

**CARPIN v SNP**

**(2011) SLR 327**

B Hoareau for the petitioner and respondent Carpin  
B Georges for petitioner and respondent Ramkalawan and SNP  
R Govinden Attorney-General in person and for the Speaker of the National Assembly

**Judgment delivered on 5 September 2011**

**Before Karunakaran, Renaud, Burhan, Dodin JJ**

On 19 July 2011, Ms Carpin filed petition number CC 7 of 2011 before the Constitutional Court requesting the Constitutional Court to grant her relief and make the declarations set out below.

On the 20 July 2011, Mr Wavel Ramkalawan also filed petition number CC 8 of 2011 requesting the Constitutional Court to make the declarations that are also set out below.

In petition number CC 7 of 2011, the petitioner, Jane Carpin petitioned the Constitutional Court to make the following orders:

To declare that the act of the 1st respondent to remove the petitioner from the Seychelles National Assembly has contravened Article 22 of the Constitution of Seychelles in relation to the petitioner and has also contravened Article 102 of the Constitution of Seychelles and the contravention has affected the petitioner's interest;

Declare that the seat of the petitioner in the Seychelles National Assembly is not vacant as such the petitioner continues to be a member of the Seychelles National Party;

Order the 1st respondent and/ or 2nd respondent to keep the petitioner as a proportionately elected member of the Seychelles National Assembly until the next General elections or until the dissolution of the Seychelles National Assembly, whichever occurs earlier;

Grant any other remedy that it deems fit and necessary In the circumstances of the case.

Order the 1<sup>st</sup> respondent and 2nd respondent to pay costs.

In petition number CC 8 of 2011, the petitioner, Wavel Ramkalawan, petitioned the Constitutional Court to make the following orders:

To declare that membership of the 1st respondent in the National Assembly ceased and the proportionately elected seat of the 1st respondent in the National Assembly became vacant on 13 July 2011 either when she was

replaced by another member or when she ceased to be a member of the Seychelles National Party;

To declare that any act of the 1st respondent as Member of the National Assembly since 13 July 2011 is null, void and to no effect.

Since both petitions are founded on the same facts and events, the Constitutional Court would have to decide the same issues in order to determine whether to make the declarations sought by both petitioners. The Court decided therefore with the agreement of all the parties to consolidate both petitions which were heard by a special panel consisting of 4 judges who heard and will give judgment on both petitions now consolidated into one.

### **The Facts**

The facts upon which both petitions are based are not in dispute and shall be briefly stated taking into account the chronological sequence of occurrence.

Petitioner Ramkalawan is the leader of the Seychelles National Party, hereinafter referred to as SNP, and has so been since the formation of the party. He was at the material time also Leader of Opposition and a directly elected member of the National Assembly.

Petitioner Carpin was proportionately elected as a member of the National Assembly on 27 February 2009 by SNP to replace a former member. The same petitioner was a member of SNP since 1998 and was elected to serve on its Executive Committee for the past 4 years.

On 12 July 2011, during the morning session of the National Assembly, petitioner Carpin voted in favour of a Bill to amend article 115 of the Constitution.

On the same day petitioner Ramkalawan sent a letter to the Speaker, the 2<sup>nd</sup> respondent in Case No CC 7 of 2011 stating as follows:

Dear Sir,

Re: Replacement of Proportionally Elected Member

Pursuant to Article 81(1)(i) of the Constitution of Seychelles I wish to inform you that I am replacing Honourable Jane Carpin as a proportionally elected member of the National Assembly for the Seychelles National Party with immediate effect.

The new member will be named next week.

I thank you

Yours faithfully,

Signed

It is presumed that the writer of this letter meant article 81(1)(h)(i) as the quoted article 81(1)(i) does not exist in the Constitution of Seychelles.

On the same day 12 July 2011 the Speaker issued the following Certificate of Vacancy to petitioner Carpin:

Dear Hon. Carpin,

**RE: CERTIFICATE UNDER ARTICLE 81(6) OF THE CONSTITUTION**

This is to certify that in view of the letter addressed to my Office by the Leader of the Opposition that you are being removed as a Proportionate Member of the Seychelles National Party, you will cease to be a member of the National Assembly with immediate effect pursuant to Article 81 (1) (h) (i) of the Constitution of Seychelles unless you choose to exercise your right of challenge under Article 81 (6) (a) of the Constitution in which case Article 81 (7) will apply.

