

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2023] CP013/2022

In the matter between

LAURA VALABHJI

(rep. by Samantha Aglae & France Bonte)

PETITIONER

AND

THE REPUBLIC

THE SEYCHELLES POLICE FORCE

THE ATTORNEY GENERAL

(rep. by Georges Thachett)

1ST RESPONDENT

2ND RESPONDENT

3RD RESPONDENT

Neutral Citation: *Laura Valabhji vs The Republic & Ors (CP13/2022) [29 November 2023]*

Before: G Dodin, M. Vidot and B. Adeline

Heard:

Delivered: 28 November 2023

RULING

Dodin J, Vidot J and Adeline J

[1] The Petitioner avers that she was arrested at the Prohibited Immigrant Centre at the Seychelles International Airport on the 18th November, 2021 by officers of the National Crime Agency UK acting under the instructions of the 2nd Respondent, the Anti-Corruption Commission upon her arrival to see her husband who had been arrested earlier and was being detained at the Centre. Her personal belongings including a laptop and 2 mobile phones were seized from the Petitioner. The Petitioner was then handcuffed and transported to Central Police Station in Victoria.

[2] The Petitioner avers that despite one accompanying officer instructing the other officer to drive into the station car park, the other officer refused and drove into the Gymnasium car park then had her walked in handcuffs through a small crowd to the station. The Petitioner avers that she was then moved to Perseverance Police Station but on 30th November, 2021, she was moved to Central Police Station where she was kept in solitary

confinement until 14th January, 2022 when she was moved to Montagne Posee Prison after the admission by the 2nd Respondent that the Central Police Station was not conducive for detainees.

[3] The Petitioner avers that the treatment she sustained and the condition of the cells at Perseverance and Central police stations violated her dignity, were inhuman or degrading and contrary to article 16 of the Constitution.

[4] The Petitioner further avers that the failure of the 1st Respondent to provide the Petitioner with proper detention facilities and conditions is contrary to the Mandela Rules and a violation of article 16 of the Constitution. The actions of the officers of the 2nd Respondent under the authority of the 1st Respondent denying the Petitioner her medical records and her medications is contrary to articles 16 and 27 of the Constitution.

[5] The Petitioner further avers that actions of the 2nd Respondent acting under the authority of the 1st Respondent in denying, causing difficulty and not facilitating the Petitioner to properly practise and observe her religion were contrary to articles 21 and 27 of the Constitution. The Petitioner avers further that the 1st Respondent allowing masked military men to escort her to court was contrary to their functions under article 163 of the constitution and violated her rights under articles 16 and 27 of the Charter.

[6] The Petitioner ventured in giving detailed accounts of several incidents which occurred both at Central Police Station and Perseverance Police Station including her being denied appropriate food in accordance with her religious conviction and conducive to her medical condition, the wearing of proper clothes and undergarments, threats by the investigating officers and other detainees as well as the lack of facilities in respect of personal and general hygiene and issues affecting both her physical and mental wellbeing.

[7] The Petitioner prays the Constitutional Court for the following remedies. To:

“i). *Interpret The Charter in such a way as not to be inconsistent with any international obligations relating to human right and freedoms, particularly the International Covenant on Civil and Political Rights, the*

Convention against Torture, Cruel, Inhuman and Degrading Treatment and Punishment, and other related international human rights instruments.

ii) Interpret The Charter in line with Article 48 (a to d) of the Constitution.

iii). Order that this case shall take 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).

AND The Petitioner further Prays This Honourable Court to be pleased to:

a). Declare that the Petitioner rights above mentioned have been contravened.

b). Declare that the acts and omissions of 1st and 2nd Respondents above-mentioned contravened the Petitioner's rights.

c). 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.

d). Make such additional order under this Constitution or as may be prescribed by law to give effect and to enforce the Petitioner's fundamental rights.

e). Order the 1st and 2nd Respondents to pay the Petitioner the sum of SCR 1 million each as compensation for the violations of her rights.

f). 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.

g). *The whole with cost of this Application.*” [Sic]

[8] The 1st and 2nd Respondent raised preliminary objections to the Petition pursuant to Rule 9 of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitutional) Rules 1991. Learned counsel for the Respondents also submitted that the objections are not being made on behalf of the 3rd Respondent who appears as *amicus curiae* and that should there be conflict or potential conflict between the position of the 1st and 2nd Respondents as against the 3rd Respondent, then the Attorney-General would take the decision for appointment of a separate counsel for the 3rd Respondent.

