

IN THE CONSTITUTIONAL COURT OF SEYCHELLES

[Corum: Dodin, Robinson, Nunkoo JJJ]

CP05/2016

[2016] SCCC 15

WAVEL RAMKALAWAN
Petitioner

versus

THE GOVERNMENT OF SEYCHELLES
First Respondent

THE ATTORNEY GENERAL
Second Respondent

Heard: 14 July 2016
Counsel: Mr. Anthony Derjacques for petitioner
The Honourable Attorney General Ronny Govinden for first respondent
and second respondent
Delivered: 28 July 2016

JUDGMENT OF THE COURT

Judgment of the Court

[1] **Background**

- [2] Petitioner filed a Constitutional Petition on 3 June, 2016, accompanied by an affidavit of facts. Petitioner prays the Constitutional Court for a number of declarations on the compatibility of section 47 (3) and section 47 (4) of the Elections Act CAP 68A (hereinafter the "Elections Act") with the rights set out in Article 24 (1) (b) of the Constitution of the Republic of Seychelles CAP 42 (hereinafter the "Constitution") interpreted with the relevant provisions of Articles 113 and 114 of the Constitution claiming that, because of the provisions impugned in the Constitutional Petition, his right to vote at a public election and to stand as a candidate in the forthcoming National Assembly election which is scheduled to be held before 30 September, 2016, for the electoral area of English River, have been contravened or are likely to be contravened.
- [3] The following averments contained in the Constitutional Petition are not disputed by First and Second Respondents —

"1. The Petitioner is the Leader of Seychelles National Party (SNP) and is an Anglican Priest. He was a Presidential Candidate in the last election of 2015. He is a Seychellois and an inhabitant of St Louis, Mahe.

2. The 1st Respondent is the Government of Seychelles, which drafted and proposed the said Election Act CAP 68A to the National Assembly of Seychelles.

3. The 2nd Respondent is the Attorney General of the Republic of Seychelles by virtue of the Constitution of Seychelles and is joined under rule 3 (3) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitutional) Rules, 1994.

4. On the 18th December 2015, the Presidential election results were announced. The Petitioner, Wavel Ramkalawan achieved 49.85 % of valid votes and Mr. James Michel with 50.15 % of valid votes.

5. The Petitioner filed a Petition namely Constitutional Court Case No. 1 of 2016 of the Constitutional Court referring to alleged illegal practices made during the course of the said presidential election.

6. *The Judgment of the Constitutional Court (Case No. 1 of 2016) was delivered on the 31st of May 2016. Important to this matter, paragraphs 473 and 474 of the said judgment are as follows:*

[473] The Second Respondent did not file a counter Petition but averred in his Statement of Defence that the Petitioner had himself committed an illegal practice by publishing and distributing leaflets in the Tamil Language to voters from the Tamil Community in Seychelles promising them inter alia senior posts in his government so as to induce them to vote for him or to refrain from voting for the Second Respondent. This was contrary to section 51 (3) (b) of the Act (supra).

[474] While it is not averred that the acts of the Petitioner affected the results of the elections in any way, it is clear that his acts satisfy the provisions of section 51 (3) (b) to constitute illegal practices. Even if he was not intending to contravene the law, we view such acts especially by the leader of a political party to be reprehensible and irresponsible. We were particularly dismayed by his nonchalance and levity when challenged with the evidence, which he admitted. We are obliged to make a report on this matter to the Electoral Commission in terms of striking his name off the register of voters."

[4] Paragraphs [473] and [474], of the judgment of the Constitutional Court (Case No. 1 of 2016), delivered on 31 May, 2016, gave rise to the dispute at the heart of the Constitutional Petition (*the Constitutional Court Case No. 1 of 2016 is hereinafter referred to as the "Wavel Ramkalawan case"*) and (*the judgment of the Constitutional Court in the Wavel Ramkalawan case, delivered on 31 May, 2016, is hereinafter referred to as the "Wavel Ramkalawan Judgment"*).

[5] **Case for Petitioner**

[6] In addition to paragraphs [473] and [474] of the Wavel Ramkalawan Judgment, Petitioner complains of the passage which appears at paragraph [529], of the same judgment in support of his claim. Therein, at paragraph [529] the learned Judges stated—

"[529] For the avoidance of any doubt, a report by the Constitutional Court will be forwarded to the Electoral Commission in regards to the illegal practice by the Petitioner pursuant to section 47 (1) (a) of the Act."

