

CONSTITUTIONAL COURT OF SEYCHELLES

Reportable

[2026]

CP 02/2023

In the matter between:

MUKESH VALABHJI

1ST PETITIONER

LAURA VALABHJI

2ND PETITIONER

LARISSA VALABHJI

3RD PETITIONER

(All rep. by Samantha Aglae)

and

THE COMMISSIONER OF POLICE

1ST RESPONENT

THE ATTORNEY GENERAL

2ND RESPONDENT

(Both rep. by Hashini Naidoo)

Neutral Citation: *Mukesh Valabhji & Ors vs. The Commissioner of Police & Ors* (CP02/2023)

Before: Dodin J. (Presiding), Adeline, and Esparon JJ.

Summary: Whether the Petitioners' rights have been violated under Articles 19 and 26 of the Constitution and whether Section 26 of the Prevention of Terrorism Act is in contravention of Article 26 of the Constitution.

Heard: Written submissions

Delivered: 20th January 2026

ORDER

- i. The Petitioners' rights under Articles 19 and 26 of the Constitution have not been violated by the initial holding of the Petitioners' properties by the Commissioner of Police or by the seizure and extension orders granted by the Court.
- ii. Section 26 of the Prevention of Terrorism Act is not in contravention of Article 26 of the Constitution.

JUDGMENT

DODIN J. (Presiding), ADELINE J. AND ESPARON J.

- [1] The 1st Petitioner, Mukesh Valabhji, is the owner of land parcel B39 situated at Morne Blanc, Mahe, Seychelles. The 2nd Petitioner is the wife of the 1st Petitioner whilst the 3rd Petitioner is the adult daughter of the 1st and 2nd Petitioners. The matrimonial home of the 1st and 2nd Petitioners is situated on the said parcel B39, which also has an apartment and an outer building constructed thereon.
- [2] On the 11th February, 2022, the 1st and 2nd Petitioners were charged under sections 7(b) and 20(c) of the Prevention of Terrorism Act for allegedly having arms and ammunitions in the matrimonial home. They are currently undergoing trial. It appears that since the 1st and 2nd Petitioners were arrested and kept in detention on the 18th November, 2021, the 1st Respondent, through his officers, have been in actual occupation of parcel B39. Parcel B39 was formally seized on the 24th June, 2022 under section 26(1) of the Prevention of Terrorism Act. The 1st Respondent filed for a Detention Order of B39 on the 28th June, 2022 which order was granted on the 13th September, 2022 for a period of 60 days. The Order was renewed in November, 2022, December, 2022, and on the 18th January, 2023 the Order was renewed indefinitely until the completion of trial.
- [3] On the 9th March, 2023, an application to produce the property pursuant to section 26(5) of the PTA read with section 98(1) of the Criminal Procedure Code (CPC) was brought by the 1st Respondent. On 7th June, 2023, the Supreme Court allowed production by the Republic of parcel B39 and the dwelling house thereon. On the same day the Court ordered that two vehicles, an Audi TT and Nissan Leaf, which the prosecution stated are not directly relevant to the case and were not kept as exhibits be taken away by the 1st and 2nd Petitioners' representatives.
- [4] The Petitioners petitioned the Constitutional Court pursuant to Article 46(1) read with Articles 19(2) and 26 of the Constitution of the Republic of Seychelles, (also referred to in this ruling as "the Charter"), read with Seychelles International obligations contained in the International Covenant on Civil and Political Rights and other related International

Human Rights Instruments pursuant to Article 48 of the Constitution on the 7th March 2023.

[5] The 3rd Petitioner further moved this Court by Motion on the 6th June 2023 to file an affidavit in support of the Petition which also claims that the 3rd Petitioner, Miss Larissa Valabhji, being the sole progeny of the 1st and 2nd Petitioners and who was in occupation of the apartment on the property has an interest in the property. Leave was granted and the 3rd Petitioner filed the said supporting affidavit.

[6] The Petitioners' prayers to this Court were as follows:

- i) Interpret the Charter in line with Article 48(a) to (d) of the Constitution.
- ii) Order that this case takes precedence over other matters before the Supreme Court and be heard as a matter of extreme urgency pursuant to Articles 18(9) and 125(2).
- iii) Declare that the Petitioners' rights above mentioned have been contravened under Articles 19 and 26 of the Charter.
- iv) Declare that section 26 of the PTA and more specifically sections 26(1), (2), (3), and (4)(b) and (5) are *ultra vires* the Constitution and contrary to Article 26(1) read with Article 26(2) of the Charter.
- v) Declare that the Detention Order of 13th September 2022, the renewal of 9th December 2022 and/or each of the extension orders made in January 2023 are contrary to Article 19(1) of the Charter.
- vi) Declare that the Detention Order of 13th September 2022, the renewal of 9th December 2022 and/or each of the extension orders made in January 2023 are contrary to Article 26(1) read with Article 26(2) of the Charter.
- vii) Declare that each and every extension orders of January 2023 are *ultra vires* the PTA and in turn *ultra vires* the Constitution and contrary to Article 26(1) read with Article 26(2) of the Charter.
- viii) Declare that each of the acts and omissions of 1st Respondent in respect of preventing, denying, refusing and ignoring to allow the Petitioners access to the Apartment, the Outer Building, the Vehicles, the contents thereof and the contents of the Matrimonial Home and the refusal to allow the Petitioners to reside in the Apartment and to use the Outer Buildings and the Vehicles is a separate and continuing contravention of Article 26(1) of the Charter.

- ix) Make such declaration, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the Charter and disposing of all the issues relating to the application.
- x) Make such additional order under the Constitution or as may be prescribed by law to give effect and to enforce the Petitioners' fundamental rights.
- xi) Grant any remedy available to the Supreme Court against any person, or authority which is the subject of the application or which is a party to any proceedings before the Constitutional Court, as the Court considers appropriate.
- xii) Award the Petitioners the costs of this Petition.