[9] This situation has been considered in many previous constitutional cases including the case of *Valabhji v The Republic & Ors CP 04/2023* (ruling delivered 21 September, 2023) where the Court stated the following:

*“In the case of *Umarji & Sons (Pty) LTD v Government of Seychelles & Ors (CP 04/2016) [2017] SCCC 3 (30 March 2017* which was referred to by the Petitioner in her submission, the Court stated thus:*

“...we are convinced that the position of the Third Respondent under rule 3 (3) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules is that of an amicus curiae. However, as the principal legal adviser to the Government of Seychelles he has the right to defend the Government of Seychelles when there is no conflict of interest between the position he will be taking up as amicus curiae and in relation to the defence he will be raising for the Government.”

In this case we take the same opinion that since the 3rd Respondent has not taken a position in respect of the Petition, there is no conflict between the position of the 1st and 2nd Respondents and the 3rd Respondent. Therefore we can proceed with this hearing on

the preliminary objections as one between the Petitioner and the 1st and 2nd Respondent only

[10] The Objections raised by the 1st and 2nd Respondents are:

- i. Petition is time-barred;
- ii. The Petition is not properly particularised; and/or
- iii. The Petition fails to disclose an arguable claim against any or all of the Respondents;

[11] On the objection that the Petition is time-barred, the 1st and 2nd Respondents submitted that Rule 4(1) of the Rules provides that any petition must be brought within three months of the date of the alleged contravention. The Respondents submitted that the Petition is time-barred for the following reasons:

- a. Each of the pleaded points raised by the Petitioner relate to her detention by the 2nd Respondent between 18 November 2021 and 14 January 2022. As such, the Petition was filed some eight months out of time and no attempt has been made to explain such a delay or to seek an extension of time for the filing of the Petition.
- b. Furthermore, none of the grounds, as pleaded against Respondents in the Petition, demonstrates that any of the alleged contraventions are or can properly be argued to be continuing breaches of the Constitution of the Republic of Seychelles. The 1st and 2nd Respondents referred the Court to the case of *Talma v Michel [2010] SCCC 6*, in which the Constitutional Court held that a continuing contravention “is different from a contravention that is a complete transaction, for instance, holding a person in custody beyond the permitted period of 24 hours without being produced before a court of law. If he is held for 3 days and then released, the contravention is complete and is not continuing.”
- c. The 1st and 2nd Respondents further referred the Court to the cases of *Mikael Esparon v Electoral Commission & Ors [2022] SCSC 1*, *Dhanjee v Michel SCSC*

CP03/2004, and Darrel Green v Seychelles Licensing Authority and Government of Seychelles CA 43/1997 in support of their submissions.

[12] On the objection regarding lack of particularisation, the 1st and 2nd Respondents submitted that rule 5(1) of the Rules requires that any petition must contain a concise statement of the material facts and refer to the provision of the Constitution that has been allegedly contravened or is likely to be contravened or in respect of which the application, enforcement or interpretation is sought. The 1st and 2nd Respondents submitted that the Petition “*is not the model of clarity and not only fails to set out the material facts in a concise manner, but also fails refer to the specific provisions of the Constitution that are alleged to have been contravened or to properly particularise the alleged contraventions by reference to the relevant provisions of the Constitution*”.

[13] The 1st and 2nd Respondents submitted that the Petitioner sets out a “*shopping list*” or “*scattergun*” averments and factual allegations in under the heading “*Particulars of the Contravention*”. The 1st and 2nd Respondents argue that none of these relates back to the alleged contraventions, nor provides any proper basis for the alleged contraventions. The 1st and 2nd Respondents submitted that the failure to properly plead to specific contraventions of the Constitution and to demonstrate how, in respect of each of the averments contained in paragraph 20 of the Petition the Petitioner’s fundamental rights have been interfered with, this Petition is not in accordance with the procedural requirements of a petition under the Rules.

The 1st and 2nd Respondent further submitted that whilst rule provides the Court with the discretion to extend time in the present matter, no application to extend time has been filed by the Petitioner and, in the Respondents’ submission, even if application for leave were to be filed at this stage, the Petitioner would not be able to demonstrate any sufficient reason to explain the delay.

[14] On the objection in respect of arguability the 1st and 2nd Respondents submitted that in the recent case of Lesperance v Bastienne & Ors [2022] SCSC 4, this Court considered the question of arguability, relying on the case of Airtel (Seychelles) Ltd v Review Panel of the National Tender Board & Anor [2021] SCCA 36, which in turn cited the decision of

Lord Diplock in *Inland Revenue Commissioners v National Federation of Self Employed and Small Businesses Ltd [1982] AC 617*. The Court in *Lesperance* accepted that the issue of arguability is one that can be addressed by way of preliminary objections by the parties, noting by reference to the *Inland Revenue Commissioners* case that an arguable case is “one that stands a realistic chance of success”. The 1st and 2nd Respondent submitted that the grounds raised by the Petitioners are so inherently weak on their face that the Petition falls to be dismissed on the basis that it does not meet the threshold test of arguability.