[7] In view of the matters contained in paragraphs [473], [474] and [529] of the Wavel Ramkalawan Judgment, Petitioner states that his name will be struck off the register of voters. Consequently, it is likely that his right as a voter will be curtailed. Furthermore, Petitioner intends to stand as a candidate for the electoral area of English River for the forthcoming National Assembly Election which is scheduled to be held before 30 September, 2016. Petitioner complains that he will be unable to stand as a candidate.

[8] Petitioner alleges that section 47 (3) and section 47 (4) of the Elections Act contravenes Article 114 (1) of the Constitution, which provides for disqualification on the ground of "*(a) infirmity of mind; (b) criminality; or (c) residence outside Seychelles.*". More specifically, it would be unconstitutional for the Electoral Commission to cause his name to be struck off the register of voters without first establishing one of the three grounds for striking off provided under Article 114 (1) (a), (b) or (c) of the Constitution read with section 5 of the Elections Act. Petitioner cites the case of Boulle v. The Government of Seychelles and The Attorney General Constitutional Case No. 2 of 2011, in support of that point. The learned Judges of the Constitutional Court stated in the Boulle case (page 16) —

"Section 5 of the Elections Act intends to set out in the constitutional provisions of article 114, in particular, that every citizen of Seychelles who is entitled to be registered as a voter under article 114 shall be registered as a voter in that electoral area unless that citizen is disqualified. It sets out that a citizen is disqualified from registering as a voter if he/she is so disqualified under the Elections Act or any other written law; or is under any written law, adjudged or otherwise declared to be of unsound mind; or detained as a criminal lunatic; or is detained at the pleasure of the President; and/or serving a sentence of imprisonment of or exceeding six months imposed by a court in Seychelles."

Petitioner avers that the Constitutional Court must adhere to the Boulle case, and insists that the Electoral Commission should not cause his name to be struck off the register of voters unless he is disqualified on the ground of "criminality".

[9] On the basis of the aforementioned matters, Petitioner states that the principal question involved in the present constitutional case is what does "criminality" entail? Petitioner relies on the decision of the Constitutional Court in the Boulle case as regards the interpretation of "criminality".

[10] On the basis of the aforementioned matters, Petitioner avers that his fundamental human rights as envisaged in the Constitution, as particularised in the aforementioned Articles, have been contravened or are likely to be contravened. Furthermore, Petitioner avers that section 47 (3) and section 47 (4) of the Elections Act is not in conformity with the rights set out in Article 24 (1) of the Constitution read with Articles 113 and 114 (1) (b) of the Constitution, and is thereby unconstitutional.

[11] Petitioner prays the Constitutional Court for the following declarations —

"(a) The Elections Act, section 47 (3) and section 47 (4) is not in conformity with and contravenes the Constitution and is therefore declared void.

(b) That the Petitioners name is not removed from the registered voters list by the Electoral Commission.

And

Costs."

[12] **Case for First and Second Respondents**

[13] With the exception of the facts that are specifically admitted in the Defence to the Constitutional Petition, First and Second Respondents deny all averments contained in the Constitutional Petition.

[14] First and Second Respondents state that section 47 (3) and section 47 (4) of the Elections Act is in conformity with the Constitution. First and Second Respondents state the following in support of that averment —

- (a) that section 47 (3) and section 47 (4) of the Elections Act will not curtail the right of Petitioner from standing as a candidate for the forthcoming National Assembly Election, as such curtailment, if any, would constitute a limitation of such a right permissible under a written law reasonably justifiable in a democratic society;
- (b) in addition, that the Electoral Commission may cause the name of Petitioner to be removed from the voters register under the Elections Act because the right of Petitioner to be registered as a voter for the purpose of and to vote at public elections would be curtailed under Article 114 (1) (b) read with section 47 (1) and section 47 (2) of the Elections Act;
- (c) that there is a presumption of constitutionality of written laws and there is no requirement for *a priori* testing of written laws by a Constitutional Court before their application and enforcement in Seychelles;
- (d) in the main, with reference to the Boulle case —
 - (i) that the scope of section 5 of the Elections Act differs from that of section 47 of the Elections Act. Section 5 of the Elections Act applies to qualification for registration of voters in an electoral area. As regards section 47 of the Elections Act, it applies to a report of a Constitutional Court as to an illegal practice. In the Wavel Ramkalawan case, the activities of Petitioner, a party to the election, were found to be contrary to the Elections Act. So section 5 of the Elections Act does not apply to the present constitutional case;
 - (ii) that the Constitutional Court dealt with facts, circumstances and provisions of written laws relating to elections under the Elections Act, which are different from those being dealt with by the Constitutional Court in the present constitutional case, and that the