[7] The Respondents raised preliminary objections to the Petition and against all the prayers raised by the Petitioners. In the ruling of this Court on the preliminary objections, the Court upheld most of the grounds of objection except for two which the Court ordered to proceed for hearing on the merits. These the two points are:

- i. Whether the Petitioners' rights have been violated under Articles 19 and 26 of the Constitution; and
- ii. Whether Section 26 of the Prevention of Terrorism Act is in contravention of Article 26 of the Constitution.

[8] The Petitioners and the Respondents made lengthy submissions on the two points starting with the 2nd ground of the Petitions, that is; whether Section 26 of the Prevention of Terrorism Act is in contravention of Article 26 of the Constitution.

[9] Learned counsel for the Petitioners submitted on the 2nd point that Article 26 of the Constitution of Seychelles is the right to property, and it falls within Chapter III of the said Constitution. Part 1 of Chapter III is the Seychellois Charter of Fundamental Human Rights and Freedoms. Part 2 of the said Chapter contains the fundamental duties of every Seychellois citizens of which one of the said duties is:

“(f) generally, to strive towards the fulfilment of the aspirations contained in the Preamble of this Constitution (Art 40 (f))-

[10] Learned counsel submitted that the People of Seychelles in the Preamble of the Constitution has solemnly declared their “*unswaying commitment*”, to several things including to uphold the rule of law based on the recognition of the fundamental human rights and freedoms enshrined in this Constitution and on respect for the equality and dignity of human being to develop a democratic system which will ensure the creation of an adequate and progressive social order guaranteeing food, clothing, shelter, education, health and a steadily rising standard of living for all Seychellois.

[11] Article 26 of the Constitution protects and guarantees the right to property which in turn together with Article 34 protects and guarantees food, clothing and shelter to every citizen of Seychelles. Article 26(1) sets out the right to property that is protected and provides that:

“(1)Every person has a right to property and for the purpose of this right includes the right to acquire, own, peacefully enjoy and dispose of property either individually or in association with others.”

Article 26(2) sets out an exhaustive list of limitations to the exercise of this right to property provided in Article 26 (1).

[12] Learned counsel submitted that Article 26 of the Prevention of the Terrorism Act (the “PTA”) is the legal provision made use of by the Respondents to detain land parcel B39 and everything thereon including building, vehicles, pets, and all the household and personal items of the Petitioners since June 2022 once investigations was completed and the area no longer being a crime scene. It is abundantly clear from the wording of Article 26 (2) that the only derogation permitted in respect of rights to property must be derogation that passes the 2 limb test in Article 26(2). The 1st limb being that it must be prescribed by law and the 2nd limb is that it must be necessary in a democratic society for any of the 9 reasons stipulated in (a) to (i) as provided in Article 26(2) (a) to (i).

[13] Section 26(1) of the PTA clearly states the basis upon which the 1st Respondent can seize a property and that is:

“Where the Commissioner of Police has reasonable grounds for suspecting that any property has been, or is being, used to commit an offence under this Act, the Commissioner may seize the property.”

Section 26 (4) (b) then gives the reason or ground on which a judge can detain that property and that is:

“...unless the judge.....-

(b) has reasonable grounds to believe that the property has been, or is being used to commit an offence under this Act.”

- [14] Article 26 of the PTA meets the 1st limb of that two limb test since it is prescribed by law, namely in the PTA. As regards the 2nd limb this is where the PTA falls short. Article 26 (2) (d) talks of a derogation with respect to a prescribed law that is necessary in a democratic society in respect of “property reasonably suspected of being acquired by the proceeds of drug trafficking or serious crime. Section 26 of the PTA does not deal with acquisition of proceeds of crime whatsoever and furthermore acquisition of property from proceeds of crime is not an offence under the PTA. It talks of property used or being used to commit offences under the PTA only.
- [15] Offences under the PTA are stipulated in Part III of the PTA and there is not a single instance that mentions acquisition of property acquired by proceeds of crime whatsoever. Article 26(2)(c) is in respect of a derogation provided for in a prescribed law that is necessary in a democratic society “*in satisfaction of any penalty, tax, rate, duty or due*” and similarly the PTA does not deal with such matters. Hence what is left is the derogations provided for in Article 26(2)(a) and (b), in respect of the PTA could have come within the ambit to provide for a section 26 detention order, whereby a judge can detain a person’s property by lawfully derogating from the right under Article 26 of the Constitution.
- [16] In conclusion, the Petitioners submit that Section 26 is unconstitutional and violates the right to property (Article 26) of suspects and accused persons as well as third parties and it also invites the Commissioner of Police and Judges to violate the absolute right to innocence of suspects and accused.

[17] On the first point, whether the Petitioners' rights have been violated under Articles 19 and 26 of the Constitution learned counsel submitted that there were indirect and direct violations of Article 26. The Petitioners referred this Court to the Guide to the implementation of the European Convention on Human Rights and its protocols - The right to property under the European Convention on Human Rights by Aida Grgaie, Zvonimir Mataga, Matija Longar and Ana Vilfan which sets out the ECtHR position on the right to property. The right to Property in Article 1 to Protocol No 1 to the Convention is very similar to our Article 26. It states:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

[18] Learned counsel submitted that however, our Article 26 (1) specifically includes the right to peacefully enjoy the property as part of the right to property. In respect of indirect violation of Article 26 by way of violation of Article 19(2), the Petitioners submitted that the right to innocence under Article 19(2) of the 1st and 2nd Petitioners have been breached by both the Commissioner of Police and Burhan J when they seized and detained the B39, including the homes of the Petitioners and all their belongings and assets situated on B39 as they made a finding of guilt (that is finding that an offence under the PTA had been or was being committed, using B39).

