

**IN THE CONSTITUTIONAL COURT OF SEYCHELLES**

**[Corum: Robinson J Presiding , Vidot & Pillay JJ ]**

**MA 157/2017  
(arising in CP 03/2017)**

**[2017] SCCC 10**

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**DURAIKANNU KARUNAKARAN**

Petitioner

versus

**THE CONSTITUTIONAL APPOINTMENTS AUTHORITY**

First Respondent

**THE ATTORNEY GENERAL**

Second Respondent

**AND IN THE MATTER OF AN APPLICATION IN TERMS WITH SECTION 118 OF  
THE SEYCHELLES CODE OF CIVIL PROCEDURE**

**MARIE-ANGE HOAREAU**

First Applicant

**JANE GEORGETTE CARPIN**

Second Applicant

**DURAIKANNU KARUNAKARAN**  
First Respondent

**THE CONSTITUTIONAL APPOINTMENTS AUTHORITY**  
Second Respondent

**THE ATTORNEY GENERAL**  
Third Respondent

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Heard: 27 June 2017  
Counsel: Ms. A. Madeleine for petitioner  
Mrs. A. Amesbury for first respondent  
Mr. A. Derjacques for the second respondent  
Mr. D. Esparon for the third Respondent

Delivered: 28 July 2017

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**RULING ON MOTION**

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**M. Vidot J (L. Pillay J concurring)**

**The First Respondent's Petition**

[1] The Respondent, Duraikannu Karunakaran, (Petitioner in case CP03/2017), is a Judge of the Supreme Court of Seychelles. The Constitutional Appointments Authority (CAA) is an Authority established under Article 139(1) of the Constitution which functions as conferred upon it by the Constitution include inter alia the appointment and removal of Judges of the Courts of Seychelles, through due process of appointing tribunals to hear and inquire into complaints made against a Justice of Appeal or Judge as provided by Article 134(2) of the Constitution. Judge Karunakaran is the subject of a Tribunal of Inquiry ("the Tribunal") set up under Article 134(2)(a) of the Constitution following a complaint lodged before the CAA by the Honourable Chief Justice, Mathilda Twomey. By letter dated 07<sup>th</sup> October 2016, the CAA informed Judge Karunakaran of the complaint and that a Tribunal had been set up. By letter date 10<sup>th</sup> October 2016, the then

President James Michel informed Judge Karunakaran that following the set up of the Tribunal to inquire into his ability to perform the functions of the Office of Judge of the Supreme Court, he was therefore being suspended.

[2] On 25<sup>th</sup> May 2017, the 1<sup>st</sup> Respondent filed a Petition before the Constitutional Court of Seychelles challenging the set up of the Tribunal. His contention is that the appointment of the Tribunal is unconstitutional and that it was made in contravention of Article 134(2) of the Constitution. The 1<sup>st</sup> Respondent, in his Affidavit attached to his Petition further complains that the CAA “arbitrarily and unconstitutionally without assessment of the complaint in order to consider whether the question of his removal from office ought to be investigated as required under Article 134(2) of the Constitution, appointed the Tribunal”.

[3] The 1<sup>st</sup> Respondent further argues that since the appointment of the Tribunal was unconstitutional, his interest is being affected and continues to be affected by the alleged contravention of Article 134(2) of the Constitution. Therefore, he prays the Constitutional Court inter alia for the following reliefs;

(a) A declaration that the appointment of the Tribunal by the CAA is unconstitutional, null and void ab initio; and

(b) The granting of any such remedy under the Constitution as this Honourable Court deems fit.

### **The Application for Intervention**

[4] Following the filing of the said Petition by the 1<sup>st</sup> Respondent, the Applicants; Mrs. Marie-Ange Hoareau and Jane Georgette Carpin have filed this application pursuant to Section 118 of the Seychelles Code of the Civil Procedure (SCCP), seeking leave to intervene in the main case. The Applicants are respectively the former chairperson and member of the CAA. At the time that the decision was made by the CAA to appoint the Tribunal as afore mentioned, the Applicants were members of the CAA. They have now resigned and new members were appointed following an amendment to the Constitution that enlarged the membership of the CAA.

[5] In their affidavits spelling out the reasons in favour of intervention the Applicants rehearsed inter alia the following;

- i. That they are interested in the event of the Petition in that they were former members of the CAA and that they formed part of its determination to set up the Tribunal in respect of the 1<sup>st</sup> Respondent, Judge Karunakaran;
- ii. That the fact that the 1<sup>st</sup> Respondent is alleging that the 2<sup>nd</sup> Respondent (CAA) in appointing the Tribunal acted arbitrarily and unconstitutionally, without making an assessment of the complaint as he avers is required under Article 134(2) of the Constitution and that further to a Press Release, the “newly appointed CAA” stated to the effect that there is nothing on the files left by “its predecessors to indicate that there was any consideration of the complaints before the appointment of the Tribunal and that it has had to assume that the former CAA did not consider the complaints in depth but automatically appointed the Tribunal”, seriously damaging their personal reputation and integrity;
- iii. That the CAA as presently constituted would concede to the Petition of the first Respondent and that the CAA as presently constituted is acting in collusion with the Petitioner to interfere with the establishment of the Tribunal against the 1<sup>st</sup> Respondent;
- iv. That they hold pertinent facts that would assist this Court to make a fair and just decision;
- v. That in view of averments of iii above, the CAA as presently constituted would concede to the Petition, thus insinuating that they did not discharge their responsibility as chairperson and member of the CAA in accordance with the Constitution in appointing the Tribunal; and
- vi. That having regard to the timing and content of a Press Release of the CAA (exhibited as A1) it is unlikely that the CAA as presently constituted

will defend the integrity of the former members of the CAA in the Petition.

- [6] On the 21<sup>st</sup> May 2017, the CAA had issued a press release decrying the manner in which the CAA as then constituted, appointed the Tribunal. We shall refrain at this stage from commenting on the propriety in issuing such a press release at the time it did.

