

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable
[2021] SCCA 9
SCA CL 03/2020
(Appeal from CP 12/2019)

James Valentin
(rep. by Mr. Divino Sabino)

Appellant

and

Planning Authority
(rep. by Mr. Stefan Knights)

1st Respondent

Public Utilities Corporation
(rep. by Mr. S. Rajasundaram)

2nd Respondent

Attorney General
(rep. by Ms. Aaishah Molle)

3rd Respondent

Neutral Citation: *Valentin v Planning Authority & Others* (SCA CL 03/2020) SCCA 9

Before: **Fernando P, Twomey JA, Robinson JA**
Summary: The Appellant complains that his rights under article 16 and 26 of the Constitution have been breached by the 1st and 2nd Respondents.
Heard: 06th April 2021
Delivered: 30th April 2021

ORDER

The Appellant's appeal against the judgment of the Constitutional Court is dismissed.

JUDGMENT

FERNANDO P

1. The Appellant has appealed against a judgment of the Constitutional Court dismissing his petition for:

- i. “a declaration that the acts of the Respondents breach the Petitioner’s rights under articles 16 and 26 of the Constitution;
 - ii. ordering the 2nd Respondent to relocate, divert or otherwise reposition the electricity lines and poles in order that the Petitioner may complete his construction works;
 - iii. ordering the 1st Respondent to lift, vacate or otherwise remove the Stop Notice;
 - iv. moral damages amounting to SR 500,000 against the Respondents; and
 - v. any other order that their Lordships deem fit.”
2. The Constitutional Court had dismissed the Petition on a preliminary objection raised on behalf of the 1st and 3rd Respondents, that the petition had been filed out of time in contravention of rule 4 of the Constitutional Court (Application, Contravention, Enforcement of interpretation of the Constitution) Rules 1994 and was in contravention of the parallel remedies principle set out in article 46(4) of the Constitution.
3. The Appellant has raised the following grounds of appeal:

 - “(1) The Learned Judges erred in redefining the basis of the Petition as one that should have challenged the 1st Respondent’s Stop Notice issued on the 31st July 2017 or the 2nd Respondent’s numerous refusals to relocate the electricity lines. The case is based on the 1st and 2nd Respondents’ directives for the Petitioner to demolish part of his house that was made on the 11th April 2019. The alternative remedies as suggested by the courts would not have fully addressed the Appellant’s issues.
 - (2) The Learned Judges erred to state that the Petition was filed out of time, they had based their decision on the correspondence from the PUC dating from 11th August 2016. The Petition is based on events of the 11th April 2019 in which the Planning Authority and PUC directed the Petitioner to demolish part of his house.
 - (3) The Learned Judges erred in concluding that the Petitioner has no prima facie constitutional case for a breach of his constitutional rights when the case on the merits was not heard in proceedings.
 - (4) The Learned Judges erred in stating that there must be a breach of a constitutional right before a Petition may be filed. The Constitution allows for Petitions to be filed if a breach is likely to occur.”

Facts in Brief:

4. The Appellant (Petitioner, before the Constitutional Court), to this appeal, is the owner of land parcel V 1564. “The 1st Respondent is the body in charge of deciding upon planning permission applications and related matters, such as issuing of Stop Notices. The 2nd Respondent is a statutory body in charge of the provision of electricity and water supply to the public and related matters such as setting up of electricity infrastructure.” (As averred by the Appellant in his Petition) The 3rd Respondent had been made a respondent to the petition before the Constitutional Court in compliance of rule 3(3) of the Constitutional Court (Application, Contravention, Enforcement of interpretation of the Constitution) Rules 1994. The 1st, 2nd and 3rd Respondents to this appeal, had been made Respondents to the Petition filed before the Constitutional Court. The Appellant who was seeking to build an extension by way of a second storey to his dwelling house on parcel V 1564 had applied to the 2nd Respondent to divert the electricity lines over his property, since according to the Appellant, the extension to his dwelling house would intrude against the electricity wires. The Appellant had wanted the extension works to proceed without hindrance. The 2nd Respondent had carried out diversion works towards the end of 2015. Since the relocated electricity pole and wires continued to obstruct the extension to the dwelling house, the 2nd Respondent had advised the Appellant to apply and pay for a second diversion, which the Appellant had done. It had been the complaint of the Appellant that despite numerous correspondences and site visits, the 2nd Respondent had failed to divert the electricity line.