[19] The notice of seizure issued by the 1st Respondent states as follows in paragraph 2:

“that I do so on the basis that I have reasonable grounds to suspect that the property has been used to commit a terrorist offence under the PTA”.

From the wording of this paragraph it is clear that the 1st Respondent is taking the commission of a terrorist offence as a given, that the commission of the offence has indeed happened and he is now suspecting that the property, that is B39, has been used to commit

the offence. If the 1st Respondent was merely suspecting that an offence under the PTA had been committed, he would have instead stated that *“that I do so on the basis that I have reasonable grounds to suspect that an offence under the PTA, namely.... Has been committed using the property.*

[20] The Petitioners submitted that the 1st Respondent in his eagerness to seize the property and apply for its detention, threw all caution to the wind and did not state firstly what offence is supposed to have been committed and secondly how has the property been used in the commission of the offence. Had it addressed his mind to these questions he would have realised several things:

- a. That he has no proof that any offence has been committed as the trial had not even commenced, therefore he only has a suspicion of the commission of an offence given the cache of weapons and ammunition found;
- b. That secondly the 1st and 2nd Petitioners had not been charged with storage of terrorist property and indeed could not have as been since storage of terrorist property is not an offence under PTA.
- c. That if storage was not an offence under the PTA, how then could the property be suspected to have been used to commit an offence under the PTA.

Had the 1st Respondent addressed his mind to these matters, he would have quickly realised that he was on thin grounds when it came to suspecting that B39 had been used to commit an offence because he would not have been able to meet the requirements of Section 26 of the PTA without inferring that an offence had been committed and moreover he would have recognised that storage of weapons was not an offence under the PTA.

[21] In the affidavit in support of the application for a section 26 detention order, Davis Simeon as Investigation Officer in the criminal case against the 1st and 2nd Petitioners made a number of unsubstantiated averments in paragraphs 5 and 10 to 13. In paragraph 14, in make a further unsubstantiated statement that *“It is clear that there are reasonable grounds to believe that the Respondent’s property, Morne Blanc (title Number 39) was being used*

to commit offences under the PTA, namely as a storage place for weapons and ammunition likely to be used to commit a terrorist act.”

- [22] In regards to indirect violations, the Petitioners submitted that one of the direct violations of Article 26 is when the Respondents categorically refused to return the Properties to the Petitioners despite there not being any detention order from the Court. This occurred at various times from 13th September 2022. The detention order ran from the 13th September 2022 to 8th March 2023 and during that period, there were periods where there were no existing detention orders whatsoever but despite that, the Respondents refused to hand over the Properties back to the Petitioners. An example of such period was from the 8th January to the 17th January 2023. This was a clear violation of the Petitioners right to property under Article 26.
- [23] Learned counsel submitted that there were also periods where Judge Burhan and Judge Adeline contrary to the PTA extended the detention order of 13th September 2022, without hearing from the Petitioners first (and relying solely of the affidavit of Sgt Simeon) and despite there not being any provision for such extensions in the PTA. This was done simply to allow the Respondents to illegally continue detaining the Properties until they could be heard on their applications for renewal of the detention, which they always made at the 11th hour. Those extension order where then covered retrospectively by Rulings made by Judge Burhan. There is no provision in the PTA for retrospective detention orders nor for extension of detention order.
- [24] Learned counsel submitted that in certain circumstances, the loss of a substantial part of an owner’s rights that falls short of expropriation can amount to a deprivation. As stated in *Sporrong and Lonroth [182] 5 EHRR 35*, the ECTHR will look behind appearances and investigate the realities of the situation. One of the issues in *Sporrong* was whether the expropriation permits and building restrictions in force for certain periods interfered with the applicants’ enjoyment of their land sufficiently to amount to a deprivation of property. The prolonged period of detention of the Petitioners’ homes whereby the Petitioners including the 3rd Petitioner who has not been charged were completely denied access, even to their medication and items of clothing, by the Respondents is tantamount to a

confiscation which is similar to the case of *Vasilescu v Romania* [1999] 28 EHRR 241 where the total inability of the owner of gold coins (which were seized during a search) to handle or take possession of them was taken by the Court to be sufficiently serious to amount to an actual confiscation.

[25] Furthermore, the Court has held in *Iatridis v Greece* [2000] 30 EHRR 97, [1999] ECHR 14 that control (or restriction) is use of property must be in accordance with law and as discussed above the detention orders were not in accordance with law as they were ultra vires the PTA.

[26] Learned counsel submitted that in the unlikely event that this Court holds that the orders are not ultra vires the PTA and thus does not offend Article 26, the Petitioners submit that still there exist violation of the right to property, because any law enacted pursuant to derogation of the right to property in the public interest, must pass the proportionality test speciality test especially in its application. As the per the ECHR Guide, State controls on the use of property must be proportionate and strike a fair balance between the general interest of the community and the private interests of the property owner.

[27] Learned counsel submitted that *Sporrong* is relevant here as well as the local case of *Hackl v Financial Intelligence Unit* (2012) SLR 225. So the minute the 1st Respondent and the judges who dealt with the detention of the Properties decided to invoke section 26 of the PTA to seize/or detain the Properties, they were under an obligation to perform the proportionality test. The British Institute of Human Rights have outlined the principle of proportionality as requiring the public body or decision makers to consider the individual's circumstances and choose the least restrictive option and to make a reasoned decision including why they consider any restriction on human rights, justifiable.

[28] Learned counsel argued that as per the ECtHR, especially in negative rights cases, the four main steps of the principle of proportionality are:

- analysing the legitimacy of the aim pursued by public powers;
- confirming the rational link between the restriction of a right and the intended goal;

- exploring if other less restrictive means could achieve the same aim; and
- balancing the affected right and the collective interest protected by trying to weigh the costs and benefits of the adopted measure.