### **Brief Overview of Counsels Submissions**

- [7] Mrs. A. Amesbury and Mr. A. Derjacques, Counsels for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents respectively oppose the application for intervention. The Honourable Attorney General (Ag), (hereafter “AG”), Mr. D. Esparon, the 3<sup>rd</sup> Respondent supported the application. Mrs. Amesbury raised objections on both points of law and on the merits as did Mr. Derjacques in their submissions

### **Objection on Points of Law**

#### **(i) Locus Standi**

- [8] Mrs. Amesbury argued that the Applicants have no *locus standi* to intervene in the 1<sup>st</sup> Respondent’s petition. She argued that the Applicants have no legal rights to invoke the jurisdiction of the Constitutional Court in order to enforce personal rights to reputation, which is a civil right, maintainable and preserved in the Civil Code of Seychelles. She added that the Applicants are seeking civil remedies for the protection of their interest and rights pertaining to their personal reputation which are available in civil suits. These are not remedies available before the Constitutional court. She maintains that the Applicants have no locus standi because they have no personal interests or rights directly involved in the facts and circumstances of the case to justify their intervention in the Constitutional Petition.

#### **(ii) Jurisdiction**

- [9] Learned Counsel for the 1<sup>st</sup> Respondent further argued that the jurisdiction and powers of the Constitutional Court shall be exercised only in relation to matters relating to the application, contravention, enforcement and /or interpretation of the Constitution, vide

Article 129(1) of the Constitution. Therefore, matters relating to reputation, integrity and alleged collusion between parties fall outside such jurisdiction. Hence this Court has no power to entertain the Application.

(iii) **No Cause of Action.**

[10] Learned Counsel for the 1<sup>st</sup> Respondent reminded Court that an application for redress before the Constitutional Court is under either Article 130(1) or Article 46(1) of the Constitution. In order to constitute a valid cause of action, the Applicant has to satisfy conditions conjunctively, which are;

(a) There should have been an allegation that a provision of the Constitution that has been contravened or likely to be contravened; and

(b) That the person's interest is being or likely to be contravened.

Learned Counsel submitted that the present Application does not satisfy, directly or indirectly the said two conditions.

(iv) **Abuse of Procedural Law by the Applicants**

[11] It is the contention of Counsels for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that the Constitution, vide Rule 2(2) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules, ("the Rules") does not provide for any third parties to intervene in a pending Constitutional suit. They refer to Section 117 of the Seychelles Code of Civil Procedure.

[12] The 1<sup>st</sup> and 2<sup>nd</sup> Respondents therefore submit that the Application for intervention is a gross abuse of procedural law and should be dismissed. They accuse the Applicants of seeking to manipulate the proceedings and that they are misapplying the Rules to obstruct proceedings and argue that at best the Applicants should be produced as witnesses to the case.

[13] Learned Counsel for the Applicants submitted that her clients have locus standi for intervention as they are interested parties as provided under Section 118 of the SCCP. As

far as the contention that the Applicants have no cause of action, Learned Counsel admitted that the Applicants are not seeking constitutional remedies pursuant to Article 46(1) and/ or Article 130(1) of the Constitution. The Applicants are said to merely “seeking an opportunity to rebut erroneous assumptions contained in the Press release”.

[14] The Applicants further argue that this Court has jurisdiction to entertain their Application as they seek to establish, contrary to averments by the 1<sup>st</sup> Respondent as pleaded in his Petition, that the CAA acted lawfully and performed the responsibilities accorded to it under Article 134(2) of the Constitution. They most strenuously refute declarations made in the press release on which the 1<sup>st</sup> Respondent’s petition is rooted. They go on to argue that the Constitutional Court is the proper forum to resolve the contentions they have in respect of the aforesaid Petition.

[15] Counsel for the Applicants rejects all suggestions that they are abusing Procedural Law. They rely on Rule 2(2) of the Rules and Section 118 of the SCCP, and referred to **Lise Morel Duboil v AG and Josephine Maryse Berlouis CP10 of 2011** where the Constitutional Court allowed an intervention to a Constitutional Petition.

[16] The AG (Ag) on its part supported the Application for intervention, citing Rule 2(2) of the Rules and Section 117 of SCCP. He further submitted that since there are allegations of impropriety in that the CAA acted arbitrarily and unconstitutionally and contrary to Article 134(2) of the Constitution, the Applicants should be allowed to intervene.

## **The Law and Findings**

### **Intervention**

[17] Rule 2(2) of the Rules provides as follows;

*“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”*

Section 117 of the SCCP reads as follows;

*“Every person interested in the event of a pending suit shall be entitled to be made a part thereto in order to maintain his rights, provided that his application to intervene is made before all parties to the suit have closed their cases”*

[18] Counsel for the 1<sup>st</sup> Respondent submitted that since the SCCP describes “suit” as being a plaint, therefore that precludes intervention where the cause of action is commenced by way of Petition. With respect to Mrs. Amesbury we cannot subscribe to such strict interpretation she has accorded to Section 117 of the SCCP. In all Constitutional Court cases the proceedings are commenced by Petition. To say that the Applicants cannot intervene simply because Section 117 of the SCCP speaks of “suit” would mean that all parties whose rights have been infringed in some way or who have an interest in a Constitutional matter would be excluded.

[19] Furthermore, it is necessary in assessing such an Application, for this Court, which is mandated with a duty to uphold a person’s Constitutional rights, to evaluate whether the Application addresses a right or rights that have to be safeguarded, (the interest of the intervener). In fact in **Lise Morel Duboil v AG and Josephine Maryse Berlouis** (supra) the Court found that a person’s right to property could be affected by a petition filed before it allowed that person the right to intervene.

### **Interest**

[20] The paramount assessment in addressing such an application therefore is to evaluate whether there has been or is likely to be a contravention of the Applicants’ right. In fact Article 46(1) of the Constitution provides thus;

*“A person who claims that a provision of this Charter has been or is likely to be contravened in relation of a person by any law, act or omission may subject to this Article, apply to the Constitutional Court for redress”*

Reference to “this charter” under the Article 46(1) of the Constitution is reference to Chapter III of the Constitution and most precisely to Part I which deals with fundamental human rights.



Of equal relevance is Article 130(1) of the Constitution which reads as follows;

*“A person who alleges that any provisions of the Constitution other than a provision of Chapter III has been contravened and that that person’s interest is being or likely to be affected by the contravention may, subject to this article, apply to the Constitutional Court for redress”*

Article 46(1) speaks of a contravention as well as a likelihood of contravention whilst the latter article speaks of a contravention without more.

