

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2026] (27 April 2026)

SCA MA 16/2025

(Arising in SCA CL 01/2025)

(Out of CP 07/2023)

In the Matter Between

Sindu Cliff Parekh

(*rep. by Mrs. Alexa Amesbury*)

Applicant

And

The Attorney General

(*rep. by Mr. Vincent Perera & Mr. Adam Afif*)

Respondent

Neutral Citation: *Parekh v Attorney General* (SCA MA 16/2025) (Arising in SCA CL 01/2025) [2026] (Out of CP 07/2023) (27 April 2026)

Before: Gunesh-Balaghee, Sharpe-Phiri, Sichinga, JJA

Summary: The Applicant's non-compliance with mandatory procedural timelines.

Heard: 14 April 2026

Delivered: 27 April 2026

ORDER

The Preliminary Objection *in limine* is upheld and the motion is dismissed with costs to the Respondent

RULING

Sichinga JA

(Gunesh-Balaghee JA, Sharpe-Phiri JA, concurring)

Introduction

1. The Appellant, now the Applicant, seeks an order to set aside the Judgment of the Court of Appeal dismissing the appeal instituted by the Applicant against the Attorney-General in SCA Constitutional Appeal CL 01 of 2025 and dismissing the Applicant's

application seeking the recusal of Justices Fernando and Andre in relation to the hearing of the Appeal dated 18 August 2025 (SCA MA 16/2025).

2. This Motion was filed on 20 October 2025 together with the record of motion.

The Background

3. The background is well captured in the affidavit in support of the motion and other documents on the record. In sum, on 26 April 2023, the Court of Appeal (Fernando PCA, Robinson and Andre, JJA) delivered a judgment in the Applicant's criminal appeal under case number SCA 10 & 13 of 2020. The Court upheld the Applicant's conviction for the offence of aiding and abetting in committing the offence of murder contrary to *section 193 of the Penal Code* as read together with *section 22 (c)* and *section 194*.
4. On 24 July 2023, following the Court of Appeal upholding his conviction, the Applicant filed a petition in the Constitutional Court alleging that the Court of Appeal drew an adverse inference against him from the exercise of his right to remain silent contrary to *Article 19 (h) of the Constitution*. He sought, *inter alia*, a declaration to quash the judgment of the Court of Appeal and an order that his criminal appeal be heard *de novo*.
5. On 26 November 2024, the Constitutional Court delivered its Ruling on the basis of two preliminary objections raised by the Attorney-General, the Respondent to the petition. It dismissed the petition for want of jurisdiction.
6. Disenchanted by that outcome, the Applicant launched an appeal against the decision of the Constitutional Court to this Court on 9 January 2025.
7. On 15 July 2025, the Applicant filed before the Court a motion seeking the recusal of Justice Fernando PCA and Justice Andre JA from hearing the appeal he initiated against the Attorney-General in case number SCA Constitutional Appeal CL 01/25 – on the ground of apparent bias or apprehended bias.
8. On 18 August 2025, the Court handed down its Judgment which is now the subject of this motion for the Court to set aside its own decision.

The Preliminary Objection in limine

9. On 27 March 2026, the respondent filed preliminary objections *in limine* advancing that: the application is time-barred; the application discloses no lawful basis for the extraordinary remedy for setting aside a final judgment of this Court; and the application is an abuse of process and a collateral attack on final judgments.

The Hearing

10. At the hearing, Mrs Amesbury relied firmly and passionately on the Applicant's written submissions, emphasizing that the appeal had been filed within the prescribed time and should not have been dismissed as time barred. She forcefully argued that the remarks attributed to Justice Fernando demonstrated a reasonable apprehension of bias, thereby undermining the Applicant's constitutional right to a fair hearing before an impartial tribunal. In doing so, she urged the Court to adopt the objective test for apparent bias and to recognise that the integrity of the proceedings had been compromised, warranting both the setting aside of the earlier judgment and the recusal of the Justices concerned.
11. Equally, Mr. Perera, the learned Attorney-General adopted and relied fully on the Respondent's written submissions, maintaining that the Notice of Motion was fatally defective on both procedural and substantive grounds. With respect to the preliminary objection, Mr. Afif, State Counsel submitted that the application was filed out of time, disclosed no lawful basis for reopening a final judgment, and constituted an abuse of process through a collateral attack on matters already conclusively determined. Counsel further submitted that no exceptional circumstances or credible evidence of bias had been established to justify the exercise of the Court's residual jurisdiction. On that basis, the Attorney-General urged the Court to dismiss the Notice of Motion *in limine*, uphold its judgment of 18 August 2025, and grant an order for costs.