[15] The 1st and 2nd Respondents moved the Court to dismiss the Petition in its entirety on the preliminary objections.

[16] The Petitioner in reply to the objections submitted on the issue of being time-barred that the Petitioner was in the detention of the 1st Respondent who acted through the 2nd Respondent from the 18th November, 2021 to 21st January, 2022, but remains in detention until now though through a different authority. The Petitioner submitted that the Petition is not time-barred for the reason that the violations which occurred caused the Petitioner psychological trauma which continues to this day.

[17] The Petitioner submitted that under rule 4(3) the Court may grant leave for the Petition to be filed out of time and that under rule 4(4) the Court may for sufficient reason extend the time for filing a Petition under rule 3. The Petitioner further referred the Court to rule 6 arguing that it is the Registrar who upon the filing a Petition verifies as to whether it complies with the rules and if the Registrar is of the view that it does not, then the Registrar places the Petition before that Constitutional Court for an order in respect of compliance with the rules. The Petitioner referred the Court to the cases of *Assemblies of God v Attorney-General CP 6 of 2019*, *Parcou v Parcou SCAR109* and *Germain v R (2007) SLR 25* in support of the proposition that dismissal of a Petition for non-compliance with the rules is not automatic but is subject to the discretion of the Court.

[18] The Petitioner further submitted that the reason the Petition was filed at the time she did was because the Petitioner was not able to file it as she was dealing with her own trauma and undergoing counselling as well as she was regularly being denied access to counsel

or visit to counsel was restricted to just 5 minutes. The Petitioner submitted that she had also been denied access to her laptops which had been seized and which to date have not been returned. Hence the unlawful acts of the 1st and 2nd Respondents are continuing acts which are in violation of the Petitioner's rights until today. The Petitioner referred the Court to the cases of Assemblies of God & Anor v Michel & Ors CC2 of 2010 and Dubois & Ors v President of the Republic (2016) SLR 553 in support of her submission.

- [19] On the issue of particularisation of the Petition, the Petitioner submitted that the Petition has been particularised and each and every contravention relating to her arrest, conditions of detention and violations has been set out and supported with exhibits attached to the Petition and Affidavit. The Petitioner further submitted that once she had complied with rule 5(1), the burden shifts to the Respondents to prove that there has been no violations.
- [20] In respect of arguability, the Petitioner submitted that the Petition sets out a *prima facie* contravention of articles 16, 21 and 27 of the Charter and all circumstances that have given rise to the contraventions. The Petitioner submitted that once a *prima facie* case has been made out the Court should proceed to hear the Petition on the merits. The Petitioner referred the Court to the cases of Chow v Attorney General & Ors [2007] SCCA 2 2007, Mellie v Government of Seychelles & Anor SCA 3 of 2019 [SCCA 40 (16 December 2019), Mancienne Civil Appeal no 15 of 1996 and Morin v Minister for Land Use [2005] as well as Dhanji v Michel (suprs), in support of her submission.
- [21] The Petitioner concluded that based on her submission, the Respondents' preliminary objections are frivolous and vexatious, calculated to further deprive the Petitioner of her right under article 46(1) of the Constitution and the Respondents are simply looking for an easy way out and not concerned with addressing the violations of the Charter complained of.
- [22] Rule 4 of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules states:

“4. (1) Where the petition under rule 3 alleges a contravention or a likely contravention of a provision of the Constitution, the petition shall be filed in the Registry of the Supreme Court—

(a) in a case of an alleged contravention, within 3 months of the contravention;

(b) in a case where the likely contravention is the result of an act or omission, within 3 months of the act or omission;

(c) in a case where the likely contravention arises in consequence of any law, within 3 months of the enactment of such law.

(2) Where a petition under rule 3 relates to the application enforcement or interpretation of any provisions of the Constitution, the petition shall be filed in the Registry of the Supreme Court within 3 months of the occurrence of the event that requires such application, enforcement or interpretation.

(3) Notwithstanding subrules (1) and (2), a petition under rule 3 may, with the leave of the Constitutional Court, be filed out of time.

(4) The Constitutional Court may, for sufficient reason, extend the time for filing a petition under rule 3.”

[23] The relevant provisions of rule 6 of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules state:

“6. (1) Where a petition which has been presented fails to comply to with the Rules, the Registrar of the Supreme Court shall submit the petition for an order of the Constitutional Court.

(2) The Constitutional Court shall hear the petitioner before making an order under subrule (1).”

[24] Rule states that:

9. The respondent may before filing a defence to the petition raise any preliminary objection to the petition and the Constitutional Court shall hear the parties before making an order on the objection.”

