

Umarji & Sons (Pty) LTD v Government of Seychelles & Ors (CP 04/2016) [2017] SCCC 3 (30 March 2017)

IN THE CONSTITUTIONAL COURT OF SEYCHELLES
[Corum: ROBINSON, MCKEE, AKIIKI-KIIZA– JJ]

CP 04/2016

[2017] SCCC

UMARJI & SONS (PROPRIETARY) LIMITED
Petitioner

versus

THE GOVERNMENT OF SEYCHELLES

First Respondent
PARTI LEPEP
Second Respondent

ATTORNEY GENERAL
Third Respondent

Heard: Written submissions (28 February 2017, 13 March 2017, 15 March 2017 and 24 March 2017)
Counsel: Mr. Frank Ally for the petitioner

Mr. George Thachett for the first respondent
and the third respondent
Mr. France Bonte for the second Respondent

Delivered: 30 March 2017

JUDGMENT

Judgment of the Court
[1] Introduction

[2] Umarji & Sons (Proprietary) Limited is the Petitioner. The Petitioner is a company incorporated under the Companies Act, 1972, of Seychelles, and is represented in these proceedings by Imtiaz Umarji, a director of the Petitioner.

[3] The First Respondent is the Government of Seychelles represented by the Attorney General. The Second Respondent is Parti Lepep. The Second Respondent is a body corporate registered under the Political Parties (Registration and Regulation) Act. The Third Respondent is the Attorney General. The Third Respondent is joined in these

proceedings pursuant to rule 3 (3) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules.

[4] The Petitioner has filed a Constitutional Petition accompanied by an affidavit, which Constitutional Petition was amended on the 29 July, 2016, with the leave of the court.

[5] The Petitioner is seeking constitutional redress under paragraph 14 of Part III, Schedule 7 of the Transitional provisions of the 1993 Constitution, for among other prayers, the return of the land comprised in title number V4908 on the ground that in July, 1993, the First Respondent had not developed the land comprised in title number V4908 or had any plans to develop it. The land comprised in title number V4908 is hereinafter referred to as the "Property".

[6] It is to be noted that it is improper for Mr. Bonte, learned counsel for the Second Respondent, to appear as counsel on behalf of the Second Respondent when he was counsel who conducted business on behalf of the Petitioner in relation to the Property in dispute. Mr. Bonte did not disclose to the court the potential conflict of interest. That is a clear breach of the Legal Practitioner's (Professional Conduct) Rules, 2013, which provides that —

"4 (1) A legal practitioner has an overriding duty as an officer of the court, to uphold the rule of law and facilitate the administration of justice.

(2) A legal practitioner shall act honestly, fairly, diligently and competently in providing legal services to his or her client.

...";

and rule 11 (1) provides that —

"A legal practitioner has a continuing responsibility to avoid conflicts of interests with or between his or her clients and shall ensure that all potential conflicts of interest are promptly identified, disclosed and addressed."

It is to be noted that the Respondents have filed the same defence and adopted the same objections. Therefore, it is our considered opinion that the issue of the conflict of interest does not have any relevance on the case.

[7] Further, we are convinced that the position of the Third Respondent under rule 3 (3) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules is that of an amicus curiae. However, as the principal legal adviser to the Government of Seychelles he has the right to defend the Government of Seychelles when there is no conflict of interest between the position he will be taking up as amicus curiae and in relation to the defence he will be raising for the Government. It is to be noted that the Respondents (with the Third Respondent joining in this objection) has objected to the Petitioner's Petition on the grounds that there are no substantial or real issues to be tried in this case and that there is no cause of action. For that reason, we have decided to treat this case as one made by the Petitioner and the Government of Seychelles as the First Respondent and Parti Lepep as the Second Respondent.

[8] The admitted facts

[9] The following facts are not in dispute among the Petitioner and the Respondents —
(a) the Petitioner was at the material time the owner of the land comprised in title number V232 with a building standing thereon situated at Francis Rachel Street,

Victoria, Mahe, Seychelles; and

(b) the land comprised in title number V232 was subsequently surveyed and from which the Property (on which stood a building) was distracted from it.

