

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) ,A.Fernando (J.A) ,M. Twomey (J.A)
F. Robinson (J.A), L. Tibatemwa-Ekirikubinza (J.A)]

Constitutional Appeal SCA CP02& 05/2019 (Appeal from Constitutional Court Decision CP 01/2018)

Alexander Geers

Appellant

Versus

The Attorney-General

1st Respondent

The Minister for Home Affairs & Local
Government

2nd Respondent

The Attorney-General, Mr. Frank Ally

3rd Respondent

Heard: 06 December 2019

Counsel: Mr. J. Camille for the Appellant

Mr. S. Knights for the Respondents

Delivered: 17 December 2019

JUDGMENT

A.Fernando (J.A)

The Appeal:

1. The Petitioner and Respondents to Constitutional case numbered CC 01 Of 2018, have filed an Appeal and a Cross-Appeal respectively, against the judgment of the Constitutional Court dated 31st May 2019. In view of this, hereinafter the Petitioner will be referred to as the Petitioner-Appellant, and the Respondents, as the Respondent-Appellants in this judgment.

Judgment of the Constitutional Court:

2. In the majority judgment of the Constitutional Court the following orders had been made:
 - i. “The second respondent has a statutory duty to make and issue regulations under section 4 and 54(1) of the Misuse of Drugs Act;
 - ii. The Petitioner had failed to establish that the failure to make and issue regulations under the provisions in (a) constitutes a violation of the Charter.
 - iii. The second respondent is ordered to issue regulations within 24 months, which regulations will have prospective effect.” (verbatim)
3. In making this order the Constitutional Court had partly granted by its orders of (i) and (iii) referred to in paragraph 2 above, only the second prayer of the Petitioner-Appellant in his Petition filed before the Constitutional Court, namely, “Issue a writ of mandamus against the 2nd Respondent ordering her to immediately make regulations under the Misuse of Drugs Act 2016 to regulate the possession, use, sale, supply, prescription or other dealing in, or the manufacture or importation or exportation of, any controlled drug for medicinal or scientific purposes”.
4. The other three prayers of the Petitioner-Appellant, namely to make a declaration that the 1st Respondent’s failure to make the regulations referred to at paragraph 3 above is a contravention of the Constitution; to make an order on the 2nd Respondent to give the said regulations retrospective effect, to apply from the date the Misuse of Drugs Act came into operation; and to issue a writ of certiorari to curtail and stop the trial in Criminal Side No 27 of 2017, in Republic v/s Alexander Geers & ors; have not been granted by the Constitutional Court.

Grounds of Appeal of the Petitioner-Appellant:

5. The Petitioner-Appellant had filed the following grounds of appeal:
 - i. “The Honourable Constitutional Court erred in law in failing to find and hold that the Appellant’s right to a fair hearing, in accordance with Article 19 of the Constitution of Seychelles, was actual and likely and violated, in his trial, namely Criminal Side No 27 of 2017, before the Supreme Court of Seychelles.

- ii. The Honourable Constitutional Court erred in law in failing to find and hold that the violation of the Appellant's rights, the 2nd Respondents breach of her statutory duties and the law, and non-access to the regulations as per the Misuse of Drugs (Amendment) Act 2016, deprived the Appellant of an apparent and alternatively possible defence and therefore a right to a fair trial.
- iii. The Honourable Constitutional Court erred in law in failing to order that the new regulations to be made and passed by the Respondents, should have retroactive effect." (verbatim)

The Petitioner-Appellant by way of relief has prayed that the Constitutional Court judgment of the 31st of May 2019 be dismissed and be amended in part with costs for the Appellant in Seychelles Court of Appeal.