[29] Learned counsel submitted that from the Rulings of all the Judges that dealt with the detention of the properties, none of them performed the proportionality test. Had they done so they would have concluded that since no further searches had been conducted nor further weapons found on B39 despite the involvement of the FBI, dog unit and specialized equipment. That would have led them to conclude that there was no further threat to the public as envisaged by both the Respondents and Judge Burhan since a house that has been used to store weapons, which act in itself is not an offence under the PTA, is not of any threat to the public or the Government for all the weapons recovered therefore had been removed and been in the 1st Respondent's custody over 6 months prior to the initial application for detention being made.

[30] Learned counsel argued that furthermore the Respondents and the Judges would have been able to see no rational link in depriving a 21 year old girl of her only home and all her belongings especially considering her medical condition and loss of both her parents, leaving her completely destitute, when balanced against the need to protect the public interest against an imaginable threat of attack when all the weapons that Judge Burhan had considered capable of being used had long been removed and were in the custody of the 1st Respondent.

[31] The Petitioners submitted that the Respondent and the Supreme Court have effectively used a sledgehammer to crack a nut when a nut cracker could have done an adequate and effective job, if only they had performed the proportionality test. In doing so they have trampled on the Petitioners rights under Article 26 and this is still continuing to this date.

[32] The Petitioners therefore prays for this Court to grant them the remedies sought for in their Petition.

[33] Learned counsel for the Respondent submitted that Section 26 of the Act envisages only a temporary measure of seizure of a property by the Commissioner of Police and further

periodical detention of the property by an order of a judge of the Supreme Court, until proceedings have been instituted for an offence under the Act, and the property referred to in the order is produced in Court in proceedings, for an offence under the Act in respect of the property. The provision under section 26 (4) (a) of the Act also provides for the protection of the rights and interests of any persons who appears to have interest in a property, by giving them the opportunity of being heard before a judge makes any detention order in respect of the said property.

- [34] Learned counsel further submitted that under section 26 (6) the Court may decide to release a property which is subject to a detention order if the judge no longer feels that there are reasonable grounds to suspect that the property has or is being used to commit an offence under the Act or if no proceedings is instituted in the Supreme Court for an offence in respect of that property. As such, section 26 of the Act can be said to be a self-contained provision because the provision itself contains all the necessary safeguards and measures to prevent abuse or any arbitrary use of the provision. Moreover, it requires judicial intervention at every stage of the detention of property which is reviewed on periodical basis by the Court, in order to protect the rights of any person who has interest in a property.
- [35] Learned counsel submitted that it is important to note that section 29 (1) (a) of the Act states that where any person is convicted of an offence under the Act, the Court may order that any property used for, or in connection with the commission of that offence, be forfeited to the state. The significance of the provisions under section 29 of the Act is that it clearly shows that it is only after a person has been convicted of an offence under this Act, that a property used for or in connection with the commission of an offence, be forfeited to the state. This underscores the notion that under the Act a person will only be permanently deprived of their rights to a property, once that property has been forfeited to the state pursuant a forfeiture order under section 29, as opposed to a detention order under section 26 of the Act. In fact, in the event that upon the final determination of the case in CR04/2023 the Petitioners are found not guilty of offences for which they are charged under the Act, then their property would be released back to them.

- [36] Learned counsel argued that the intention of the provisions under section 26 of the Act is not to permanently deprive a person of their rights to the property. Instead, the objective of the provision is to provide through the use of a detention order a temporary measure to preserve property reasonably suspected to have been used to commit an offence under the Act, until such time as proceedings is instituted and the property is produced in Court in proceedings. Furthermore, it is important to note that the definition of ‘property’ under the Act includes both movable and immovable property. The entire cache of firearms and ammunition were hidden on land parcel B39, which is the immovable property which is the subject matter of the detention orders under the Act, and the recovery of these firearms and ammunition led to the filing of the charges under the Act against the 1st and 2nd Petitioners. Hence, this is the reason why the Court took the view that there were reasonable grounds for the detention orders to be granted against parcel B39.
- [37] Learned counsel argued that further to the detention orders and subsequent to the Petitioner filing this Constitutional petition, the property in parcel B39 was produced in proceedings in Court in CR04 of 2023 and is now in the custody of the court. The Respondent submits that the Petitioner’s claim that the provision of section 26 of the Act is incompatible with Article 26 of the Constitution are plainly misconceived. The detention orders against land parcel B39 which were made in accordance with section 26 of the Act did not cause the Petitioners’ to be permanently deprived of their rights to their property and therefore do not constitute a contravention of their right to property under Article 26 of the Constitution.
- [38] Learned counsel submitted that the provisions under section 26 of the Act impose temporary measures which are not intended to permanently deprive a person of their rights to a property, and as such do not contravene a person’s right to property under Article 26 of the Constitution. Nevertheless, in the event that the Court was to take the view that the temporary measures under section 26 of the Act constitutes an unreasonable deprivation or interference with the Petitioner’s right to property and a contravention of Article 26 of the Constitution, the Respondent is of the view that section 26 of the Act meets the criteria required for a legislation to be in conformity with the permissible limitations to the right to property, as provided for under Article 26 (2) of the Constitution.

[39] Learned counsel submitted that Article 26 (2) states that the exercise of the right under Article 26(1) may be subject to such limitations as may be prescribed by a law necessary in a democratic society. The said Article thereafter exhaustively set out nine limitations, being instances which such law in a democratic society may prescribe limitations. They are set out in Article 26 (2) (a) to (i). Three conditions for an interference with right to property to be permissible under Article 26 (2) are that:

1. It is prescribed by law
2. It is necessary in a democratic society; and
3. It falls within any of the nine limitations set out under Article 26(2)(a) to (i).

