address significant issues in Chambers without allowing the parties the opportunity to contest those issues fairly. De Silva JA cannot state.

in his judgment that he had not reviewed my opinion before finalising his views. My decision to write an opinion in this case depended on the approach taken by De Silva JA. Any opinion I write would not have included a substantial discussion of the **Vijay Patel Construction (Pty) Ltd** case.

6. Due to time constraints, I do not intent to engage with the issues raised in the judgment of De Silva JA. I respectfully disagree with his approach. At this moment, I cannot determine whether his interpretation of the majority Judgment in Vijay Construction (Pty) Ltd is correct, as I have not had the opportunity to thoroughly consider the analysis, which I only became aware of after the judgment was shared. I will reserve my opinion on the discussions, reasoning, and conclusions presented regarding the **Vijay Construction (Pty) Ltd** case until I can address them in a separate matter.

7. However, I want to express my concern with his finding that the Court of Appeal of Seychelles has "General Jusrisdiction" based on the principles established in the case of **Taylor** [supra] in conjunction with section 12(3) of the Court's Act only when bias or fraud is demonstrated. He noted that neither fraud, nor bias is present in the current application. In the case of **Vijay Construction (Pty) Ltd**, the majority judgment acknowledged that it remains unclear whether the constitutional provisions and the Courts Act play a role in defining jurisdiction or inherent jurisdiction. We did not reach a conclusion on this matter. Nonetheless, he proceeded to consider the facts in a manner that seems orbiter. Additionally, if in his view the Court of Appeal does not have any jurisdiction to entertain the application because there is no fraud or bias present in this case, how could he proceed to assess the merits in the absence of this Court having the jurisdiction to entertain the application?

8. The majority judgment in **Vijay Construction (Pty) Ltd** answered the question of whether the Court of Appeal has inherent authority of its own to set aside its judgments. However, De Silva JA's stance on this issue remains unclear, as he based his conclusion on **Talyor** in conjunction with section 12 (3) of the Court's Act – a position I have yet to examine. In the case of **Paul Chen – Young & Nors v Eagle Merchant bank Jamaica Limited & Anors and the Attorney General of Jamaica – Interested Party [2018] JMCA App 7,**

which the Court of Appeal quoted with approval in the case of **Vijay Construction (Pty) Ltd**, the Court of Appeal of Jamaica stated –

> *"[40] But it is necessary to distinguish between questions which relate to the jurisdiction of the court as an appellate court and questions which relate to how that jurisdiction may, or is to be, exercised. In this regard, as with all superior courts of record, this court enjoys a residual jurisdiction, described variously as an inherent, implicit or implied jurisdiction, or an inherent power within its jurisdiction, to do such acts as it must have power to do, in order to maintain its character as a court of justice and to enhance public confidence in the administration of justice. It is this jurisdiction which among other things, empowers the court to regulate its own proceedings in a way that secures convenience, expeditiousness and efficiency."*

9. Further, the learned editiors of Halsbury's laws of England Volume 11 (2015), paragraph 23, describe the inherent jurisdiction of a court as an undefined source of civil procedural law –

> *"...In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine, and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression, to do justice between the parties and to secure a fair trial between them."*

10. Returning to the facts, De Silva JA stated in his judgment that there was no error in the Attorney General raising only article 1315 of the Civil Code of Seychelles in the notice of appeal. He noted that section 75 of the Seychelles Code of Civil Procedure was considered by the trial Judge to be intrinsically connected to Article 1315 of the Civil Code. Based on this finding, he concluded that there was no procedural irregularity in the Court addressing section 75, even though it was not included in the submissions.

11. With all due respect, I disagree with De Silva JA's approach particularly concerning a vague ground of appeal that violated the Court of Appeal of Seychelles Rules, which should have been dismissed. I do not understand how article 1315 of the Civil Code of Seychelles, which deals with proof of obligations and is part of our substantive law, could be considered, without further justification, to be intrinsically or fundamentally linked to section 75 of the Seychelles Code of Civil Procedure, which pertains to a statement of defence and its required contents.

12. These provisions of the Court of Appeal of Seychelles Rules 2023 are relevant to the analysis.

> "18(8) The appellant shall not without leave of the Court be permitted, on the hearing of that appeal, to rely on any grounds of appeal other than those set forth in the notice of appeal.
> Provided that nothing in this sub-rule shall restrict the power of the Court to make such order as the justice of the case may require.
>
> (9) Notwithstanding the foregoing provisions, the Court in deciding the appeal shall not be confined to the ground set forth by the appellant –
> Provided that the Court shall not, if it allows the appeal rest its decision on any ground not set forth by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground.

13. Further rule 30 (5) of The Court of Appeal of Seychelles Rules provides –

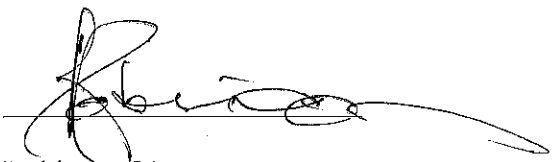
> "(5) After all the arguments have been concluded, the Court may give judgment immediately or may reserve judgment until a later date.
>
> Provided that the Court may unanimously suo moto decide or any of the Justices of Appeal who heard the appeal may, where there is no unanimity request the President, in the interest of justice, to reconvene the Court before the date fixed for judgment to seek any clarifications pertaining to the appeal, and in the later instance, the President may give such direction as he deems just and expedient for

the Court to reconvence."

14. In view of time constraint, I state in conclusion that a fair hearing was not secured between the parties. It is noted that The Court of Appeal of Seychelles Rules 2023 provide the fundamental safeguard to ensure that a fair hearing is secured between the parties. I conclude that this case has been conducted in blatant disregard of The Court of Appeal of Seychelles Rules. The parties cannot be blamed for not addressing an issue which did not form part of the grounds of appeal. In this capplication the Applicant has nto been heard on Section 75 of the Seychelles Code of Civil Procedure through no fault of the Applicant. I conclude that this amount to a serious breach of the Applicant's right to a fair hearing. In the case if **Ex parte Andre Baillon** SCA 12/2019 (13 August 2021), Twomey JA delivering the Judgment of the Court with whom the President and myself concurred held the view that –

> *"Counsel has submitted in respect of the above ground, relying on the authority of Morin v Ministry of Land Use and Habitat (unreported) CA 9/2005, that it is a fundamental principle of law, norms and traditions that judges are required not to take a legal point suo motu against a litigant without first having given the litigant an opportunity to be heard, a principle which was breached in the present matter. We agree and see no need to restate what is trite."*

14. I conclude that this is a fit case for the Court to invoke its inherent power to declare the judgment null and set aside the judgment.



Robinson JA

Signed, dated and delivered at Ile du Port on 27 April 2026.