

CONSTITUTIONAL COURT OF SEYCHELLES

Reportable
[2020] SCCC 398
CP 0014/2019

JEAN FRANCOIS ADRIENNE

TERRENCE SERVINA
(rep. by Alexia Amesbury)

Petitioners

versus

ATTORNEY GENERAL
(rep. by Ananth Subramaniam)

Respondent

Neutral Citation: *Adrienne & Anor v Attorney General* (CP 0014/2019) [2020] SCCC 398 (7 July 2020).

Before: Govinden J. (Presiding) Dodin J. Andre J.

Summary: Interpret the Charter in such a way as not to be inconsistent with any international obligation – whether sentences violate articles 16, 27 and 31(d) – whether mandatory sentencing regime of MODA contravenes article 19(1). The sentences of 20 years imprisonment do not violate articles 16, 27 or 31(d) of the constitution or any international obligations. – the sentencing regime under MODA 2016 does not contravene article 19(1) of the constitution -

Heard: 10 March 2020

Delivered: 7 July 2020

ORDER

- i. The sentences of 20 years imprisonment although severe in nature did not contravene article 16 of the constitution and are not inconsistent with the obligations of Seychelles under the United Nations Covenant on Civil and Political Rights and the International Convention Against Torture and other Inhuman, Degrading Treatments and Punishment.
- ii. The Petitioners’ right under articles 16, 27 and 31(d) has not been violated by the trial or appellate Courts in respect of proportionality of sentences.

- iii. Since the Misuse of Drugs Act 1995 has been repealed and replaced by the Misuse of Drugs Act 2016 which only provides for indicative minimum sentences there is no mandatory sentencing regime. Article 19(1) has not been violated. This prayer is therefore misconceived.
- iv. No other right of the Petitioners under articles 16, 27 and 31(d) has been contravened.
- v. As there is no claim that section 51(9) of MODA contravenes the Petitioners' constitutional right this prayer is not sustainable.

JUDGMENT OF THE COURT

GOVINDEN J. (Presiding) DODIN J. ANDRE J.

[2] The Petitioners are prisoners who were convicted for the offences of trafficking and conspiracy to traffic in a controlled drug, namely 47.435 kg of cannabis herbal material under The Misuse of Drugs Act [MODA]. They were sentenced on the 27th July 2015 to 2 life sentences which are to run concurrently with effect from their arrest on the 9th April, 2014. The Petitioners appealed their conviction and sentence to the Seychelles Court of Appeal which appeal was dismissed on the 11th August 2017 and the sentences were maintained. On the 28th of August 2017 they applied to the Tribunal set up under MODA 2016 for a review of the sentences. On 12th December 2018 the Tribunal found that a sentence of life imprisonment is above the range of sentences under the MODA 2016 and ordered that the outstanding portion of their sentences be reviewed and reduced to 20 years imprisonment.

[3] The Petitioners now claim that the sentencing regime of Cap 133, The Misuse of Drugs Act, that permits the imposition of sentences of 20 years imprisonment for a class B drug contraventions their right under Article 16 of the Constitution as it is cruel and degrading

treatment and punishment especially when they have heard that other inmates who have been charged, convicted and sentenced for more serious class A drug offences such as importation of class A drugs have received more lenient and humane sentences.

- [4] The Petitioners further claim that the disparity in sentences meted out to them when compared to that of other prisoners with more serious drug offences also contravene their right to equal treatment under Article 27 of the Constitution.
- [5] The Petitioners further aver that the mandatory sentencing regime under The Misuse of Drugs Act 2016 for a class B drug violates their right under Article 16 of the constitution as it takes away from the court the Petitioners' right to have their sentences determined by the court based on the principle of proportionality pursuant to their right to a fair trial by an impartial and independent court under article 17(1) which right includes a fair sentence set by the sentencing judge after considering the offender and the gravity of the offence and not one set by the legislature.
- [6] The Petitioners aver further that although the Constitution guarantees them a right to just and proportionate sentences under the right to a fair trial pursuant to Article 19 (1) of the constitution, the 20 year imprisonment imposed will continue to be a cruel and degrading treatment and punishment unless the court applies the reasoning in Ponoo v/s the Attorney General [2010] SLR 361.
- [7] The 1st Petitioner aver that he has 4 minor children Jade Adrienne 12 years old, Ismael Adrienne 10 years old, Jaliah Adrienne 4 years old and Nadenne Adrienne 8 years old and the 2nd Petitioner has 2 minor children; Ibrahim Servina 16 years old and Grace Servina 8 years old. Under Article 31(d) of the Constitution the State herein represented by the Respondent undertakes to ensure the right of these minor children not to be separated from their parents save in judicially recognized circumstances but the Petitioners aver that separation from their fathers for a prolong period of 20 years is cruel, psychological torture, inhuman and degrading treatment that amounts to punishment of these six minor children and make them “ hidden victim” of the criminal justice system with no available support from anyone.