[40] Learned counsel referred to the case of *Albert v/s Government of Seychelles CP5/2018 SCC6 (2019)*, paragraph 46, where the Court stated that in order for an act or omission of a person or of the Government to be a permissible limitation of the right to protection of property, all three of the above conditions must be present simultaneously.

Condition 1: Prescribed by law

The Courts have ruled that any limitations to the right to property must meet the requirement of legality and this is in accordance with the principle of legal certainty and rule of law. In the case of *Bernard Sullivan v/s Attorney General & Ors SCA 25/02*, paragraph 23, the court stated that “The accepted requirement of a prescribed law are that it be certain, clear and precise and framed so that its legal implication are foreseeable”. Furthermore, in *Albert v/s Government of Seychelles* (supra) the Court of Appeal explained that “laws will fit the prescriptive test of ‘prescribed’ only when they are accessible by the members of the public after their publication in the Gazette following their assent by the President”. In the current case, the Act was assented to by the President and published in the Gazette and the Act commenced on the 1st December 2004. The provisions of Section 26 of the Act are clear and precise enough for the so that the legal implications are foreseeable.

Hence, the Respondents are of the view that there is no doubt that S.26 of the Act satisfies the test of being a prescribed law.

Condition 2: Necessary in a democratic society

Democratic society under Article 49 of the Constitution means, “a pluralistic society in which there is tolerance, proper regard for fundamental human rights and freedoms and the rule of law and where there is a balance of power among the Executive, Legislature and Judiciary.” The Courts in deciding what is necessary in a democratic society have applied the ‘proportionality test’ which is a test to establish whether a limitation on a freedom is arbitrary, excessive or not permissible. In the case of *Bernard Sullivan v/s Attorney General & Ors (supra)*, paragraph 29, the Court, upheld this test as applied by the Supreme Court of Zimbabwe in the case of *Nyambirai vs National Social Security Authority [1996 J 1 LRC 64, 75]*, which is whether;

- i. the legislative objective is sufficiently important to justify limiting a fundamental right;
- ii. the measures designed to meet the legislative objective are rationally connected to it; and
- iii. the means used to impair the right or freedom are no more than is necessary to accomplish the objective

[41] In regards to the first limb, the Respondent notes that under the objects and reasons of the Prevention of Terrorism (Second Amendment Bill, 2021), it states that Prevention of Terrorism Act 2004, (Cap 179) was enacted to provide for measures to prevent and suppress terrorism and for connected matters. Considering the aforementioned objects and reasons for the Act and the public interest aims of achieving the said objects, it is safe to say that the legislative objectives of the Prevention of Terrorism Act 2004, is sufficiently important to justify the limiting of a fundamental right under the constitution.

- [42] In relation to the second limb, it is important to note that the provisions for seizure and detention orders against property under section 26 of the Act, are aimed at providing a temporary measure to preserve property reasonably suspected to have been used to commit an offence under the Act. Therefore, the measures under section 26 of the Act targets property used in relation to the commission of terrorism offence and this fits within the statutory framework of the Act because the provision is rationally connected to the legislative objective of the Act, which is to suppress and prevent terrorism.
- [43] The last limb of the proportionality test is whether the means used to impair the right or freedom are no more than is necessary to accomplish the objective. The Respondents are of the view that section 26 of the Act contains all the necessary safeguards to prevent any excessive or arbitrary use of the provision to unfairly curtail the Petitioners' right to property. Furthermore, the measures under the provision are temporary in nature and provides for periodical judicial intervention in order to assess whether the said measures should be maintained or whether the property should be released from detention. Moreover, the means used under S.26 of the Act to impair the right of property of the Petitioners, are no more than is necessary to achieve the objectives of the Act, and are proportionate to the legitimate aim of the legislation. As such, the Respondents submit that the provisions of S.26 of the Act satisfy the proportionality test, and the measures under provision are necessary in a democratic society.

Condition 3: Falls within one of the nine limitations set out under Article 26 (2) (a) to (i) of the Constitution

- [44] The legislative objective of the Act is to prevent and suppress terrorism which invariably has the public interest aim of preserving public safety and national security. In that regard, the provisions for seizure and detention of a property under S.26 of the Act are measures which are aimed at preserving a property suspected to be used in connection with a terrorism offence, until the final determination of the case. These measures are necessary and are in the public interest because where there are reasonable grounds to suspect a property has been used to commit a terrorism offence, then such a property cannot be allowed to be simply returned to the suspects pending the final determination of the case.

[45] Learned counsel submitted that the Court in the case of Reference by Attorney-General under Section 342(a) of the Criminal Procedure Code SCA 6/2009, considered the constitutional right to privacy and stated that:

“The Constitution of Seychelles is fairly clear on the principle that fundamental rights and freedoms of any individual which are protected by the Constitution are subject to the rights of others and the public interest and also that restrictions and limitations are permissible to the extent that must be reasonably justifiable in a democratic society. It is for the court to decide in any given case whether the public interest in the fight against crime justifies a restriction of the privacy of the individual”

[46] Learned counsel submitted that in Hackl v Financial Intelligence Unit (FIU) & Anor (SCA 10 of 2011) [2012] SCCA 17, which was a case concerning the right to property, the Court took the view that even though the case of Reference by Attorney General under Section 342 (a) of the Criminal Procedure Code (supra) was in relation to the right to privacy, the principles articulated by the Court in that case apply to all rights contained in the Charter. Similarly, the Respondents submitted that the principles articulated in Reference by Attorney-General under Section 342 (a) of the Criminal Procedure Code SCA 6/2009 apply to the current case which pertains to the Court’s assessment of whether section 26 of the Act amounts to a breach of the Petitioners’ right to property under Article 26 of the Constitution.