[10] The case for the Petitioner

[11] Save for the admitted facts, this is the case for the Petitioner. Mr Umarji Ebrahim was the owner of the Property on which stood a building. The ground floor of the said building was converted into two commercial units whilst the first floor was used as accommodation for Mr. Umarji Ebrahim and his family. Mr. Umarji Ebrahim rented out one of the commercial ground floor unit to Mr. France Albert Rene, a legal practitioner at the time for use as an office for his law practice and which the said Mr. France Albert Rene also used as the headquarters of the Seychelles People's United Party, a political party that the said Mr. France Albert Rene had formed, whilst the other ground floor unit in the said building was rented out to one Henri Pool for use as a craft and curio shop.

[12] On the 5 June, 1977, Mr. France Albert Rene became the President of Seychelles following a coup d'état.

[13] Upon the demise of Mr. Umarji Ebrahim in 1980, the land comprised in title number V232 was transferred to the Petitioner for the sum of Seychelles rupees 195,750.00/-.

[14] In 1984, the First Respondent carried out a survey of the land comprised in title number V232 and subdivided it into parcel numbers V4908 (the Property) and V4909. The Property is the part of the land comprised in title number V232 on which stood the said building.

[15] By a certificate dated the 1 February, 1984, the First Respondent compulsorily acquired the Property in the "national interest" under the Lands Acquisition Act, 1977, and the Ebrahim family occupying the part of the said building was compelled and forced to leave their home in the said building and had to find alternative accommodation and as a result thereof lost their family home and substantial rental income.

[16] Consequently, the First Respondent became the proprietor of the Property.

[17] However, for reasons stated in the Petitioner's Affidavit in support, the Petitioner accepted monetary compensation in the form of 20 year Government bond of Seychelles rupees 123,735.00/- bearing interest at the rate of 4% per annum.

[18] In 1985, the First Respondent used the said building to house a museum of "SPUP/SPPF" that was the sole political party in Seychelles at the material time until December, 1991.

[19] Upon the coming into force of the Constitution, the Petitioner and the First Respondent continued negotiations for the Petitioner to be compensated (including the return of the Property) for the compulsory acquisition of the Property under the provisions of Part III, Schedule 7 of the Transitional provisions of the Constitution and by letter dated the 3 September, 1997, addressed to the Petitioner, the First Respondent offered the Petitioner Seychelles rupees 180,000.00/- as compensation less the sum already paid, i.e. Seychelles Rupees 123,750/-, which offer the Petitioner rejected for the reasons averred in the Petitioner's Affidavit in support of its Petition.

[20] In October, 2013, when the Second Respondent was about to demolish and rebuild the said building, the Petitioner discovered from a search that it carried out at the Land

Registry that the First Respondent had sold and transferred the Property on the 31 January, 1997.

[21] The Petitioner prays the Constitutional Court as follows —

"(1) To declare that the transfer of Parcel V4908 by the 1st Respondent to the 2nd Respondent a contravention of the 1st Respondent's powers and obligations under Part III of Schedule 7 to the Constitution and the Constitutional right of the Petitioner to property;

(2) To rescind, cancel, annul or revoke the said transfer of Parcel V 4908 by the 1st Respondent to the 2nd Respondent and order the Land Registrar to act accordingly;

(3) To declare that Parcel V4908 be returned and/or transferred to the Petitioner for the reasons that the 1st Respondent had not developed Parcel V4908 and had no plans to develop Parcel V4908 on the coming into force of the Constitution;

(4) To issue a writ of mandamus ordering the 1st Respondent to return Parcel V4908 to the Petitioner and/or the 2nd Respondent to return Parcel V4908 to the 1st Respondent for it to return Parcel V4908 to the Petitioner;

(5) Order the Land Registrar to rectify the land register of Parcel V4908 accordingly;

(6) In the alternative to prayers (3), (4) and (5) above, to issue a writ of mandamus ordering and/or order the 1st Respondent as follows—

(i) to compensate the Petitioner by transferring to the Petitioner a corresponding parcel of land to parcel V4908 with a building similar to the Building thereon and located in the heart of Victoria; or

(ii) to pay the Petitioner full monetary compensation for Parcel V4908 and appoint at least three (3) independent appraisers of repute to value the Parcel V4908 as to its value on the date of the judgment or the valuation and or order the 1st Respondent to pay to the Petitioner compensation for it as per the said valuation;

(7) Make any other order that this Honourable Court shall deem fit in the circumstances of the case.

The whole with cost."