[8] The Petitioners further claim that based on the report of the superintendent of prisons they are model prisoners and they have been completely rehabilitated and if released they are prepared to contribute in a meaningful way to the community and to abide by any conditions that the court might deem fit to impose on them for their sake and that of the six minor children. The Petitioners aver that by the year 2035 the youngest of the 6 children will be 24 years old and they will all be grown up without the support of their fathers who have been completely rehabilitated, and they will have lost a whole generation of their lives.

[9] The Petitioners aver that they are persons whose rights under Article 16, 27 and 31 (1) (d) have been contravened and they bring this petitioner pursuant to Article 46(1) of the Constitution praying for the court to:

- i) Interpret the chapter of the constitution in such way as not to be inconsistent with any international obligations relating to Human right and freedoms, particularly the United Nations Covenant on Civil and Political Rights and The International Convention against Torture and other inhuman, Degrading Treatments and Punishment which Seychelles acceded to in 1992.
- ii) Apply the principle in the case of *Ponoo v/s Attorney General* especially as the sentences violate their rights under Article 16, 27 and 31 (d).
- iii) Declare that the mandatory sentencing regime under MODA 2016 contravenes the Constitution in regards to them as it takes away the court's absolute discretion when sentencing an offender and as it violates their right to a fair trial by an independent and impartial court under Article 19(1) which right includes a fair and just sentence imposed by the court and not one determined by the legislature.
- iv) Declare that the rights of the Petitioners under Article 16, 27 and 31 (d) to have been contravened, and provide appropriate remedies.

v) Make such declaration or order, issue such writ 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.

vi) To interpret section 51(9) (d) of MODA 2016 so as to clarify the meaning of to “vary the sentence by reducing by any amount, the time remaining to be served in prison.”

[10] The Respondent submitted in defence that the sentencing provisions of the Misuse of Drugs Act, CAP 133 do not violate or infringe any of the Petitioners’ rights guaranteed under Article 16 of the Constitution. The Court has unfettered discretion while passing the sentence and the said discretionary power of the Court was not taken away by the Misuse of Drugs Act. Learned counsel submitted that the sentence imposed on the Petitioners was neither inhuman nor degrading or cruel. The Court acted within its legal parameters and did not imposed any arbitrary, disproportionate or excessive sentence beyond their power or provided by law.

[11] The Respondent further submitted that it is the paramount duty of the Court to consider the facts and circumstances of the particular case while imposing the sentence under the law and therefore the sentences imposed by the Court also vary depending on the facts and circumstances of each case. The sentence imposed on the Petitioners are to be dealt in accordance with the facts and circumstances of their case. Learned counsel submitted that the issue of unconstitutionality of mandatory minimum sentence as well as whether the sentencing provisions of Misuse of Drugs Act contravene or violate the rights guaranteed under Article 16 were already settled in the cases of *Ponoo vs Attorney General (SCA 38 of 2020)* and *Aaron Simeon v Attorney-General (1 of 2010) [2010] SCCC 3 (28 September 2010)*.

[12] The Respondent further submitted that there is no breach or violation of any of the Petitioners’ rights under the constitution much less Article 27 of the constitution, as alleged due to the sentence imposed upon them. It is the Petitioners who seek to attribute intentionally an allegation of disparity against the lawful sentence imposed on them. In

addition, the Sentence Review Tribunal established under MODA, 2016 reduced the sentence of life imprisonment imposed on the Petitioners to 20 years imprisonment.

