

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 266/2016**  
**(arising in MC 86/2016 and MC 87/2016)**

**[2016] SCSC 615**

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**LINYON DEMOKRATIK SESELWA**  
**(Rep. by Mr. Roger Mancienne)**

Petitioner

versus

**MR. HENDRICK GAPPY & ORS**  
Respondents

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Heard: 24 August 2016  
Counsel: Mr. D. Derjacques and Mr. D. Cesar for petitioner  
Ms. S. Aglae for respondent  
Delivered: 24 August 2016

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**RULING**

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Karunakaran J

**[1]** This is the ruling in respect of the application made by LDS (Linyon Demokratik Seselwa) for contempt proceedings against the Electoral Commission, comprising its Chairman Mr. Hendrick Gappy, Mr. Beatty Hoareau, Dr. Marie-Therese Purvis, Mr. Gerard Lafortune and Mr. Bernard Elizabeth.

- [2] I believe I need not go into all the details which gave raise to this application for contempt proceedings. I would say, when we deal with contempt issues in matters of this nature, since the magic of checks and balances among three branches of the State and the Rule of law which constitute the bedrock for stability in democracy, it is pertinent to remind ourselves of what Lord Denning had to say in *Gouriet versus Union of Post Office Workers, 1977, 1 Queensbent*, at page 72, which I quote; “To every subject in this land, no matter how powerful, I would use Thomas Fuller’s over 300 years ago ‘*You never so high, the law is above you*’.”
- [3] It is truism that in democracy laws are voluntarily observed by authorities and citizens whereas in a dictatorship laws are enforced. What is important is the Rule of Law. Rule of law in a democracy must be maintained by inner restraints and self-discipline by authorities who exercise power over its citizens. The citizens and authorities should respect the law and the lawful orders of the Court. The bottom line is the Rule of law which must be maintained at all cost. Without Rule of law democracy loses its meaning.
- [4] Indeed, the determination of whether contempt is civil or criminal depends on the underlying purpose of the contempt ruling. The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised including the nature of the relief and the purpose for which the sentence is imposed.
- [5] The purpose of civil contempt is to compel the defendant to do thing required by the order of the court for the benefit of the complainant. The primary purpose of criminal contempt are to preserve the Court’s authority, and to punish for disobedience of its orders. If it is for civil contempt the punishment is remedial or compensatory and for the benefit of the complainant but if it is for criminal contempt the sentence is punitive to vindicate the authority of the Court vide Court of Appeal decision in *Miller vs. Miller* the United States page 375443 and 652.
- [6] Having said that I note a Judge hearing any contempt issue must warn himself that he must find before deciding upon conviction for contempt whether Civil or Criminal, that the inculpatory facts pleaded by the alleged contemtor were incompatible with the innocence and incapable of explanation upon any other reasonable hypostasis other than

guilt. Having said that in this particular case, I note that inculpatory facts pleaded by the alleged contemtor seems to be compatible with innocence due to ignorance in understanding the nature and enforcement of lawful orders made by the Supreme Court particularly in exercise of its supervisory jurisdiction confirmed by the constitution. Ignorance is preferable to error and he is less remote from the truth who believes nothing than who believes what is wrong. When knowledge and understanding, remove the ignorance the alleged contemtor in the matter immediately undertook under oath to comply with the orders of the court which he has done now, at the earliest time possible and at the first opportunity available.

- [7] In the circumstances justice demands that the contempt proceedings instituted by the complainant in this matter should be set aside and the alleged contemtor should be completely discharged. I do so accordingly and he is set free from this contempt proceedings. At the same time this gentlemen and other members of the EC might have a professional career and good prospect of future employment in Seychelles or elsewhere. In that respect I make further orders to the Registrar of the Supreme Court as follows;
- [8] I order the Registrar of the Supreme Court to seal the file in respect of these contempt proceedings so that it will not enter any Criminal or Personal character records maintained by any authority, Police or Security Agencies locally or required by anyone in this country or elsewhere for publication or for any other purpose whatsoever, without the that order from this Court.

Signed, dated and delivered at Ile du Port on 24 August 2016

D Karunakaran  
Judge of the Supreme Court