Thank you.

Signed

On the same day petitioner Carpin issued the Speaker with the following letter -

Dear Hon'ble Speaker,

I have today at 13:45 hours informed you that I intend to and will shortly challenge the decision of the Leader of the Seychelles National Party to rotate me out and render my seat as a Proportionately Elected Member of the National Assembly, vacant.

I will challenge the decision in the Constitutional Court within 30 days from today.

Yours sincerely

Sign

On 13 July 2011, the Speaker informed petitioner Wavel Ramkalawan by letter that he had issued the said Certificate of Vacancy and that according to his interpretation of the constitutional provisions, Petitioner Carpin remained a member of the National Assembly as she has indicated that she will be contesting her removal before the Constitutional Court.

On the same day, 13 July 2011, petitioner Ramkalawan informed the Speaker by letter that petitioner Carpin was to be replaced by Mr Edwin Gerald Julie.

By letter dated 18 July 2011, petitioner Ramkalawan sent the following letter to the Speaker of the National Assembly.

Dear Sir,

Re: Hon. Jane Carpin

I write in terms of Article 81 (3) of the Constitution to advise you that, at its meeting of 13th July, 2011, the Seychelles National Party resolved that Mrs. Jane Carpin cease to be a member of the SNP forthwith. Accordingly, Mrs. Carpin is no longer a member of the SNP since that day

I take this opportunity to advise you that the SNP has prepared and will be filing tomorrow 19 July 2011 an application under Articles 82(1) (b) and 82 (3) (b) of the Constitution for declarations (i) that the seat occupied by Hon Carpin in the National Assembly became vacant upon her replacement in the National Assembly and/ or upon her ceasing to be a member of the SNP and (ii) that all actions of Hon Carpin as a Member of the National Assembly after these two events will be deemed null and void.

I thank you.

Yours faithfully

Signed

On 19 July 2011, the National Assembly voted on a motion to dissolve itself and petitioner Carpin voted in favour of the dissolution.

### **The Law**

The relevant provisions for replacing a proportional member of the National Assembly are found in article 81 of the Constitution -

81. (1) A person ceases to be a member of the National Assembly and the seat occupied by that person in the Assembly shall become vacant-
  - (h) If, in the case of a proportionately elected member-
    - (i) The political party which nominated the person as a member nominates another person as member in the place of the first mentioned person and notifies the Speaker in writing of the new nomination;
    - (ii) The person ceases to be a member of the political party of which that the person was a member at the time of the election.
- (3) A political party of which a proportionately elected member was a member of at the time of election shall notify the Speaker in writing on the person ceasing to be a member of the party.
- (4) Subject to this article and article 82, where a person who is proportionately elected member of the National Assembly ceases to be so, the political party of which the person was a member of at the time at the election and which nominated the person as a member may, by notice in writing to the Speaker, replace the person who has ceased to a member by another person including the person who has immediately before ceased to a member.

- (6) A certificate under the hand of the Speaker certifying that a person has ceased to be a member of the National Assembly shall be conclusive evidence of this fact and of the fact that the seat held by that person is vacant unless-
    - 1. The person makes an application under article 82 to the Constitutional Court within thirty days of the date of the certificate; and
    - 2. The Constitutional Court determines that the person is still a member of the National Assembly and that the person still occupies that seat.
  - (7) Until the final determination of an application referred to in clause (6)(a) the person who made the application shall continue to be a member of the National Assembly in respect of the seat for which the person was elected.
82. (1) The Constitutional Court shall have jurisdiction to hear and determine whether-
- .....
- (b) The seat of a member of the National Assembly has become vacant.

**Other constitutional provisions relied upon by petitioner Jane Carpin**

Article 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.

Article 130 (1) 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.

Article 102 (1) There shall be freedom of speech and debate in the National Assembly and a member shall not be subject to the jurisdiction of any Court or to any proceedings whatsoever, other than the proceedings in the National Assembly, when exercising those freedoms or performing the functions of a member in the Assembly.