- [13] The Respondent further submitted that under Section 51 (9) (b) of MODA, 2016 the tribunal has got ample power to vary the sentence imposed on the convicts under MODA to vary the sentence by reducing the time remaining to be served in prison. The Tribunal acted very fairly after considering all the necessary and relevant materials in accordance with Section 51 (8) of MODA, 2016.
- [14] The Respondent further submitted that there is no mandatory minimum sentence regime under MODA, 2016 as alleged by the Petitioners rather the Act prescribed an indicative minimum sentence only for the aggravated offences. The nature and circumstances of aggravated offences are defined in Sections 6(4) & 48 of the MODA, 2016. The Courts as well as Review Tribunal considered the above mentioned provisions and imposed the sentence by considering the aggravated circumstances present in their case.
- [15] The Respondent further submitted that the right guaranteed under Article 31 (d) is not an absolute right rather subject to restrictions in accordance with law. The right under said Article 31 (d) is well restricted by judicially recognized circumstances. The sentence imposed on the Petitioners squarely falls within the judicial recognized circumstances and therefore there is no violation or breach as alleged by the Petitioners.
- [16] In respect of the children, the Respondent submitted that the Courts as well as the Tribunal considered all these mitigating circumstances in considering the sentence against the Petitioners. Moreover, the sufferings of the children are all the natural and reasonable consequences upon conviction and inevitable one in the administration of criminal justice system.
- [17] The Respondent concluded that none of their guaranteed rights of the Petitioners under Articles 16, 27, and 31 (d) of the Constitution were contravened as alleged in the petition. Learned counsel further submitted that the reliefs sought by the Petitioners are not sustainable and further, that it is a well settled principle that judicial decisions cannot be

challenge as violations of fundamental rights and therefore there are no substantial or real issues to be tried in this petition.

[18] Learned counsel referred the Court to the case *M versus The State and Centre For Child Law (Amicus Curia) CCT 53/06 [2007] ZACC 18* in support of his submission in respect to the rights and situation of the children.

[19] At the outset, we note learned counsel for the Petitioners' submission that the Respondent cannot place the burden of proof on the Petitioners in a constitutional petition. Article 46(8) states:

“Where in an application under clause (1) or where a matter is referred to the Constitutional Court under clause (7), the person alleging the contravention or risk of contravention establishes a prima facie case, the burden of proving that there has not been a contravention or risk of contravention shall, where the allegation is against the State, be on the State.”

We agree that the Petitioners only have to establish a prima facie case and then the burden rests on the state to prove that there has not been or not likely to be a contravention or risk of contravention. We therefore do not expect the Petitioners to establish anything more than a prima facie case in support of their Petition.

[20] The Petitioners claim that their rights under articles 16, 27 and 31(d) have been violated by the trial court and Court of Appeal as well as by the Review Tribunal. These articles of the constitution provide:

Article 16 “Every person has a right to be treated with dignity worthy of a human being and not to be subjected to torture, cruel, inhuman or degrading treatment or punishment.”

Article 27(1)“Every person has a right to equal protection of the law including the enjoyment of the rights and freedoms set out in this Charter without discrimination on any ground except as is necessary in a democratic society.

(2) Clause (1) shall not preclude any law, programme or activity which has as its object the amelioration of the conditions of disadvantaged persons or groups.”

Article 31 “The State recognises the right of children and young persons to special protection in view of their immaturity and vulnerability and to ensure effective exercise of this right the State undertakes -

(d) to ensure, save in exceptional and judicially recognised circumstances, that a child of young age is not separated from his parents.”

[21] In the case of *Furman v. Georgia, 408 U.S. 238 (1972)*, Justice Brennan stated;

“There are, then, four principles by which we may determine whether a particular punishment is 'cruel and unusual;

i. The "essential predicate" is "that a punishment must not by its severity be degrading to human dignity", especially torture.

ii. A severe punishment that is obviously inflicted in wholly arbitrary fashion.

iii. A severe punishment that is clearly and totally rejected throughout society.

iv. "A severe punishment that is patently unnecessary."