Constitutional Court should, therefore, distinguished the Boulle case with the present constitutional case, in that in the Boulle case the issue before the Constitutional Court, among other things, was whether or not a person who was under lawful detention could be assimilated to a criminal, and his right to be registered as a voter was fettered in any way under Article 114 (1) (b) of the Constitution;

- (iii) further, that the Constitutional Court was not called upon to provide an exhaustive interpretation of the word "criminality", and did not provide such an exhaustive interpretation of the said word;
- (iv) that the Constitutional Court did not rule that "criminality" as a ground of disqualification permitted by Article 114 (1) (b) of the Constitution was to be interpreted only in its strictest sense as provided by the Constitution under Article 19 (2) of the Constitution. That is "criminality" would have to be based only on that constitutional principle and unless and until that person had gone through that process he could not be deemed to be a criminal;
- (v) that the determination of the Constitutional Court that a citizen was disqualified from registering as a voter when serving a term of imprisonment of six months or more was not unconstitutional in the circumstances because "criminality" was recognised by Article 114 (1) (b) of the Constitution as a ground of such disqualification, that the right to be registered as a voter and to vote at an election by a category of prisoners that fell into that category might, as a matter of policy, be lawfully and constitutionally curtailed;
- (e) that a person reported to be guilty of an illegal practice by the Constitutional Court to the Electoral Commission is subject to the

consequences of disqualification and having his name removed from the register of voters of the electoral area where the person is registered as a voter, is "criminality" as a ground of disqualification under Article 114 (1) (b) of the Constitution, being a permissible and justifiable limitation on the right to vote in a democratic society, after due legal process.

[15] First and Second Respondents aver that the rights of Petitioner as envisaged in the Constitution have neither been contravened nor are likely to be contravened.

[16] First and Second Respondents aver that section 47 (1), section 47 (2), section 47 (3) and section 47 (4) is constitutional.

[17] First and Second Respondents pray the Constitutional Court for the following orders —

(a) to dismiss the Constitutional Petition;

(b) for cost;

(c) for such other orders that the Constitutional Court shall deem fit.

[18] **Submissions of counsel**

[19] Mr. Derjacques outlines one main issue as forming the core of the Constitutional Petition: "criminality" under Article 114 (1) (b) of the Constitution.

[20] Mr. Derjacques contends that the learned Judges in the Wavel Ramkalawan case had invoked Article 114 (1) (b) of the Constitution, which provides for disqualification on the ground of "criminality", when they made the finding that the acts of Petitioner satisfy section 51 (3) (b) to constitute illegal practice and stated that they are obliged to report to the Electoral Commission that an illegal practice has been proved in terms of striking Petitioner's name off the register of voters.

[21] Learned counsel, relying on the Boullé case, insists that "criminality" will have to be based only on the constitutional principle that a person is considered to be innocent until the person is proved or has been found guilty by a court of law after due legal process under Article 19 (2) of the Constitution. The position of Petitioner is that a person will not be deemed a criminal unless and until the person has gone through that legal process. In support of that point Mr. Derjacques made extensive submissions on the protection afforded by Article 19 of the Constitution to the right of fair trial and whether or not section 47 (3) and section 47 (4) is compatible with the protections afforded by Article 19 of the Constitution.

[22] Drawing a distinction between a trial of an election petition and a criminal trial, Mr. Derjacques argues that in a criminal trial, prosecutorial powers under Article 76 of the Constitution are vested in the Attorney General, who in exercising his powers shall not be subject to the direction or control of any other person or authority. Under Article 19 (1) of the Constitution, a charge must be laid, and 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. Under Article 19 (2) of the Constitution, "*a 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 [...].*". Such protections, it is urged by Mr. Derjacques, are missing in an election petition. Further, Mr. Derjacques suggested that if a person is proved at trial to have been guilty of an illegal practice, then the same would be reported to the Attorney General who would exercise his discretion, preferring any charge against the person by the process specified under the Criminal Procedure Code.