[21] Therefore, the Applicants have to satisfy court that either their rights as promulgated under Chapter III have been or likely to be contravened by the final judgment if they are not allowed to intervene in the Petition or that there has been a contravention of provisions other than Chapter III and that they have an interest in the matter. These have to be assessed against the jurisdiction and powers of the Constitutional Court which by virtue of Article 129(1) shall be exercised in matters relating to application, contravention, enforcement and interpretation of the Constitution. These should determine whether or not the Applicants have *locus stand i* in this matter. It is worth noting that in **Chow v AG [2007] SCA 2**, the court held that Constitutional provisions have to be interpreted in a purposive sense; vide **AG of Gambia v Momodou Jobe (1943) 3 WLR 174**; **Societe United Docks v Government of Mauritius (1985) LRC Const.801 at 844** and **Catanic Components Ltd v Hill and Smith Ltd (1982) RPC 183 (HL)**.

[22] As per **Chow v AG** (supra), for an applicant to gain access to the Constitutional Court under Article 46(1) he has to claim;

- i. *A law has been passed, or a public body has done something or omitted to do something;*
- ii. *the law, act or omission contravenes or likely to contravene a provision of the Charter;*
- iii. *the contravention or likely contravention is in relation to him*

[23] On the other hand, to gain access to the Constitutional Court under Article 130, an applicant has to establish that

- i. *the facts do not fit in Chapter III;*
- ii. *they constitute a contravention of a provision of the Constitution;*
- iii. *his interest is being or likely to be affected by the contravention.*

[24] In its assessment of the Applicant's application, in order to appreciate if there is a contravention or likely contravention of Article 46(1) or a contravention of Article 130 (1) the Court should bear in mind that a difference exist in the interpretation of the Constitution as opposed to the interpretation of statute; vide **Chow v AG**, in which it was held that;

*“a constitution is the 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 frame-work 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 that very 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 the state and the citizen on the basis of the provisions of the criminal law.”*

[25] Where the Constitution is concerned, its judges should be pro-active. We should ensure that we do not confuse our role with that of the civil court or the criminal court. As further stated by in **Chow v AG**, this Court should be;

*“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."*

- [26] In applying a more liberal approach to standing Twomey JA in **Michel v Dhanjee** followed the lead in **Chow**, warning against too restrictive an approach in relation to standing. It is to be noted however that in **Michel v Dhanjee**, the Court of Appeal adopted "a liberal and generous approach" to standing and interest, and accepted that the Petitioner was bringing the case as a concerned citizen "given the exceptional importance of the issues raised."

It is in this spirit that we shall approach the Applicant's application.

- [27] In their Affidavits and during submission of Counsel for the Applicants it was clearly expressed that the Applicants are **not** seeking a constitutional redress as provided under Articles 46(1) or 130 of the Constitution, nor are they seeking a civil remedy based on defamation, but merely seeking an opportunity to rebut the erroneous assumptions contained in the press release that the 1<sup>st</sup> Respondent (Petitioner) is relying to invalidate the Tribunal. The Applicants are in effect averring that they are not invoking any provisions of the Constitution. We cannot therefore understand how the Applicant could in the circumstances be declared to have locus standi.

- [28] In **Michel v Dhanjee [2012] SLR 258**, the court citing **Subhash Kumar v The State of Bihar and Ors [1991] SCR (1) 5** stated;

*"a person invoking the jurisdiction of this Court [under the provisions of the Constitution] must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity"*

The Applicants as per their affidavits are attempting to vindicate themselves. In their affidavits attached to the Application, the Applicants actually complained of serious damage to their reputation and integrity which are basically civil rights. They make unsubstantiated allegation of collusion between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. These are not issues to be resolved by the Constitutional Court.

[29] The present circumstances are contrasted to those in the **Lise Morel Duboil** case above. The intervener in that case was allowed to be joined because her rights to property could be affected by the Petition before the court. The Petitioner was suing for the return of property acquired by the Government and subsequently sold to the intervener.

[30] So, what is locus standi?

In **Chow v AG**, it was held that *"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"*

[31] In **Naddy Dubois and Ors v James Michel and Ors [2016] SCSC23; CP 04/2014**, Renaud J, in finding that the Petitioner had locus relied on **Chow v AG**, stated that;

*"although our Constitution does not use the term "locus standi", it is a concept which encapsulates the enabling provisions of articles 46 or 103. But if it is being 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 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 judges themselves."*

*"The responsibility on constitutional judges in the new democracies, accordingly, are never so great. It may be tempting to decide the petitioner has no locus 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 an honourable exit.”*

- [32] It is to be noted that the rules of natural justice dictate that a non-party whose interest is to be directly affected by a decision in a proceedings has a right to intervene and protect that interest. So, do the Applicants have an interest that would be affected by the final judgment, hence need to be given the opportunity to be heard?
- [33] It is not our intention to use pleadings to deny the Applicants access to judicial relief. However, as aforementioned the Applicants have submitted that they are not seeking a constitutional relief. They are not coming under Articles 46(1) and 130 of the Constitution. In any event the Constitution does not provide a right to reputation. The Applicant’s wish to assist court to reach a fair and just decision and rebut erroneous assumptions of the Press release are not rights guaranteed by the Constitution. It can be said that the Applicants could have, if they felt there had been erroneous assumptions in the Press release issued by the CAA on 21<sup>st</sup> May 2017, sought a right of reply and issued their own Press release to refute such assumptions and set the record straight. The Applicants have not established sufficient interest in the matter.
- [34] We also note that at paragraph 10 on the affidavit sworn by Dr. Shelton Jolicoeur, Chairman of the CAA, states that “the CAA denies that it will simply concede to the Petition before Court, but will humbly submit to the Court’s consideration, the facts, the laws and principles leading to the reasoning, observation and comments.” We shall hold the CAA to this undertaking because the adoption of such course of action will ensure that it upholds its credibility. The case of the removal of the 1<sup>st</sup> Respondent from his position as a Judge of the Supreme Court has evolved into a national issue that requires full disclosure surrounding the CAA’s decision to invoke Article 134(2) of the Constitution. To fail in that undertaking will be to cast doubts on the CAA’s intentions in this matter and in the same instance fail the Seychellois nation.
- [35] Far be it for this Court to tell parties how to conduct their case, but we would venture to state that in defending the Petition, it is for the CAA to bring and place before Court all necessary and relevant information, even if that includes calling the members who were