[22] The case for the Respondents

[23] Save for the admitted facts, the Respondents denied the claims of the Petitioner. In reply, the Respondents contended that, in 1981, the First Respondent requested, from the Petitioner, the building and the premises for the purposes of turning the building and the premises into a Museum. They added, further, that the Petitioner was willing to give away the building and the premises, subject to certain conditions. It is the case for the First Respondent that, due to the "great historical importance" of the building and the premises, the First Respondent decided to compulsorily acquire the building and the premises and intimated its decision to the Petitioner. The First Respondent also intimated to the Petitioner its intention to survey the land comprised in title number V232. Accordingly, the land comprised in title number V232 was surveyed and subdivided into two plots for the purposes of the compulsory acquisition. Subsequently, in 1984, the Property was acquired, in the "national interest", by the First Respondent, under the Lands Acquisition Act.

[24] The Respondents contended that the Petitioner willingly accepted the monetary compensation offered by the First Respondent. They, further, alleged that the monetary compensation was justifiable in the circumstances of the case, commensurate with the value of the Property acquired.

[25] It is the case for the Respondents that the First Respondent and the Petitioner did not continue to negotiate for the return of the Property, as alleged. Then the Respondents alleged that the First Respondent and the Petitioner had at no point in time negotiated for the return of the Property as the Property had already been developed at the time of the coming into force of the 1993 Constitution. The Respondents contended, further, that the Property, compulsorily acquired in 1984, was developed into a Museum, at considerable costs and declared as a national Monument prior to the coming into force of the 1993 Constitution.

[26] The Respondents stated that the Property was valued in 1993, and on the 3 September, 1997, the First Respondent, acting in good faith, offered to the Petitioner, an amount of Seychelles rupees 180,000.00/- less the amount of Seychelles rupees 120,000.00/-, which had already been awarded to the Petitioner, as total compensation for the Property, in accordance with the provisions of the Constitution. The said offer was rejected by the Petitioner, through its counsel, on the 5 August, 1998, and on the 3 December, 1998, the Petitioner, through its counsel, informed the First Respondent that it expected to be offered a minimum value of Seychelles rupees 1,500,000.00/-. Since the Petitioner rejected the offer of the First Respondent, there were no, further, negotiations from either side and the First Respondent did not pursue the matter.

[27] The Respondents claimed that the First Respondent acted bona fide in transferring the Property to the Second Respondent (the Seychelles Progressive People's Front) for valuable consideration in furtherance of the development of the Property. It is their position that the transfer of the Property does not in any way affect the right of the Petitioner to be compensated with respect to the Property. Further, the Respondents claimed that since the Property was already developed at the time of the coming into force of the 1993 Constitution, the Petitioner was limited only to monetary compensation.

[28] In relation to the transfer of the Property to the Second Respondent by the First Respondent, the Respondents alleged that there was no collusion or connivance between them to commit or perpetuate fraud on, or to deprive the Petitioner of any of its alleged rights under the Constitution; and that the First Respondent acted in good faith in transferring the Property to the Second Respondent.

[29] In light of all the above, the Respondents contended that the Petitioner is only entitled to monetary compensation, but not at the current market value of the Property as appraised by 3 independent appraisers; and that the transfer of the Property by the First Respondent to the Second Respondent should not be rescinded, cancelled and/or revoked as alleged.

[30] Petitioner's Principal Claim and the Respondents' Defence

[31] The Petitioner's Principal Claim

[32] The Petitioner claimed that in view of the fact that upon the coming into force of the 1993 Constitution, the Property had not been developed and the First Respondent had not adduced any cogent evidence of a plan to develop it prior to July, 1993, the Property ought to be returned to it.

[33] The Petitioner claimed that the sale of the Property by the First Respondent to the Second Respondent amounts to the breach of the First Respondent's constitutional obligations towards the Petitioner. For the submission learned counsel relied on the decision of the Court of Appeal of Seychelles Josephine Claude Marise Berlouis & ors v/s Lise Morel du Boil Constitutional Appeal SCA CP 03 & 04/2015 Appeal from the Constitutional Court Decision CP 10/2011, judgment delivered on the 12 August, 2015.

[34] The Petitioner stated that in this case, the First Respondent sold the Property to the Second Respondent, the ruling political party at the material time, prior to the settlement of the Petitioner's claim. In view of the fact that the First Respondent and the Petitioner were negotiating for compensation and the First Respondent was under an obligation to negotiate with it in good faith, until the Petitioner's claim is settled, the Petitioner has a right to be returned the Property (which is compensation under Part III, Schedule 7 of the Transitional provisions of the Constitution) or to accept other form of compensation.

