

IN THE CONSTITUTIONAL COURT OF SEYCHELLES

[Corum:Renaud, Dodin, Robinson, JJ]

CP04/2014

[2016] SCCC 23

NADDY DUBOIS
First Petitioner**MARIE JEAN**

Second Petitioner

SHELTON JEAN
Third Petitioner

YVES DUBOIS
Fourth Petitioner

versus

THE PRESIDENT OF THE REPUBLIC
JAMES ALIX MICHEL
First Respondent **THE CONSTITUTIONAL APPOINTMENTS AUTHORITY**

Second Respondent

ATTORNEY GENERAL
Third Respondent

MOHAN NIRANJIT BURHAN
Fourth Respondent

Heard: 14 June 2016
Counsel: Alexia Amesbury for petitioners
Honourable Attorney General Ronny Govinden for first respondent
and third respondent
Francis Chang-Sam for second respondent
Kieran Shah appearing together with Basil Hoareau for fourth respondent

Delivered: 25 October 2016

RULING

Robinson J (Dodin J concurring)

[1] **The Constitutional Petition**

[2] Naddy Dubois is First Petitioner. Marie Jean is Second Petitioner. Shelton Jean is Third Petitioner. Yves Dubois is Fourth Petitioner. Petitioners are citizens of Seychelles and a family of four. Petitioners have filed a Constitutional Petition accompanied by an affidavit. Petitioners are seeking constitutional redress under Article 130 (1) and Article 46 (1) of the Constitution for alleged acts of contravention of the Constitution of the Republic of Seychelles (Constitution of the Republic of Seychelles is hereinafter referred to as the "Constitution"). The Constitutional Petition alleges that the "re-appointment" of Mohan Niranjit Burhan, Fourth Respondent, as a Judge of the Supreme Court of Seychelles, is in contravention of Article 130 (3), Article 130 (4) and Article 19 (1) of the Constitution.

[3] **Background facts**

[4] The facts giving rise to the Constitutional Petition are to the following effect. Paragraph 1 of the Constitutional Petition alleges that in 2012, Petitioners were charged with offences under the National Drugs Enforcement Agency (herein the "NDEA") Act and the Penal Code in Criminal Side No. 43 of 2012. On count 1 the statement of offence is "*obstructing, interfering with, resisting or delaying NDEA Agents in the exercise of their duties contrary to section 16 (c) of the NDEA Act ... and punishable under section 17 (3) of the NDEA Act*". On count 2 the statement of offence is "*committing an act intended to threaten another with injury or violence to omit to do any act which that person is legally entitled to do contrary to Section 89(a) ... and punishable under section 89 of the Penal Code*". On count 3 the statement of offence is "*committing acts willfully and unlawfully destroying or causing damages to the property contrary to section 325 (1)...*"

and punishable under Section 325 of the Penal Code". On count 4 the statement of offence is "committing acts of assault or attempts to assault NDEA Agents contrary to section 16(6)(a) of the NDEA Act ... and punishable under Section 17 (3) of the NDEA Act". On count 5 the statement of offence is "committing acts with intent to cause grievous harm to a person contrary to Section 219(a) of the Penal Code ... and punishable under Section 219(a) of the Penal Code". On count 6 the statement of offence is "committing acts with intent to cause grievous harm to a person contrary to Section 219(a) of the Penal Code ... and punishable under Section 219 of the Penal Code".

[5] Paragraph 9 of the Constitutional Petition alleges that Criminal Side No. 43 of 2012 commenced before Fourth Respondent, in 2012, and terminated before him on 31 January, 2014.

[6] Paragraphs 2, 3 and 4 of the Constitutional Petition allege that First, Second, and Third Petitioners (then accused) were each convicted and sentenced. First, Second and Third Petitioners were each sentenced as follows —

"Count 1, the 1st, 2nd and 3rd Petitioners a term of 11 years imprisonment. Count 2 a term of imprisonment of 5 years. Count 3 a term of imprisonment of 2 years. Count 4 a term of imprisonment of 11 years. Count 5 a term of imprisonment of 5 years. Count 6 a term of imprisonment of 5 years, a total of 40 years imprisonment."

The sentences imposed on First, Second and Third Petitioners were each to run concurrently with time spent on remand to count towards sentence. First, Second and Third Petitioners would each serve a sentence of 11 years imprisonment. Fourth Petitioner was sentenced to two years probationary supervision.

[7] Paragraph 8 of the Constitutional Petition alleges that Fourth Respondent was, until 26 November, 2013, a foreign Judge who had been appointed to the Supreme Court on a five year fixed term contract. The contract of Fourth Respondent expired on a date unknown to Petitioners. In November, 2013, Fourth Respondent was allowed to continue in the

judicial office for the purpose of giving judgments or otherwise in relation to any proceedings, commenced before the termination of his appointment as a Judge.

[8] Paragraphs 5, 6, 7, 9 and 10 of the Constitutional Petition allege, among other things, that First Respondent is the President of the Republic of Seychelles. Second Respondent, the Constitutional Appointments Authority, is the body that, among other functions, recommends "*re-appointment*" of Judges when "*exceptional circumstances*" exist that necessitate such "*re-appointments*". Third Respondent, the Attorney General, is a necessary party to these proceedings. At the time of the conviction and sentence of Petitioners, Fourth Respondent had been granted Seychellois citizenship by First Respondent (26 November, 2013), and registered as a Seychellois citizen under the Citizenship Act. On 12 February, 2014, First Respondent "*re-appointed*" Fourth Respondent as a Judge of the Supreme Court, on the recommendation of Second Respondent.

[9] *Alleged acts of non-compliance by Respondents*

[10] Paragraph 11 of the Constitutional Petition states that First Respondent, on the recommendation of Second Respondent, may "*re-appoint*" a person who is not a citizen of Seychelles and who has already completed a term of office as a Judge, in exceptional circumstances, under Article 131 (4) of the Constitution. Paragraph 11 of the Constitutional Petition alleges that Fourth Respondent was not entitled to be "*re-appointed*" as a Judge of the Supreme Court, under Article 131 (4) of the Constitution, because the criterion of "*exceptional circumstances*" had not been established. Admittedly, Fourth Respondent was granted Seychellois citizenship by First Respondent. Petitioners allege that Fourth Respondent was neither eligible nor entitled to be granted Seychellois citizenship.

