

**IN THE SEYCHELLES COURT OF APPEAL**

**SEYCHELLES GOVERNMENT  
ATTORNEY GENERAL**

**APPELLANT**

versus

**MRS ANGOR CHANG LAI SENG**

**RESPONDENT**

Civil Appeal No: 39 of 1998

*[Before: Ayoola, Venchard & Adam, J.J.A]*

.....  
Ms. L. Pool for the appellant  
Mr. P. Boulle for the respondent

**JUDGMENT OF THE COURT**  
***(Delivered by Ayoola J.A)***



This is an appeal by the Seychelles Government ("the Government") and the Attorney General from the decision of the Constitutional Court (Amerasinghe & Bwana JJ, with Perera, J. dissenting) granting leave to the petitioner (now referred to as the "Respondent"), on her application, to amend her petition.

The decision arose from an application by the respondent to amend her petition which had been brought pursuant to Article 130(1) of the Constitution of the Republic of Seychelles 1993 ("the Constitution"). Article 130(1) of the Constitution provides that:-

"A person who alleges that any provisions of this Constitution, other than a provision of Chapter III, has been contravened and that the person's interest is being or is likely to be affected by the contravention may, subject to this article, apply to the Constitutional Court for redress."

The Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules, 1994 (“the Constitutional Court Rules”) provide that an application to the Constitutional Court in respect of matters relating to the application, contravention, enforcement or interpretation of the Constitution shall be made by petition accompanied by an affidavit of the facts in support thereof: (Rule 3 (1) ) and that all persons against whom any relief is sought in a petition under sub-rule (1) shall be made a respondent thereto: (Rule 3 (3)). Sub-rule (1) of rule 4 provides inter alia that where the petition alleges a contravention of a provision of the Constitution the petition shall be filed in the Registry of Supreme Court within 30 days of contravention. A petition under rule 3 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, and where the petitioner alleges a contravention or likely contravention of any provision of the Constitution, the petition shall contain the name and particulars of the person alleged to have contravened that provision or likely to contravene that provision, and, in the case of an alleged contravention also state the date and place of the alleged contravention: Rules 5(1) and (2). Rule 5(3) of the Constitutional Court Rules provides that:

“The Court shall not permit an amendment of a petition which seeks to include any new matter not pleaded in the petition.”

It is right to observe at this stage that the Constitutional Court is empowered by clause 4 of Article 130 of the Constitution upon the hearing of an application under Article 130(1) to declare any act or omission which is subject of the application to be a contravention of the Constitution and to 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.

In the respondent’s petition the material facts stated, in summary, are that after coming into force of the Constitution, the respondent applied under Section 14(1) of Part III Schedule 7 to the Constitution in respect of her property,

registered as Parcel No. V5286, which was compulsorily acquired by the Seychelles Government in 1987. In October 1997, the Minister of Community Development wrote to the respondent's son that the property was not to be returned. The contravention alleged was that: "As a result of the failure of the Minister to negotiate in good faith and give reasons, the Petitioner's right under Section 14 of Part III of Schedule 7 to the Constitution has been violated." The respondent prayed for a declaration that the decision of the Minister was a violation of her right under the said section and for an order of certiorari quashing the decision of the Minister. She sought an "interim injunction" restraining the Government from transferring the property to a third party until negotiations under Section 14(1) of Part III of Schedule 7 are undertaken and completed.

By the amendment to the petition granted, the respondent introduced new paragraphs as follows:

"7. On the 17<sup>th</sup> day of October 1997 the 1<sup>st</sup> defendant sold parcel No. V5286 to the 3<sup>rd</sup> defendant."

"8. At the time of the sale mentioned in paragraph 7 above the 3<sup>rd</sup> defendant was aware of the fact that Parcel No. V5286 had been compulsorily acquired by the 1<sup>st</sup> defendant and that the Petitioner had lodged an application for the return of Parcel No. V5286 in virtue of his Constitutional rights under Part III of Schedule 7 to the Constitution.

"9. The action of the 1<sup>st</sup> and 3<sup>rd</sup> defendant (sic) mentioned in paragraphs 8 and 9 above, are unlawful and unconstitutional as it has deprived the Petitioner of her constitutional right to negotiations under Part III of Schedule 7 of the Constitution."

In the amended petition the relief for interim injunction was dropped and a declaration that the sale of the property to the 3<sup>rd</sup> respondent was



unconstitutional, and null and void was substituted. It may well be that, as noted by Amerasinghe, J., the amendment was instigated by the response of the Government to the petition, inter alia, that it was not the owner of the land and had no power to transfer it back to the respondent. But as rightly observed by Amerasinghe, J in his judgment, that is of little moment because what should concern the Court on the application for leave to amend the petition was whether the amendment introduced any new matter not pleaded in the petition.

Amerasinghe, J with whose decision Bwana, J agreed, stated the reasons for his decision to grant leave to amend in these words:

“On an examination of the petition the matters pleaded arise on the alleged contravention of the provisions of Section 14 of Part III of Schedule 7 of the Constitution. The said section provides for negotiations undertaken by the State with a view to transferring back the land acquired. In the petition it appears that a specific order was sought to ensure that no impediment will arise to prevent the granting of the reliefs provided by the Constitution. Hence the petitioner has sought the issue of an injunction as prayed for.”

“It is my considered opinion that all the amendments sought not only arise from the fact disclosed in the answer of the 1<sup>st</sup> Respondent but also to provide a proper and just determination of the issues raised by the matters pleaded by the petitioner.”