part of the panel who took the decision sought to be invalidated before this Court. Without delving too deeply into the Petition at this stage, but what it says is that the 1<sup>st</sup> Respondent made a decision contrary to law and without giving reasons for such decision. The Petition does not call into question the propriety of the members but of the body, in the manner that the decision was taken. It is not for the individual members to seek to be heard individually. We can draw comparisons to an appeal filed against the decision of a judge in a case. In spite of the fact that the appellant may appeal on the basis that the judge failed to address his/her mind to relevant issues or erred in law in not considering others, the judge does not seek to intervene personally to clear his name. These are decisions made in the performance of duties of the office and the individual is only called in to file affidavits in the most extreme of circumstances. We would agree with the 2<sup>nd</sup> Respondent that the failure of an official “to adopt a correct or lawful procedure does not impact on an official’s integrity and reputation.”

[36] As for the Attorney General, he has a pivotal role in this case. The AG is joined in such cases pursuant to Rule 3(3) of the Rules. The AG is a Respondent in this case. He is also duty bound to assist Court and bring forth any pertinent facts that will allow court to make a fair and just decision. With respect to the AG (Ag), we believe that he is misconceiving his role when he states that it is fallacious to suggest that he can use the Applicants as witnesses to assist with his position in respect of the Petition. As a Respondent the AG is therefore not restricted merely to filing submissions in respect of such matters. If there is necessity for him to file an Answer in response to the Petition, then he should do so. The Applicants have averred that they fully complied with the provisions of Article 134 of the Constitution in discharging their duties and claim to have evidence that contradicts the Press Release. That being so, we agree with Counsel for the 1<sup>st</sup> Respondent that the Applicants in such circumstances should be produced as witnesses and the onus rests on the 3<sup>rd</sup> Respondent, the AG to ensure that the Applicants’ position is heard.

[37] We therefore find that the mere fact that the Applicants were member of the CAA at the time the decision was taken to appoint the Tribunal, does not confer on them constitutional interest in this matter or direct interest that may affect the final judgment. We do not find special circumstances that would warrant this Court to allow them to intervene in the Petition. They have no locus standi. They have failed to establish that either Article 46(1) or Article 130(1) have relevancy to their cause. Therefore, the application is denied.

That being our Ruling, we find no necessity to address the objection of the Application on the merit.

Signed, dated and delivered at Ile du Port on 28 July 2017

M Vidot  
Judge of the Supreme Court

L. Pillay, J  
**Judge of the Supreme Court**

**F. Robinson, J**

[38] I have had the privilege of reading beforehand the opinions of my brother Vidot and sister Pillay JJ, I have, however, had to part company with them in relation to their opinions and part of their conclusions, and I will endeavour in this ruling to explain the reasons for those divergences of opinion.

[39] **THE BACKGROUND FACTS**

[40] The Petition

[21] Duraikannu Karunakaran is the Petitioner in CP 3/2017. The Petitioner is a Judge of the Supreme Court of Seychelles. The Petitioner commenced an application by

Constitutional Petition, before the Constitutional Court, dated 25 May, 2017, accompanied by an affidavit, of even date, against the Constitutional Appointments Authority, the First Respondent and the Attorney General, the Second Respondent (hereinafter referred to as "*Petition*"). The Second Respondent is joined in these proceedings pursuant to Rule 3 (3) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules. The Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules are hereinafter referred to as the "*Rules*".

[22] In the Petition, the Petitioner prays for a declaration that the appointment of the tribunal of enquiry, by the First Respondent, is unconstitutional and null *ab initio*. The Petition alleges that, in establishing the tribunal of inquiry, the First Respondent acted arbitrarily and unconstitutionally, without making an assessment of the complaint as required under Article 134 (2) of the Constitution of the Republic of Seychelles. Constitution of the Republic of Seychelles is hereinafter referred to as the "*Constitution*".

**[23] THE PRESENT APPLICATION**

[24] This is an application commenced by motion, dated the 26 May, 2017, accompanied by two affidavits in support, dated the 29 May, 2017, containing the grounds on which Marie-Ange Houareau, the First Applicant and Jane Georgette Carpin, the Second Applicant, rely in support, pursuant to section 118 of the Seychelles Code of Civil Procedure. Seychelles Code of Civil Procedure is hereinafter referred to as the "*Code*".

[25] The First and Second Applicants ask the Constitutional Court to make order authorising them to intervene as third parties in the pending Petition. The First and Second Applicants contend that they are interested in the event of the pending Petition; and that they shall be entitled to be made parties to it in order to maintain their rights, under section 117 of the Code.

[26] The Petitioner and the First Respondent now cited as the First and Second Respondents, respectively, resist the application and file affidavit in reply. The Second Respondent



now cited as the Third Respondent, supports the application for intervention and files skeleton arguments.

**[27] THE CASE FOR THE FIRST AND SECOND APPLICANTS**

**[28]** In support of their case that they are interested in the event of the pending Petition, the First and Second Applicants seek to rely on the following allegations, contained in the Petition, which are set out in paragraphs 4 and 5, of their respective Affidavit in Support

—

*"4. The Petition alleges that in setting up the Tribunal of Inquiry, the Constitutional Appointments Authority acted arbitrarily and unconstitutionally, without making an assessment of the complaint as required under Article 134 (2) of the Constitution.*

*5. The Petition further refers to a Press Release by the newly constituted Constitutional Appointments Authority to the effect that there is nothing in the files left by its predecessor to indicate that there was any consideration of the complaints before the appointment of the Tribunal and that it has had to assume that the former Constitutional Appointments Authority did not consider the complaints in depth but automatically appointed the Tribunal. It is now shown to me, produced and exhibited herewith as A1 a copy of the said Press Release."*

In terms of their averments, the First and Second Applicants aver that for the reason that she [the First Applicant] was the former Chairperson of the First Respondent and that she [the Second Applicant] was a former member of the Second Respondent; and that they both *"formed part of its [Second Respondent's] determination to set up the Tribunal of Enquiry"*, with respect to the First Respondent, they clearly have an interest in the event of the pending Petition for the reason that their personal reputation and *"integrity are seriously damaged"*.