[35] The Respondent claims that the Petitioner had waived its right to be returned the Property by rejecting the offer of Seychelles Rupees 180,000.00/- and informing the First Respondent that it will accept no less than Seychelles rupees 1,500,000.00/-. The Petitioner submitted that it was negotiating for compensation and responding to an offer for monetary compensation. Its reply to the offer and counter offer during negotiations was not a waiver of its rights for the Property to be returned to it and thus, it has all the rights to claim its return to him and the First Respondent was wrong to deal with the Property during its negotiation with the Petitioner for compensation for the Property.

[36] Thus, the said sale, further, shows that the First Respondent acted in bad faith, maliciously and, fraudulently to deny the Petitioner of its right to recover ownership of the Property under Part III, Schedule 7 of the Transitional provisions of the Constitution. The Second Respondent being the ruling political party and the First Respondent being the Government that the leader of the Second Respondent is the Head and the nature of the transaction clearly showed that the Respondents acted in collusion, connivance and in cahoots to commit and/or perpetuate the fraud on the Petitioner's rights to recover ownership and title to the Property.

[37] On the above facts alone, the sale should be rescinded and annulled and the Property should be returned to the Petitioner.

[38] Petitioner's Alternative Claim

[39] The Petitioner submitted that there is ample evidence before the court for it to be returned the Property. However, if the court were to find otherwise it has the option to —
(a) compensate the Petitioner by transferring a corresponding parcel of land (with a similar building thereon and located in the heart of Victoria) to the Property to the Petitioner; or
(b) compensate the Petitioner monetarily for the said acquisition.

[40] In relation to the first option, the Petitioner submitted that the First Respondent has failed to make an offer in terms of that option to the Petitioner during negotiations or in this matter. Furthermore, it has failed to adduce evidence as to whether there is a similar or corresponding property in Victoria that it can transfer to the Petitioner as compensation. The Petitioner submitted that having failed to exhaust that option, it shows a lack of good faith being exhibited by the First Respondent towards the Petitioner in this case.

[41] In relation to the second option, the position of the Petitioner is that if it cannot be compensated in terms of the first option, the court can order that the Petitioner be compensated monetarily for the said compulsory acquisition. The Petitioner should be compensated at the current market value of the Property and not at its value in July, 1993, for the reasons stated in the Petitioner's Affidavit in support and written submissions. The Petitioner invited the court to adopt the same reasoning and mode of compensation as was adopted for monetary compensation in the case of Charles Alfred Moulinie versus Government of Seychelles and Attorney General SCA40/2013, Appeal from Supreme Court Decision 11/2010 delivered on the 22 April, 2016.

[42] The Respondents' Defence

[43] The Respondents claimed that at no point in time the First Respondent negotiated on the restitution of the Property as the Property had already been developed into a museum spending considerable amounts as it was of national importance and it was declared a national Monument prior to the coming into force of the 1993 Constitution, thus constituting development.

[44] According to the Respondents, the sale of the Property by the First Respondent to the Second Respondent was done in good faith for value and thus, should not be affected by the Petitioner's claim for return.

[45] In reply, learned counsel for the Petitioner submitted that, if this is so, then —

- (a) only part of the ground floor of the building was rented out to Mr. France Albert Rene for his law practice;
- (b) Mr. France Albert Rene unilaterally decided to use the part rented out to him for his law practice as the Headquarters of his political party;
- (c) the rest of the said building was used for the other purpose, as a shop and as the residence of the Ebrahim family;
- (d) Mr. France Albert Rene and his party are persons just like the Petitioner and equal under the law and they should not enjoy greater benefits than the Petitioner who has more rights to the Property than the Second Respondent;
- (e) if it was a serious museum, then the First Respondent was wrong to sell and transfer it to the Second Respondent after the coming into force of the 1993 Constitution;
- (f) the establishment of the museum in the building does not amount to development as envisaged by Schedule 7 of the Transitional provisions of the Constitution; and
- (g) the sale, if for value, was definitely not bona fide by any stretch of imagination. If the court finds that it was a bona fide sale for valuable consideration, then it will still be affected as it was effected post July, 1993, whilst negotiations were still ongoing.