[11] Paragraph 15 of the Constitutional Petition alleges that First, Second and Fourth Respondents knew that, in the absence of "*exceptional circumstances*", Fourth Respondent could not be "*re-appointed*". Consequently, First Respondent granted Fourth Respondent Seychellois citizenship, thereby circumventing that express prohibition,

while Second Respondent recommended his *"re-appointment"*, and First Respondent subsequently *"re-appointed"* him. Petitioners allege that the above mentioned acts of the Respondents appear to be a tripartite collusion to violate the Constitution, are intellectually dishonest and lacking in integrity, and emanate from persons who swore Oaths of Allegiance to the Constitution.

[12] Paragraphs 21 and 22 of the Constitutional Petition allege that the recommendation for the *"re-appointment"* of Fourth Respondent, a foreigner at the time, as a Judge by Second Respondent and his subsequent *"re-appointment"* by First Respondent, in the absence of *"exceptional circumstance"*, is a contravention of the Constitution. Petitioners allege that the granting of Seychellois Citizenship is not an exceptional circumstance that warrants *"re-appointment"*. Consequently, Petitioners allege that the recommendation by Second Respondent was illegal and unconstitutional as was the *"re-appointment"* by First Respondent.

[13] Based on the foregoing, Petitioners allege that the *"re-appointment"* of Fourth Respondent was a favour granted to him by First Respondent in collaboration with Second Respondent and the *"return favour was the tough stance to be taken on crime evidenced by the handing down to Petitioners of a total of 40 years imprisonment for allegedly causing bruising and scratch marks to the left lower eyelid eye of a law enforcement agent and for the band aid superficial injury to another, preceding his re-appointment by 12 days"*.

[14] Paragraph 24 and 25 of the Petition allege —

"24 The Petitioners aver that the 4th Respondent prior to the granting of the citizenship, on 4th December 2012 had sentenced an accused who had totally blinded a victim in one eye, to the payment of a fine and given her time within which to pay it, hence the Petitioners did not receive an independent adjudication since the 4th Respondent was seeking re-appointment at the time he sentenced them and he must have been acting with an eye on securing a reappointment hence the excessive disproportionate sentence visited upon them.

25 The Petitioners aver that henceforth every judgment in a case where the government has a direct or indirect interest before a court presided by the 4th Respondent, will be "suspect" as citizenship once granted can, under section 11 A of the Citizenship (Amendment) Act 2013 be revoked and the 4th Respondent will be forever beholden to the 1st Respondent or, subject to executive control in the performance of his judicial functions especially in criminal cases, which are brought at the instance of the Republic herein represented by the 1st respondent, and this is likely to affect the interests of the Petitioners who are going to ask for bail pending appeal which matter will be placed before the 4th Respondent as the sentencing judge."

[15] Particulars of allege contravention of the Constitution by Respondents

[16] With reference to the foregoing and all matters incidental, paragraph 26 of the Petition alleges that Petitioners did not get a fair trial by an independent and impartial court as is guaranteed to them under Article 19 (1) of the Charter as follows —

"The right to a fair trial, which includes conviction and sentence by an independent and impartial court established by Article 19 (1) was contravened.

Article 131 (3) and (4) of the Constitution in relation to them and their interest is being or is likely to be contravened by the acts and omission of the 1st 2nd and 4th respondents, detailed hereinabove."

[17] Relief

[18] Petitioners are seeking the following reliefs from the Constitutional Court —

"1) [to] Interpret the Charter in such a way as not to be inconsistent with any international obligations relating to Human Right and freedoms, particularly The United Nation Covenant on Civil and Political Rights which Seychelles acceded to in 1992.

2) [to] interpret the Charter in line with Article 48 (a to d) of the Constitution."

[19] Petitioners are seeking further reliefs from the Constitutional Court as follows —

- "a) *[to] declare that the Petitioners case CR. No. 43/2012 and the subsequent conviction and sentence and all matters incidental thereto contravened their right to a fair trial by an independent and impartial court.*
- b) *to declare that the acts and omissions of the 1st, 2nd and 4th Respondents above-mentioned contravened the Constitution.*
- c) *to declare that the re-appointment of the 4th Respondent as a Seychellois judge and in the absence of exceptional circumstances is a violation of the Constitution. And said re-appointment is void, and until the case is determined the performance of judicial functions by the 4th Respondent should be suspended.*
- d) *to make such declaration, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the Charter and disposing of all the issues relating to the application.*
- e) *[to] make such additional order under this Constitution or as may be prescribed by law.*
- f) *[to] grant any remedy available to the Supreme Court against any person, or authority which is the subject of the application or which is a party to any proceedings before the Constitutional Court, as the court considers appropriate.*
- g) *the whole with interest and cost of this Application."*

[20] **Affidavit in Support of the Constitutional Petition**

[21] The affidavit in support of the Constitutional Petition was sworn/signed by First, Second and Third Petitioners. First Petitioner signed on behalf of Fourth Petitioner.

[22] First, Second and Third Petitioners swore to an affidavit in support of the Constitutional Petition on 29 April, 2014. The affidavit adopts and repeats the averments contained in the Constitutional Petition "*to avoid repetition*".

[23] First, Second and Third Petitioners made other allegations against Fourth Respondent and in support of those allegations exhibited the following documents — NMSY 1 (Sri Lankan Legal System); NMSY 2 (Justice Burhan sworn in as Puisne Judge); NMSY 3 (Justice Burhan sworn in as Supreme Court Judge), (copies of miscellaneous photographs) and a copy of judgment CR No. 30 of 2009); and NMSY 4 (copy of judgment CR. No. 30 of 2...The Republic v Lolette Uranie).

[24] First, Second and Third Petitioners also adopted and repeated the prayers contained in the Constitutional Petition.

[25] **The Preliminary objections**

[26] Respondents raised preliminary objections to the Constitutional Petition. The Constitutional Court heard counsel for Petitioners and Respondents, on the objection, on 14 June, 2016.

