IN THE COURT OF APPEAL OF SEYCHELLES

Reportable
[2026] (27 April 2026)
SCA MA 02/2026
(Arising in SCA CL 02/2025)

The Estate of the Late Dr Hilda Stevenson Delhomme **Applicant**
(rep. by Mr. Phillipe Boulle)

And

The Attorney General **Respondent**
(represented by Mr. Vinsent Perera and Ms. Ria Alcindor)

Neutral Citation:	*The Estate of the Late Dr Hilda Stevenson Delhomme v The Attorney General* (SCA MA 02/2026) [2026] (Arising in SCA CL 02/2025) (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 has by Notice of Motion dated 13 January 2026 (Motion) sought an order declaring the judgment delivered by the Court of Appeal in SCA CL 02/2025 dated 15 December 2025 (Judgment) be declared null and void and an order fixing a date for the appeal to be reheard by a different bench.

2. The Motion contains 26 paragraphs based on which the Appellant seeks these orders. These have been summarised into two main grounds in the submissions of the Appellant dated 4 March 2026. They are as follows:

   (i) The Court of Appeal ignored the binding precedent in ***Poole v. Government of Seychelles and Anor*** **[(SCA 42 of 2013) [2015] SCCA 10 (17 April 2015)]** and instead preferred to espouse principles enunciated in judgments from foreign jurisdictions which is an affront to the Seychelles legal system, let alone the fact that the foreign judgments favoured, found their roots in equity and statutes which has no relevance to the rights of citizens under Constitutions such as the Constitution of Seychelles under which the Appellant was asserting a constitutional right, which requires different and *sui generis* norms and principles of adjudication.

   (ii) The Court of Appeal introduced in support of the Judgment *suo motu* authorities and judgments from foreign jurisdictions beyond the scope of the appeal and arguments of the parties without giving the opportunity for the parties to be heard on those authorities, and judgments which were decisive of its judgment, which deprived the Appellant of the basic element of a fair hearing that amounts to a serious procedural irregularity rendering the judgment null and void.

3. The Respondent has filed objections to the Motion raising the following preliminary objections:

   a. The Motion is incompetent and/or discloses no lawful basis to set aside the Judgment.

   b. The Motion is an abuse of process, being an impermissible attempt to re-litigate matters already determined.

Jurisdiction of Court

4. Accordingly, a fundamental question that arises for determination is whether the Court of Appeal has jurisdiction to reopen a matter in which it has already delivered judgment.

5. The Applicant relies on the decision in ***Attorney-General v. Joseph Marzorcchi and Charles Marzorcchi C.A. No. 8 of 1996*** **(judgment delivered on 9 April 1998)** to

establish that the Court of Appeal has the jurisdiction to reopen a case where its judgment is a nullity.

6. In ***Marzorcchi*** **[supra]** 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. With the greatest respect, I am not inclined to accept this proposition as it does not provide any reasoning leading to the conclusion. A bare statement by Court claiming it has jurisdiction merely because it is claimed that the impugned judgment is a nullity, for which no justifiable reasons have been adduced, does not create binding precedent.

7. We have also been referred to the decision in ***Vijay Construction (Pty) Ltd v. Eastern European Engineering Limited*** **[(SCA MA 24/2020) (2022) SCCA 5 (21 March 2022)]**. The question that arose for determination in there 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.

8. 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***."

9. 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."*

Dichotomy between Jurisdiction and Power

10. 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.

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

12. 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*.

13. 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.

14. 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.

15. 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.

16. 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***.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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)

24. 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.

25. 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.

26. 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.

27. 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]**.

28. 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."*

29. 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.

30. 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

31. 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.

32. 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.

33. 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)

34. 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"*

35. 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."*

36. 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)**.

37. 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."

38. 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.

39. 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.

40. 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***.

41. ***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.

42. 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***.

43. 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]

44. 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.

45. 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]**.

46. 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."*

47. 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.

48. 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.

49. 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].

50. 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.

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

52. 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.

53. 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*.

54. 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.