Article 22 (1) Every person has a right to freedom of expression and for the purpose to hold opinions and to seek, receive and impart ideas and information without interference.

**Article 4 of the Constitution of SNP**

- i. A member may be expelled from the party for grave cause by a majority vote of the Executive Committee. No member may be expelled unless given written notice of the cause for expulsion and an opportunity of appearing before the Executive Committee to be heard.

## **The Submissions**

Counsel for petitioner Ramkalawan and SNP submitted that the Constitutional Court is being called upon to determine two issues in the process of determining whether to make the declarations sought by petitioner Ramkalawan and SNP and to decline to grant the remedies sought by petitioner Carpin. These are firstly whether petitioner Carpin continues to be a member of SNP and secondly whether petitioner Carpin continues to be a member of the National Assembly from the date the leader of SNP informed the Speaker of her removal from the National Assembly or from the date the Speaker was informed that she was no longer a member of SNP.

Counsel however submitted that his submission is based mainly on the process of removal of petitioner Carpin from the National Assembly by letter dated 11 July 2011 and that the letter informing the Speaker that petitioner Carpin was no longer a member of SNP dated 18 July 2011, was simply to comply with the provisions of article 81(3), and to use the counsel's own words, the notice was given "out of an abundance of caution".

Counsel submitted that petitioner Carpin was wrong to claim that she was removed from the National Assembly because she was exercising her right to freedom of speech as a member of the National Assembly under article 102 (1) of the Constitution. Counsel contended that article 102 (1) must be looked at in the context of what or who the member represents in the National Assembly. Since petitioner Carpin was elected in the National Assembly to represent the voters who voted for SNP, she had to act in good faith in accordance with the party line failing which the Party has unfettered discretion to remove her as proportionally elected member of the National Assembly.

Counsel submitted that under article 81(1)(h)(i) rotation of the proportionally elected member applies immediately the notice is given the Speaker. The subsequent issue of the Certificate of Vacancy is purely evidential in value and only authorizes the member who has been removed to challenge the removal before Court within the 30 days limit allowed by article 81(6) but that the Certificate itself does not create a vacancy.

Counsel further submitted that article 81(7) allows a member who is being rotated to remain a member only if the member challenges successfully that member's removal from the National Assembly. Hence counsel concluded that if the challenge is successfully, all acts performed by that member in the National Assembly during that period is validated by the successful challenge but if the challenge is unsuccessful, all acts performed by that member would be void from the date that member was removed by the party.

Counsel therefore moved Court to interpret article 81(1) of the Constitution as giving SNP unfettered discretion to remove petitioner Carpin from the National Assembly and that article 81(7) did not give petitioner Carpin full rights of membership to do as she wished in the National Assembly.

Counsel also moved Court that in the alternative if the Court finds that petitioner Carpin remained a member until the determination of the challenge, the Court must

find that any act performed by petitioner Carpin in the National Assembly from the date the Speaker was notified of her removal must be declared void if her challenge was unsuccessful.

Counsel finally concluded that in view of the unfettered discretion of SNP to replace proportionally elected members of the National Assembly under article 81(l)(h)(i), petitioner Carpin's challenge cannot be successful and it follows that all acts performed by her pursuant to her removal was void and should be declared so.

Counsel for petitioner Carpin submitted that under article 81 (7) of the Constitution it is clear that petitioner Carpin remains a member of the National Assembly until the Constitutional Court determines the issue. Counsel submitted that the Constitution does not have any provision which limits the performance, rights or privileges of a member of the National Assembly who is challenging his or her removal. Therefore it follows that all acts performed by that member, in this case, petitioner Carpin, would be valid and not subject to any challenge before the Court.

Counsel for petitioner Carpin agreed with counsel for petitioner Ramkalawan that the Certificate of Vacancy does not create a vacancy in itself but is only evidence of such.

Counsel further submitted that a political party does not have unfettered discretion to replace a proportionately elected member of the National Assembly and that article 81(1)(h)(i) cannot be interpreted on its own without considering the protection and the right to challenge given to the proportionately elected member under article 81(6) (a) and 81(6)(b) as well as article 81(7). Counsel submitted that all these provisions must be read together and there is no need to give additional meaning to the literal meaning of these provisions.