[46] Assessment of the respective contentions in light of Part III, Schedule 7 of the Transitional provisions of the Constitution, the evidence and the written submissions of counsel

[47] We read Part III, Schedule 7 of the Transitional provisions of the Constitution —

"PART III
COMPENSATION FOR PAST LAND ACQUISITIONS
"14(1). The State undertakes to continue to consider all applications made during the period of twelve months from the date of the coming into force of this Constitution by a person whose land was compulsorily acquired under the Land Acquisition Act, 1977 during the period starting June, 1977 and ending on the date of coming into force of this Constitution and to negotiate in good faith with the person with a view to —

a. where on the date of the receipt of the application the land has not been developed or there is no government plan to develop it, transferring back the land to the person;

b. where there is a government plan to develop the land and the person from whom the land was acquired satisfies the government that the person will implement the plan or a similar plan, transferring back the land to the person;

c. where the land cannot be transferred back under sub-sub-paragraphs (a) or sub-sub-paragraphs (b), -

i. as full compensation for the land acquired, transferring to the person another parcel of land of corresponding value to the land acquired;

ii. paying the person full monetary compensation for the land acquired; or

iii. as full compensation for the land acquired, devising a scheme of compensation combining items (i) and (ii) up to the value of the land acquired.”.

[48] In the *Moulinie* case, *supra*, Domah., J.A delivering the judgment of the Court of Appeal of Seychelles with Fernando., J.A and the Honorable Chief Justice Twomey., J.A concurring, stated that —

”[a]s may be seen, two conditions apply for paragraph 14(1) to kick in so that the 1993 compensation would become payable. One is that, on the date of the receipt of the application, the land has been developed. The other is that on that date, there is already a government plan to develop it. In the absence of those conditions, government is under a constitutional duty to transfer back the land to the person from whom the property was acquired. A duty to transfer would occur even where there is a government plan to develop the land but the person from whom the land was acquired satisfies government that he will implement the plan or a similar plan. Now, where the land cannot be transferred because the case falls outside those situations, there arises a duty to give full compensation in cash or in kind: either transferring to the person another parcel of land of corresponding value to the land acquired or paying the person full monetary compensation for the land acquired; or devising a scheme of compensation combining items (i) and (ii) up to the value of the land acquired.”.

Emphasis is ours

[49] The above principles will direct the court’s approach to the resolution of the case before it.

[50] The following issues have been framed for the determination of the court —

(A) was the Property developed prior to the coming into force of the 1993 Constitution?

(B) whether the First Respondent had a plan for the Property?

(C) has the Petitioner waived its right for restitution?

(D) is the sale of the Property by the First Respondent to the Second Respondent in accordance with the constitution?

[51] Was the Property developed prior to the coming into force of the 1993 Constitution

[52] In order to answer the first question and in the light of the averments of the Respondents in objecting to the Petitioner’s claim for the return of the Property and the

averments of the Petitioner that the Property had not been developed, the court has to consider whether the use of the building (the Property) by the First Respondent as a museum amounts to development in terms of and as envisaged by Part III, Schedule 7 of the Transitional provisions of the Constitution. The Petitioner submitted that such use would not amount to development.

[53] With regards to the facts of the case, the Notice of Acquisition referred to compulsory acquisition being used in the "national interest". The Respondents stated that the First Respondent —

"acquired the Property in 1984 in the public interest to salvage the historically important building from a state of neglect and deterioration at the hands of the Petitioner and to turn the premises into a museum thus preserving its symbolic character. The century old building was renovated extensively and converted into a Museum [The Seychelles People's United Party Museum] in 1984 constituting complete development. The nature of the renovation works for the building included replacement of the exterior walls of the entire building ... Because of the historical importance, the architectural structure was retained. However, with the passage of time, for reasons beyond the control of the respondents, the structure required complete reconstruction in 2003".

Emphasis is ours

The Seychelles People's United Party Museum was declared to be a national Monument on 25 May, 1987. The Property was transferred by the First Respondent to the Second Respondent on 23 January, 1997. Consequently, it is the position of the Respondents that the Property cannot be returned to the Petitioner.