[23] Another distinguishing factor between the trial of an election petition, and that of a criminal offence with its safeguards under Article 19 of the Constitution, is that the latter

requires proof beyond reasonable doubt; whereas the former requires proof on a balance of probabilities. Mr. Derjacques refers to the Wavel Ramkalawan Judgment about the threshold of proof, in particular to the passages which appear at paragraphs [389] and [412] of the same judgment —

at paragraph [389] the learned Judges stated —

"[389] More problematic is the fact that the Election Petition brought by the Petitioner alleges both non-compliance with the Act (section 44 (7) (a)) and illegal practices (section 47 (b)). While it is evident that the standard of proof in relation to the former should clearly be that of civil cases, in the case of the latter the standard may be that of criminal cases."

and at paragraph [412] the learned Judges stated —

"[412] in our view this raises important questions about the threshold of proof that should be applied in presidential election disputes and how it should be discharged. We have given anxious consideration to these issues and have come to the conclusion that given all the different considerations above it is the civil standard of proof, that is proof on a balance of probabilities, that should be applied when considering whether an election is void by reason of non-compliance with the provisions of the Act and, or the commission of illegal practices."

We note that no adverse comment was made on the standard of proof - proof on a balance of probabilities - applied by the Constitutional Court in the Wavel Ramkalawan case. Both counsel submitted that the same standard of proof should be applied in the present constitutional case.

[24] In the main, the Honourable Attorney General, on behalf of First and Second Respondents, argues that section 47 (3) and section 47 (4) of the Elections Act is constitutional. After making many references to the Boulle case, the Honourable Attorney General was of the view that the Boulle case neither provides an exhaustive interpretation of the word "criminality" nor that should the basis of "criminality" only be on account of a criminal conviction. In his opinion, a disqualification by reason of a

report of a Constitutional Court pursuant to section 47 (3) and section 47 (4) of the Elections Act is compatible with the relevant provisions of Article 24 of the Constitution interpreted with the relevant provisions of Articles 113 and 114 of the Constitution.

[25] **The law**

[26] The Constitutional Court sets out the relevant written laws for ease of reference.

[27] Article 24 of the Constitution falls under the Seychellois Charter of Fundamental Human Rights and Freedoms. Article 24 provides —

"24 — (1) Subject to this Constitution, every citizen of Seychelles who has attained the age of eighteen years has a right

—

(a) to take part in the conduct of public affairs either directly or through freely chosen representatives;

(b) to be registered as a voter for the purpose of and to vote by secret ballot at public elections which shall be by universal and equal suffrage;

(c) to be elected to public office; and

(d) to participate, on general terms of equality, in public service.

(2) The exercise of the rights under clause (1) may be regulated by a law necessary in a democratic society."

[28] Articles 113, 114 and 115 of the Constitution fall under Chapter VII of the Constitution, dealing with, "*Electoral Areas, Franchise and Electoral Commission*".

[29] Article 113 of the Constitution deals with the right to vote and provides that—

"113 — A citizen of Seychelles who is registered as a voter in an electoral area shall be entitled to vote, in accordance with law, in

the electoral area —

- (a) at an election for the office of President;*
- (b) at an election of the members of the National Assembly; or*
- (c) in a referendum held under this Constitution,*

unless any circumstances have arisen which, if the citizen were not so registered, would cause the citizen to be disqualified under an Act made under article 114(1) on ground (a) ground (b) of article 114(1)."

[30] Article 114 of the Constitution deals with the qualification for registration as a voter and provides that —

"114 — (1) A person who is a citizen of Seychelles and has attained the age of eighteen years is entitled to be registered as a voter unless the person is disqualified from registration under an Act on the ground of —

- (a) infirmity of mind;*
- (b) criminality; or*
- (c) residence outside Seychelles.*

(2) An Act referred to in clause (1) may provide for different grounds of disqualification with regard to —

- (a) an election for the office of President;*
- (b) an election of the members of the National Assembly; and*
- (c) a referendum held under this Constitution.*

(3) A person is not entitled to be registered as a voter in more than one electoral area."