Counsel hence moved Court to find that the notice to remove petitioner Carpin dated 12 July 2011 and the subsequent issue of a Certificate of Vacancy did not have the effect of automatically removing petitioner Jane Carpin from the National Assembly as she had already informed the Speaker of her intention to challenge her removal. Therefore by virtue of article 81(7) she remained a member of the National Assembly with all rights of a member of National Assembly, hence the Court cannot pronounce on the acts she performed in the National Assembly during that period.

Although counsel for petitioner Ramkalawan had opted not to pursue the second issue of whether petitioner Jane Carpin was no longer a member of SNP, counsel submitted briefly that in any event, the purported termination of petitioner Carpin's membership of SNP was not valid as it was contrary to article 4 of the Party's (SNP) Constitution.

Hence counsel concluded that the second attempt to remove petitioner Carpin from the National Assembly by giving notice to the Speaker that she was no longer a member of SNP was not valid as per SNP's own Constitution she was never formally notified nor given any opportunity to be heard.

In conclusion, counsel for petitioner Carpin concluded that SNP attempted to remove petitioner Carpin from the National Assembly because she was exercising her

constitutional rights under article 102(1) of the Constitution and as such she was entitled to challenge her attempted removal by virtue of article 81(7) and also under articles 46 and 130 of the Constitution.

Counsel therefore moved the Court to move in terms of the prayers of Petitioner Carpin.

The Attorney-General submitted that he adopted the submission of the counsel for petitioner Carpin in total. In addition, the Attorney-General submitted that article 81 (7) of the Constitution allows for security of tenure of a proportionately elected member of the National Assembly. He further submitted that the Certificate of Vacancy only starts the process of replacement because where there is no contest, the member can be replaced immediately but where the removal is contested, the member cannot be replaced until the Court determines whether there is a vacancy. Hence the member remains a member of the National Assembly with all rights, powers and privileges until the Court's determination.

### **Determination of the issues raised**

It is apt to start here with a quotation from the decision of the Seychelles Court of Appeal in the case of *Frank Elizabeth v The Speaker of the National Assembly* SCA 2 of 2009 - which stated thus:

The Courts are not a score-board for political points but for the institutional enforcement of the Rule of Law under the Constitution. In so doing, our Courts act impartially and independently, way away from the platform of party politics, with a spatio-temporal vision well beyond electoral squabbles. That fundamental serves prince and pauper alike and does justice to ruler and ruled to an equal measure for the good of all.

The instant case shall be dealt with in the same spirit and under the same guidance enunciated by the Seychelles Court of Appeal as quoted above.

Secondly, laws must be interpreted as they are and not as it is wished they ought to be. The law courts are not at liberty to find ideal solutions without regard to existing laws when it is called upon to resolve legal disputes. The Court must also remain strictly faithful to its role as interpreter and enforcer of the law and not allow itself the temptation to usurp the roles and functions of the legislature or the executive or bow to popular feelings or demands. It is with the above caution in mind that this matter is also determined.

### **The replacement on 12 July 2011**

Prior to 1 August 1996 a proportionately elected member of the National Assembly ceased to be a member of the National Assembly and the seat occupied by that person in the Assembly became vacant in only two instances, namely, if that person (a) ceased to be a member of the political party of which that person was a member at the time of election; or (b) the political party which nominated that person is dissolved or otherwise ceased to exist.



The constitutional amendment of 1st August 1996 made a very fundamental change in respect of a proportionately elected member of the National Assembly by effectively adding a new circumstance for removal, namely that if the political party which nominated the person as member of the National Assembly, *"nominates another person as member in place of the first-mentioned person and notifies the Speaker in writing of the new nomination"*, [emphasis ours], that first-mentioned person ceases to be a member of the National Assembly and the seat occupied by that person in the National Assembly shall become vacant.

The letter sent to the Speaker date 12 July 2011, only informed the Speaker that petitioner Carpin was being replaced with immediate effect as a proportionally elected member of the National Assembly and that the replacement was to be named the following week.

Article 81(1)(h)(i) makes it mandatory that all conditions precedent must be fulfilled in order for a member to be replaced. These conditions are that:

- (i) The political party which nominated the person as a member must nominate another person as member in the place of the first mentioned person, and
- (ii) Notifies the Speaker in writing of the new nomination.