[54] In the case of Charles Alfred Paul Moulinie versus Government of Seychelles and the Attorney General Constitutional Petition No. 11 of 2011, delivered on the 8 May, 2012, Egonda Ntende., CJ with whom Burhan., J concurred, considered the term "development" referred to in the said paragraph 14. Egonda Ntende., CJ opined that —

"[27] ...where land has not been developed between the date of compulsory acquisition and date of receipt of the application for return under section 14 (1) (a), such land must be returned to the former owner. Property V5318 was not developed between the date of compulsory acquisition and at the time of receipt of the application for return. It is available therefore for return to the former owner.

[28] ... No evidence has been adduced that this property has been developed or in any case was developed at the time of receipt of the application of the Petitioner.

[29] Property V5320 was used as a multipurpose court for use by the community. Use is not one of the conditions for non-return. Development is the condition and clearly no evidence has been shown that there is any development of this property. Property V5320 remains available for return."

In the same case, Dodin., J gave the word "development" the following meaning —

"[13] ... the nature of development always involves a certain goal or several goals that must have been met for the benefit of the community or the targeted group."

[55] It is to be noted that the Court of Appeal of Seychelles to a large extent adopted such reasoning in the Moulinie case, supra. Domah., J. A stated —

"[18] ... Holding on to property without doing anything extra to improve or change it would not amount to development. We endorse that view to the extent that it comes as

near the true meaning of development in the law of compulsory acquisition of property demands.”;

at paragraph 19, of the judgment, the learned Justice of Appeal elaborated further —

”[19] the meaning is inherent in section 14 (1) (a) and (b): a development which only the government can undertake in public interest for public purposes and one which any private developer would not wish to undertake for its lack of business viability.”;

and at paragraph 20, of the judgment, the Learned Justice of Appeal opined, further, that —

”Development should be understood in that sense. ... The key question is what is the public interest which can only be undertaken by government and not the private sector. That is the concept in the Constitution ... If land is scarce, it is in the interest of government not to hold on to land and thereby inhibit development. It is in its interest to return it and encourage its exploitation ”.

In the said judgment the learned Justice of Appeal stated that the term ”acquire in the public interest”, in relation to land, is defined —

”[23] ... as the acquisition or taking possession of land for its development or utilisation to promote the public welfare or benefit or for public defence, safety, order, morality or health or for town and country planning. The overriding criterion of whether there has been development or not is the concept of public interest”.

Emphasis is ours

[56] Further, in light of the above principles we find that the compulsory acquisition of the Property by the First Respondent to transform it into or use it as a Museum [The Seychelles People’s United Party Museum] fell short of satisfying the criterion of public interest. On the facts and circumstances of the case, we are of the view that the compulsory acquisition of the Property by the First Respondent was done in the interest of the Seychelles People’s United Party/SPUP, the Second Respondent, being the sole ruling party embodying the State from June, 1977, till December, 1991.

[57] In the context of the present case, the court also finds that, on balance, use or change of use would not amount to development and would not be a ground or condition for non-return, acquisition in the public interest being the criterion. Moreover, the court agrees with learned counsel for the Petitioner that any such renovation and maintenance of the said building (the Property) would not amount to development as envisaged by the Constitution. As stated by the Court of Appeal of Seychelles in the case of John Atkinson v/s The Government of Seychelles and The Attorney General SCA No. 1 of 2007, delivered on 24 August, 2007, in relation to a similar case for compensation for land compulsorily acquired and subject to return under the Constitution —

”it is a canon of interpretation that where the text is plain, full effect should be given to the intention of the legislator. The clear and plain language of paragraph 14 (1) (a) did not lead to any absurdity and required no judicial acrobatics but its simple application.”.

[58] For the reasons stated above, the court finds that the First Respondent has shown no evidence that there has been any development of the Property between the date of compulsory acquisition and at the time of receipt of the application.

[59] Whether the First Respondent had a plan for the Property

[60] The next linked question is – was there any government plan at the time of the application to develop the Property? According to the Atkinson case — “if any plans exist, it should be concrete and serious. It is all too easy to say that someone has a plan when it does not have”.

Having come to the above finding, we have no hesitation to hold that there was no concrete and serious government plan at the time of the application to develop the Property. The Property [the Seychelles People’s United Party Museum] was declared to be a national Monument on the 25 May, 1987.