Grounds of appeal of the Respondent-Appellants:

6. The Respondent- Appellants in filing a Notice of Cross-Appeal has contended that the decision of the Constitutional Court judgment of the 31st of May 2019 "ought to be varied to the extent and in the manner and on the grounds set out" in their Notice of Cross-Appeal, namely that the Court of Appeal "set aside the order of mandamus issued by the Constitutional Court and find that there was no mandatory obligation on the 1st and 4th(sick) Appellants to make regulations under sections 4 and 54 of the Misuse of Drugs Act 2016 on the grounds that:
 - i. The learned Justice Burhan (the majority judgment) misapplied article 46(5)(c) of the Constitution of the Republic of Seychelles and issued a mandamus even though the learned judge found that there was no infringement on the Petitioner's rights under article 16, 18, 19, 24 and 29 of the Constitution.
 - ii. The learned Honourable Constitutional Court erred in law in finding that sections 4 and 54 of the Misuse of Drugs Act 2016 impose a statutory duty on the second respondent.
 - iii. The learned Honourable Constitutional Court misconstrued the words 'medical or scientific purposes' introduced in the Misuse of Drugs Act 2016 as being a material change in the legislative scheme of the Misuse of Drugs Act 1990.
 - iv. The learned Honourable Constitutional Court erred in law by finding that the regulations made under the Misuse of Drugs Act 1990 and later saved under the Misuse of Drugs Act 2016 through savings provisions are

interim solutions to prevent gaps in the law until regulations were made under the 2016 Act.” (verbatim)

Case before the Constitutional Court in brief:

7. The Petitioner-Appellant, a Hotel Manager and an inhabitant of Belombre, had filed a petition before the Constitutional Court on the 29th of January 2018. According to the petition he had been on the 13th of June 2017, “charged with the offence as per section 9(1) of the Misuse of Drugs Act 2016, i.e. possession of cannabis with the intent to traffick in the controlled drug in criminal side No 27 of 2017...” and the case is proceeding before the Supreme Court. Thus, the constitutional petition had been filed after the institution of criminal proceedings against the Petitioner-Appellant.
8. The Petitioner-Appellant had averred that the Misuse of Drugs Act (MODA) 05 of 2016 came into operation on the 1st of June 2016. The said Act according to the Petitioner has stated at section 4(1) that “a controlled drug may be manufactured, imported or exported and dealt with in Seychelles for medical or scientific purposes in accordance with regulations made under this Act”. He had then gone on to cite section 54(1) of the said Act which provides that “the Minister may, in consultation with the Minister responsible for Health, make regulations for carrying into effect the objectives and purposes of this Act”; and section 4(2) which provides that “In any proceedings under this Act a person claiming to have acted pursuant to a provision of this Act or to regulations made under sub-section (1) shall bear the burden of proving that fact”. The Petitioner has also made reference to the preamble which in setting out the purpose of the Act states: “... ensure the availability of controlled drugs for legitimate medical and scientific use...”
9. It had been the position of the Petitioner-Appellant that up to the filing of his petition no regulations have been made in accordance with sections 4 and 54 of the Misuse of Drugs Act 05 of 2016 and thus the 2nd Respondent-Appellant had failed, refused or neglected to comply with her statutory duty. The Petitioner-Appellant had however not averred that he had urged any of the Respondents to make the regulations.
10. The Petitioner-Appellant had averred that for the past 7 years prior to filing of the petition he had lobbied, supported and canvassed for the legitimization of cannabis

for research and scientific and medical purposes, to the knowledge of the Respondents and corresponded and held seminars with the Respondents and other persons and institutions set out in the petition. There is no mention of anyone, with whom he had done research or medical doctor or scientist with whom he had discussed the issue of medical or scientific research as to the curative and beneficial effects of marijuana. There are many non-medical or non-scientific persons, who support the legalisation of marijuana for medical and other purposes, but not all of them would be able to cultivate or possess marijuana with impunity under the MODA or its regulations.