[47] Learned counsel further referred the court to the European Court of Human Rights case of Arcuri and Others v Italy (2001) 54924/99 ECHR 219. The Court considered whether a preventive confiscation order against the assets of the applicants infringed their right of peaceful enjoyment of their possessions under Article 1, Protocol 1. The Court found that even though the measure in question led to a deprivation of property, this amounted to control of the use of property within the meaning of the second paragraph of Article 1, Protocol 1, which gives the State the right to adopt such laws as it deems necessary to control the use of property in accordance with the general interest.

- [48] The Respondents considers that the Court's reasoning in *Arcuri and Others v Italy* (supra) is applicable to the current case, inasmuch as the seizure and detention orders under section 26 of the Act may have deprived the Petitioners of their property but they were limitations which were necessary in a democratic society and were in the public interest, in the same way that the confiscation orders in *Arcuri and Others v Italy* were necessary to control the use of property in accordance with the general interest. The Respondents submitted that the measures imposed against Petitioners' property pursuant to section 26 of the Act were in the 'public interest', and are therefore permissible limitations to the right to property under Article 26 (2) (a) of the Constitution.
- [49] Learned counsel concluded that the measures under section 26 of the Act which were imposed against the property of the Petitioners were necessary and proportionate limitations to the right to property, and they do not amount to a contravention of the Petitioners constitutional rights.
- [50] On the question of whether the Petitioners rights have been violated under Articles 19 and 26 of the Constitution learned counsel submitted that Article 19 of the Constitution protects the right to fair trial and public hearing. Learned counsel submitted that under section 26 (1) of the Act if the Commissioner of Police has reasonable grounds for suspecting any property has been used or is being used to commit an offence under the Act, the Commissioner may seized the property. The Commissioner of Police shall as soon as practicable after seizing any property under subsection (1) make an application to a judge of the Supreme Court for a detention order in respect of the property. Section 26 (4) (a) of the Act also provides for the protection of the rights and interests of any persons who appears to have interest in a property, by giving them the opportunity of being heard before a judge makes any detention order in respect of the said property.
- [51] The Respondents argued that in relation to this case when the detention orders on the property were granted, renewed and subsequently when the property was ordered to be produced in the Court pursuant to section 26(5) of the Act, the Petitioners were granted the opportunity to be heard. The Respondent submits that as result of the inbuilt safeguards in the provisions of section 26 of the Act, the Petitioners' right to a fair trial has always been

provided for, pursuant to Article 19(1) of the Charter. The provisions of section 26 are under Part IV of the Act under the heading 'Investigation of offence' under which there are provisions for arrest of suspects, remand of suspect, and methods of gathering information evidence relating to an offence. The fact that section 26 falls under the Part of the Act relating to Investigation of an offence is a clear indication that its provision are not concerned with the final determination of guilt of the suspect. Instead, the emphasis is on preserving any property suspected of having been used or being used to commit an offence under the Act.

[52] Learned counsel argued that the court in considering whether or not to make a detention order under section 26 of the Act, had to balance the Petitioners' rights to property as provided for under Article 26 of the Constitution, against the public interest consideration of preserving property which was reasonably believed or suspected of having been used to commit a terrorism offence under the Act. When considering the merits of an application for detention order under section 26 of the Act the Court is not concerned with whether a suspect is guilty of a crime under the Act, but rather with whether there are reasonable grounds to suspect that property has been used to commit an offence. In assessing an application under section 26 of the Act, the Court is concerned only with whether there is a 'prima facie' evidence of a crime having been committed under the Act, and the property in question having been used to commit the said offence.

[53] Learned counsel argued that the mere possession of the substantial quantity of firearms and ammunition and the manner in which they were stored on the property as in this case gives the Compol reasonable grounds to suspect that the property was being used to commit a terrorism offence under the Act. The Respondents argue that this is similar to when the Court is considering an application for remand of an accused pursuant to section 179 of the Criminal Procedure Code. In such case the court must be satisfied that the prosecution has demonstrated that there is a prima facie case against the accused. The requirement was spelt out in *Beeharry v Republic SCA 11 of 2009*, where the court stated that:

“to support detention, the prosecution must demonstrate a Prima facie case against the accused then the court should determine whether the defendant

may be released with or without conditions for the purpose of ensuring that the defendant appears on a subsequent date.

- [54] These principles were further expounded upon in the recent case of *R v Dodin and Anor* (CM 2 of 2023) [2023] SCSC 247, para 37, whereby the Court stated that:

“In essence, the prosecution carrying the burden of proof had only to present evidence to create a rebuttable presumption that the allegations as averred are true. As such, the standard of proof that the prosecution must have satisfied the Court at a prima facie stage is lower than for proof of the accused guilt.”

- [55] Learned counsel submitted that in the context of section 26 of the Act, an affidavit supporting an application for a detention order need only provide ‘prima facie’ evidence of an offence under the Act having been committed using a property, and this would amount to reasonable grounds for a judge to believe that the property had been used to commit a crime under the Act. The Court does not need to be satisfied beyond a reasonable doubt that the suspect has used the property to commit the offence, because the standard of proof that the applicant must satisfy for a detention order against a property is lower than that required for a final determination of guilt against a suspect. Thus, an order made under section 26 of the Act cannot be constructed as a finding of guilt against the relevant suspect and as far as the relevant offence is concerned, the suspect is still presumed to be innocent until the relevant criminal charge is proved beyond reasonable doubt in the criminal trial.
- [56] In relation to the case at hand, when the judge heard the application for a detention order under section 26 of the Act and determined that there were reasonable grounds to believe that the property parcel B39 had been or is being used to commit an offence under the Act, this did not equate to the judge having made a final finding of guilt against the 1st and/or 2nd Petitioners in relation to the charges against them. Therefore, the provisions of section 26 of the Act cannot be said to be in contravention of the Petitioners right to innocence under Article 19(2) of the Constitution because the granting of a detention order under an Act does not equate to a finding of guilt against the Petitioners, and they remain innocent until they are found or plead guilty.