[31] Article 115 of the Constitution establishes the Electoral Commission. The Electoral Commission is constitutionally mandated to perform the functions conferred upon it by

the Constitution and any other written law.

[32] Section 5 of the Elections Act provides for the qualification for registration as a voter as follows —

"5 — (1) Every citizen of Seychelles entitled to be registered as a voter for registration under article 114 of the Constitution shall, if the citizen resides in an electoral area, be registered as a voter in that electoral area unless the citizen —

- (a) is disqualified from registering as a voter under this Act or any other written law;*
- (b) is under any written law, adjudged or otherwise declared to be of unsound mind or detained as a criminal lunatic or at the pleasure of the President;*
- (c) is serving a sentence of imprisonment of or exceeding six months imposed by a court in Seychelles.*

(2) No person shall be registered as a voter in more than one electoral area."

[33] Section 47 of the Elections Act provides for a report of a Constitutional court as to an illegal practice as follows —

"47 — (1) At the conclusion of the trial of an election petition, the Constitutional Court shall report in writing to the Electoral Commission—

- (a) whether an illegal practice has been proved to have been committed by a candidate or an agent of the candidate and the nature of the practice;*
- (b) the names and descriptions of all persons who have been proved at the trial to have been guilty of an illegal practice.*

(2) Before making any report under subsection (1) (b)

in respect of a person who is not a party to an election petition the Constitutional Court shall give the person an opportunity to be heard and to call evidence to show why the person should not be reported.

(3) When the Constitutional Court reports that an illegal practice has been committed by a person, the person is disqualified for a period of five years from the date of the report from being registered as a voter and from voting at an election or a referendum under this Act.

(4) The Electoral Commission shall cause the name of the person reported under subsection (1) to be removed from the register of voters of the electoral area where the person is registered as a voter."

[34] **Issue**

[35] The principal issue for the determination of the Constitutional Court is whether or not section 47 (3) and section 47 (4) of the Elections Act is constitutional? More specifically, whether or not a disqualification by reason of a report of a Constitutional Court pursuant to section 47 of the Elections Act is compatible with Article 24 (1) (b) interpreted with Articles 113 and 114 (1) (b) of the Constitution.

[36] **Discussion**

[37] The Constitutional Court has considered the principal issue for determination in the light of the Constitutional Petition, the Defence to the Constitutional Petition and the submissions of counsel (consideration has been given to all submissions on record).

[38] **The Boulle case**

[39] The Constitutional Court agrees with the Honourable Attorney General that the Constitutional Court in the Boulle case dealt with facts, circumstances and provisions of written laws relating to elections under the Elections Act, which are different from those being dealt with by the Constitutional Court in the present constitutional case. Nevertheless, the Constitutional Court is of the opinion that the Boulle case offers

valuable guidance on the issue for determination. The petitioner was a Seychellois over 18 years old. The petitioner had the right to be registered as a voter under Articles 24 (1) (b) and 114 of the Constitution. The petitioner was registered as a voter and intended, as entitled, to stand as a candidate for the forthcoming Presidential election. The petitioner brought a Constitutional Petition for a number of declarations on the compatibility of provisions of the Elections Act with the rights set out in the Constitution, alleging that, because of the provisions impugned in the Constitutional Petition, his right to be elected to public office under Article 24 (1) (c) of the Constitution was likely to be contravened.

[40] Whether or not section 5 (1) (b) of the Elections Act was unconstitutional?

[41] Among other things, the petitioner contended that section 5 (1) (b) of the Elections Act was unconstitutional, to the extent that it disqualified a citizen from registering and voting if he was detained at the pleasure of the President in spite of the fact that such restriction was not permissible under Article 114 (1) of the Constitution, which provided for disqualification on the ground of "criminality".

[42] It is observed that no definition is provided for the word "criminality" in the written laws under consideration. The learned Judges were of the opinion that "criminality" as a ground of disqualification permitted by Article 114 (1) of the Constitution, was to be interpreted in its strictest sense, as provided by the Constitution; under Article 19 (2) (a) a person was considered to be innocent until he is proved or had been found guilty by a court of law after due legal process.

[43] The learned Judges emphasized that "criminality" would have to be based solely on that constitutional principle and unless a person had gone through that process he could not be deemed to be a criminal. In that context, a person who was under lawful detention could not be assimilated to a criminal and his right to be registered as a voter was not fettered in any way.

