**IN THE CONSTITUTIONAL COURT OF SEYCHELLES**

**CP** **01/20****16**

**[2016] SCCC 4**

**WAVEL JOHN CHARLES RAMKALAWAN**

versus

**THE ELECTORAL COMMISSION (Represented by Mr. H Gappy)**

First

**JAMES ALIX MICHEL**

Second

**THE ATTORNEY GENERAL**

Third

Heard: 16th February 2016

Counsel: Mr. B. Georges and Mrs. A. Georgesfor Petitioner

Mrs. S. Aglae for the First Respondent

Mr B. Hoareau and Mrs. L. Valabhji for the Second Respondent

Mr. R. Govinden and Mr. A. Subramanian for the Third Respondent

Delivered: 18th February 2016

**RULING ON PLEA IN LIMINE LITIS**

**Ruling of the Court**

1. This ruling arises out of a plea in limine litis raised by the third respondent in this matter. The Attorney-General has submitted that several paragraphs of the petition fail to comply with Rule 7(1) and Rule 7(2) of the Presidential Election and National Assembly Election [Election Petition] Rules, 1998 (the Election Petition Rules).
2. We are guided by the provisions of Rule 7 of the Election Petition Rules which provide as follows:

“*7. (1)  An election petition shall contain a concise statement of the material facts on which the petitioner relies and the relief which the petitioner claims.*

*(2)  Where the petitioner alleges that an illegal practice has been committed in relation to the election, the petition shall contain the name and particulars of the person alleged to have committed the illegal practice and the date and place of the commission of the illegal practice.”*

1. The Honourable Attorney General for the Third Respondent submits that the following paragraphs be struck out of the Petition, namely: paragraphs, 25; 25[a]; 25[b]; 25[c]; 25[[d]; 25[e]; 25[f]; 25[g]; 26; 27; 28; 29; 30; 30[i]; 31[c]; 31[d] and 31[f].
2. Mr. Georges for the Petitioner resists the application. Furthermore, Mr. Georges submitted that the Court does not have the power to strike out a mere part of a pleading but only the whole of a pleading under section 92 of the Seychelles Code of Civil Procedure, Cap 213.
3. We have considered whether the persons who have allegedly committed the offences contrary to the Election Act have been sufficiently identified and whether the circumstances surrounding the allegations and material facts have been sufficiently particularized. This requirement, in our view, is to be interpreted against the general background that the hearing has to be fair and parties are to be given the opportunity to submit evidence of the facts on which they rely in order that the court can come to a just conclusion.
4. We have considered the terms of the Petition, the Defence lodged by the Third Respondent in respect, only, of the preliminary pleas, the legal authorities produced and the oral submissions of Counsel.

FINDINGS

1. Firstly we find that we are entitled to strike out part only of the averments in the Petition. The requirements of Rule 7(1) and Rule 7(2) must be read with section 92 of the Seychelles Code of Civil Procedure, Cap 213 which provides that “[t]he 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” [own emphasis].
2. It would be nonsensical for the Court to be granted the power to strike out the entire pleading without being able to strike out noncompliant averments within the pleading. However, we exercise this power with due restraint.
3. We adopt a higher standard of scrutiny of the pleadings in Election Petitions than in other civil cases. In the case of *Wavel Ramkalawan v Albert Rene* CP7 of 2001 the Constitutional Court held that -

*“ It needs to be stressed that election petitions are not like any other civil actions. They are not matters of private individual interests. Persons presenting an electoral petition must be certain as to the averments they make and can prove and which they can reasonably expect the Respondent or Respondents to rebut. It is not sufficient to an electoral petitioner to make vague allegations and wait for a request for particulars in order to expand on the petitions” (p15).*

1. Though substantive justice must be done without undue regard to technicalities, it is our view that in a case holding this much national importance, pleadings must be procedurally correct, clear and unambiguous.
2. We now proceed to the identification and examination of the averments in the light of the objections raised.
3. We have considered paragraph 25 *in toto*.
4. We find the first four lines of this paragraph, to some extent, to be introductory in nature and are also to be read along with each the sub-paragraphs [a] to [g]. We find that the phrases “During both ballots” and “Between both ballots” throughout the Petition are sufficient to satisfy the requirement that the date of the alleged offence be stated. We find that in this paragraph and throughout the Petition it is reasonable to infer and find that any alleged offences occurred within the jurisdiction of Seychelles. We find that the Agency for Social Protection in the Ministry of Social Affairs is a legal person as defined in the Interpretation and General Provisions Act (Cap 8), is sufficiently identified, and hence complies with Rule 7(2). We find that the averments at paragraphs 25[a], 25[b] and 25[c] are to be allowed. Each complies with Rule 7(2).
5. We accept that in paragraph 25[d] the name of the individual person who allegedly distributed money at the District Administration Office at Perseverance is not averred, however we are satisfied that the District Administration Office is an agency of the government and the persons employed therein are agents of the District Administration Office, which enjoys legal personality. Therefore we are satisfied that this is sufficiently clear for the purposes of Rule 7(2) and hence this paragraph complies with Rule 7(2).
6. We now look at paragraphs 25[e] and 25[f]. We find that the Principal Secretary of the Minister of Finance, Trade and Blue Economy is sufficiently identified. We find that the limited company, Indian Ocean Tuna Limited, is a legal person in conformity with the Interpretation Act and is sufficiently identified. Accordingly we find that the averments in paragraphs 25[e], 25[f] and also 25[g] comply with Rule 7(2).
7. We have considered the averments in paragraphs 26, 27, 28, and 29. We find that these averments comply with Rule 7(2) and are to be allowed.
8. We now turn to paragraph 30 and paragraph 30[i]. The introductory four lines of paragraph 30 will remain and have to be read with sub-paragraphs [a] to [h] which we find to be compliant with Rule 7(2). In respect of paragraph 30[i] the averment does not specify the particular officers of the National Drug Enforcement Agency who allegedly acted in breach of the Elections Act and hence this sub-paragraph does not comply with Rule 7(2) and is to be struck off the Petition.
9. The remaining paragraphs which are subject to objection are sub-paragraphs 31[c], 31[d] and 31[f]. The introductory paragraph remains, it stands on its own and also refers to sub-paragraphs [a] and [b] to which no objection is lodged. In our opinion sub-paragraph [c] lacks specification in respect of the names of persons allegedly involved in offences and hence fails to comply with Rule 7(2). Sub-paragraph [d] must remain since, on a wide interpretation of paragraph 31 it may also refer to sub-paragraphs [a] and [b]. Paragraph 31 [f] refers to paragraph 23[h] to which no prior objection has been made. We find that paragraph 23[h] complies with Rule 7(2) and paragraph 31[f] remains in the Petition.
10. Therefore we make the following order as follows:

Paragraphs 30[i] and 31[c] are hereby struck from the Petition.

Signed, dated and delivered at Ile du Port on 18 February 2016

M. Twomey C. McKee D. Akiiki-Kiiza

**Judge Judge**