**[29]** In further support of their case that they are interested in the event of the pending Petition, the First and Second Applicants make the following points in their respective Affidavit in support —(1) that on the basis of A1, *"it is apparent"* that the Second Respondent as presently constituted would concede to the Petition; and (2) that *"[a]s a*

*matter of fact ... the Constitutional Appointments Authority [the Second Respondent] — as presently constituted — is acting in collusion with the Petitioner to interfere with the establishment of the Tribunal of Enquiry against the Petitioner".* In terms of their averments, the First and Second Applicants fear that the Second Respondent as presently constituted would concede to the Petitioner and thus insinuate that they did not discharge their responsibilities correctly, pursuant to the Constitution, in establishing the tribunal of enquiry, as former Chairperson and former member of the Second Respondent, respectively. Moreover, the First and Second Applicants fear "*having regard to the content and timing of the Press Release of the Second Respondent — as presently constituted —*", that it would be unlikely that it would defend the integrity of its former members in the Petition.

[30] The First and Second Applicants aver that "... [they] *would be able to lay before the Constitutional Court all the pertinent facts to allow it to make a fair and just decision*".

[31] **THE CASE FOR THE FIRST RESPONDENT**

[32] The "*1<sup>st</sup> Respondent's Objections to the Applicant's motion for leave to intervene in the pending Constitutional Petition filed by the 1<sup>st</sup> Respondent*" hereinafter the "*First Respondent's Objections*" contain pleas in *limine litis* and objections on the merits.

[33] The First Respondent's Objections raise four pleas in *limine litis* as follows —

- (1) the First and Second Applicants do not satisfy the requirement of standing;
- (2) in light of plea (1), the Constitutional Court has no jurisdiction to entertain the application for third party intervention;
- (3) the application for third party intervention discloses no cause of action; and
- (4) the process of the court is being abused.

[34] The objections on the merits are as follows. In the main, the First Respondent's Objections make the point that the machinery of the Constitutional Court is being used as

a means of vexation and oppression in the process of these proceedings. In support of that point, the First Respondent's Objections seek to rely on the following grounds.

[35] The Petitioner brings the Petition against the Second Respondent in its capacity as an authority, established under Article 139 (1) of the Constitution, to defend decisions taken by it. The Petition challenges the constitutionality of the "act" of the Second Respondent in that it arbitrarily appointed a tribunal of enquiry in contravention of Article 134 (2) of the Constitution. The Petition does not challenge "*the acts and conducts or decisions or any steps taken by the members, officers etc. of the Authority*". The position of the First Respondent made in this regard is that, being an authority, the Second Respondent can sue and be sued in its own name and not in the names of its members, and that, so long as the Second Respondent is cited, there would be no need to cite its individual members.

[36] For the submissions the First Respondent's Objections rely on the cases of *Ahmedabad Municipal Corporation Vs. Raju Bhai Som Bhai Bharward (2015) 7 SCC 663* and *State of U.P. and Another Worker Vs. CODChheoki Employees' Co-operative Society Limited and others (1997), 3 SCC 681*. I have considered the said judgments, though I do not refer to them in the ruling below.

[37] The First Respondent asks the Constitutional Court to dismiss the application to intervene with cost.

**[38] THE CASE FOR THE SECOND RESPONDENT**

[39] Mr. Shelton Jolicoeur, the Chairperson of the Second Respondent, (hereinafter the "*Chairperson*"), avers that he is authorised to swear the "*AFFIDAVIT IN ANSWER TO THE MOTION FOR INTERVENTION IN CONSTITUTIONAL PETITION 3 OF 2017 AND MA 157 OF 2017*" hereinafter "*Affidavit in Answer*" on behalf of the members of the Second Respondent, namely, Mrs. Marie-Nella Azemia, Mrs. Annette Georges, Mr. Willy Confait and Mrs. Simone Decomarmond. The Affidavit in Answer avers that the Chairperson was appointed on 2 May, 2017; that Mrs. Marie-Nella Azemia was appointed member on 27 May, 2016; and that the other members, namely Mrs. Annette

Georges, Mr. Willy Confait and Mrs. Simone Decomarmond were appointed on 24 April, 2017.

- [40] The Chairperson tabled items for consideration, by the Second Respondent, at its first regular meeting on 9 May, 2017. One of the items tabled at the said meeting was the complaint made by the Chief Justice, Dr Mathilda Twomey, against the First Respondent. The Second Respondent reviewed the said complaint. In relation to the review, the Second Respondent *"made certain observations, and comments which were eventually released to the public and press on the 21<sup>st</sup> of May 2017, after full, due and entire consideration, as mandated by Article 134 (2) of the Constitution"*.
- [41] In support of the Second Respondent's case that the First and Second Applicants are not interested in the event of the pending Petition, paragraphs 7,8, 9, 10, 11 and 12 of the Affidavit in Answer make the following points —

*"7. In accordance with section 117 of the Seychelles Civil Procedure Code, the 1<sup>st</sup> and 2<sup>nd</sup> Applicants are not lawful interested persons, in that, following their resignations on the 24<sup>th</sup> of April 2017, they are functus officio and have no official status with respect to this matter. The CAA has reasonable suspicion concerning the involvement of the Applicants in the Petition before the Court in that the Petition was filed at the Registry of the Supreme Court on the 25<sup>th</sup> of May 2017. Yet the Applicants clearly had access and sight of the Petition and Affidavit, on the 26<sup>th</sup> of May 2017, as their Application to intervene is dated the 26<sup>th</sup> of May and they were already aware that the Petition was cause listed for the 30<sup>th</sup> of May 2017 at 1000 hours. The Constitutional Appointments Authority was served with the Petition on the 30<sup>th</sup> of May 2017, at 0930 hours, to appear in Court at 1000 hours on the same day.*

*8. I aver that paragraph 7 of the Affidavits of both Applicants should be rejected by the Court, because the failure by the Applicants to adopt a correct and lawful procedure does not impact on an official's integrity and reputation.*

*9. I aver that paragraphs 8 and 9 of the Applicants' affidavits should be rejected in their entirety. The Constitutional Appointments Authority, as presently constituted takes its constitutional responsibilities seriously and it not subject to the direction or control of any person or authority. The Constitutional*

*Appointments Authority believes in the rule of law, due process and respects the constitutional rights of any individual in its decision making process.*

10. *The Constitutional Appointments Authority denies that it will simply concede to the Petition before the Court, but will humbly submit for the Court's consideration, the facts, the laws and principles leading to its reasoning, observations and comments.*

11. *The Constitutional Appointments Authority is in possession of the official file concerning this matter before the Honourable Court which clearly established that Judge Duraikannu Karunakaran was not given the opportunity to address the Constitutional Appointments Authority with respect to the complaint against a Judge before the Constitutional Appointments Authority.*

12. *Paragraphs 11 and 12 are denied. The Constitutional Appointments Authority will humbly lay before the Court how it believes consideration should be reached and made prior to deciding to appoint a tribunal following to a complaint. The Constitutional Appointments Authority has established internal rules in order to guide its decision making process."*

[42] The Second Respondent asks the Constitutional Court to dismiss the application for third party intervention.