[27] First and Third Respondents raised the following preliminary objections to the Constitutional Petition —

- "1. *The decision of the President to appoint a Judge proposed by the Constitutional Appointment Authority is a constitutional prerogative that is not reviewable by a court.*
2. *The provision of the Charter has not been or is not likely to be contravened in relation to the Petitioners by the appointment of the 4th Respondent by the 1st Respondent and accordingly they cannot apply to the Constitutional Court for redress. The Petitioners having a perverse interest in bringing the Petition to Court."*

[28] Second Respondent raised the following preliminary objections to the Constitutional Petition —

"In accordance with section 90 of the Seychelles Code of Civil Procedure read with rule 2 (2) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the

Constitution) Rules (the "Rules"), the 2nd Respondent objects to the Petition on the following grounds —

1. *The Petition is not in accordance with Rule 5 of the Rules which requires a concise statement of the material facts and a reference to the provision(s) of the Constitution that is alleged to have been contravened or likely to be contravened with the date and place and name of the person who has allegedly contravened or likely to contravene said provision(s) of the Constitution.*
2. *For reasons set out in this paragraph, the purported affidavit in support of the Petition is not in accordance with sections 170 and 171 (a) of the Seychelles Code of Civil Procedure Act when read with rule 2(2) of the Rules in that the affidavit which stands in lieu of the testimony of Petitioner has not been sworn to by Jean Yves DUBOIS, one of the Petitioners. The signature of Naddy DUBOIS appears in instead without any explanation for this.*

In addition it is humbly submitted that the facts sworn by 3 of the petitioners do not entirely match those recited in the Petition and with regard to paragraph 3 thereof it does not disclose the source of the information and ground of the belief as required by section 170 the Seychelles Code of Civil Procedure Act when read with rule 2(2) of the Rules. Please see the authority of Union Estate Management (Pty) Ltd v H Mittemeyer (1979) SLR 140 at p 143.

3. *In the circumstances there is no affidavit in terms of section 170 as above-referred and there is therefore no proper Petition in terms of rule 3(1) of the Rules before this Honourable Court".*

[29] Fourth Respondent raised the following preliminary objections to the Constitutional Petition —

- "1 *The Petitioners have no locus standi to challenge the granting of Seychellois citizenship to the 4th Respondent and/or the appointment of the 4th Respondent as a Seychellois puisne judge.*
2. *The Petition is frivolous and vexatious and/or does not disclose any reasonable cause of action.*
3. *The affidavit in support of the Petition is defective and bad in law as one the deponents have not signed the affidavit.*

4. *The affidavit in support of the Petition does not disclose evidence in support of the Petition."*

[30] **The law**

[31] The following provisions of the Constitution are of particular relevance.

[32] Article 130 of the Constitution, so far as relevant, provides —

"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.

...

(7) Where in an application under clause (1) or where a matter is referred to the Constitutional Court under clause (6), the person alleging the contravention or risk of contravention establishes a prima facie case, the burden of proving that there has not been a contravention or risk of contravention shall, where the allegation is against the State, be on the State. [...]."

[33] Article 46 of the Constitution, so far as relevant, provides —

"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.

...

(8) Where in an application under clause (1) or where a matter is referred to the Constitutional Court under clause (7), the person alleging the contravention or risk of contravention establishes a prima facie case, the burden of proving that there has not been a contravention or risk of contravention

shall, where the allegation is against the State, be on the State. [...]."

- [34] Article 131 deals with the tenure of office of Justices of Appeal and Judges of the Supreme Court. Article 131 of the Constitution, so far as relevant, provides —

"131 ...

(3) Subject to clause (4), a person who is not a citizen of Seychelles may be appointed to the office of Justice of Appeal or Judge for only one term of office of not more than seven years.

(4) The President may, on the recommendation of the Constitutional Appointments Authority in exceptional circumstances, appoint a person who is not a citizen of Seychelles and who has already completed one term of office as a Justice of Appeal or Judge for a second term of office, whether consecutive or not, of not more than seven years."

- [35] The Rules provide for the practice and procedure of the Constitutional Court in respect of matters relating to the application, contravention, enforcement or interpretation of the Constitution. Rules 3, 4, and 5 of the Rules provide —

"3 (1) — An application to the Constitutional Court in respect of matters relating to the application, contravention, enforcement or interpretation of the Constitution shall be made by petition accompanied by an affidavit of the facts in support thereof.

...

5 (1) — A petition under rule 3 shall contain a concise statement of the material facts and refer to the provision of the Constitution that has been allegedly contravened or is likely to be contravened or in respect of which the application, enforcement or interpretation is sought.

(2) Where the petitioner alleges a contravention or likely contravention of any provision of the Constitution, the petition shall contain the name and particulars of the person alleged to have contravened that provision or likely to contravene that

provision and in the case of an alleged contravention also state the date and place of the alleged contravention."

[36] **Submission and discussion**

[37] I have considered the Constitutional Petition, the preliminary objections raised by Respondents, the written laws as set out, and the submissions of counsel.

[38] The following issues arise for consideration —

- locus standi under Article 130 (1) and Article 46 (1) of the Constitution;
- the form of the affidavit in support of the Constitutional Petition;
- striking out of the Constitutional Petition under section 92 of the Seychelles Code of Civil Procedure (the Seychelles Code of Civil Procedure is hereinafter referred to as the "Code").

[39] I have not considered the preliminary objections in any particular order. I have considered the approach of our courts on the issue of locus standi with regards to a Constitutional Petition. In Chow v. A-G [2007] SCA 2, a Bench comprised of Bwana Ag P., Hodoul and Domah JJA., said —

"[18] A Constitutional Court ... sits between the power of the people and the authority of the organised government to ensure that public affairs are conducted within the frame-work tacitly agreed upon and enshrined in the Charter. It is the temple and the throne to which the citizen-pecunious or impecunious rushes to with a view to ensuring that the people power delegated to authority are properly used and not abused. Its prime purpose is to make Constitution work.

[20] Basically, what locus standi means is the right of a litigant to act or be heard before the courts. Originating in private law, it has become "one of the most amorphous concepts in the entire domain of public law". The right of a citizen to act or be heard before the courts could exist as a private right as well as a public right.

[22] *Although our Constitution does not use the term "locus standi", it is a concept which encapsulates the enabling provisions of articles 46 or ... [130]*

[19] *Having said that we should rush on to add that Constitutional Courts have to be equally vigilant that their process is not abused by vexatious and frivolous applications. People are also born with whims and caprices. Some engage in ego trips. Some engage in serious works. Some help. Other hamper. They may come to court as individuals or busybodies, with either legitimate or vested interests. The Constitutional Court's high responsibility lies not only in a judicious but enlightened approach deciding the merit or demerit of an action under the Constitution. It is with this caveat that we approach the issue of locus standi in the Constitutional context which is very different in other areas of the law."*

[40] In the case of Michel and Others v Dhanjee and others SCA 5 and 6 of 2012, a bench comprised of Fernando, Twomey and Msoffe JJA., examined the basis under which applications are made to the Constitutional Court under Article 130 (1) and Article 46 (1) of the Constitution.