Justice Brennan added:

“The function of these principles, after all, is simply to provide [the] means by which a court can determine whether [the] challenged punishment comports with human dignity. They are, therefore, interrelated, and, in most cases, it will be their convergence that will justify the conclusion that a punishment is "cruel and unusual." The test, then, will ordinarily be a cumulative one: if a punishment is unusually severe, if there is a strong probability that it is inflicted arbitrarily, if it is substantially rejected by contemporary society, and if there is no reason to believe that it serves any penal purpose more effectively than some less severe punishment, then the continued infliction of that punishment violates the command of the Clause that the State may not inflict inhuman and uncivilized punishments upon those convicted of crimes.”

[22] The Petitioners in this case were initially sentenced to life imprisonment but the sentences were reduced to 20 years by the Review Tribunal set up under MODA. Learned counsel for the Petitioners referred the Court to other similar cases where the

convicts have received lower sentences even when the amount of drugs was much more than in the present case. In the case of *In the case of Saadi v Italy (37201/06) ECHR 28 February 2008*, the European Court of Human Rights stated:

“According to the Court's settled case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of §3 (of the European Convention on Human Rights). The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.

In order for a punishment or treatment associated with it to be 'inhuman' or 'degrading', the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.”

(Article 3 of the European Convention on Human Rights states:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”)

In *Michael Esty Ferguson v Queen [2008]1 SCR 96, [2008] SCC 6, (Canada)* the Court stated:

“The test for whether a particular sentence constitutes cruel and unusual punishment is whether the sentence is grossly disproportionate. As the court has repeatedly held, to be considered grossly disproportionate, the sentence must be more than merely excessive. The sentence must be so excessive as to outrage standards of decency and disproportionate to the extent that Canadians would find the punishment abhorrent or intolerable.”

[23] We note that even learned counsel for the Petitioners in his further submission to the Review Panel stated correctly: *“Under the Misuse of Drugs Act of 2016 the indicative sentence to be imposed for a case of this nature that is 47 kilograms of cannabis would be a maximum of 50 years and an indicative minimum sentence of 15 years.”* The Review Tribunal reviewed the sentences and reduced the same from life to 20 years. Learned counsel for the Petitioners submitted that a sentence of 20 years cannot be considered a reduction since convicts who are sentenced to life imprisonment tend to serve approximately 20 years which with remission means they serve only 13 to 14 years

imprisonment. Hence a sentence of 20 years imprisonment without remission would be an increase of the sentence of life imprisonment. We do not subscribe to that argument.

[24] It must be emphasised that the offences in question were committed between February and March 2014 and that the Petitioners were charged, tried, convicted and sentenced under the provisions of the Misuse of Drugs Act 1995 and prior to the coming into force of the Misuse of Drugs Act 2016. Under the 1995 Act the prescribed sentence for the offences charged was mandatory life imprisonment. Hence both the trial court and the Court of Appeal were not wrong in sticking to the then existing sentencing regime. However, the Review Tribunal revised the sentences so that the Petitioners became entitled to “*la peine la plus douce*” under the Misuse of Drugs Act 2016 which provided an indicative minimum sentence of 15 years imprisonment.

[25] The MODA 2016 did away with the then controversial mandatory minimum sentence regime and replaced the same by indicative minimum sentences. This Court is being asked to make a determination on provisions which no longer exist. Further it seems that learned counsel for the Petitioners has been selective in her interpretation of *Ponoo*. The Court of Appeal maintained in *Ponoo* that not all mandatory sentences are unconstitutional. As per the Seychelles Court of Appeal:

“It cannot be gainsaid that not every mandatory or mandatory minimum penalty prescribed by legislation breaches the constitutional principle of the separation of powers, as an encroachment by the legislature on judicial power...

...In other words, Parliament had the constitutional right to impose a mandatory minimum as a general principle for reasons that it is best able to decide and for which legal fiction has given Parliament unlimited wisdom. However, Parliament could never envisage that a court of law would feel bound to say: "If this Court convicts you, your sentence will be the one which Parliament has written down for you in advance as a general principle; it matters little what the facts are and your personal circumstances are!" The appellant has his constitutional rights. The power of Parliament as well as the power of the Courts stop where the constitutional rights of the citizen begins. That is the whole concept of

constitutionalism”.

The apex Court has obviously addressed and settled the controversy of mandatory sentences. We also hold the view that MODA as it is now does not violate article 19(1) of the constitution.