11. The Petitioner-Appellant had averred of the allegedly proven curative and beneficial effects of marijuana for several chronic diseases. He had averred that “many countries of the world have now legalized the use of marijuana not only for medical and scientific purposes but also for recreational use and have passed laws and regulations to provide for its possession, use, manufacture, import and cultivation”. He had averred that cancer patients he had spoken to in the Seychelles had expressed the wish to try marijuana to counter the side effects of cancer treatment and to manage the disease and the absence of regulations will make them suffer.
12. The Petitioner-Appellant had averred that upon the enactment of the Misuse of Drugs Act 2016 he had “carried out research in cannabis for a scientific and medical purposes, at a house at Belombre”. (emphasis added) The Petitioner who has described himself as a hotel manager has not however in the petition referred to any qualifications or experience in the field of medicine or science, which would qualify himself to be a medical or scientific researcher, the type of research he had carried out or the laboratory facilities that was available to him.
13. It has been the Petitioner-Appellant’s complaint that his right to a fair hearing has been and continues to be infringed by the Respondents refusal or failure to enact the required regulations under the Misuse of Drugs Act 2016. It is his position that a purposeful reading of section 4(1) and 4(2) of the Act and had the Respondents passed the pertinent regulations, he would have been afforded a valid and outright defence under the Act and lawful protection. He had thus averred that the failure, refusal or negligence of the Respondents to provide a “partial legal framework should not allow the 1st and 3rd Respondent , to pursue a criminal action against him and such a prosecution violates his constitutional rights, including to a fair hearing (Article 19(7) Cap42)...” (emphasis added), among other rights he had set out in the Petition, namely articles 16, 18, 24(1)(a) and 29. I have restricted myself to the

Petitioner-Appellant's complaint against violation of his right to a fair hearing since in challenging the judgment of the Constitutional Court before the Court of Appeal he had restricted himself to the violation of his right to a fair hearing under article 19(7) .

14. The indictment in the Criminal side No 27 of 2017 referred to in the petition and which I have called for and perused, had charged the Petitioner-Appellant as follows:

“Count 1
Statement of Offence

Possession with intent to traffick in a controlled drug namely cannabis herbal materials contrary to section 9(1) of the Misuse of Drugs Act 2016 and punishable under section 7 (1) of the Misuse of Drugs Act, 2016

Particulars of offence

Albert Alexander Roderick Geers of Belombre, Mahe, on 30th May 2017 to 31st May 2017 at his residence in Belombre, Mahe possessed the controlled drug having net weight of 3.945 kilo grams of Cannabis unlawfully with intent to traffick in contravention of the said Act committed the offence of trafficking.

Count 2
Statement of Offence

Cultivation of a controlled drug namely Cannabis Plants contrary to section 6(2) of the Misuse of Drugs Act 2016 and punishable under the Second Schedule the Misuse of Drugs Act 2016.

Particulars of offence

Albert Alexander Roderick Geers of Belombre, Mahe, on 31st May 2017 at his residence in Belombre, Mahe possessed 49 cannabis plants in doing cultivation.” (verbatim as per Indictment).

15. The Petitioner does not explain why he had as much as 3.945 kg of cannabis or 49 cannabis plants for research purposes.
16. I am at a loss to understand why the Petitioner-Appellant had referred to article 19(7) in respect of the violation of his right to a fair hearing; and the Constitutional

Court had proceeded to hear the case and give judgment on the same lines; when the reference should, if at all, have been to article 19(1) of the Constitution. Rule 5(1) of the Constitutional Court Rules requires: “A petition ...shall...refer to the provision of the Constitution that has been allegedly contravened or is likely to be contravened...”. This is because the complaint of the Petitioner-Appellant as stated at paragraph 13 above is the pursuit of a ‘criminal action’ as contemplated by article 19(1) against him by the Respondent-Appellants and not a complaint regarding the institution of proceedings to determine the existence or extent of any civil right as referred to by article 19(7).

17. I hereby set out the provisions in articles 19(1), (2) and 19(7) of the Seychellois Charter of Fundamental Rights pertaining to the Right to a fair and public hearing and which have a bearing on this case:

“19. (1) Every person charged with an offence has the right, unless the charge is withdrawn, to a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with an offence-

(a) is innocent until the person is proved or has pleaded guilty;

(b) shall be informed at the time the person is charged or as soon as is reasonably practicable, in, as far as is practicable, a language that the person understands and in detail, of the nature of the offence;

(c) shall be given adequate time and facilities to prepare a defence to the charge;

(d) has a right to be defended before the court in person, or, at the person’s own expense by a legal practitioner of the person’s own choice, or, where a law so provides, by a legal practitioner provided at public expense;

(e) has a right to examine, in person or by a legal practitioner, the witnesses called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on the person’s behalf before the court on the same conditions as those applying to witnesses called by the prosecution;

(f) shall, as far as is practicable, have without payment the assistance of an interpreter if the person cannot understand the language used at the trial of the charge;

(g) shall not be compelled to testify at the trial or confess guilt;

(h) shall not have any adverse inference drawn from the exercise of the right to silence either during the course of the investigation or at the trial; and

(i) shall, except with the person’s own consent, not be tried in the person’s absence unless the person’s conduct renders the continuance of the proceedings in the person’s presence impracticable and the court has ordered the person to

be removed and the trial to proceed in the person's absence.