[41] **Michel** concerned a challenge to the re-appointment of a Mauritian national Dr Satyabhooshun Gupt Domah, (herein "Dr Domah") to the Court of Appeal. In April, 2011, Dr Domah wrote to the Constitutional Appointments Authority applying for a second term of office. In June, 2011, the Constitutional Appointments Authority wrote to the President recommending the re-appointment of Dr Domah for a further term of two years. In September, 2011, the President appointed Dr Domah for a further term of five years. In October, 2011, Viral Dhanjee filed a petition to the Constitutional Court praying for a declaration that the recommendation of the Constitutional Appointments Authority and the re-appointment of Dr Domah was null and void for contravening the Constitution. The Constitutional Court ruled that a prima facie case had been made and that it viewed the recommendation for an "extension" of the term of office of Dr Domah as alien to the Constitution and inconsistent with Article 131 of the Constitution. The respondents – the President of the Republic of Seychelles, the Attorney General and Dr Domah appealed to the Court of Appeal on the grounds, *inter alia*, that Viral Dhanjee had no locus standi to file a petition under Article 130 (1) challenging the re-appointment of a Justice of Appeal in his capacity as a former and future litigant before the Court of Appeal.

- [42] *Per Twomey JA (as she was then)*. The petitioner had to demonstrate that his interest was likely to be affected in some way. The clear and concise test to be applied to decide if a prima facie case was made out was as follows — **(a)** there was a contravention or was likely to be a contravention of the Constitution, **(b)** the person had a personal interest that was being or was likely to be affected by the contravention, **(c)** the person whose interest was likely to be affected by the contravention could not obtain redress for the contravention under any other law, and **(d)** the question raised by the petitioner was not frivolous or vexatious. Only on passing these tests could the case go for hearing. The Seychelles Court of Appeal further opined that there would be a grave lacuna in public law if outdated technical rules of locus standi prevented a person bringing executive illegality to the attention of the courts. Locus standi should, therefore, not be used to prevent a litigant from arguing the substance of his or her case.
- [43] In **Michel** the Court of Appeal adopted a liberal and generous approach to locus standi, given the exceptional importance of the issues raised. Consequently, it was accepted that Viral Dhanjee had brought the case as a "*concerned citizen*" (see paras [16]-[17], [19]-[21], of the judgment). Dicta of Lord Diplock in IRC v National Federation of Self Employed and Small Businesses [1981] 2 All ER 93 at 107, of Ngulube CJ in Mwanba v A-G of Zambia [1993] 3 LRC 166 at 170 and of Bwana Ag. P., in **Chow** (para [22] applied).
- [44] *Per Fernando JA*. The petitioner, as a citizen of Seychelles, had a fundamental duty to uphold and defend the Constitution and had a right to claim that the appointment of Dr Domah contravened the Constitution. In an application to court under Article 130 (1), all that one had to show was that there had been a contravention of the Constitution and that the person's interest was being or was likely to be affected by such contravention (see paras [55]-[63] of the judgment).
- [45] Article 46 of the Constitution is designed to afford a remedy to a person who contends that one or more of the fundamental rights that the person enjoys under the Seychellois Charter of Fundamental Human Rights and Freedoms have been or are likely to be, contravened. Article 46 (1) provides a personal remedy for personal prejudice. This is

made clear by the phrase "*in relation to the person*" in Article 46 (1) of the Constitution. In **Michel** Fernando JA., in interpreting Article 46 (1) of the Constitution, said—

"[59] In an application under art 46 (1) in view of the use of the words 'contravened in relation to the person', a direct link must be shown between the contravention and its effect on the person making the application. In other words, the contravention should have been in relation to the person. [61] An applicant can succeed under article 130 (1) even when the person's interest is being or is likely to be affected by such contravention. Under art 46 (1) one cannot succeed on the basis of a likelihood of his interests being affected, there need necessarily be a contravention in relation to the person. The reason for this differentiation is that art 46 (1) deals with the Seychellois Charter of Fundamental Human Rights and Freedoms, which sets out specifically the individual rights of persons which are personal to him."

[46] In the present case, Petitioners contend that the appointment of Fourth Respondent is in contravention of Article 131 (3) and Article 131 (4) and Article 19 (1) of the Constitution. In support of the contention, Petitioners allege that Fourth Respondent, who until 26 November, 2013, was a foreign Judge of the Supreme Court, was granted Seychellois citizenship, by First Respondent, on 26 November, 2013, in order to pave the way for the "*re-appointment*" of Fourth Respondent as a Judge of the Supreme Court. Consequently, the recommendation of Second Respondent, in breach of Article 131 (3) and Article 131 (4) of the Constitution, is illegal and unconstitutional as was the appointment of Fourth Respondent, by First Respondent, in the absence of any "*exceptional circumstance*". Petitioners further allege that Respondents were in cahoots because they "*knew*" that Fourth Respondent could not be appointed as a Judge of the Supreme Court in the absence of "*exceptional circumstances*". Additionally, Petitioners allege that there was a vested interest in Fourth Respondent imposing harsh sentences on Petitioners because he was securing a "*re-appointment*" at the time of sentencing. Consequently, the appointment of Fourth Respondent, as a Judge of the Supreme Court,

is likely to affect the interest of Petitioners as past, present and future litigants before the Fourth Respondent, and that his *"re-appointment"* has contravened their interest under Article 19 (1) of the Constitution (i.e. their right to a fair trial by an independent and impartial court as is guaranteed under Article 19 (1) of the Constitution).

[47] In the main, learned counsel for Respondents contend that the reasons given by Petitioners are perverse and unlawful.

[48] In an application under Article 130 (1) of the Constitution, I am mindful that I should adopt a liberal and generous approach to locus standi in consonant with **Michel**. It should be pointed out, however, that the Seychelles Court of Appeal recognised and emphasized that the issues raised in **Michel** were of *"exceptional importance"*, hence it accepted that Viral Dhanjee has brought the Constitutional Petition as a *"concerned citizen"*. As explained by Fernando JA *"all that one had to show was that there had been a contravention of the Constitution and that the person's interest was being or was likely to be affected by such contravention"*. In an application under Article 46 (1) of the Constitution, a direct link must be shown between the contravention and its effect on the person making the application.