[61] Waiver of right for restitution

[62] The point made by the Respondents is that the Petitioner had waived its right for restitution in that in one of its correspondence with the First Respondent it requested a sum of Seychelles rupees 1, 500,000.00/- as monetary compensation. It is the considered opinion of the court that it should be guided only by Part III, Schedule 7 of the Transitional provisions of the Constitution in arriving at a just determination in this case. Further, it is also the considered opinion of the court that there is nothing improper in the Petitioner on the one hand negotiating for the return of the Property and on the other hand exploring the possibility that a financial settlement could be a suitable outcome.

[63] The dispute about the sale of the Property by the First Respondent to the Second Respondent – is the sale constitutional

[64] The other question that will have to be considered in light of the evidence adduced in this case is whether the sale of the Property is constitutional. The First Respondent transferred title and ownership of the Property to the Second Respondent on the 23 January, 1997. It is common ground between the Petitioner and the Respondents that the Property had been transferred to the Second Respondent after the commencement of negotiations between the Petitioner and the First Respondent.

[65] The Petitioner invited the court to consider the following facts in order to consider the point in issue: that the Second Respondent was the ruling political party; that the President and Head of State from the 5 June, 1977, till to date has been the leader of the Second Respondent; that the Second Respondent controls the machinery of the State and the First Respondent; that the sale of the Property by the First Respondent to the Second Respondent is a conflict, a breach of good practices and in contravention of the written laws of Seychelles; that the sale of the Property was effected whilst negotiations between the First Respondent and the Petitioner were still ongoing; that the said negotiations had not resulted in a settlement; and that the First Respondent has a constitutional obligation to negotiate in good faith with the Petitioner for compensation. The Respondents claim that it was a bona fide transaction for valuable consideration; and that the Property cannot now be transferred back.

[66] We have given serious consideration to the facts and circumstances of the case. We find that the First Respondent had transferred the Property to the Second Respondent in violation of its own obligations under paragraph 14 of Part III, Schedule 7 of the Transitional provisions of the Constitution to “negotiate in good faith” with the Petitioner in relation to its application for the return of the Property until a decision was reached under the said paragraph 14. Further, the actions of the First Respondent was also in clear violation of the rights of the Petitioner under the said paragraph 14 and its right to be returned the Property under article 26 of the Constitution (See the Berlouis

case, supra). We hold that it was not a bona fide transaction between two independent parties; and that the transfer of the Property by the First Respondent to the Second Respondent was more fictional than real.

[67] The Respondents submitted that the constitutional obligation of the First Respondent under paragraph 14 of Part III, Schedule 7 of the Transitional provisions of the Constitution is to return land which is, in its possession, and relies on the wording in paragraph 14 (1) (c) which makes reference to "where the land cannot be transferred back" to strengthened their argument, and state that the remedy in such a situation is compensation. In the Berlouis case, supra, Fernando., J.A with whom Domah., J.A and Msoffe, J.A concurred, stated the following on that point —

"To transfer land to a third person, while negotiations are ongoing with the original owner for the return of such land, and then to take up the position that the land cannot now be transferred back is to make a mockery of the Constitutional provision under paragraph 14 of Part III of Schedule 7 of the Constitution. We therefore dismiss the second ground of appeal raised by both appellants".

[68] For the reasons stated above, we, therefore, hold that the sale should be cancelled and the land register of V 4908 (the Property) be rectified as per the Petitioner's prayer.

[69] Decision

[70] For all the reasons stated above, we enter judgment for the Petitioner as follows —

(1) we declare that the transfer of Parcel V4908 [the Property] by the First Respondent to the Second Respondent a contravention of the First Respondent's powers and obligations under Part III of Schedule 7 of the Transitional provisions of the Constitution and the constitutional right of the Petitioner to property;

(2) we rescind, cancel, annul or revoke the said transfer of Parcel V4908 [the Property] by the First Respondent to the Second Respondent and order the Land Registrar to act accordingly;

(3) we declare that Parcel V4908 [the Property] be returned and/or transferred to the Petitioner for the reasons that the First Respondent had not developed Parcel V4908 [the Property] and had no plans to develop Parcel V4908 [the Property] on the coming into force of the 1993 Constitution;

(4) we order the Land Registrar to rectify the land register of Parcel V4908 [the Property] by registering the property in the name of the Petitioner.

[71] We make no order as to costs.

Signed, dated and delivered at Ile du Port on 30 March 2017

F Robinson C McKee D. Akiiki-Kiiza
Judge of the Supreme Court Judge of the Supreme Court Judge of the Supreme Court