.....

(7) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a court or other authority the case shall be given a fair hearing within a reasonable time."

18. The Petitioner-Appellant has invoked the jurisdiction of the Constitutional Court under the provisions of article 46(1) which reads as follows:

"46.(1) A person who claims that a provision of this Charter has been or is likely to be contravened in relation to the person by any law, act or omission may, subject to this article, apply to the Constitutional Court for redress."

19. Even if we are to ignore the erroneous reference to article 19 (7) and take the petition as referring to article 19(1), the question arises whether the refusal, failure or negligence to enact the regulations under MODA 2016 by the Respondent-Appellants have contravened or is likely to contravene any of the guaranteed rights of the Petitioner-Appellant under article 19(1) or (2) above. In my view failure to provide, even if that had been the case, a legal framework under MODA 2016 under which the Petitioner-Appellant could have taken cover in a prosecution instituted against him certainly does not come within the ambit of a guarantee of a fair hearing to a person facing a criminal prosecution or a civil suit before a court. It is not possible to give such a wide interpretation to the words "shall be given a fair hearing". In the circumstances of this case, the concept of "fair hearing" in article 19, is something that should be given a meaning within the ambit of the judicial branch of a State and more within the court structure and cannot spill over to the Legislative or Executive branches of the State. If that were to happen persons against whom prosecutions have been instituted under the existing domestic laws of a country will start complaining to the Constitutional Court; of the failure of the Legislature to amend the laws, to fall in line with the legal developments taking place in other countries in relation to LGBT rights, euthanasia, abortion, and legalization of marijuana for recreational purposes. Both in articles 19(1) and 19(7) the obligation is cast on the court to ensure that a person is granted a "fair hearing". I am not unmindful of the role of the Legislative and Executive branches in not providing for an independent and impartial court or the Executive being responsible for delays in instituting litigation.

20. For the reasons enumerated above I am in agreement with the majority decision of the Constitutional Court that the Petitioner's argument regarding violation of his right to a fair hearing cannot be sustained. I agree with their finding: "The Petitioner is not a medical expert nor a scientist, but a strong proponent for the medical benefits of cannabis. However, the law in its present form makes it clear that cannabis cannot be manufactured or sold for medical purposes, and such conduct is criminal. The law is clear and unambiguous in its present form, and the possibility of regulation cannot be used to ground a defence, and the failure to regulate does not deny the Petitioner a valid defence..." The Constitutional Court had dismissed the Petitioner-Appellant's complaint regarding violation of his fundamental rights under articles 16,18, 24 and 29 of the Charter and as stated at paragraph 13 above I shall not deal with them as there is no appeal against the dismissal of the said complaints.
21. I therefore dismiss the Petitioner-Appellant's first, second and third grounds of appeal.
22. This then brings me to the question raised in ground (i) of the Notice of Cross-Appeal raised by the Respondent-Appellants referred to at paragraph 6 above.
23. Article 46(5) of the Fundamental Rights Charter states:

"Upon hearing of 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 the Charter;

(b) declare any law or the provision of any law which contravenes the Charter void;

(c) make such declaration or order, issue such writ 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) award any damages for the purpose of compensating the person concerned for any damages suffered;

(e) make such additional order under this Constitution or as may be prescribed by law."