[49] How are these considerations to be applied to the facts of this case? First, have Petitioners shown a constitutional appointment that contravenes Article 131 (3) and Article 131 (4) of the Constitution, and are their interests being or are likely to be affected by the contravention? Second, have the Petitioners shown a direct link between the alleged contravention and its effect on them? I have considered both questions together.

[50] As I read the Constitutional Petition, I do not see how it meets the requirements of Article 130 (1) and Article 46 (1) of the Constitution. The Constitutional Petition contains a number of imputations against Respondents. Petitioners have made allegations of *"collusion"*, *"intellectual dishonesty"* and *"lack of integrity"* against Respondents. Petitioners have alleged that Fourth Respondent has solicited a *"re-appointment to the bench"*; that Fourth Respondent was seeking a *"re-appointment"* at the time that he sentenced the Petitioners; that Fourth respondent must have been discharging his duties with a view to securing a *"re-appointment"*, hence the disproportionate sentence visited

on Petitioners; and that the *"re-appointment"* of Fourth Respondent was a favour granted to him by First Respondent in collaboration with Second Respondent and that the *"return favour was the tough stance to be taken on crime evidenced by the handing down to Petitioners of a total of 40 years imprisonment for allegedly causing bruising and scratch marks to the left lower eyelid eye of a law enforcement agent and for the band aid superficial injury to another, preceding his re-appointment by 12 days"*, among others. Counsel for Respondents have complained that those passages in the Constitutional Petition are inadmissible hearsay, unsubstantiated, speculative and so forth.

[51] Rule 3 (1) of the Rules states that a Constitutional Petition shall be accompanied by an affidavit of the facts in support thereof. Rule 2 (2) of the Rules provides that, *"[w]here any matter is not provided for in these Rules, the Seychelles Code of Civil Procedure shall apply to the practice and procedure of the Constitutional Court as they apply to civil proceedings before the Supreme Court"*. Section 170 of the Seychelles Code of Civil Procedure requires that an affidavit shall be confined to such facts as a witness is able of his or her own knowledge to prove, except on interlocutory applications, for which statements as to his or her belief, with the grounds thereof, may be admitted. I state at this juncture that a Constitutional Petition is not an interlocutory application within the meaning of section 170 of the Seychelles Code of Civil Procedure? I opine that the dictum in Union Estate Management (Pty) Ltd v H Mittemeyer (1979) SLR 140 at p 143 (see para [28], of this judgment) does not apply to the Constitutional Petition because it (the Constitutional Petition) determines the rights of Petitioners. The evidence must be regulated by the ordinary rules. Having considered the submissions of counsel I am satisfied that the statements of Petitioners —

- are based on speculation, not fact;
- are inadmissible hearsay;
- speculate about the motivation and state of mind of Respondents, which are not within Petitioner's knowledge and are, therefore, objectionable opinion evidence;
- are argumentative;
- are statements of opinions outside their factual knowledge; and

- are irrelevant opinion evidence that is vexatious and intended only to embarrass Respondents.

Those statements in breach of section 170 of the Seychelles Code of Civil Procedure and other relevant written laws (including the Supreme Court Rules) are clearly improper and inadmissible. I state with regret that those are not the only offending statements contained in the Constitutional Petition. I accept the submissions of Respondents stating that, Petitioners have not shown how Second Respondent by recommending the candidacy of Fourth Respondent, who happened to be a Seychellois and who had judicial experience, to First Respondent who, is not bound in law to adopt the recommendation, violated Article 131 (3) and Article 131 (4) of the Constitution. The Constitutional Petition shows that Fourth Respondent was appointed as a Seychellois Judge of the Supreme Court and not "*re-appointed*" as a foreign Judge on the basis of "*exceptional circumstances*". Further, I may not assume that there was a vested interest in Fourth Respondent imposing harsh sentences on Petitioners because he was securing a "*re-appointment*" at the time of sentencing. I am satisfied on the evidence prima facie that the Constitutional Petition does not show a constitutional appointment that contravenes the Constitution. In light of the above, I am satisfied that Petitioners alleging the contravention have not established a prima facie case under Article 130 (1) and Article 46 (1) of the Constitution.

[52] In spite of my findings, should locus standi be used to prevent Petitioners from arguing the substance of their case? The issue is linked to the preliminary objection raised by Fourth Respondent, namely, whether or not the Constitutional Petition is frivolous or vexatious and/or does disclose a reasonable cause of action?

[53] Section 92 of the Code enforces the rules of pleading.

[54] Section 92 of the Code provides —

"92. The court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in such case, or in case of the action or defence being shown by the pleading to be frivolous or vexatious, the court may order

the action to be stayed or dismissed, or may give judgment, on such terms as may be just".

- [55] Section 92 of the Code concerns the discretion of the court to strike out any pleading where, on the face of the pleading, it discloses no reasonable cause of action or answer. Where this is the only ground on which the application is made, evidence is not admitted: see A. –G. of Duchy of Lancaster v. L. & N. W. Ry., [1892] 3 Ch. 278; Republic of Peru v. Peruvian Guano Co. (1887), 36 Ch. D. 489, 498). Under section 92 of the Code, the court may also exercise the discretion to strike out any pleading where the action or defence being shown by the pleading are frivolous or vexatious. In applications on this ground, affidavit evidence may be and is used. On both grounds the court retains the discretion to stay or dismiss the proceedings or may give judgment on terms as may be just.
- [56] "There is some difficulty in affixing a precise meaning to" the term no reasonable cause of action or defence. "In point of law, [...] every cause of action is a reasonable one" (per Chitty, J., Rep. of Peru v. Peruvian Guano Co., 35 Ch. D. P. 495). A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleadings are considered (per Lord Pearson in Drummond-Jackson v. British Medical Association [1970] 1 W.L.R. 688; [1970] 1 All E.R. 1094, C.A.) However, the practice is plain, so long as the plaint or the particulars (Davey v Bentinck [1893] 1 Q. B. 185) disclose some cause of action, or raise some questions fit to be decided by a Judge; the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out (Moore v. Lawson, 31 T.L.R. 418, C.A.; Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 ALL E.R. 871, C.A.). I bear in mind also that pleadings should only be struck out in plain and obvious cases and I look with particular care at the Constitutional Petition, constitutional rights emanating from a higher order law.
- [57] Does the Constitutional Petition raise any question fit to be decided by the Constitutional Court or is the Constitutional Petition sustainable? I have considered only the allegations in the Constitutional Petition and am satisfied that it raises no questions fit to be decided by the Constitutional Court. I have found that the disputed paragraphs of the

Constitutional Petition are prima facie quite incapable of giving rise to the reliefs sought. The case for strike out or dismissal is perfectly plain and obvious.