**[43] THE POSITION OF THE THIRD RESPONDENT**

[44] The Third Respondent's Skeleton Arguments invite the Constitutional Court to apply section 117 of the Code, by virtue of Rule 2 (2) of the Rules, to make order allowing the First and Second Applicants to intervene in the pending Petition.

[45] On their merits, the Skeleton Arguments state that for the reason that allegations of "impropriety" have been made against the First and Second Applicants, they [the First and Second Applicants] have sufficient interest to intervene in the pending Petition.

[46] It is sufficient to observe that the Acting Attorney General does not make any submissions that are useful to the Constitutional Court, and which differ from those of the parties. Here the Acting Attorney General makes common cause with the First and

Second Applicants and urges the Constitutional Court to grant the motion. This does not mean that the Acting Attorney General may not urge upon the Constitutional Court to reach a particular result, but he may do so only in the course of helping the Constitutional Court to arrive at a just determination and not to help support the case of any of the parties.

**[47] SUBMISSIONS OF COUNSEL**

[48] The Constitutional Court heard submissions for and against the application.

[49] First and Second Applicants

[50] Learned counsel, for the First and Second Applicants, makes the point that third party intervention in an application commenced by constitutional petition accompanied by affidavit in support is part of our *jurisprudence* and refers it to the case of *Lise Morel Du Boil v Attorney General and Josephine Maryse Berlouis CP10 of 2011*.

[51] In support of the submission that the First and Second Applicants are interested in the event of the Petition, the First and Second Applicants, through learned counsel, contend in their "*SKELETON ARGUMENTS ON BEHALF OF THE APPLICANTS IN APPLICATION FOR INTERVENTION*" that they are interested parties for the purpose of establishing that the Second Respondent as "*formerly constituted*" considered the complaint against the First Respondent pursuant to Article 134 (2) of the Constitution. It follows, therefore, in their contention that the Second Respondent as "*presently constituted*" may not "*assume*" that the complaint was not "*considered in depth*"; and that a tribunal of enquiry was "*automatically appointed*" in relation to the First Respondent. Further, the First and Second Applicants, through learned counsel, contend that the First Respondent seeks to review the decision of the Second Respondent "*then composed*" on the basis of a press release (Exhibit A1), which contains "*unreasonable and unfounded assumptions*"; and that the Petition is the most appropriate mechanism by which all matters relating to the "*unreasonable and unfounded assumptions*" may be rectified.

[52] In terms of the case for the First and Second Applicants, learned counsel contends, in her written submissions, that "*this suggests that the CAA [Second Respondent] as presently*

*constituted acted in collusion with the Petitioner [First Respondent] in bringing this Petition." (see 3.9 and 3.10 of the "SKELETON ARGUMENTS ON BEHALF OF THE APPLICANTS IN APPLICATION FOR INTERVENTION").*

[53] First Respondent

[54] In terms of the Petition and the First Respondent's Objections, learned counsel contends, in her submission, that Rule 2 (2) of the Rules should not be used so as to permit the First and Second Applicants to intervene in the pending Petition. Then, learned counsel suggests that the application (Petition) must be in a pending suit and that the Petition is not a suit, under section 117 of the Code.

[55] Second, learned counsel contends that the First and Second Applicants have no *locus standi* to intervene in the Petition because they have "*no legal right* to invoke the jurisdiction of the Constitutional Court in order to maintain their respective "*personal rights to reputation*", which, she contends, are not constitutional rights. Learned counsel invites the First and Second Applicants to seek the protection of their interests and rights in a civil suit, before the Supreme Court, which, in her opinion, has exclusive jurisdiction to entertain such a suit.

[56] Third, the Constitutional Court has no jurisdiction to entertain the application for the reason that it is not a matter in relation to the application, contravention, enforcement or interpretation of the Constitution under Article 129 (1) of it. Consequently, the Petition does not disclose a cause of action under Article 130 (1) of the Constitution.

[57] In relation to the merits, the position of the First Respondent is as already stated above.

[58] Second Respondent

[59] The position of the Second Respondent is as already stated above.

[60] Third Respondent

[61] The position of the Third Respondent is as already stated above.

**[62] THE WRITTEN LAW**

[63] The following provisions of the written laws of Seychelles are relevant.

[64] Article 129 and 130 of the Constitution, so far as relevant, provides —

*"129 (1) The jurisdiction and powers of the Supreme Court in respect of matters relating to the application, contravention, enforcement or interpretation of the Constitution shall be exercised by not less than two Judges sitting together.*

...

*(3) Any reference to the Constitutional Court in this Constitution shall be a reference to the Court sitting under clause (1).*

*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.*

...

*(4) Upon hearing an application under clause (1), the Constitutional Court may -*

- (a) declare any act or omission which is the subject of the application to be a contravention of this Constitution;*
- (b) declare any law or the provision of any law which contravenes this Constitution to be void;*
- (c) 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.*

...".