[44] Whether or not section 5 (1) (c) of the Elections Act was unconstitutional?

[45] The petitioner contended that section 5 (1) (c) of the Elections Act was unconstitutional as it deprived citizens of age from exercising their right to register or vote if serving a period of imprisonment.

[46] The learned Judges were of the opinion that section 5 (1) (c) of the Elections Act, providing that a citizen was disqualified from registering as a voter when serving a term of imprisonment of six months or more, was not unconstitutional in the circumstances. "Criminality" was recognised by Article 114 (1) of the Constitution as a ground for such disqualification.

[47] The Elections Act had defined "criminality" to be a state in which a person was serving a sentence of imprisonment of or exceeding six months imposed by a court in Seychelles. The right to be registered as a voter and to vote at an election by a category of prisoners that fell into that category might, as a matter of policy, be lawfully and constitutionally curtailed. That was a matter of policy to be determined by the State. The curtailing of the right of prisoners to vote was neither necessarily unreasonable nor unjustifiable, particularly in a country like Seychelles where there was a strong public feeling against the high level of crime. That measure might be considered a minimum impairment test and satisfy the requirement of proportionality between the right of society to curb criminal action and the right of the prisoners to vote at the time of the preparation of the Electoral Register of the district in which he resided pursuant to the provisions of the Elections Act.

[48] Whether or not section 6 (b) of the Elections Act was unconstitutional?

[49] Additionally, the petitioner contended that, in the light of Article 113 of the Constitution, section 6 (b) of the Elections Act was unconstitutional as it introduced a restriction on voting that was different from the restriction on registration, which was not permissible under Article 113, and, furthermore, as it introduced a frivolous restriction in violation of

voter would not be entitled to vote if he was being detained under any written law, as it contravened Article 113 of the Constitution.

[51] *The present constitutional case*

[52] In the present constitutional case it is not disputed that Petitioner is a registered voter in an electoral area and is entitled to vote at an election in the electoral area. It is also not disputed that Petitioner voted at the election for the office of President and stood as a candidate for the office of President in the election for the office of President in 2015. The Wavel Ramkalawan case arose from the election for the office of President. The petitioner (Petitioner in the present constitutional case) felt aggrieved by the declaration of the Electoral Commission that James Alix Michel was validly elected President of Seychelles, and filed a petition (Wavel Ramkalawan case), praying, among other things, that the Constitutional Court declare that the election is void.

[53] The learned Judges in the Wavel Ramkalawan case found that the petitioner had himself committed an illegal practice by publishing and distributing leaflets in the Tamil Language to voters from the Tamil Community in Seychelles, promising them, among other things, senior posts in the Government so as to induce them to vote for him or to refrain from voting for James Alix Michel. The learned Judges found that it was contrary to section 51 (3) of the Elections Act and satisfied the provisions of section 51 (3) (b) in constituting illegal practice. The learned Judges stated that they, "*are obliged to make a report on this matter to the Electoral Commission in terms of striking his name [Petitioner] off the register of voters*".

- [54] With reference to the Boulle case, Petitioner insists that disqualification does not arise until he has been charged and convicted by a court in Seychelles. First and Second Respondents are not in agreement with the stance of Petitioner. Learned counsel on behalf of First and Second Respondents argues that the exercise of the rights under Article 26 of the Constitution may be regulated by a law necessary in a democratic society. To determine the issue, the Constitutional Court embarked on an interpretation of section 47 (3) and section 47 (4) of the Elections Act to ascertain whether or not it is compatible with the relevant provisions of Article 24 of the Constitution interpreted with Articles 113 and 114 of the Constitution.
- [55] The right of a citizen of Seychelles who has attained the age of eighteen years to be registered as a voter for the purpose of and to vote at an election under Article 24 (1) (b) of the Constitution is not absolute. The right under Article 24 (1) (b) of the Constitution is subject to this Constitution. The exercise of the right under Article 24 (1) of the Constitution may be regulated by a law necessary in a democratic society under Article 24 (2) of the Constitution.
- [56] Article 113 of the Constitution provides for the entitlement to vote of a citizen of Seychelles who is registered as a voter in an electoral area. In terms of Article 113 of the Constitution any circumstances could have arisen that would cause the citizen to be disqualified under an Act made under Article 114 (1) of the Constitution on ground of infirmity of mind or "criminality".
- [57] Article 114 is to the effect that a person who is a citizen of Seychelles and has attained the age of eighteen years is entitled to be registered as a voter unless the citizen is disqualified from registration under an Act on the ground of (a) infirmity of mind; (b) "criminality", or (c) residence outside Seychelles.
- [58] Section 47 of the Elections Act – "*Elections in Seychelles are civil in nature, even if there are some findings of criminal activity involved*": see the Wavel Ramkalawan case (paragraph [405]). "(a) at the conclusion of the trial of an election petition the