The letter of petitioner Ramkalawan to the Speaker dated 12 July 2011 therefore fell well short of the constitutional requirements to replace a proportionately elected member. The attempt to rectify matters the following day by naming Mr Edwin Gerald Julie as a replacement to petitioner Carpin is too little too late. The focus of the replacement under article 81(1)(h)(i) is not the outgoing member but the incoming newly nominated member. Without naming the member who is being proportionately elected to replace the outgoing member article 81(1)(h)(i) has not been complied with making such an attempt at replacement unconstitutional.

This begs the question of the validity of the Certificate of Vacancy issued by the Speaker on the same day. As submitted by both counsel and the Attorney-General, a Certificate of Vacancy in itself does not create a vacancy. It is only evidence of the vacancy which allows the outgoing member to challenge his or her removal within the 30 days allowed by article 81(6)(a). The jurisdiction of the Constitutional Court under article 82(1)(b) is to determine whether the seat of a member of a National Assembly has become vacant and not the validity of any decision, act done or omitted to be done by the Speaker. Nevertheless it makes logical sense that the Speaker must issue a Certificate of Vacancy without considering whether the replacement has been properly done or not because determination of whether the seat is vacant effectively lies with the Constitutional Court, and without a Certificate of Vacancy a member being replaced cannot challenge the replacement before Court.

In conclusion therefore the Court finds that the removal of petitioner Carpin by the letter to the Speaker dated 12 July 2011 was not in compliance with the provisions of article 81(1)(h)(i) since the said constitutional provision did not allow for the replacement of a proportionately elected member without naming the new member who is being proportionately elected and nor does the said article allow for the

replacing member to be nominated at a future date or time or after a certificate of vacancy has been issued by the Speaker.

### **Notice of termination of membership of SNP**

Although counsel for petitioner Ramkalawan has submitted that the notice of termination of membership sent to the Speaker dated the 18 July 2011 is no longer being canvassed as an issue before the Constitutional Court, the following observations are pertinent to the matters at hand as the 1st prayer of petitioner Ramkalawan requires this Court to declare that membership of the 1st respondent in the National Assembly ceased and the proportionately elected seat of the 1<sup>st</sup> respondent in the National Assembly became vacant on 13 July 2011 either when she was replaced by another member or when she ceased to be a member of the Seychelles National Party and petitioner Carpin has also prayed this Court to declare that she is still a member of SNP.

The requirement to notify the Speaker of the National Assembly that a member of the political party which that person was a member of at the time of the election pursuant to article 81(1)(h)(ii) and 81(3), is clearly for the purpose of activating the provisions of article 81(4), replacement of that member, and the Speaker has to issue a Certificate of Vacancy under article 81(6) which would allow the member being replaced the option of challenging the replacement based on the ground given, that is that that member has ceased to be a member of the political party that the person was a member of at the time of that member's election. It is not just a nicety or a formality with no purpose. It is therefore very obvious that unlike the "abundance of caution" argument put forth by counsel for petitioner Ramkalawan, the notice sent to the Speaker dated 18 July 2011, was in fact a second attempt at replacing petitioner Carpin using the alternative provision, probably after the realization by the SNP Executive Committee that the initial attempt at removal was defective.

In any event, a cursory look at the provisions of the Constitution of SNP which govern the termination of membership, namely article 4(vi), shows that the procedure for termination of petitioner Carpin's membership were not fully complied with and is open to challenge as the SNP constitution clearly stipulates that no member may be expelled unless given written notice of the cause for expulsion and an opportunity of appearing before the Executive Committee to be heard.

Be that as it may, the decision of petitioner Ramkalawan not to proceed on the issue of termination of membership means that this Court need not pronounce itself on the second limb of petitioner Ramkalawan's first prayer that the seat of petitioner Carpin became vacant when she ceased to be a member of the SNP.

### **Articles 22(1), 46(1), 102(1) and 130(1) of the Constitution**

Counsel for petitioner Carpin sought to rely on the above mentioned articles in support of the challenge by petitioner Carpin of the decision to replace her in the National Assembly.

Article 22 relates to the Human Rights Charter protection of freedom of expression afforded to every person.