55. 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."*

56. 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.

57. 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.

58. 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.

59. 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..."*

60. 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.

61. 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.

62. 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."*

63. 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."*

64. 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.

65. 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.

66. 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.*

67. 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)]**.

68. I have earlier set out 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 jurisdiction*, where bias is established, to 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.

69. 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.

70. 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

71. 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).

72. 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

73. 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.

74. 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.

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

76. 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.

77. 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.

78. 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)

79. 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)

80. 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.

81. In view of my conclusion, there is no need to examine the grounds on which the Applicant seeks to set aside the Judgment. Nevertheless, for the sake of completeness, I shall do so.

Ratio in Poole **[supra]**

82. One of the primary complaints of the Applicant is that the Court ignored the binding *ratio* in ***Poole*** **[supra]**. This is incorrect. The Court has in the Judgment at paragraphs [74] to [76], [86], [88], [89] to [91] given its mind to the decision in ***Poole*** **[supra]**. The Applicant may take the view that the Court misconstrued ***Poole*** **[supra]** or that its conclusions are erroneous. However, this is not a ground upon which the Judgment can be set aside. In ***Pinochet 2*** **[supra]**, the House of Lords held [p. 585 j to p, 586 a, p. 590 f g, p. 592 g j, p. 596 b to d and p. 599 b, post] that a decision of the House of Lords will not be varied or rescinded merely because it is subsequently thought to be wrong.

83. The law envisages finality to litigation even if it is conceivable that the final judgment may be based on human fallibility. As Lord Wilberforce held in ***Ampthill Peerage Case*** **[(1976) 2 All ER 411 at 417-418, (1976) AC 547 at 569]**:

> *"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*

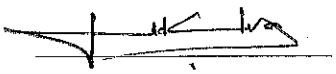
further inquiry. It is said that in doing this, the law is preferring justice to truth. That may be so: these values cannot always coincide. The law does its best to reduce the gap. But there are cases where the certainty of justice prevails over the possibility of truth (I do not say that this is such 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." (emphasis added)

84. 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 CL 02/2025 dated 15 December 2025 to be quashed, reversed, and set aside.

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

Orders

86. 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):

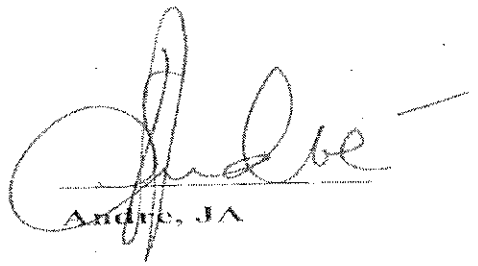
1. I have had the benefit of reading in draft the judgment of De Silva JA. I agree that the application should be dismissed.

2. In my view, it is unnecessary for the purposes of this application to finally determine the precise scope of this Court's authority to reopen a concluded appeal, or to revisit the principles discussed in ***Vijay Construction (Pty) Ltd v Eastern European Engineering Limited*** **(SCA MA 24/2020)**.

3. Even on the assumption that such authority exists in exceptional circumstances, the matters relied upon by the Applicant fall manifestly short of the threshold required to justify its exercise.

4. The complaints advanced are, in substance, directed at the correctness of the earlier judgment and the manner in which the Court dealt with the authorities before it. Such matters do not constitute exceptional circumstances warranting the setting aside of a final judgment of this Court.

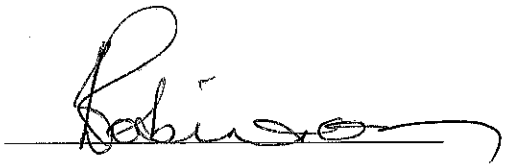
5. On that basis, I concur in the order dismissing the application.



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

ROBINSON JA

I agree with the conclusion that the application should be dismissed. I have considered the issue with respect to the jurisdiction of the Court of Appeal to entertain this application in the case of The Estate of the Late Andre Delhomme v/s The Attorney General, SCA MA 01/26 and SCA MA 04/26.



Robinson JA

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