Constitutional Court shall report in writing to the Electoral Commission whether an illegal practice has been proved to have been committed [...] by a candidate and the nature of the practice; (b) the names and descriptions of all persons who have been proved at the trial to have been guilty of an illegal practice". Those reported by the Constitutional Court to be guilty of an illegal practice are subject to severe electoral disqualification in terms of section 47 (4) of the Elections Act. In our considered opinion a determination by the Constitutional Court that a person is guilty of an illegal practice is necessarily a crime. Section 47 of the Elections Act makes it clear that the Constitutional Court does not convict persons or impose any criminal penalties at this stage. The Constitutional Court "shall report in writing to the Electoral Commission" under section 47 (1) of the Elections Act. The passages which appear at paragraphs 406 and 407 of the Wavel Ramkalawan Judgment are pertinent.

At paragraph 406 the learned Judges stated —

"[406] The Act also, separately to the Election Petition process, provides for offences which may be prosecuted by the Attorney General with penalties of up to three years imprisonment and fines of up to SR20, 000."

And at paragraph 407 —

[407] Hence, whilst persons found to have been involved in electoral malpractice may face serious consequences, including being disqualified from participation in future elections and/or prosecution and imprisonment, it is not up to the Constitutional Court to convict persons or impose any criminal penalties at this stage. We may only report."

[59] Consideration was given during submissions to the standard of proof to be applied by a Constitutional Court to find a person guilty of having committed an illegal practice. We are satisfied that, if there is a prosecution under section 51 (1) of the Elections Act, the case must be proved to the criminal standard of proof – proof beyond reasonable doubt. It is our considered opinion that it would not be desirable to have a different standard of proof in different courts on the same issue: see The Queen v. Mr. Commissioner Rowe Q.C. Ex parte Julia Mainwaring and others The Queen v Mr. Commissioner Rowe Qc Ex parte Belle Harris 1992 WL 893525 24 March 1992.

[60] In light of the above, in the context of the present Constitutional Petition, it is our considered opinion that the Elections Act provides for "criminality" to be a state in which a person party to an election reported, by the Constitutional Court to the Electoral Commission, to have been guilty at trial of an illegal practice is subject to the severe consequence of disqualification for a period of five years from the date of the report from being registered as a voter and from voting at an election or a referendum under the Elections Act.

[61] On a consideration of the above, we are satisfied that the arguments of counsel for Petitioner grounded on Article 19 (2) of the Constitution bear no merit.

[62] We are also satisfied that the disqualification, of a person party to an election, by reason of a report, of a Constitutional Court, in terms of section 47 (3) and section 47 (4) of the Elections Act, is necessary in a democratic society. The disqualification of a person party to an election involved in an illegal practice is on the ground that he is not a responsible citizen, and has demonstrated beyond reasonable doubt his lack of commitment to the well-being of the community. In the context of the present constitutional case, section 47 (3) and section 47 (4) does not fail the proportionality test because it limits the disqualification to persons party to an election who have been proved at the trial to have been guilty of an illegal practice. The National Assembly has carefully considered the extent to which persons party to an election should be disenfranchised. The disqualification is for a period of five years from the date of the report.

[63] **Determination**

[64] We are satisfied that section 47 (3) and section 47 (4) is in conformity with and does not contravene the Constitution.

[65] The Constitutional Petition is dismissed.

[66] We make no order as to costs.

Signed, dated and delivered at Ile du Port on 28 July 2016



A handwritten signature in cursive script, appearing to read "G. Dodin".

G. Dodin

Judge of Supreme Court

A handwritten signature in cursive script, appearing to read "F. Robinson".

F. Robinson

Judge of Supreme Court

A handwritten signature in cursive script, appearing to read "S. Nunkoo".

S. Nunkoo

Judge of Supreme Court