For his part Perera, J. was of the view first, that “an amendment of the petition as proposed goes beyond the disclosing of the present factual position and would change the nature of the application before this Court from one in respect of the application, enforcement or interpretation of the Constitution, to one of civil action, secondly, that the respondent should have amended the petition within 30 days from the date of the sale, that is 17<sup>th</sup> October, 1997 if the petition was to maintain its character as a Constitutional Petition, thirdly, that

the only relief the Supreme Court could grant on the petition if it succeeded was a declaration as to whether the petitioners' constitutional right under Part III of Schedule 7, has or has not been violated; and fourthly, that the petitioner has no remedy against the 3<sup>rd</sup> respondent (sic) until and when the Supreme Court made the declaration sought. Finally, Perera, J. expressed the opinion that:-

“The subject of the application is an alleged contravention of the Constitution and not a question as to whether the State had the capacity to dispose of the property to a third party. A bona fide purchaser for value cannot be added as a party in this matter.”

The two issues raised by the grounds of appeal on this appeal are (i) whether Amerasinghe and Bwana, JJ were right in finding that since the respondent sought an injunction to restrain the State from transferring the land to a third party she was unaware of the sale; and (ii) whether the amendment sought by the respondent included any new matter not pleaded in the petition. Of these two issues the second one raises the question that is decisive of this appeal.

Ms Pool, learned counsel for the appellants in an able and careful presentation, after noting that the Constitutional Court Rules contained no definition of “new matter”, the inclusion of which is prohibited by an amendment of a petition, drew aid from the Seychelles Code of Civil Procedure and the principles of law stated in Halsbury's Laws of England Vol. 37 para 70 (4<sup>th</sup> Ed) and enunciated in several decided cases to construe the meaning of the words “new matter”.

The principle is stated in Halsbury's Laws of England (supra) that: “An amendment should not normally be allowed if it would change the whole nature of the action.” Substantially the same principle has been enunciated in several of the cases cited by Ms Pool, namely: Harel & Or v Societe Jean-Claude Harel (1993) MLR 253; Lamb v Beazley No. (1988) (1) ZLR 77 (HC 77; Khan v Roshaw [1965] E.A 289; Eastern Bakery v Casterlino [1958] EA 462. The principle has been stated in various ways. Some decisions tend to imply that amendment



would only be refused if it would introduce “totally different, new and inconsistent case” while others suggest that the court will refuse to allow an amendment which would conveniently be the subject of a fresh action. (See Joomun v Kissoodhary 1977 MR 256, 259). Section 146 of the Seychelles Code of Civil Procedure also prohibited amendment which would “convert one suit of one character into a suit of another and substantially different character.”

Useful as these authorities may be as aid to interpretation, it must nevertheless be borne in mind that rule 5(3) of the Constitutional Court Rules is not a codification of the principles enunciated in them. Rule 5(3) is to be construed on its own terms and in the context of the nature of the proceedings for which the Constitutional Court Rules were made. “New matter” in rule 5(3) does not mean “new facts.” “New facts” may be introduced by amendment of the petition where it does not alter the “matter” already before the Court. When “material facts” are pleaded pursuant to rule 5(1), those facts, in contested case, raise issues for determination in the case in order for the Court to decide, in the case of allegation of contravention, whether in terms of article 130(4)(a) of the Constitution the act or omission which is the subject of the application amounts to a contravention of the Constitution. Where new facts are pleaded which go beyond merely establishing that the act or omission stated in the original petition amounts to the contravention alleged but is tantamount to an alteration of the nature of the contravention alleged or the act or omission which the court is asked to hold constitutes an alleged contravention or would occasion a dispute as to rights and interests otherwise vested in a third party, such new facts would raise ‘a new matter’ not pleaded in the petition.

In the present case the new facts would involve the investigation of the circumstances of the acquisition of the property by the Democratic Party and the question whether, if there was a contravention of the Constitution by reason of the failure of the Government to negotiate with the respondent as alleged, such contravention would necessarily affect the title of the Democratic Party to the property. These are but a few of the fresh questions that may be engendered by the facts introduced by the amendment. The proceedings would depart from one merely to try the specific allegation of contravention of the Constitution to one for the determination of dispute as to property rights in which contravention of the

Constitution becomes merely a ground for declaration of the nullity of the transfer of property. Proceedings under clause 1 of Article 130 of the Constitution are not designed for such purpose. The procedure sanctioned by the Constitutional Court Rules is a special procedure designed to ensure a speedy and uncomplicated machinery for determination of allegations of contravention of the Constitution and should not be diverted to other purposes.

We feel no hesitation in agreeing with Perera, J that the amendment sought should be refused and in holding that their Lordships of the Constitutional Court (Amerasinghe and Bwana, JJ) erred in granting the respondent leave to amend her petition.

The view must be expressed that the hearing of the petition has been made to suffer unnecessary delays by reason of the application for amendment which is unrelated to the merits of the real issues in controversy in the matter and that the sooner the hearing of the petition is proceeded with, the better.

Be that as it may, for the reasons which we have stated, the appeal is allowed without costs. The decision of the Constitutional Court granting leave to the petitioner to amend her petition and, though not sought by the petitioner, adding a new party to the proceedings, is set aside in its entirety. In lieu therefor the petitioner's application for leave to amend the petition is refused also without costs.


Dated this 4<sup>th</sup> day of **December** 1998.

  
E. O AYOOLA

**JUSTICE OF APPEAL**

  
L.E. VENCHARD

**JUSTICE OF APPEAL**

  
M. A. ADAM

**JUSTICE OF APPEAL**