[26] Considering cases of similar nature and gravity referred to by learned counsel for the Petitioners, we agree that the sentences are rather severe and on the high side. However it cannot be said that the Review Tribunal were bound by the mandatory minimum sentence regime or that the sentences as now reduced are patently unnecessary, rejected by society or were imposed in arbitrary fashion. Further, we are of the view that the amount of drugs and the number of years’ imprisonment in themselves are not enough to establish cruel, inhuman or degrading treatment or punishment.

[27] In the case of *Skinner v. Oklahoma, 316 U.S. 535 (1942)* the following principle was elucidated in respect of the doctrine of equal protection of the law:

“When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment.”

We sometimes refer to this right as everyone being subject to due process. In this case the Petitioners were tried in the Supreme Court, exercised their right of appeal to the Court of Appeal. Learned counsel for the Petitioners does not contend that the trial and appeal process were unfair or discriminatory against the Petitioners. Learned counsel argued that the sentences imposed were disproportionate and despite the reduction by the Review Tribunal, still harsher than other convicts charged with similar or more serious offences.

[28] In the case of *Bouchereau & another v Superintendant of Prisons & another (SCA 01/2013) [2015] SCCA 3 (17 April 2015)* Twomey J. A stated in respect article 27 of the constitution:

“In this regard we endorse the findings of the Constitutional Court that the right to equal protection translates into the State treating an individual in the same manner as others in similar conditions and circumstances. A distinction or classification is constitutional if it has a rational basis or a legitimate state objective. Discrimination or classification based on race, colour, gender or status is generally suspect and will be strictly scrutinised by the court as will classification that interferes with rights protected under the Charter. However, where the discrimination or classification has a rational basis or where the state has a rational interest in making the distinction then the qualification will pass the Court’s scrutiny”.

Sentencing is not a calculation with mathematical precision. Each judge is and should be able to apply the sentencing principles that judge deems proper and applicable to each specific case. As long as the sentence is within the parameters of the law and does not violate the provisions of article 16 (cruel, inhuman or degrading treatment or punishment as expounded above) it cannot be said that there has been violation of article 27 of the constitution.

[29] In the actual case we are of the view that although the Petitioners’ sentences are on the severer side than those in the cases referred to by learned counsel for the Petitioners, it cannot be said that such disparity was a result of the Petitioners not having been afforded equal treatment or protection before the law.

[30] In respect of article 31(d), there is no question that a sentence of imprisonment would inevitably separate the families of the convict. Learned counsel for the Petitioner argued that separating the Petitioners from their minor children for 20 years is a violation of article 31(d). She submitted that by the time the Petitioners are released all their children would be in their twenties or older. In response, the Respondent in addition to referring the Court to the case of *M versus The State & another* [supra] maintained that the deprivation that results upon the imprisonment of a convict is not a violation of article 31(d) as such separation is the consequence of a lawful court process and decision. As such it is a judicially recognised circumstance which is allowed under article 31(d).

[31] We take the view that if article 31(d) was to be interpreted so as to be an absolute guarantee that the interests of a child should override all other interests including the legitimate interest of society at large, it would be a complicated if not impossible task for a court to impose a sentence of imprisonment upon a serious offender who is the primary caregiver to minor children. We do not think that this is what article 31(d) intended. As stated by Sachs J. in M versus The State & another:

“No constitutional injunction can in and of itself isolate children from the shocks and perils of harsh family and neighbourhood environments. What the law can do is create conditions to protect children from abuse and maximise opportunities for them to lead productive and happy lives. Thus, even if the State cannot itself repair disrupted family life, it can create positive conditions for repair to take place, and diligently seek wherever possible to avoid conduct of its agencies which may have the effect of placing children in peril. It follows that section 28 requires the law to make best efforts to avoid, where possible, any breakdown of family life or parental care that may threaten to put children at increased risk. Similarly, in situations where rupture of the family becomes inevitable, the State is obliged to minimise the consequent negative effect on children as far as it can”.