It is clear on a reading of article 46(1) of the Charter referred to at paragraph 18 above that the issue of redress under article 46(5)(c) arises only when a person has successfully established before the Constitutional Court that a provision of the

Charter has been or is likely to be contravened in relation to him by any law, act or omission. The need to make an order under article 46(5)(c) arises “*for the purpose of enforcing or securing the enforcement of the Charter*” which has been or is likely to be contravened. Granting of any relief under article 46(5) is necessarily linked to article 46(1). Part IV of Chapter III of the Constitution is restricted to constitutional remedies. This becomes clear on a reading of article 129 of the Constitution, which restricts matters relating to the contravention of the Constitution to the jurisdiction of the Constitutional Court. To interpret it otherwise would mean that litigants will come before the Constitutional Court seeking injunctions, directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto against subordinate courts, tribunals and adjudicating authorities and damages arising from delicts or breach of contract; even where there has not been a violation of a charter provision.

24. Part IV of Chapter III cannot be made use of to seek relief that could be granted by the Supreme Court in the exercise of its supervisory jurisdiction under article 125(1)(c). Article 125 (1) states as follows:

“125. (1) There shall be a Supreme Court which shall, in addition to the jurisdiction and powers conferred by this Constitution, have -

- (a) original jurisdiction in matters relating to the application, contravention, enforcement or interpretation of this Constitution;*
- (b) original jurisdiction in civil and criminal matters;*
- (c) supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority and, in this connection, shall have power to issue injunctions, directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as may be appropriate for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction; and*
- (d) such other original, appellate and other jurisdiction as may be conferred on it by or under an act”*

25. This is made further clear by article 46(8) of the Charter which places the burden of establishing a prima facie case that there has been a contravention or risk of contravention on the Petitioner. It is only after such burden is discharged, the burden shifts to the State to prove that there has not been a contravention or risk of contravention. Thus establishing that there has been on the face of it a contravention or likely contravention and the person invoking the jurisdiction of the Constitutional Court has locus standi are threshold issues that has to be determined before considering the substantive claim of a contravention or likely contravention. It is for this reason that the **Constitutional Court (Application, Contravention,**

Enforcement or Interpretation of the Constitution) Rules of April 1994 made under article 46(10) of the Constitution in relation to the jurisdiction and powers of the Constitutional Court specifically lays down in rule 5(1) that a petition to the Constitutional Court “*shall refer to the provision of the Constitution that has been allegedly contravened or is likely to be contravened.*”

26. The **Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules of April 1995** made under article 136(2) of the Constitution as Rules of the Supreme Court would be rendered nugatory if the remedies under article 125(1)(c) can be granted under article 46(5) (c). The procedure to be adopted to invoke the jurisdiction under articles 125 (1) (b) has been clearly set out in the **Seychelles Code of Civil Procedure and the Criminal Procedure Code**. It will be an unruly hodgepodge if the jurisdiction of the Constitutional Court is to be invoked in respect of the several and different jurisdictions set out in article 125(1).

27. It must however be stated that where the Constitutional Court on an application under clause (1) is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned in any other court under any other law, the Court may hear the application or transfer the application to the appropriate court for grant of redress in accordance with law. That is where the Constitutional Court is satisfied that there has been a contravention of the Constitution but adequate means of redress for the contravention are available.

28. In **Nolin V Attorney General[1996-1997] SCCA 127** this Court said: “*The Constitutional Court is empowered to make declarations or orders and issue writs, and also award damages...when it has been established that a provision of the Charter of Fundamental Human Rights and Freedoms has been or likely to be contravened. Judicial review of an administrative action which does not involve a breach of the Constitution but only of an empowering statute as alleged in the instant case, is within the supervisory powers of the Supreme Court and not a matter for the Constitutional Court. Thus for the purpose of determining this appeal it would suffice to state that as the fundamental right of the appellant has not been infringed the Constitutional Court was right in not making any consequential declaration and order as prayed for in the appellants petition. That, in short, is the kernel of this judgment.*”