Article 46(1) allows a person whose right under the Human Rights Charter have been or is likely to be violated to apply to the Constitutional Court for redress.

Article 130(1) allows a person who alleges that the provision of the Constitution other than those under the Human Rights Charter have been contravened to apply to the Constitutional Court for redress.

These provisions are applicable and available to every person regardless of status held or occupation. However it is not correct to apply these provisions to the proceedings of the National Assembly which has its own constitutional provisions to regulate its functions. Hence in determining whether or not a seat has become vacant in the National Assembly, which is the mandate of the Constitutional Court under article 82(1)(b), this Court cannot take into account these constitutional provisions.

Article 46(1) and 130(1) should not be interpreted so as to subsume the limited jurisdiction given to the Constitutional Court under article 82(1).

Article 102(1) is relevant to the performance of a member of the National Assembly but it does not grant a member immunity from the provisions of article 81 (1) (h) (i), that is replacement. There is no immunity from replacement.

Furthermore article 81(1)(h)(i) does not require a political party to give reasons why the political party has opted to replace a member. Hence the reason for replacement is irrelevant when a challenge is made to the Constitutional Court and it is not within the jurisdiction of the Constitutional Court to consider the reason for the replacement of the proportionately elected member. It follows therefore that a challenge can only be made in relation to the procedure of removal and not the reason thereof.

In addition to the above, articles 81 and 82 of the Constitution provide specific procedures for the replacement of a member, the right to challenge the replacement before the Constitutional Court and the scope of the Constitutional Court's jurisdiction in the specific circumstances. It is therefore not proper or necessary to import other constitutional provisions not related to the process of replacement of a proportionately elected member in order to determine whether the seat of a member of the National Assembly has become vacant.

### **The position of a member challenging replacement**

In light of the finding of this Court that the replacement of petitioner Carpin was wrong in procedure this issue, that is, the status of the member being replaced has become purely academic. However a very brief observation is made which addresses the submissions of the parties to the petitions.

Firstly, there is the provision of article 81(7) which gives a member being replaced the protection from outright replacement pending the determination of the challenge made to the Constitutional Court. This protection cannot be overlooked as it clearly ensures that a political party does not have unfettered discretion to replace a proportionately elected member. The outcome of the application of article 81(7) may indeed create very unsatisfactory conditions for the National Assembly or the political

party concerned or the executive to function, but as stated before, the Constitution must be interpreted as it is and not as it ought to be. Hence, the member being replaced remains a member of the National Assembly until the Constitutional Court determines whether the seat is vacant.

Secondly, there are no constitutional provisions limiting the right of a member of the National Assembly, including a proportionately elected member being replaced during the period of challenge, to fully participate in all the affairs of the National Assembly. Furthermore article 102 of the Constitution continues to operate in relation to that member ensuring that the member enjoys all the privileges and immunities afforded by the Constitution.

Counsel for petitioner Ramkalawan submitted that under article 81(6) read with article 81(7), a member who challenges his or her replacement before the Constitutional Court must do so successfully in order for the acts performed by that member during the period that the replacement is being contested to be valid. Counsel argued that in the event that the challenge is not successful, all acts performed during the period would be void from the date notice of the replacement was served on the Speaker.

Although this proposition may sound reasonable and fair the fact is that the Constitution of Seychelles does not make any such pronouncement. Furthermore, article 81(7) is clear in meaning and effect and therefore does not require any further re-interpretation. In addition to the above, the Constitutional Court is not mandated to review or decide on the performance of a member of the National Assembly. It is only mandated in this specific circumstance to determine whether the seat in question has become vacant. The control of the daily functions of the National Assembly and decisions relating to the performance of any member lies with the Speaker. Hence the submission of counsel for petitioner Ramkalawan on the issue cannot be sustained.