[65] Article 134 (2) of the Constitution provides —

*"134 (1) A Justice of Appeal or Judge may be removed from*



*office only —*

- (a) *for inability to perform the functions of the office, whether arising from infirmity of body or mind or from any other cause, or for misbehaviour; and*
- (b) *in accordance with clauses (2) and (3).*

(2) *Where the Constitutional Appointments Authority considers that the question of removing a Justice of Appeal or Judge from office under clause (1) ought to be investigated—*

- (a) *the Authority shall appoint a tribunal consisting of a President and at least two other members, all selected from among persons who hold or have held office as a Judge of a court having unlimited original jurisdiction or a court having jurisdiction in appeals from such a court or from among persons who are eminent jurists of proven integrity; and*
- (b) *the tribunal shall inquire into the matter, report on the facts thereof to the Authority and recommend to the President whether or not the Justice of Appeal or Judge ought to be removed from office.*

[66] Rule 2 of the Rules provides —

*"2(1) These 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.*

(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.*

[67] Sections 117 and 118 of the Code provide —

*"117. Every person interested in the event of a pending suit shall be entitled to be made a party thereto in order to maintain his rights, provided that his application to intervene is made before all parties to the suit have closed their cases.*

118. *An application to intervene in a suit shall be made by way of motion with an affidavit containing the grounds on which the applicant relies in support."*

**[68] DISCUSSION**

[69] I have considered the issues that arise for consideration and that frame the two issues for determination, namely—

(A) whether or not there is third party intervention in a pending application (Petition). This is a question of "*forme*".

(B) on the merits, whether the First and Second Applicants are interested in the event of the pending Petition? The issue encapsulates and addresses, in passing, the other pleas *in limine litis* raised by the parties.

[70] Third Party intervention in a pending Petition

[71] It is to be noted that learned counsel did not put forward any clear justifications for their respective position. I, therefore, give the present matter my best consideration.

[72] It is undisputed that the Constitution and the Rules do not provide the test for the intervention of parties in constitutional matters. The following provision of the Code is relevant —

*"Definitions*

2.

...

*"cause" shall include any action, suit or other original proceedings between a plaintiff and a defendant;*

...

*"matter" shall include every proceeding in the court not in a cause;*

*"suit" or "action" means a civil proceeding commenced by plaintiff;  
".*

[73] Rule 3 (1) of the Rules provides —

*"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."*

(Underlining is mine)

[74] The word "cause" includes any "action" or "suit" between a plaintiff and a defendant. A "suit" or "action" is an original proceeding between a plaintiff and a defendant. Rule 3 (1) refers to an *application to the Constitutional Court*". The word "cause includes "other original proceedings". On the basis of the provisions set out above, I am of the considered opinion that an application, under rule 3 (1) of the Rules, is an original proceeding; and that it comes within the definition of the word "cause". Section 117 of the Code, applies to a pending suit (an original proceeding) and, therefore, by the same token, applies to an application under rule 3 (1) of the Rules.

[75] For the reasons stated above, I hold that section 117 of the Code applies to an application, under rule 3 (1) of the Rules, as it applies to a "suit" or "action". It is my view that, in a democracy such as ours, an interpretation that seeks to prevent third party intervention, in a pending application, subject to the intended intervener meeting the requirements of section 117 of the Code, will lead to an absurd or frivolous result.

[76] Are the First and Second Applicants interested in the event of the pending Petition

[77] What are the prerequisites to a party being permitted to intervene in a suit or pending application (Petition)? In considering the issue I pay particular attention to rule 2 (2) of the Rules, which states, in part, that *"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"*. The Constitutional Court and the Supreme Court have in several cases been called upon to decide questions that come under section 117 of the Code resulting in different opinions being conveyed in relation to the

principles that should apply. The following cases show the problems with which I had to cope.

- [78] The case of *D’Emmerez v Biggerstaff & Anor* 1916 MR 105 - two consolidated appeals from two decisions of the then Chief Justice of Seychelles in Civil Case 250/14 delivered on 26 January and 9 March, 1915. The court referred to Garsonnet in considering our law relating to intervention as revealed in the following extract from the judgment in that case

—

*"932 ...A qui appartient le droit d'intervenir, et, dans quelles instances peut-il s'exercer? La jurisprudence l'a résolu dans le sens le plus large tant a cause des avantages que l'intervention présente et des heureux resultats qu'elle peut produire qu'en vertu du principe que quiconque a un intérêt légitime a une action peut le faire valoire... "*

- [79] In D’Emmerez the court addressed the issue of intervention as follows—

*"...apart from the reasons given by the Chief Justice in his considered judgment of the 26<sup>th</sup> January, we are of the opinion that Biggerstaff who had been expressly warned of the position by D’Emmerez in the telegram of the 23<sup>rd</sup> September 1914, had the greatest possible interest in intervening; that the paramount question in cause 250/14 was whether or not the contract had come to an end automatically; that this question was raised by D’Emmerez as a defence which struck at the root of the case and had been accordingly strenuously resisted by Plaintiff in his rejoinder; and that Biggerstaff asked for a decision on that issue they were in the position of interveners with a "droit personnel et primordial" which fully warranted the court in deciding that they had the right to intervene ..."*

- [80] *Essack v Auto Clinic (Prop) Ltd* (2000) SLR 125 applied the case of *Raffaut v Mauritius Marine Insurance Co* (1886) MR 108. Raffaut held that —

*"..any person whose interest can be affected by the result of law proceedings between other parties can intervene in those proceedings"*.

It is my view that Raffaut was alluding to the French law of "*intervention*" as expounded in articles 339 to 341, 175 et seq. of the Code of Civil Procedure. Essack held that —

*"[w]hat is pertinent for the present purposes is that the intervenor [a director of the company] has an interest in the present proceedings. A sale of a leasehold interest of the company would affect such interest."*

[81] Lise Morel Du Boil allowed the intervention in order to allow the issues in dispute, in the pending constitutional petition, to be effectually and completely determined. In light of Lise Morel Du Boil, the applicant, in my view, fell within the category of persons contemplated in section 112 of the Code. Nonetheless, it appears to me that Lise Morel Du Boil considers the general principles of our law of intervention, in relation to an application, under rule 3 (1) of the Rules, to be wide ranging.

[82] I now proceed to deal with the issue whether the First and Second Applicants for intervention have made out a case that they are interested in the event of the present Petition and shall be entitled to be made a party thereto in order to maintain their respective rights. To decide the issue I look to the principles of our law of intervention and see no reason to depart from the principles in D'Emmerez and Essack. I also consider the following extracts from DALLOZ RÉPERTOIRE DE PROCÉDURE CIVILE ET COMMERCIALE TOME II Faillite – Voies de recours - INTERVENTION p. 136, (hereinafter "DALLOZ") at p. 137 —

*" §5. — Conditions de fond.*

...