The Decision of the Court

12. I have carefully read the documents filed in support of the motion for setting aside the judgment on appeal in SCA CL 01/25 together with the entire record, the written

competing submissions and oral arguments by counsel. The Applicant's submissions raise a wide range of constitutional, procedural, and fairness-based arguments, centred primarily on *Article 19(1)* and *Article 19(2)(h) of the Constitution*.

13. Upon consideration of the preliminary objection *in limine*, the central question in this case, remains narrow - whether the Applicant has filed the application in conformity with the rules of the Court? As the question is indeed one of jurisdiction, it must be answered first.

14. Indeed, the Court of Appeal of Seychelles Rules 2023 do not specify a time period within which such application may be brought to the Court of Appeal decision may be brought to the Court. However, the Court had occasion to address this point in *Vijay Construction (Pty) Ltd v Eastern European Engineering Ltd (EEEL)* (SCA MA 23 of 2020; SCA MA 44 of 2022; SCA MA 9 of 2023) [2023] SCCA 17 (26 April 2023) where it stated as follows:

“The law does not specify the time period within which a party dissatisfied with a decision of the Court of Appeal must file their application for a re-opening of the matter. The Rules of the Court are silent. This is perhaps because a re-hearing or review of a judgment of a court of last resort is and should be a rare occurrence. It was the submission of Counsel for the Applicant that the determinant should be whether the application was filed within reasonable time from the delivery of the impugned judgment. That although a notice of appeal from a decision of the Supreme Court to the Court of Appeal must be filed within 30 days from the judgment of the lower court, 30 days should not be defined as the maximum limit of reasonable time for an application such as the one before court. That “reasonable time” is open and it is the court, which should, after considering all the circumstances pertaining to the case before it, decide whether it can be said that there has been inexcusable delay. It is my considered view that a motion filed beyond the 30 days’ period set for an appeal is not filed within reasonable time. And in the circumstances of this case, the application was not only filed almost four months after the judgment of the Court was delivered, but more than three months after the respondent had taken steps to execute the judgments.”

15. We reserve our own position on the correctness of the decision in *Vijay*. However, assuming it reflects the correct position in law, the time within which such an application must be filed as specified is not less than 30 days.
16. *In casu*, the record shows that the notice of appeal to this Court following the judgment of the Court of 18 August 2025 was filed on 20 October 2025, a period of 45 court days. Clearly, this goes beyond the “reasonable time.” Further, a careful perusal of the brief shows that the Applicant did not file any application for condonation of the delay, in effect robbing the Court of any jurisdiction for any further consideration of this matter.
17. Rules, particularly those governing prescribed time limits, are crucial to the fair and efficient administration of justice. Furthermore, we have stated in a plethora of cases that any application to undertake a procedural step must be supported by sufficient material placed before the Court to enable it properly exercise its discretion, with delays being justified by special circumstances. There is no material placed before this Court to consider the special circumstances warranting a departure from this position. While the Court acknowledges the importance of determining cases on their substantive merits, this objective cannot be pursued to the detriment of procedural discipline.
18. The appellant’s failure to comply with the prescribed time limits of this Court undermines the integrity of the administration of justice, results in an unnecessary expenditure of judicial resources, and erodes public confidence in the judicial process. Such non-compliance cannot be countenanced.

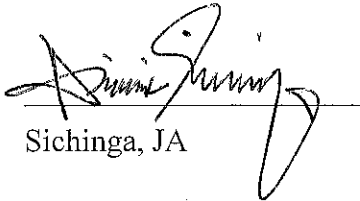
In Conclusion

19. In these circumstances, the preliminary objection succeeds on the first objection. The motion to set aside the judgment in SCA CL 01 of 2025 filed on 20 October 2025 is accordingly dismissed *in limine* with costs awarded to the Respondent.

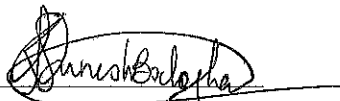
ORDER

19. For the reasons set out above, the Court makes the following orders:

- (i) The preliminary objection in limine is upheld;
- (ii) The motion to set aside the judgment of this Court in SCA Constitutional Appeal CL01/2025 is dismissed.
- (iii) Costs to the Respondent.


Sichinga, JA

I concur:


Gunesh-Balaghee, JA

I concur:


Sharpe-Phiri, JA

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