IN THE CONSTITUTIONAL COURT OF SEYCHELLES

[Corum: Karunakaran ACJ, Renaud J and Burhan J.]

CP 03/2014

[2014] SCCC

VIRAL DHANJEE

Petitioner

versus

MR. JAMES ALIX MICHEL

First Respondent**MR. PATRICK HERMINIE**
Second Respondent

THE ATTORNEY GENERAL
Third Respondent

Heard: 24 June 2014

Counsel: Mrs. A. Amesbury Attorney at Law for petitioner

Mr. R Govinden Attorney General with Mr. Ananth Assistant Principal State Counsel for first, second and third respondents

Delivered: 15 July 2014

RULING

[1] Burhan JI have considered the application made by learned counsel Mrs. Amesbury

seeking my recusal from this case. The application was initially based by learned counsel "in the interest of justice and independence and that impartiality needs to be seen to be done" and therefore learned counsel for the petitioner Mrs. Amesbury moved "especially on the instructions of the petitioner" that I recuse myself from this case.

[2] Subsequently a motion and affidavit dated 13th May 2014 were formally filed by the petitioner in this case seeking my recusal. The said application was opposed by the learned Attorney General. I wish to place on record that I appreciate the concerns expressed by learned counsel Mrs. Amesbury on behalf of her client and am of the view that the petitioner Mr. Viral Dhanjee being a citizen, has every right to express his apprehension and concerns regarding his case and having considered his views seriously and objectively I have set down below in detail, the reasons for my decision.

[3] I have considered the main grounds urged by the petitioner set out in his affidavit. The main contention of the petitioner is that there is a public perception amongst the informed and fair minded persons of the public, that as I have been granted citizenship there is a reasonable apprehension that I would be bias for the Government of Seychelles and not be impartial. It is learned counsel Mrs. Alexia Amesbury's contention that it was a "favour" that had been granted. Learned Attorney General countered, that the law legally provided for persons to be given citizenship who have worked hard and contributed towards the benefit of the country and that citizenship had been granted to judicial officers even on earlier occasions.

[4] Be that as it may, while rejecting learned counsel Mrs. Amesbury's contention on the basis an act done in accordance with the law cannot be considered to be a favour, one must bear in mind that all judicial offices take the sacred oath to act impartially and without fear and favour. Therefore in my view this sacred oath supersedes any act of appointment, even it be done by the President of the Republic, when one is performing one's official duties. To give any other interpretation in the absence of any evidence would undermine the sacred official oath taken under the Constitution.

[5] Considering the submissions made by learned counsel for the petitioner, it is apparent the petitioner has further based his apprehension of bias on a case filed against me by persons

who I have convicted for serious offences and imposed long terms of imprisonment. It is wrong and not reasonable to base one's apprehension of bias on the mere filing of a case by individuals who quite obviously would be prejudiced against me and then state that there is a public perception amongst the informed and fair minded persons of the public that I would be biased and not be impartial in the hearing of this case.

[6] Therefore as the petitioner has not based his apprehension of bias on public perception amongst the informed and fair minded persons but on the views of interested parties who seek my removal from office, it cannot be a reasonable apprehension and the petitioner cannot contend that there is a public perception amongst the informed and fair minded persons that I would be biased, when it is his own personal opinion based on the views of interested parties wanting to remove me from office.

[7] Further the subject matter in this case is not in respect of the personal or private interest of the petitioner but is a challenge in respect of the constitutionality of a piece of legislation and therefore a matter of public interest. The question of bias would therefore not arise because the issues in this case have nothing to do with personalities but are in respect of questions of law.

[8] Applications for recusal are mainly based on the maxim that judges are charged with the duty of impartiality in administering justice. The test to apply as already set down by various authorities is whether a fair minded and informed observer having considered the facts would conclude that there was a real possibility that the tribunal was biased. The factors to be considered by a judge challenged with recusal in deciding his partiality or impartiality is whether;

a) he has personal interest or personal knowledge in respect of the case,

b) he has a personal interest in the outcome of the case.

c) he is related to a party or attorney in the case.

d) he is a material witness in the case.

e) he has previously acted as an attorney for either party.

[9] I am satisfied that none of these factors apply to me and therefore there exists no substantial or recognised ground for me to recuse myself from this case.

[10] It is also to be borne in mind that this bench comprises of 3 judges. The petitioner has not challenged the impartiality of the other two judges and whatever decision made by this bench is appealable to the Court of Appeal. Therefore the petitioner is not without relief if he disagrees with the judgment of mine or the Constitutional Court as presently constituted, a fact referred to by Bwana J and Amarasinghe J in the case ***of Mathew Abraham Servina v The Speaker of National Assembly Constitutional Case No 2 of 1994.***

[11] In the case of ***Livesey v New South Wales Bar Association (1985) L.R.C (Const) – 1107*** it was held;

"-----, i*t would be an abdication of judicial function and an encouragement of procedural abuse for a judge to adopt the approach that he should automatically disqualify himself whenever he was requested by one party so to do on the grounds of possible appearance of prejudgment or bias, regardless of whether the other party desired that the matter be dealt with by him as the judge to whom the hearing of the case had been entrusted by the ordinary procedures and practice of the particular court."* (underlining mine)

[12] A panel of judges has been appointed and entrusted to hear this case. It is my considered view if the petitioner had any reasonable apprehension, he should have first made representations to the authority namely the Hon Chief Justice that appointed this panel and moved that a fresh panel be constituted to hear the case, rather than to seek my recusal on an unreasonable apprehension of bias, based on a case filed by interested parties who seek my removal from office.

[13] In the light of the aforementioned case, it is clear that mere *possible appearance of pre judgment or bias* is insufficient there should be a reasonable apprehension or real possibility of bias.

[14] For all the aforementioned reasons I am of the view that I would be abdicating in my judicial function which has been entrusted to me and I would be encouraging procedural

abuse, if I were to automatically disqualify myself on the mere request of a party or counsel when no material grounds have been adduced or merely on a statement that "impartiality must seen to be done." I am satisfied that I can act impartially, competently and diligently in this case. The application seeking my recusal from the case in its entirety is baseless and not an application of substance. I therefore accordingly kindly decline to recuse myself from this case.

Signed, dated and delivered at Ile du Port on 15 July 2014

M Burhan
Judge of the Supreme Court