5. As per the petition before the Constitutional Court when the extension works were almost completed and was near the electricity lines, the 1st Respondent had on the 31st of July 2017, issued a Stop Notice against the Appellant and subsequently on 11th April 2019 directed the Appellant to demolish parts of his construction works and complete it in such a manner so as not to intrude upon the electricity lines. According to the Appellant, it had been the position of the 1st Respondent that the Stop Notice will be removed only thereafter. It had been the Appellant’s position that according to a structural report obtained by him JV 16, if he were to demolish the parts as recommended it would lead to the weakening of the structural integrity of his entire house. Strangely JV 16 is dated 19th February 2019, before the so called directive from the 1st Respondent. The Appellant had averred in his petition that the above actions had violated his right to dignity under article 16 of the Constitution and his right to peacefully enjoy his property under article 26 of the Constitution.

6. The Appellant had also averred that the 2nd Respondent had stated in its letter dated 18th March 2016, produced by the Appellant as JV9, that the 2nd Respondent is unable to carry out the works, because the adjacent landowner was refusing to allow the 2nd Respondent to erect a pole on his land and had requested the Appellant to obtain consent from that landowner. It is stated at JV 9 that “Our construction team went on site and were unable to complete the work due to objections from the landowner of parcel V1221 regarding the installation of electricity pole.”, and had requested the Appellant to seek permission for erecting the pole and routing the electricity lines across the properties of the adjacent landowners; and that if permission is not granted the 2nd Respondent will be unable to divert the line, and the application will be rendered void and the money paid by the Appellant will be refunded.
7. It is clear from the Appellant’s own pleadings at paragraph 6 above, that the 2nd Respondent cannot go to the adjacent landowner’s property and divert electricity lines over the that property without his consent as this would be a violation of the constitutional rights of the adjacent landowner. I do agree with the submission of the 2nd Respondent that what the Appellant wants is for “the 2nd Respondent to breach, violate a third party’s constitutional rights on the pretext of alleged violation, breach of his constitutional rights.”
8. The 1st and 3rd Respondents had raised two preliminary objections namely:
 1. The petition is filed out of time, and
 2. The Petitioner has other causes of action available to secure the redress to which the Petitioner may be entitled.

I am of the view that it was not proper for the 3rd Respondent the Attorney General to have been a party to the preliminary objection, as he has been made a respondent to the petition in compliance with the Constitutional Court Rules 1994 as stated at paragraph 4 above.

9. **Rule 4 of the Constitutional Court (Application, Contravention, Enforcement of interpretation of the Constitution) Rules 1994** states as follows:

“4(1) Where the petition under rule 3 alleges a contravention or a likely contravention of a provision of the Constitution, the petition shall be filed in the Registry of the Supreme Court -

(a) in a case of an alleged contravention, within 3 months of the contravention;

(b) in a case where the likely contravention is the result of an act or omission, within 3 months of the act or omission;

(c) in a case where the likely contravention arises in consequence of any law, within 3 months of the enactment of such law.

(2) Where a petition under rule 3 relates to the application enforcement or interpretation of any provisions of the Constitution, the petition shall be filed in the Registry of the Supreme Court within 3 months of the occurrence of the event that requires such application, enforcement or interpretation.

(3) Notwithstanding sub rules (1) and (2), a petition under rule 3 may, with the leave of the Constitutional Court, be filed out of time.

(4) The Constitutional Court may, for sufficient reason, extend the time for filing a petition under rule 3.”