*17. L'intervention accessoire a un but conservatoire ou de sauvegarde. Le tiers n'invoque pas un droit propre sur l'objet du litige. Il se prévaut seulement d'un intérêt légitime justifiant sa participation à l'instance : il desire en surveiller le cours, afin d'éviter de négligence ou de fraude, ou bien il veut prendre fait et cause pour l'une des parties, afin d'éviter l'éventualité d'une action récursoire exercée contre lui. L'intervention du tiers est alors moins grave: elle n'a pas un caractère agressif, mais purement défensif. Le tiers ne demande pas au tribunal de prononcer une condamnation à son profit, mais seulement de lui*

*donner acte de son intervention, considérée comme légitime et d'avoir désormais la qualité de partie à l'instance. Aussi la jurisprudence se montre-t-elle moins exigeante au point de vue des conditions de recevabilité.*

**18.** *1° L'intervenant doit justifier, non d'un droit propre, mais d'un intérêt personnel, légitime et suffisant... Il n'est pas nécessaire d'avoir un intérêt né et actuel. Une intervention basée sur un droit conditionnel et même simplement éventuel, sur un droit certain mais non encore exigible, est recevable...*

**19.** *L'intérêt invoqué peut être direct ou indirect... Il peut être matériel ou moral...*

**21.** *Mais un intérêt théorique, purement doctrinal ne suffit pas.*

**22.** *Les juges du fond ont un pouvoir souverain pour apprécier si l'intérêt invoqué par l'intervenant est légitime et suffisant... Jugé aussi qu'une intervention doit être déclarée irrecevable, l'orsqu'elle n'a été formée que dans un but vexatoire et même lorsqu'elle est simplement surabondante..."*

[83] Consideration of the complaint

[84] In the main, the issue to be determined, in the Petition, is whether the Second Respondent considered the complaint as required under Article 134 (2) of the Constitution. In relation to the intervention, I have a discretion to exercise judicially at this stage of the proceedings.

[85] According to Exhibit A1 "*there is nothing in the files left by its [the Second Respondent's] predecessor to indicate that there was any consideration of the complaints before the appointment of the Tribunal of Enquiry*". The Second Respondent "*has had to assume that the former Constitutional Appointments Authority did not consider the complaints in depth but automatically appointed the Tribunal*". Considering the serious nature of the allegations made, by the First Respondent (Petitioner) against the Second Respondent, it is my view that it would be remiss for the Second Respondent to "*assume*" that its "*predecessor*" did not consider the "*complaints in depth but automatically appointed the Tribunal*". An affidavit sworn by Mrs Marie-Nella Azemia, dated the 25 June, 2017,

exhibited with the Affidavit in Answer, alleges that the Second Respondent considered the complaint, but —

*"5. at no time did the Constitutional Appointments Authority ever give Judge Duraikannu Karunakaran the opportunity to address the Constitutional Appointments Authority with respect to the said complaint."*

[86] The First and Second Applicants aver that they are interested in the event of the pending Petition for the purpose of establishing that the Second Respondent as formerly constituted did not act arbitrarily and unconstitutionally and refuting the assumptions made. The court accepts the approach of the First and second Applicants that the only test to be satisfied by the First and second Applicants is that they are *"interested in the event of the pending Petition to maintain their rights"*. Having considered the evidence I am satisfied that the First and Second Applicants have established that they have *"un intérêt personnel, légitime et suffisant"* to intervene; and that they have not made a vexatious application. I agree with learned counsel for the First and Second Applicants that the Petition is the most appropriate mechanism by which all matters relating to the questions in issue may be addressed. To refuse to grant the application for intervention may lead to multiplicity of actions. In my view third party intervention is a procedure that imports natural justice in that it requires and allows an interested party to be heard- *audi alteram partem*; and that the non-inclusion of a third party who has an interest can violate this natural law principle.

[87] For the reasons stated above, I am prepared, after giving due consideration to the evidence, to exercise my discretion to allow the First and Second Applicants to intervene, in the pending Petition, in relation to the issue directly linked to the Petition, namely, whether the Second Respondent as *"formerly constituted"* considered the complaint as required under Article 134 (2) of the Constitution.

[88] Collusion

[89] The first and Second Applicants also contend that *"the CAA as presently constituted acted in collusion with the Petitioner in bringing the Petition"*. I consider the following extract from DALLOZ p. 136 —

*"§ 3. — Caractères communs aux deux sortes d'intervention volontaire*

...

*8...3° L'intervention doit avoir un rapport direct avec l'objet de l'instance elle ne peut ni excéder les bornes du procès principal, ni tender a une fin differente... La nullité, l'irrecevabilité de la demande originaire entraîne la nullité, l'irrecevabilité de l'intervention (Limoges, 13 mai 1867, D. P. 67. 2. 81 ; Amiens, 9 janv. 1890, D. P. 91. 2. 7)."*

[90] Considering that the application in relation to the issue of collusion has no direct link to the object of the pending Petition, I am not prepared, after giving due consideration to the contentions, of the First and Second Applicants, to exercise my discretion to allow the intervention in relation to the issue of collusion. Moreover, it is my view that such intervention might open the door to other interventions on the part of other parties and unduly delay the hearing of the Petition.

[91] Lastly, in my view, the Third Respondent should assist the Constitutional Court to arrive at a proper and just outcome of the Petition. If there is any evidence of collusion between the First and Second Respondents, the Third Respondent should lay it before the Constitutional Court. I am of this view because of the important status enjoyed by the Second Respondent under the Constitution; and that I am of the firm belief that allegations of collusion made against the Second Respondent should not be taken lightly by it and the Constitutional Court.

[92] **DECISION**

[93] For the reasons stated above, I grant leave to the First and Second Applicants to intervene in the pending Petition only in relation to the issue directly linked to the Petition, namely whether the Second Respondent as formerly constituted considered the complaint as required under Article 134 (2) of the Constitution.



[94] The First and Second Applicants shall within two weeks, file a statement of their demand and other material facts on which it is based and shall at the same time supply a copy of such a statement to the Petitioner, the First Respondent and the Second Respondent to the application/Petition.

[95] Costs shall abide the final event.

Signed, dated and delivered at Ile du Port on 28 July, 2017.

F Robinson  
**Presiding Judge**