- [57] Learned counsel submitted that the intention of the provisions under section 26 of the Act is to deal with the property used to commit the offence, rather than any suspect involved in the offence. To that end, the Respondents submit that there is nothing in section 26 of the Act which infringes the Petitioners' right to innocence under Article 19 (2) of the Constitution, because the provisions of section 26 of the Act are not concerned with the guilt of any suspect for an offence under the Act, but are instead directed against the property suspected of being used to commit the alleged offence.
- [58] Learned counsel submitted that section 29 of the Act specifically provides that a property can only be forfeited after a person's conviction. The detention of property pursuant to section 26 of the Act is a temporary measure pending trial, and such property can only be permanently forfeited pursuant to section 29 of the Act after conviction. The granting of detention order does not amount pre-conviction finding the guilt of the Petitioners and there is plainly no interference with the right to innocence under the Act.
- [59] Learned counsel concluded that section 26 of the Act is not in contravention of Article 26 of the Constitution and further submitted that the Petitioners rights under Article 26 have not been violated in any way and that the Petitioners' claims are fundamentally flawed and without merit. The provisions of section 26 of the Act contain safeguards that ensure that Petitioners right to a fair trial has always been provided for, pursuant to Article 19(1) of the Charter. Section 26 of the Act is not in contravention of the Petitioners right to innocence Article 19(2) of the Constitution because the imposition of the measures against the property, do not equate to a finding of guilt against the Petitioners. As such, the Respondents submit that Petitioners rights under Article 19 of Charter have not been violated. The Respondents moved that this Court dismiss the Petition in its entirety'
- [60] The parties are in agreement to treat the second question arising from the Petition first. That is *whether Section 26 of the Prevention of Terrorism Act is in contravention of Article 26 of the Constitution.*
- [61] Article 26 of the Constitution of Seychelles in respect of the right to property provides:

(1) Every person has a right to property and for the purpose of this article this right includes the right to acquire, own, peacefully enjoy and dispose of property either individually or in association with others.

(2) The exercise of the right under clause (1) may be subject to such limitations as may be prescribed by law and necessary in a democratic society—

(a) in the public interest;

(b) for the enforcement of an order or judgment of a court in civil or criminal proceedings;

(c) in satisfaction of any penalty, tax, rate, duty or due;

(d) in the case of property reasonably suspected of being acquired by the proceeds of drug trafficking or serious crime;

(e) in respect of animals found trespassing or straying;

(f) in consequence of a law with respect to limitation or actions or acquisitive prescription;

(g) with respect to property of citizens of a country at war with Seychelles;

(h) with regard to the administration of the property of persons adjudged bankrupt or of persons who have died or of persons under legal incapacity; or

(i) for vesting in the Republic of the ownership of under ground water or unextracted oil or minerals of any kind or description.

(3) A law shall not provide for the compulsory acquisition or taking of possession of any property by the State unless—

(a) reasonable notice of the intention to compulsorily acquire or take possession of the property and of the purpose of the intended acquisition or taking of possession are given to persons having an interest or right over the property;

(b) the compulsory acquisition or taking of possession is necessary in the public interest for the development or utilisation of the property to promote public welfare or benefit or for public defence, safety, order, morality or health or for town and country planning;

(c) there is reasonable justification for causing any hardship that may result to any person who has an interest in or over the property;

(d) the State pays prompt and full compensation for the property;

(e) any person who has an interest or right over the property has a right of access to the Supreme Court whether direct or on appeal from any other authority for the determination of the interest or right, the legality of the acquisition or taking of possession of the property, the amount of compensation payable to the person and for the purpose of obtaining prompt payment of compensation.

(4) Where the property acquired by the State under this article is not used, within a reasonable time, for the purpose for which it was acquired, the State shall give, to the person who owned it immediately before the acquisition of the property, an option to buy the property.

(5) A law imposing any restriction on the acquisition or disposal of property by a person who is not a citizen of Seychelles shall not be held to be inconsistent with clause (1).

[62] Section 26 of the Prevention of Terrorism Act (PTA) provides as follows:

- 1) *Where the Commissioner of Police has reasonable grounds for suspecting that any property has been, or is being, used to commit an offence under this Act, the Commissioner may seize the property.*
- 2) *The Commissioner of Police may exercise powers under subsection (1), whether or not any proceedings have been instituted for an offence under this Act in respect of that property.*
- 3) *The Commissioner of Police shall as soon as practicable after seizing any property under subsection (1) make an application, ex-parte and supported by an affidavit, to a judge of the Supreme Court for a detention order in respect of that property.*
- 4) *A Judge to whom an application is made under subsection (3) shall not make a detention order in respect of the property referred to in the application unless the judge -*
 - a) *has given every person appearing to have an interest in the property a reasonable opportunity of being heard;*
 - b) *has reasonable grounds to believe that the property has been, or is being used to commit offence under this Act.*
- 5) *Subject to subsection (6), every detention order made under subsection (4) shall be valid for a period of 60 days and may, on application, be renewed by a judge of the Supreme Court for a further period of 60 days until such time as the property referred to in the order is, where applicable, produced in Court in proceedings for an offence under this Act in respect of that property.*
- 6) *A judge of the Supreme Court may release any property referred to in a detention order made under subsection (4) if -*

a) *the judge no longer has reasonable grounds to suspect that the property has been or is being used to commit an offence under this Act; or*

b) *no proceedings are instituted in the Supreme Court for an offence under this Act in respect of that property within six months of the date of the detention order.*

7) *A seizure of any property by the Commissioner of Police under subsection (1) shall be deemed not to be a contravention of section 8.*

8) *No civil or criminal proceedings shall lie against the Commissioner of Police for a seizure of property made in good faith under subsection (1).*

[63] It is obvious that the right to property in Article 26 of the Constitution is not an absolute right because it is subject to limitations as prescribed by Article 26(2). In the present case, the law enacted reflecting the limitation imposed is the PTA. It appears that whilst the Petitioners' contention is that section 26 of the PTA is in contravention of Article 26 of the Constitution, the submission of the Petitioners does not challenge the constitutionality of section 26 of the PTA but rather the procedure and determination of the Supreme Court, namely Burhan J. and Adeline J. in granting and renewing the seizure and holding orders issued against the Petitioners properties including land parcel B39.