It is to be noted that article 81(7) refers to the seat (one seat). It states "the person who made the application shall continue to be a member of the National Assembly in respect of "the seat" for which the person was elected". It is quite obvious that it is the "seat" the member occupies in the National Assembly that gives him/her his/her identity as a member of the National Assembly and this seat cannot be shared or the number of seats occupied by an individual member cannot be increased in any way. If counsel for petitioner Ramkalawan's submission is to be accepted it would result in the following absurdity. The member who made the application to the Constitutional Court would occupy one seat and not vote while the new member appointed by the party to replace him/her would occupy another seat resulting in the number of seats in the National Assembly increasing or it would result in more absurd situation for both, the member who made the application and the new member appointed by the party who replaces him sharing one seat. It is to avoid this absurd situation that article 81(7) has added the words "in respect of the seat."

## **Conclusion**

Both petitioners in this consolidated matter, have obviously, invoked the special jurisdiction conferred on this Court by article 82(1)(b) of the Constitution to determine

whether the seat of a member of a National Assembly has become vacant or not. In this exercise, the Court is indeed, called upon to make declarations and orders in relation to the status of petitioner Carpin, both as a member of the National Assembly and as a member of the SNP. The Court shall first consider the prayers of petitioner Carpin followed by the prayers of petitioner Ramkalawan.

In the final analysis and for the reasons stated hereinbefore, this Court in unanimity makes the following findings, declarations and orders:

- (l) In respect of petitioner Carpin's petition:
  - (a) With regard to her first prayer for a declaration that the act of the first respondent (SNP) to remove the petitioner (Jane Carpin) from the Seychelles National Assembly has contravened Article 22 of the Constitution of Seychelles in relation to the petitioner and has also contravened article 102 of the Constitution of Seychelles and that the said contravention has affected the petitioner's interest, this Court finds that since its jurisdiction under article 82 (l)(b) is limited to determining whether the seat of a member of the National Assembly has become vacant this Court cannot tread beyond its jurisdiction and make any determination or declaration whether article 22 and article 102 of the Constitution have been contravened in relation to the petitioner's interest in this matter. Hence, this Court declines to grant the relief sought by Ms Jane Carpin in this respect.
  - (b) With regard to her second prayer for a declaration that the seat of the petitioner (Jane Carpin) in the Seychelles National Assembly is not vacant and as such she continues to be a member of the Seychelles National Party, this Court finds in her favour and declares that the petitioner Jane Carpin's seat in the Seychelles National Assembly was not vacant and that the petitioner continued to be a member of the Seychelles National Assembly with all rights and privileges afforded to all members of the Seychelles National Assembly. Thus, this Court grants the relief sought by Ms Jane Carpin in this respect.
  - (c) With regard to her third prayer for ordering the first respondent (SNP) and/or second respondent (Mr Ramkalawan) to keep the petitioner as a proportionately elected member of the Seychelles National Assembly until the next General elections or until the dissolution of the Seychelles National Assembly, whichever occurs earlier, this Court finds that since its jurisdiction under article 82 (l)(b) is limited to determining whether the seat of a member of the National Assembly has become vacant, it cannot tread beyond its jurisdiction and order the first respondent (SNP) or the second respondent (Mr Ramkalawan) to do so in this matter. Hence, this Court declines to grant the relief sought by Ms Jane Carpin in this respect.

- (II) In respect of petitioner Ramkalawan's petition:
- (a) With regard to his first prayer for a declaration that the membership of the first respondent (Ms Jane Carpin) in the National Assembly ceased and the proportionately elected seat of hers in the National Assembly became vacant on 13 July 2011 either when she was replaced by another member or when she ceased to be a member of the Seychelles National Party, this Court finds and declares that the proportionately elected seat of the first respondent (Jane Carpins) in the National Assembly did not become vacant on the 13 July 2011 or at any time before or thereafter. She continued to be a member pursuant to article 81(7). Hence, this Court declines to grant the relief sought by petitioner Ramkalawan in this respect.
  - (b) With regard to his second prayer for a declaration that any act of the first respondent ( Ms. Jane Carpin) as Member of the National Assembly since 13 July 2011 is null, void and of no effect, this Court finds that since its jurisdiction under article 82 (l)(b) is limited to determining whether the seat of a member of the National Assembly has become vacant, it cannot tread beyond its jurisdiction and make a declaration on acts performed by the 1<sup>st</sup> Respondent ( Ms Jane Carpin) as a member of the National Assembly, in this matter. Hence, this Court declines to grant the relief sought by petitioner Ramkalawan in this respect as well.
- (III) No order is made as to costs.