10. According to the Appellant, the 1st Respondent had issued a Stop Notice against the Appellant on 31st July 2017 notifying the Appellant with immediate effect to stop works on V1569. The said Stop Notice has been produced by the Appellant as JV 14 along with his petition before the Constitutional Court. The Stop Notice had been issued pursuant to section 14 of the Town and Country Planning Act. According to JV 14 the reason for the issue of the Stop Notice was because of issues with PUC electrical cables being located too close to the house under construction. The Appellant’s document JV 15 shows that he had been in receipt of this notice. It is the position of the Respondents in the preliminary objection raised that the petition in this case had been filed on the 19th of June 2019, long after the 3 months’ prescriptive period set out in rule 4(1)(a) or (b) of the Constitutional Court Rules 1994 referred to at paragraph 9 above, namely 23 months later. The Appellant’s averments in the petition that he filed a complaint before the Anti-Victimisation Committee of the National Assembly is not supported by any documentary evidence. The averment that the 1st and 2nd Respondents directives to him to demolish parts of his construction works in order to remove the Stop Notice is not supported by any documentary evidence. The Appellant who had filed 18 documents in support of his application had failed to attach a single document to support his claim that he had been directed by the 1st or 2nd Respondents on the 11th April 2019, to demolish parts of his construction works and complete it in such a manner so as not to intrude upon the electricity lines and that the 1st Respondent would remove the Stop Notice, only thereafter. The Appellant in his petition filed before the Constitutional Court had only sought an order against the 1st Respondent to lift, vacate or otherwise remove the Stop Notice. There was no order sought against the so called verbal directive of 11th April 2019, to demolish parts of his construction works.

11. I am of the view that this is a veiled attempt by the Appellant to avoid the prescriptive period. The Appellant without seeking leave of the Constitutional Court to file the

petition out of time in accordance with rule 4(3) of the Constitutional Court Rules 1994, had tried to overcome the prescriptive period, by making references to complaints he had made before the Anti-Victimisation Committee of the National Assembly, which this Court is not prepared to accept. Complaints to the Anti-Victimisation Committee or the Ombudsman do not extend the prescriptive time period set out in the Constitutional Court Rules 1994. It is to be noted that an extension of time may be granted at the discretion of the Constitutional Court to file a petition out of time only where an extension is sought by a person or where the Court finds that there are sufficient reasons to do so. In this case no extension had been sought by the Appellant nor had the Constitutional Court found sufficient reasons to do so.

12. At grounds 1 and 2 of appeal the Appellant's Counsel states that his case is based on the 1st and 2nd Respondents' directives to the Appellant to demolish part of his house that was made on the 11th of April 2019 and not on the Stop Notice dated 31st July 2017. There isn't a single document produced as stated earlier to show that there were any directives to the Appellant to demolish part of his house. The only directive was, as stated in JV14 dated 31st July 2017 to stop works with immediate effect. The Appellant in his petition filed before the Constitutional Court had only sought an order against the 1st Respondent to lift, vacate or otherwise remove the Stop Notice. As stated earlier there was no order sought against the so called verbal directive of 11th April 2019, to demolish parts of his construction works. I therefore dismiss grounds 1 and 2 of appeal. It is not possible to believe that the Appellant had placed reliance on a verbal directive on an important matter of this nature.
13. In relation to ground 3 of appeal, I am of the view that the issuance of a Stop Notice or a request to carry out construction works and complete it in such a manner so as not to intrude upon the electricity lines, by the 1st and 2nd Respondents carrying out public functions, cannot be said to violate the Appellant's right to dignity or his right to property, in the absence of any allegation of malice or abuse of authority. The Appellant has not alleged any mala fides or abuse of authority in respect to the actions of the 1st and 2nd Respondents. I therefore agree with the pronouncement of the Constitutional Court that: "after perusing the Petition and affidavit of the Petitioner (*Appellant*), we find that no prima facie case of breach of the Petitioner's Constitutional rights under articles 16 or 26 has been made out. We find the decision of the 2nd Respondent to be purely administrative. At most, the Petitioner could have sought judicial review of that decision". I therefore dismiss ground 3 of appeal.
14. I dismiss ground 4 of appeal as there is no specific pronouncement by the Constitutional Court in their judgment that "there must be a breach of a constitutional right before a Petition may be filed". It is the Appellant who in his Petition had sought "a declaration

that the acts of the Respondents breach the Petitioner’s right under articles 16 and 26 of the Constitution.”

15. I therefore dismiss the appeal. I make no order as to costs.

Signed, dated and delivered at Ile du Port on 30 April 2021.

Fernando, President

I concur

Twomey JA

I concur

Robinson JA