29. In the case of **Citra Hoareau V Attorney General, civil appeal No. 42 of 1999 decided in April 2000**, the crux of the decision of this Court, was to the effect that the Constitutional Court, before granting the remedies under article 130(4)(c) had to *“determine whether in the first place there had been a contravention of the Constitution as alleged.”* The Court went on to say: *“What is essential, in our view, is the finding of the Constitutional Court with regard to the alleged unconstitutionality of the act or omission.”* This Court however said that the failure to pray for a declaration under article 130(4) (a) or (b) in the petition did not make the petition defective so long as the Constitutional Court makes a finding that there has been a contravention of the Constitution.
30. In **Chowdhuri V Union of India and Others[1950] 2 SCR 1113**, a shareholder challenged the validity of legislation which affected a take-over of control of the affairs of a company on grounds that the Act was not within the legislative competence of Parliament and also infringed his fundamental rights of property. The Supreme Court by a majority held there was no violation of any fundamental right and dismissed the application under articles 32 for a writ of mandamus to enforce these rights and for a declaration that the Act was void ultra vires, without going at all to the latter question.
31. Article 32 of the Constitution of India which deals with remedies for enforcement of Fundamental Rights conferred by Part III of the Constitution states: *“(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part. (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.”* It is to be noted that article 32(2) of the Indian Constitution is similar to article 45(6)(c) of the Seychelles Constitution, for under article 32(2) the power to issue directions or orders or writs therein is for the enforcement of any of the fundamental rights conferred by Part III.

32. **Mukherjea J** said in **Chowdhuri V Union of India and Others** at p 1115 that: *“Article 32 as its provisions show, is not directly concerned with the determination of constitutional validity of particular legislative enactments. What it aims at is the enforcing of fundamental rights guaranteed by the Constitution, no matter whether the necessity for such enforcement arises out of an action of the executive or of the legislature. To make out a case under this article, it is incumbent upon the petitioner to establish not merely that the law complained of is beyond the competence of the particular legislature...but that it affects or invades his fundamental rights guaranteed by the constitution, of which he could seek enforcement by an appropriate writ or order.”*
33. In **Raj Kapur V State of Punjab {1955} 2 SCR 225**, certain executive action of the Education Department of the State in taking over exclusively the printing, publishing and selling of text books for prescribed schools was questioned, under article 32, as infringing the fundamental right to carry on any trade or business, and as an unlawful monopoly established without legislation passed in the manner laid down in the Constitution. The petition was dismissed. Mukherjea CJ said at p 239 *“...even if the acts of the executive are deemed to be sanctioned by the legislature, yet they can be declared to be void and inoperative if they infringe any of the fundamental rights of the petitioners guaranteed under Part III of the Constitution. On the other hand, even if the acts of the executive are illegal in the sense that they are not warranted by law, but no fundamental rights of the petitioners have been infringed thereby, the latter would obviously have no right to complain under article 32 of the Constitution though they may have remedies elsewhere if other heads of rights are infringed.”*
34. **Basu in his Commentary on the Constitution of India, Vol 2 (5th edn)** states: *“The sole object of article 32 is the enforcement of the fundamental rights guaranteed by the Constitution. Whatever other remedies may be open to a person aggrieved, he has no right to complain under Article 32, where no ‘fundamental’ right has been infringed. For the same reason, no question other than relating to a fundamental right will be determined in proceeding under Art. 32.”*
35. Since the Constitutional Court had concluded that there has not been any violation of the Petitioner-Appellant’s fundamental rights; and specifically stated in its Order at paragraph (ii), referred to at paragraph 2 above, that the Petitioner has failed to establish that the failure to make and issue regulations under the provisions of

Sections 4 and 54(1)(a) of the Misuse of Drugs Act constitutes a violation of the Charter; the Constitutional Court had erred in making its orders at paragraphs (i) and (iii),referred to at paragraph 2 above.

36. I therefore quash the orders (i) and (iii) made by Constitutional Court in allowing the first ground of appeal raised by the Respondent-Appellants. In view of the dismissal of all three grounds of appeal of the Petitioner-Appellant and allowing ground (i) of appeal raised by the Respondent-Appellants the need to determine the rest of the grounds of the Respondent-Appellants do not arise for consideration.
37. The appeal of the Petitioner-Appellant is therefore dismissed and the appeal of the Respondent-Appellants is allowed by setting aside the order of mandamus issued by the Constitutional Court on the 2nd Respondent and the order to issue regulations within 24 months of the order of the Constitutional Court. I make no award as to costs.

A. Fernando (J.A)

I concur:.

F. MacGregor (PCA)

I concur:.

F. Robinson (J.A)

Signed, dated and delivered at Ile du Port on 17 December 2019