[58] I examine the form of the affidavit further. Rule 3 (1) of the Rules requires evidence to be given by an affidavit of facts. The affidavit sets out the factual basis of Petitioners' Petition, or in the words of Mr. Chang-Sam, "*the affidavit ... stands in lieu of the testimony*" of Petitioners. The affidavit of Petitioners adopts the averments contained in the Constitutional Petition "*which should be read as part of their [Petitioners] affidavit to avoid repetition*". Additionally, the facts sworn by First, Second and Third Petitioners do not entirely match those recited in the Constitutional Petition. In short, having considered the preliminary objections on point (see paras [28] and [29], of this judgment) I am satisfied that the Constitutional Petition does not disclose evidence in support of the Petition in accordance with Rule 3 (1) of the Rules. In light of the above, I am satisfied that I cannot receive the affidavit.

[59] Mr. Chang-Sam contends that "*the affidavit which stands in lieu of the testimony of Petitioners has not been sworn to by Jean Yves DUBOIS, one of the Petitioners. The signature of Naddy DUBOIS appears instead without any explanation for this*". The same objection was taken by Mr. Hoareau. I have considered the objection. The affidavit was not signed by Fourth Petitioner. The jurat states that it was, "*[s]worn before me at Mt. Posee This 29th Day of April 2014 [SD] Melchior Vidot Deponents ... 4. [SD] N. Dubois (representing Jean Yves Dubois)*". The position is that the affidavit must be sworn/signed by all deponents. Could the irregularity be cured? Irregularities in the jurat cannot be waived by Petitioners and Respondents and the Constitutional Court has no power to assist where an affidavit is unsworn. In my view, Petitioners should have sought the leave of the Constitutional Court to take the affidavit off the file to be corrected, re-sworn and re-filed. In light of the above, I am satisfied that I cannot receive the affidavit. In sum, I opine that there is no Constitutional Petition in terms of Rule 3 (1) of the Rules.

[60] **DECISION**

[61] In light of all the above, I dismiss the Constitutional Petition. Each Party shall bear his or its own costs.

Signed, dated and delivered at Ile du Port on 25 October 2016

Fiona Robinson

Judge of Supreme Court

[62] **Dodin JI** have had the opportunity to read both rulings delivered by my Honourable brother and sister Judges. My views on the issues raised in this ruling were made known to and discussed with both so I do not find it necessary to write a third ruling which would reflect one of the rulings delivered here today.

[1] I shall however make three short observations on three of these issues:

1. Affidavit.

It is trite law that affidavits must be statements of facts and must be subscribed to by the deponents. Where more than one person makes a common affidavit, it cannot be proper that one or more of those persons do not sign the same. That defect cannot be cured by simply ignoring that non-signatory or that person. That defect is fatal. It might have been different if each person had sworn a separate affidavit.

2. Granting of citizenship.

The prerogative power to grant citizenship lies with the President of the Republic as per the provisions of the Constitution of the Republic of Seychelles. A concerned citizen may not like the granting of citizenship to a particular person and may indeed object to the same but no power is given to the Court to revoke such granting of citizenship unless the President for valid reason, makes such application to Court.

3. Appointment of Judges.

It is not disputed that such appointment can be challenged by persons with proper *locus standi*. The issue raised in this case goes further by linking the convictions and sentences of the Petitioners by the 4th Respondent, inferring that the Petitioners were given unduly heavy sentences because the 4th Respondent had an eye on his new appointment. I fail to see the logic of this argument. For example, a learned magistrate surely has a hope of one day being elevated to the bench. Does it mean that he or she must not convict or impose sentences because of his or her aspiration? Without clear facts showing that there was a deal between the respective appointment bodies in that respect one cannot simply assume that there must have been something improper.

[2] For these reasons therefore I find myself coming to the same conclusions as my Honourable sister Judge Robinson. I therefore endorse and concur with her ruling.

Signed, dated and delivered at Ile du Port on 25 October 2016

G Dodin
Judge of the Supreme Court

Renaud J

[3] Accessing the jurisdiction to the Constitutional Court is in general subjected to the provisions of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules, 1994 (hereinafter “the Rules”)

[4] The Petitioners have entered a Petition and the Respondents have raised certain preliminary objections to that Petition.

[5] The 1st and 3rd Respondents raised preliminary objections in terms of Rule 9 of the Rules, as follows:

1. The decision of the President to appoint a Judge proposed by the Constitutional Appointment Authority is a constitutional prerogative that is not reviewable by a Court.
2. The provision of the Charter has not been or is not likely to be contravened in relation to the Petitioners by the appointment of the 4th Respondent by the 1st Respondent and accordingly they cannot apply to the Constitutional Court for redress. The Petitioners having a perverse interest in bringing the Petition to Court.

[6] The 2nd Respondent objected to the Petition in terms of Section 90 of the Seychelles Code of Civil Procedure (SCCP) read with Rule 2(2) of the Rules, on the following grounds:

1. The Petition is not in accordance with Rule 5 of the Rules which requires a concise statement of the material facts and a reference to the provision(s) of the Constitution that is alleged to have been contravened or likely to be contravened with the date and place and name of the person who has allegedly contravened or likely to contravene said provision(s) of the Constitution.
2. The purported affidavit in support of the Petition is not in accordance with Section 170 and 171(a) of the SCCP when read with Rule 2(2) of the Rules in that the affidavit which stands in lieu of the testimony of Petitioner has not been sworn by Jean Yves DUBOIS, one of the Petitioners. The signature of Naddy DUBOIS appears in instead without any explanation for this.
3. In the circumstances there is no affidavit in terms of Section 170 of SCCP and there is therefore no proper Petition in terms of Rule 3(1) of the Rules before this Court.

