

IN THE SEYCHELLES COURT OF APPEAL

MRS ANGOR CHANG LAI SENG

APPELLANT

versus

SEYCHELLES GOVERNMENT

1ST RESPONDENT

THE ATTORNEY GENERAL

2ND RESPONDENT

Civil Appeal No: 39 of 1998

[Before: Ayoola, P., Silungwe & De Silva, J.J.A]

Mr. P. Boulle for the Appellant

Ms. L. Pool for the Respondents



RULING OF THE COURT

(Delivered by Ayoola, P.)

This is an application by the petitioner, Mrs. Angor Chang Lai Seng, for special leave to appeal from an interlocutory decision of the Constitutional Court. The petitioner had lodged a petition before the Constitutional Court alleging that her rights under Section 14(1), Part III Schedule 7 of the Constitution have been contravened. The petition was accompanied by an affidavit by the petitioner and a second affidavit sworn to by the petitioner's son to which had been attached a document. The respondents filed a reply to the petition accompanied by affidavit and copies of relevant documents. The respondents raised an objection that the petitioner had no cause of action against the respondents.

The petitioner filed an "Answer to Defence in Limine Litis". In paragraph 6 of the Answer it was stated that:-

"The affidavit filed in support of the Defence in Limine Litis is inadmissible for the following reasons:-

- (i) It is totally irrelevant to the Defence in Limine Litis.

- (ii) It is against the law of procedure applicable to Defence raised in Limine Litis.
- (iii) It contains hearsay evidence.
- (iv) Affidavit evidence is in any event inadmissible in the hearing of the petition under the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules 1994 without leave of the Court under S.2(2) of the said Rules and Section 168 of the Seychelles Code of Civil Procedure."

The Constitutional Court rejected all the grounds on which the respondents raised a preliminary objection to the petition. The matter as far as the respondents' preliminary objection was concerned should have ended with the rejection of the grounds of objection. However, the Constitutional Court proceeded to consider at considerable length the 6th paragraph of the petitioner's answer to the defence in limine litis and particularly the 4th ground raised to the admissibility of the respondents' affidavit in support of the defence in limine litis. Perera, J regarded the petitioner's objection as one to the use of affidavit by the respondents as questioning "the propriety of adducing affidavit evidence at the hearing of a petition before this Court." (Emphasis ours). At the end of the day he concluded that:-

"On the basis of the settled practice therefore, this Court will as a rule determine issues that arise in the application, contravention, enforcement or interpretation of the Constitution on the basis of affidavit evidence and submissions of Counsel. Where the affidavits and counter affidavits conflict on a matter which falls under the jurisdiction of this Court, either party should make a written application to adduce oral evidence to resolve that conflict."

Juddoo, J came to the same conclusion in substance. The petitioner seeks leave to appeal stating in the proposed Memorandum of Appeal that the leave sought is from the whole of the decision made on 13th July 1990. It is evident, however, from the grounds of appeal, that the part of the decision complained about is that relating to the opinions expressed on the question whether or not at the hearing of the petition affidavit evidence would be admissible.

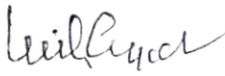
At the stage at which a decision was made by the Constitutional Court on 13th July 1999 the question submitted for the decision of the Court was whether or not the preliminary objection raised by the respondents had any merit or not. The decision of the Constitutional Court that the objection lacked merit disposed of that question. The respondents who are the only persons aggrieved by that decision have not appealed from the decision. The question whether or not the affidavit filed by the respondent in support of the Defence in *Limine Litis* is admissible or not is one raised as one of the grounds on which the petitioner sought to defeat the preliminary objection. Once the preliminary objection was over-ruled and rejected, in the absence of an appeal by the respondents, the question whether the Constitutional Court was right or wrong in its view as to any of the grounds on which the petitioner had sought to defeat the preliminary objection cannot be subject of an appeal since an appeal is from a judgment order or decision and not from reasons given by the Court for the judgment, order or decision.


If the Constitutional Court had confined its ruling to the issue before it, which was whether the preliminary objection was valid or not, perhaps the petitioner would not have contemplated an appeal from a decision in her favour rejecting the preliminary objection. The question which the Court proceeded to consider as to the form in which evidence to be adduced at the hearing of a petition should take, does not properly arise on a preliminary objection to the petition, raised on the ground that the petitioner did not have a cause of action.

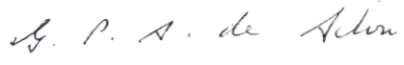
The comments of the Constitutional Court on questions which had not properly arisen at that stage of the proceedings and were of no relevance to the question whether the petitioner had a cause of action or not, cannot be regarded as "decisions". They were, at best, at that stage of the proceedings, academic opinions.

The petition had not been heard. It is at the stage of the hearing of the petition that the question could properly arise as to the form in which evidence could be adduced. The parties should be at liberty to raise such question at the hearing of the petition, if there is need, at the appropriate time when any or either of the parties seeks to adduce evidence by affidavit.

For these reasons, we refuse the application for special leave to appeal with costs to the respondents.


E. O AYoola
PRESIDENT


A. M. SILUNGWE
JUSTICE OF APPEAL


G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 3rd day of November 2000.