[64] The Petitioners argue that Section 26 is unconstitutional and violates the right to property (Article 26) of suspects and accused persons as well as third parties and it also invites the Commissioner of Police and Judges to violate the absolute right to innocence of suspects and accused. The fundamental question that has to be considered is whether the law that deprives a person of his/her lawfully acquired property whether temporarily or permanently is necessary, justifiable or reasonable in a democratic society. That law must also be consistent with the prescribed limitations of Article 26(2) and in this case article 26(2)(a) and 26(2)(b) are worthy of consideration. That is whether the provisions of the PTA in respect to property are:

(a) in the public interest;

*(b)for the enforcement of an order or judgment of a court in
civil or criminal proceedings*

- [65] When making such a consideration, the Court should not concern itself with whether an offence contrary to the PTA has been committed or not or can be proved or not but rather whether Seychelles, being a democratic society, may enact a law that may deprive a person suspected of using the property to facilitate or commit an offence under the Act. Whilst the Judge considering the application made by the Commissioner of Police has to be satisfied that there is sufficient ground to grant the order, the Constitutional Court has no business in considering whether the Judge hearing the application followed the proper procedures or had sufficient grounds to issue the seizure order. That is a matter for appeal and not a matter for constitutional consideration or review.
- [66] It is the considered view of this Court that a law that deprived a person of lawfully acquired property, either temporarily or permanently is in the public interest and if it is by order of the Court in a civil or criminal proceedings, it falls within the limitations allowed by Article 26(6)(b) and therefore the impugned provisions of the PTA *per se* are not unconstitutional. Whether the procedures were applied correctly in the case against the Petitioners however is not a matter for the Constitutional Court to pronounce itself on.
- [67] It is further noted that the Petitioners argued that the seizure of their properties were ultra vires the PTA. This argues that if the Commissioner of Police and the Judges did not act in accordance with the provisions of the PTA, their decisions were not within the limitations imposed Article 26(2) of the Constitution and therefore a violation of the Petitioners' constitutional right to property. That is an ingenious way of getting around the fact that the provisions of section 26 of the PTA are actually within the constitutional limitations. However, this argument does not defeat the fundamental principle that when a Judge makes or upholds a decision ultra vires the law, the proper procedure is to appeal the decision and not to have a constitutional review of the same.
- [68] We now consider the first question of whether the Petitioners' rights have been violated under Articles 19 and 26 of the Constitution. Article 26 of the Constitution, the right to property has been set out above and considered in the angle of whether section 26 of the

PTA violates its provision. From the above analysis and findings, it is obvious that the limitations under the PTA do not violate Article 26 and therefore we can safely state in short order here that as far as the Commissioner of Police and the Judges acted under the provisions of the PTA, the right of the Petitioners to property has not been violated.

[69] On the other hand, if the Commissioner of Police or the Judges acted ultra vires the PTA, the proper procedure available to the Petitioners is to appeal the Judges' decisions. That is because it is obvious that the Judges who made the seizure and extension orders, whether rightly or wrongly, made them with the satisfaction that these orders were in accordance with the provisions of the PTA. However, had the Commissioner of Police not sought any Court order at all, or had continued to hold the Petitioners' property where the Court had refused the Commissioner's application, the constitutional right of the Petitioners to property would certainly have been infringed.

[70] Article 19(2)(a) of the Constitution provides as follows:

“(2)Every person who is charged with an offence—

(a)is innocent until the person is proved or has pleaded guilty;”

Learned counsel for the Petitioners argued that by way of violation of Article 19(2), the 1st and 2nd Petitioners right to innocence under Article 19(2) have been breached by both the Commissioner of Police and Burhan J when they seized and detained B39, including the homes of the Petitioners and all their belongings and assets situated on B39 as they made a finding of guilt by granting the seizure.

[71] Since this Court has already found that the impugned provisions of the PTA do not violate Article 26 of the Constitution, it follows that the Commissioner of Police may detain property and apply to the Court for a seizure order and for subsequent extensions. We are in agreement with the Respondents that the Court is not required to make a finding of guilt and in fact did not make a finding of guilt in order to make the seizure order and the subsequent extensions. There are ample examples across the legal and judicial spectrum where the Courts have ordered the seizure of properties for evidence or preservation or the

remanding of persons into custody pending trial. Such decisions do not amount to findings of guilt and therefore do not violate the provision of Article 19(2)(a) of the Constitution.

[72] We therefore conclude by finding that the Petitioners' rights under Articles 19 and 26 of the Constitution have not been violated by the initial holding of the Petitioners' properties by the Commissioner of Police or by the seizure and extension orders granted by the Court. We also find that Section 26 of the Prevention of Terrorism Act is not in contravention of Article 26 of the Constitution.


[73] The Petition is therefore dismissed in its entirety.

[74] We make no order for costs.

Signed, dated and delivered at Ile du Port on 20th January 2026.



Dodin J
(Presiding)



Adeline J



Esparon J