[7] The 4th Respondent raised the following grounds of objections:

1. The Petitioners have no *locus standi* to challenge the granting of Seychelles citizenship to the 4th Respondent and/or the appointment of the 4th Respondent as a Seychellois puisine judge.
2. The Petition is frivolous and vexatious and/or does not disclose any reasonable cause of action.

3. The affidavit in support of the Petition is defective and bad in law as one of the deponents has not signed the affidavit.
4. The affidavit in support of the Petition does not disclose evidence in support of the Petition.

[8] The various legal procedural provisions cited above are reproduced hereunder for ease of reference.

Rule 2(2):

“Where any matter is not provided for in these Rules, the Seychelles Code of Civil Procedure shall apply to the practice and procedure of the Constitutional Court as they apply to civil proceedings before the Supreme Court.”

Rule 3(1):

“An application to the Constitutional Court in respect of matters relating to application, contravention, enforcement or interpretation of the Constitution shall be made by petition accompanied by an affidavit of the facts in support thereof.”

Rule 5:

“5(1) – A petition under rule 3 shall contain a concise statement of the material facts and refer to the provision of the Constitution that has been allegedly contravened or is likely to be contravened or in respect of which the application, enforcement or interpretation is sought.”

5(2) – Where the petitioner alleges a contravention of likely contravention of any provision of the Constitution, the petition shall contain the name and particulars of the person alleged to have contravened that provision or likely to contravene that provision and in case of an alleged contravention also state the date and place of the alleged contravention.”

Section 90 of the SCCP:

“Any party shall be entitled to raise by his pleadings any point of law; and any point so raised shall be disposed of at the trial, provided that by consent of the parties, or by order of the court, on the application of the party, the same may be set down for hearing and disposed of at any time before the trial.”

Section 170 and 171(a) of the SCCP:

“S 170 – Affidavits shall be confined to such facts as the witness is able of his

knowledge to prove, except on interlocutory applications, on which statements as to his belief, with the grounds thereof, may be admitted.”

“S 171 – Affidavits may be sworn in Seychelles –

(a) before a Judge, a Magistrate, a Justice of the Peace, a Notary or the Registrar; ...”

[9] The Seychelles Court of Appeal when delivering its judgment on 26th April, 2007, in the case of ***Chow v Gappy &ors SCA 10/07*** made certain observations and provided authoritative guidance on issues which have direct bearing in the instant matter.

[10] I believe that it is apposite to cite relevant portions of that judgment which serve to judiciously enlighten and guide my decision when dealing with the matter at hand.

[11] In the case cited, after reviewing both the majority and minority judgments delivered in the Supreme Court of Seychelles, the Seychelles Court of Appeal stated as follows:

*“8. On the matter of **locus standi** the Constitutional Court correctly juxtaposed the relevant parts of Articles 46 and 130 for the sake of comparison and distinction.*

9. The two articles form the basis of the action whereby a citizen may seek redress before the Constitutional Court.

11. An applicant, to gain access to the Constitutional Court under Article 46(1) has to claim:

(1) A law has been passed, or a public body has done something or omitted to do something;

(2) The law, act or omission contravenes or is likely to contravene a provision of the Charter;

(3) The contravention or likely contravention is in relation to him.

12. On the other hand, to gain access to the Constitutional Court under Article 130, an applicant has to allege:

(1) The facts do not fit Chapter III;

(2) They constitute a contravention of a provision of the Constitution;

(3) his interest is being or is likely to be affected by the contravention.”

13. [...] **[C]onstitutional provision has to be interpreted in a purposive sense.** A clear distinction is to be drawn between access afforded under Article 46(1) and that afforded under Article 130(1). In this regard, the former case speaks of a contravention as well as likelihood of contravention whereas the latter speaks of a contravention without more.

14. [...] **[W]hat Article 130(1) takes away from one hand, it gives with another.** In practical terms, that distinction may be purely academic and theoretical. Article 130(1) even if it requires a likely contravention is not worded so widely as to include an allegation which Article 130(1) speaks of.

15. [...] **What is not purely academic and theoretical is the fact that Article 46(1) encompasses two types of contraventions: contraventions that have taken place and contraventions that will take place.... Article 130(1), however, rests content only with contraventions that have been or alleged to have been.** The difference is basically between the present and the imminent acts and omissions under Article 46(1) and the past ones under Article 130(1).

17. ...**[There is a] difference which should exist in the interpretation of the Constitution as opposed to an interpretation of a statute.** A Constitution is a people's Charter. An Act of Parliament is an action of the legislature. The former wields the power from which the latter derives its mandate to work within the conceptual framework laid down in the Constitution. **Where there is a reasonable apprehension that that people's mandate is being exceeded in one form or another, a citizen is given the right by the Constitution to rush to the Constitutional Court to seek redress.** In this sense, the Constitutional Court is the repository of the content of the Constitution. A Civil Court resolves rights between citizen and citizen on the basis of the Civil Code provisions. A

Criminal Court deals with law and order between State and the citizen on the basis of the provisions of the criminal law.

*18. A Constitutional Court is different and [...] its judges display pro-active frame of mind and read into the seeds of time thrown in and about in the Charter of the people... It sits between the power of the people and the authority of the organized Government to ensure that public affairs are conducted within the frame-work tacitly agreed upon and enshrined in the Charter. **It is the temple and the throne to which the citizen – pecunious or impecunious – rushes to with a view to ensuring that the people power delegated to authority are properly used and not abused.** Its prime purpose is to make the Constitution work. For Seychelles, the pre-amble sets out how. We do not even need to go to judicial pronouncements to say what the Constitutional Court should have in mind when it is sitting to decide between people’s power and public authority and between this land’s dreams and this land’s destinations.*

*19. [...] Constitutional Courts, however, have to be equally vigilant that their process is not abused by vexatious and frivolous applications... The Constitutional Court’s high responsibility lies not only in a judicious but enlightened approach in deciding the merit or demerit of an action under the Constitution. **It is with this caveat that we approach the issue of locus standi in the constitutional context which is very different in other areas of the law.***

*20. Basically, **locus standi** means the right of a litigant to act or be heard before the Courts. Originating in private law, it has become ‘one of the most amorphous concepts in the entire domain of public law’. The right of a citizen to act or be heard before the Courts could exist as a private right as well as a public right.*