[32] In the same case Madala J. cited Murray J who stated in Hodder v The Queen (1995) 15 WAR 264 at 287 (as quoted in S v The Queen 2003 WL 23002572 (WASC), [2003] WASCA 3):

“Where serious offences are committed, it is inevitable that more severe punishment will be involved and that will be expected in almost every case to cause hardship to innocent persons associated with the offender and the commission of the offence, as victims or otherwise. It is right then that only in an exceptional case, quite out of the ordinary, should the hardship which a proper sentencing disposition will occasion to innocent third parties be allowed to substantially mitigate the court’s sentencing disposition. The court should not lose sight of the fact that the hardship occasioned by the sentencing process is, in truth, caused by the offender who commits the offences and visits upon himself or

herself the punishment of the court. Even so, the court should ... be prepared to drawback in mercy where it would, in effect, be inhuman to refuse to do so.”

[33] It is our finding that both the trial judge in mitigation and the Court of Appeal considered the family circumstances of the Petitioners. As repeated by the Court of Appeal in paragraph 68 of its judgment:

“The trial judge had stated in his Sentencing Order: ‘In this instant case learned counsel for the accused in mitigation specified the family circumstances of both the accused and moved the court for a social service report to support the facts stated by him. The offenders are not minors or elderly persons and the prosecution has not challenged the family circumstances mentioned by learned counsel for the accused. As these circumstances have not been challenged I will proceed to accept them and therefore the necessity of calling for a social service report does not arise. Other than the family circumstances and the fact that both accused are first offenders as submitted by learned counsel for the accused, I see no other facts or special circumstances that could be considered in mitigation for both accused.”

[34] We admit that the actual record of the words employed by learned counsel in mitigation have not been placed before this Court. Nevertheless, it is obvious that learned counsel for the Petitioners, the trial judge and the judges of the Court of Appeal addressed their minds to the family circumstances of the Petitioners. Be that as it may, this Court’s mandate is not to review the decision of the trial or appellate courts but rather to determine whether the trial judge in sentencing or the Court of Appeal violated the Petitioners’ right under of article 31(d) of the constitution.

[35] We are of the view that judicially recognised circumstances, which include the imposition of a sentence of imprisonment, does not violate article 31(d) of the constitution. Furthermore, since the family circumstances of the Petitioners were in fact considered by the trial judge and on appeal we conclude that the constitutional right of the Petitioners under article 31(d) has not been violated by either Court.

[36] In respect of section 51(9) (d) of MODA 2016 the Petitioners did not contest its constitutionality but asked this Court to clarify the meaning of to “vary the sentence by reducing by any amount, the time remaining to be served in prison.” It must be noted that under article 130 of the Constitution, the jurisdiction of the Constitutional Court is to address contravention or risk of contravention of the Constitution and other matters relating to the application, contravention, enforcement or interpretation of the Constitution. Interpretation of laws would fall under the mandate of the Constitutional Court only where such interpretation is necessary to address an alleged contravention or risk of contravention or to determine whether a law or a provision contained in a law needs to be interpreted in order to determine a matter relating to the application, contravention, enforcement or interpretation of the Constitution. No provision of the Constitution is claimed to have been or likely to be violated by section 51(9) of MODA 2016. Furthermore section 51(10) of MODA provides the right of appeal to the Court of Appeal in respect of the application of section 51(9). The Court of Appeal would be the proper forum to interpret section 51(9).

[37] Consequently in respect of the Petitioners’ prayers as set out in the Petition we find as follows:

- i. The sentences of 20 years imprisonment although severe in nature did not contravene article 16 of the constitution and are not inconsistent with the obligations of Seychelles under the United Nations Covenant on Civil and Political Rights and the International Convention Against Torture and other Inhuman, Degrading Treatments and Punishment.
- ii. The Petitioners’ right under articles 16, 27 and 31(d) has not been violated by the trial or appellate Courts in respect of proportionality of sentences.
- iii. Since the Misuse of Drugs Act 1995 has been repealed and replaced by the Misuse of Drugs Act 2016 which only provides for indicative minimum sentences there is no mandatory sentencing regime. Article 19(1) has not been violated. This prayer is therefore misconceived.
- iv. No other right of the Petitioners under articles 16, 27 and 31(d) has been contravened.

v. As there is no claim that section 51(9) of MODA contravenes the Petitioners' constitutional right this prayer is not sustainable.

[38] We therefore dismiss the Petition in its entirety.

Signed, dated and delivered at Ile du Port on 7th July 2020.

GOVINDEN J.
(PRESIDING JUDGE)

DODIN J

ANDRE J