[25] The Petitioner filed her on 12 December, 2022. Since the Petitioner has not filed for leave no explanation was given in respect of the reasons why the Petition was filed in December 2022. The Petitioner argued that the violations complained of are continuing violations which have not been addressed and referred to the fact that her laptops have still not been returned to her. Hence if the violations are considered to be continuing contraventions as the Court as defined in the case of *Talma & Anor v Michel & Anor* (supra) the Petitioner would not be time-barred but if the violations were completed acts of violation, then the Petitioner had 3 months to file the Petition at the completion of the contraventions.

[26] We find that the contraventions complained of were contraventions allegedly perpetrated whilst the Petitioner was being arrested and whilst the Petitioner was being held at Central Police Station and at Perseverance Police Station. According to the Petition, the Petitioner was held at Perseverance Police Station and Central Police Station until she was moved to Montagne Posee on the 14th January, 2022. In the Petitioner’s reply to the objections, the Petitioner submitted that she was kept at Perseverance Police Station and Central Police Station from the date of her arrest in November, 2021 until 21st January, 2022 when she was moved to Montagne Posee. Since the Petitioner has not raised any contravention in respect of her time to date at Montagne Posee Prison, the only contention supporting the Petitioners argument that the violations are continuous is that her laptops have still not been returned to her. We find that since the possession of the laptops is not an issue for determination by this Court but an issue for the trial Court, hence this argument does not carry any significant weight as to whether the violations are continuing and therefore not time-barred.

[27] The Petitioner’s other argument is that she was not in her normal state of mind and suffering from stress and anxiety and undergoing counselling. There is at present no evidence to that effect before the Court to prove these assertions. We therefore cannot conclude that the Petitioner only discovered the contraventions or realised that there have been violations of her rights after she was treated and recovered from the trauma which made her incapable of making a Petition to the Constitutional Court until December, 2022.

[28] Furthermore, the Petitioner could have applied for the leave of the Court to file the Petition out of time. Such application for leave could have been supported by relevant affidavits supporting the alleged trauma and state of mind which prevented the Petitioner from filing a timely Petition. Since leave was not applied for, the Court cannot grant on its own volition, what was not sought by the Petitioner.

[29] We are in agreement with the 1st and 2nd Respondents that this case can be distinguished from the case of *Assemblies of God v Attorney General* (Supra), in which the Court dismissed the preliminary objection in respect to time prescription as the violation was continuing one. The Petitioners’ case was still ongoing when the Petition was filed. In that case the Court made the following finding:

“[25] In the current matter, the last correspondence regarding the appeal was sent to the Petitioner on 25 August 2014. The Ministry of Land Use and Housing wrote to the Petitioner informing them that the appeal had been considered and forwarded to the Appeal's Advisory Committee for further processing. It is common cause that to date, the Petitioner has not received the outcome of that appeal. The appeal process has therefore not been finalised yet, since there is no decision.

[30] *[26] Accordingly, the Petitioner was correct to rely on the reasoning in Talma. Since the decision in the appeal proceedings has not yet been given, the potential breach of their rights is still*

continuing. Thus, following Talma, the second objection is dismissed. The petition is not time barred.”

[31] In the present case, the situation is different in that the contraventions claimed occurred up to 14th or 21st January 2022 at Central Police Station and Perseverance Police Station. The Petition should have been filed by 21st April, 2022. The Petitioner could have sought leave to file out of time with supporting reasons. That was not done. The time limit imposed by the rules cannot be set aside except for good reason. If the Petitioner had come to this Court with application for leave to file the Petition accompanied by supporting proof justifying the late filing, then maybe the principles set out in Pool could have applied. In Pool v Government of Seychelles [2013] SCCC the Court stated:

“Rule 4(1) provides a mandatory time limit, but where the petitioner became aware of the alleged act or omission which constitutes the contravention of the Constitution only on a later date, the 90-day period would commence from that date.”

[32] We agree with the Respondents submission with references to the cases of Mikael Esparon v Electoral Commission & Ors and Dhanji v Michel (supra). As much as we would wish to test the violations claimed against the Constitutional provisions, rules are set not for the Court to become slaves to rules but to ensure that Petitioners are diligent and not rely on the Courts to grant leave or exceptions to the rules as a matter of course. In certain instances, such approach may be to the disadvantage of litigants but the Court must also ensure that proper procedures are only departed from for good reason and so that justice may prevail.

[33] As a consequence of our above findings, we find the Petitioner’s Petition to be in breach of rule 4(1) and since the Petitioner has filed no application under rule 4(4), the objection that this Petition is time-barred succeeds.

[34] Considering this finding, we do not find it necessary to address to other grounds of objection raised by the 1st and 2nd Respondent.

[35] This Petition therefore cannot proceed and is dismissed accordingly.

[36] We make no order for cost.

Signed, dated and delivered at Ile du Port on 28th day of November 2023.

G Dodin

Judge (Presiding)

M. Vidot

Judge

B. Adeline

Judge