IN THE SEYCHELLES COURT OF APPEAL

CITRA HOAREAU APPELLANT

versus

THE GOVERNMENT OF SEYCHELLES
THE ATTORNEY GENERAL RESPONDENTS

Civil Appeal No: 42 of 1999

[Before: Pillay, De Silva & Matadeen, JJ.A]

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Mrs. A. Georges for the Appellant
Ms. L. Pool for the Respondents

JUDGMENT OF THE COURT

(Delivered by Pillay, J.)

This is an appeal against a unanimous decision of the Constitutional Court which struck out, with costs, the petition of the appellant who had alleged in paragraph 11 thereof that the provisions of Part III to Schedule 7 of the Constitution have been contravened in that, despite of her new right of action to compensation under the Constitution in respect of her land which had been compulsorily acquired by the first respondent in 1984, the first respondent had refused to negotiate with her, pursuant to Clause 14 of Part III to Schedule 7 of the Constitution.

The applicant had sought from the Constitutional Court –

> "(a) a writ of certiorari quashing the decision dated 15th May 1998 of the first respondent not to review the application of the petitioner

in the matter of the compulsory acquisition of parcel S1949;

(b) a writ of mandamus ordering the first respondent forthwith to review the application of the petitioner in the matter of the compulsory acquisition of parcel S1949 in terms of the provisions of Clause 14(1) and (2) of Part III of Schedule 7 of the Constitution."

The stand taken by the Constitutional Court for striking out the petition of the appellant is that the Court must first declare whether (a) the act or omission alleged by the appellant contravenes the Constitution or (b) any law or the provision of any law contravenes the Constitution, under Article 130(4)(a) or (b) of the Constitution, before proceeding further and granting the remedies of certiorari and mandamus under Article 130(4)(c). Since the appellant had not sought for a declaration under Article 130(4)(a) or (b), her petition is substantially defective and the Constitutional Court is deprived of its jurisdiction to hear the petition.

It is not in dispute that the appellant's cause of action, as is made clear by paragraph 11 of her petition, is grounded in Article 130(1) of the Constitution which reads as follows:-

"Any 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."

It is not also contested that in accordance with Article 8 of Schedule 2 to the Constitution:-

> "For the purposes of interpretation –
> (a) the provisions of this Constitution shall be given their fair and liberal meaning (the underlining is ours)"

Article 130(4) of the Constitution is as follows:-

> "Upon hearing an application under clause (1), the Constitutional Court may –
>
> (a) declare any act or omission which is the subject of the application to be a contravention of this Constitution;
>
> (b) declare any law or the provision of any law which contravenes this Constitution to be void;
>
> (c) 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."

It is quite clear, as correctly pointed out by learned Counsel for the appellant, that if the Constitutional Court interpreted disjunctively the provisions of Section 130(4)(a) and (b), there is no valid reason why paragraph (c) of that Section should not also be interpreted disjunctively,

especially in the absence of the word "and" after the semi-colon appearing after paragraph (b) of Article 130(4).

Given that a Constitution is to be interpreted fairly and liberally in the light of Article 8(1) of Schedule 2 to the Constitution, already cited, we have no hesitation in holding that paragraphs (a) to (c) of Article 130(4) of the Constitution must not be interpreted conjunctively as three alternative remedies are open to a petitioner who has a right of action under Section 130(1) of the Constitution.

The fact that a remedy under Article 130(4)(a) or (b) of the Constitution may be combined with a remedy under Article 130(4)(c) does not mean that in order to obtain a remedy under Article 130(4)(c), it must first be combined with a remedy under 130(4)(a) or (b).

Which brings us to the last submission made on behalf of the appellant. Learned Counsel for the appellant contended that implicit in her client's remedy under article 130(4)(c) for the writs of certiorari and mandamus to issue is a prayer for a finding by the Constitutional Court that the act or omission of the first respondent constitutes a contravention of the Constitution. We agree with the submissions of Learned Counsel.

What is essential, in our view, is the finding of the Constitutional Court with regard to the alleged unconstitutionality of the act and omission of the first respondent, not the declaration of the unconstitutionality of such act or omission.

Consequently, the Constitutional Court has erred in holding that it was necessary for the appellant to have prayed for a declaration of the unconstitutionality of the act of omission of the first respondent. Indeed the Constitutional Court seemed, in our opinion, to have latched on a mere technicality in order to strike out the petition of the appellant.

Since the appellant plainly had a right of action under Article 130(1) of the Constitution in that, according to her, the provisions of Part III to Schedule 7 of the Constitution have been contravened and her interests in the land which had been compulsorily acquired had been affected, she could, by petition, seek the remedies of certiorari and mandamus under Article 130(4)(c) of the Constitution without first seeking a declaration under Section 130(4)(a) or (b). Moreover, we fail to see how the Constitutional court could have been deprived of its jurisdiction to hear the petition since it had to determine whether in the first place there had been a contravention of the Constitution, as alleged.

For the reasons given, we allow the appeal, quash the judgment of the Constitutional Court and remit the matter to be heard on its merits by the Court. The first respondent is to pay both the costs of the Court below and those of this appeal.

A. G. PILLAY	**G. P. S. DE SILVA**	**K. P. MATADEEN**
JUSTICE OF APPEAL	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Delivered at Victoria, Mahe this 13th. day of ***April*** 2000.