*22. Although our Constitution does not use the term “**locus standi**”, it is a concept which encapsulates the enabling provisions of Articles 46 or 130. **If it is used to restrict or disable the provisions, it is being improperly used.** The Constitution enshrines the*

*freedoms of the people. Freedom is different from licence. A freedom to “ester en justice” is different from a licence to “ester en justice”. At the same time, while checking the licence to “ester en justice”, a Court should not demarcate the line so far that it basically **restricts the freedom** by the stroke of a pen. That may amount to **judicial dictatorship** which is the worst form of dictatorship in a democratic society. Executive tyranny may be checked: the Courts are here for it. Political tyranny may be checked: elections are there for it. Who checks judicial dictatorship? Except the self-restraint of the judges themselves.*

23. The responsibility on Constitutional Court judges is ever so great. It may be tempting to decide that the Petitioner has no locus standi and the Petition is frivolous and vexatious and that is the end of the matter. The Courts will discharge its function as a Court honourably by so doing. It may not be so easy to say the Petitioner has a locus but let us at least hear him to see whether he has a point in the higher interest of the Constitution which we all have to serve. To say so would be a responsible exit of a Constitutional Court that will not hide behind a honourable exit.

24. In our view and our analysis, the Petitioner has a locus. If the Courts stated that the pleadings did not satisfy an application under Article 130 in as much as both the minority and majority judgments rely on the pleadings to deny access to the Petitioner, we shall say the premise on which the judge relied to so decide was seriously flawed.”

[12] I have highlighted certain pertinent parts of the quote from that judgment of the Seychelles Court of Appeal which are very relevant and pertinent in its application to the issues raised by the preliminary objections. In fact it answers the materials points raised.

[13] In the instant case the Petitioners have indeed rushed to this Court with the hope of finding a redress to what they consider to be infringement of the provision of the Constitution by the Respondents. To again quote the Seychelles Court of Appeal in the case cited earlier- “It

may not be so easy to say the Petitioner has a locus but let us at least hear him to see whether he has a point in the higher interest of the Constitution which we all have to serve”.

[14] I will now set out the issues raised by each Respondent and concisely give my considered answers to those issues.

Issues raised by 1st and 3rd Respondents

- The President have constitutional prerogative under our Constitution.

Nowhere in our Constitution is the word “prerogative” mentioned. The President is vested with powers to discharge his constitutional functions in accordance with the Constitution.

- President is empowered to appoint any person as a Judge

The underlying presumption is that the proposition of CAA is made in accordance with the Constitution both in words and spirit.

One of constitutional functions of the President is the appointment of judges whose names have been proposed by the Constitutional Appointment Authority. In exercising such powers it is understood that the President is to ensure that the names proposed are of persons who meet the criteria set out by the Constitution to take up such appointment. In other words the President must assure himself that the proposed names are of persons who are constitutionally entitled of being so appointed.

- Whether any provision of the Charter has been contravened in relation to the Respondents is a matter that ought to be determined at the hearing on the merits and not at the procedural stage. This issue is best left to be determined at the hearing on the merit.
- Likewise, whether the Petitioners have a perverse interest or not is also a question of fact which can only be determined after hearing of the Petition on the merit.

Issues raised by the 2nd Respondent

- Petition comply with the requirement of Rule 5

The main contentious issue raised here is that the Petition is purportedly supported by an Affidavit which is not in accordance with the law because not all the deponents thereto have signed that affidavit in person.

An affidavit is a written statement of facts tendered by the deponent to be used as evidence in support of its case. A deponent can be called and cross-examined by the adverse party to establish the veracity or otherwise of its content as would normally be done when a witness gives oral evidence before the Court. The Affidavit in the form it is

drawn up will not prejudice the Respondents in any way as the onus is always on them to disprove any allegations raised by the Petitioners.

Issues raised by the 4th Respondent

- Petitioners have no *locus standi* to enter this Petition

The answer to this question is amply answered by the Seychelles Court of Appeal in the case of *Chow v Gappy & ors*. The relevant part of that judgment has been reproduced in this Ruling.

- The Petition is frivolous and vexatious

From my analysis of the Petition I find that the Petition is not frivolous and vexatious and has merit. They have raised a serious constitutional issue as to whether a non-Seychellois judge who has completed a term of judgeship can be re-appointed to a further term when there was no exceptional circumstances shown. It also raised the issue as to whether a non-Seychellois on becoming a citizen of Seychelles can be equated to the existence of “special circumstances” as envisaged by the Constitution for the renewal of appointment as a judge for life. Was it the intention of the framers of the Constitution to facilitate re-appointment of non-Seychellois judges by circumventing a constitutional requirement by making the judge a Seychellois other than on the basis of exceptional circumstances?

- Affidavit defective and bad in law

The answer to this question has been answered earlier in this Ruling.

- Affidavit disclose evidence in support of the Petition

The contents of the Affidavit disclose sufficient evidence to support the fundamental contentious issue raised by the Petition. The Petitioners are required to only raise a *prima facie* case in order for this Court to call upon the Respondents to answer the case. It is required of the Respondents to advance their respective case by supplying cogent evidence by Affidavit sworn to by the Respondents in answer to the allegations of the Petitioners.

[15] It is my considered view that in the instant case the Rules require that the Petitioners supporting evidence is made by sworn Affidavit. There are four Petitioners herein and it is their right to enter separate Petition before the Constitutional Court alleging the same grievances based on the same supporting facts. The Constitutional Court in such case may hear these cases separately or for the purpose of convenience have those cases consolidated by agreement of the parties.

[16] Here the Petitioners consolidated their cases into one Petition supporting by one composite Affidavit deponed by all of them to be signed by each one of them distinctively. If one of them, as in the instant case, does not sign this composite Affidavit, in my considered judgment, it does not amount to the Affidavit to be invalidated in respect of all the deponents. The deponent who did not sign the affidavit is deemed not to have subscribed to it and therefore the Petition is not valid in respect to only him and not the other three Petitioners. That specific Petitioner is hereby struck off leaving the other three Petitioners to pursue their Petition. I so rule.

[17] For reasons stated above and based on the authority afforded by the Seychelles Court of Appeal in the cited case, I find that 3 of the Petitioners have *locus standi* to pursue this Petition before this Court. I accordingly, with respect dismissed this ground of preliminary objection and ordered that the Petition be heard on its merits.

Signed, dated and delivered at Ile du Port on 25 October 2016

B Renaud
Judge of the Supreme Court