# IN THE CONSTITUTIONAL COURT OF SEYCHELLES

**[C G Dodin J. Presiding, M A Vidot J. and L Pillay J.]**

## CP 03/2017

[2018] SCCC 10

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**DURAIKANNU KARUNAKARAN**
Petitioner

versus

**CONSTITUTIONAL APPOINTMENTS AUTHORITY**
**First Respondent**

**THE ATTORNEY GENERAL**
Second Respondent

**MARIE-ANGE HOAREAU**
First Intervener

**JANE GEORGETTE CARPIN**
Second Intervener

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| Heard: | 6, 27 March, 10 April 2018 |
| Counsel: | A Amesbury for petitioner |
| | A Derjacques for 1st respondent |
| | D Esparon for 2nd Respondent |
| | A Madeleine for 1st and 2nd Interveners |
| Delivered: | 26th June 2018 |

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**JUDGMENT OF THE COURT**

[1] The Petitioner is a Judge of the Supreme Court of Seychelles appointed on the 8th of March 1999. The 1st Respondent is Constitutional Appointments Authority (CAA) established under article 139(1) of the Constitution. The 2nd Respondent is a party as required by Rule 3(3) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules 1994. The 1st and 2nd Interveners were granted leave to intervene as per judgment of the Court of Appeal dated 19th September 2017.

[2] The Petitioner who is currently the subject of a Tribunal of Inquiry set up under Article 134(2)(a) of the Constitution has been suspended from performing the function of Judge since the 10th October 2016 by the President of the Republic.

[3] The Petitioner contends that pursuant to the complaint by the Chief Justice, the 1st Respondent arbitrarily and unconstitutionally, without making an assessment of the complaint, in order to consider whether the question of removing a Judge ought to be investigated as required by Article 134(2) of the Constitution, appointed a Tribunal and informed the Petitioner so by letter dated 7th October 2016. The Petitioner therefore contends that the appointment of the Tribunal is unconstitutional and it was made in contravention of Article 134 (2) of the Constitution.

[4] The Petitioner further avers that his interest is being affected and continues to be affected by the said contravention which came to the knowledge of the Petitioner only on the 21st May 2017 at about 6pm, when the 1st Respondent made a press release to the public. The Petitioner filed this Petition at the earliest time possible after becoming aware the abovementioned contravention.

[5] The Petitioner submitted that it is fair, just and reasonable that the Petitioner be granted leave to file this Petition out of time.

[6] The Petitioner further prays this Court to declare that the appointment of the Tribunal by the 1st Respondent is unconstitutional, null and void *ab initio* and to grant such other remedy under the Constitution as this Court deems fit.

[7] In its answer to the Petition, the 1st Respondent virtually admitted all the contentions of the Petitioner and concluded that the 1st Respondent was not contesting the Petition. The

pertinent parts of the 1st Respondent's answer is contained in paragraph 5 to 13 of the Answer which state:

5. *It is admitted, as averred in paragraph 6 of the Petition, that a Tribunal of Inquiry was appointed by the 1st Respondent (as then constituted) on 7th October 2016. The 11st Respondent further avers that:*

*(i)* *The substance of the Charge was only put to the Petitioner by the 1st Respondent (as then constituted) on the 12th October 2016, five days after the Petitioner was informed that a Tribunal had been appointed by the 1st Respondent (as then constituted), and two days after the Petitioner was suspended by former President James Alix Michel;*

*(ii)* *The Petitioner was never heard by the 1st Respondent (as the constituted) at the consideration stage before a decision was made to appoint a Tribunal under Article 134 of the Constitution.*

*(iii)* *Past consideration of complaints made to the Constitutional Appointments Authority included the process of allowing the person complained against an opportunity to be appointed or not;*

*(iv)* *The 1st Respondent (as then constituted) was on the 29th September 2016 aware that a complaint was to be lodged and had begun the process of identifying members to be appointed to a Tribunal of Inquiry;*

*(v)* *The minutes of meetings recorded by the 1st Respondent (as then constituted) following the complaint lodged against the Petitioner were only on 10th October 2016, three days after Petitioner was informed by the 1st Respondent (as then constituted) that a Tribunal was to be appointed.*

*(vi)* *The veracity of the facts stated and the decision recorded in the minutes are doubtful;*

*(vii)* *The subject matter of the complaints themselves were never given any consideration by the 1st Respondent (as then constituted).*

*(viii)* *The 1st Respondent (as then constituted) was not acting as it is required by the Constitution, independently of the direction or control of any other person contrary to Article 139(2) of the Constitution.*

*6* *By reason of the foregoing, the 1st Respondent avers that the*

*requirements of natural justice and procedural fairness were lacking at the consideration stage of the complaint and in the process that the 1st Respondent (as the constituted) undertook from 29th September 2016 when it first identified the members of the Tribunal of Inquiry to 11th October when a Press Release was issued.*

7 *As a consequence of the above the constitutionality of the consideration of the complaint against the Petitioner is called into question.*

8 *The 1st Respondent further avers that the elements of natural justice and procedural fairness are required and must be adhere to throughout the determination process under Article 134 (2), including at the preliminary the stage of consideration of a complaint by Constitutional Appointments Authority.*

9 *The 1st Respondent avers that the absence of procedural fairness vitiates the appointment of the Tribunal, the suspension made by former President James Alix Michel under Article 134 (4) of the Constitution and any subsequent decision of the Tribunal.*

10 *The 1st Respondent will leave the determination of the allegation made in paragraphs 7 and 8 of the Petition to this Honourable Court Following a full consideration of the facts and the law by it.*

11. *Paragraph 9 of the Petition is admitted to the extent that the 1st Respondent did issue a Press Released on the 21st May 2017. The 1st Respondent avers that the Press Release was issued in good faith after a full, factual and legal assessment of the process leading to the appointment of a Tribunal by the 1st Respondent (as then constituted).*

12 *The 1st Respondent further avers that it needed to distance itself from a process that it believed lacked the requirements of natural justice and procedural fairness which it could not simply ignore.*

13 *The 1st Respondent does not oppose the request made by the Petitioner in paragraph 10 of the Petitioner.*

[8] We are intrigued by the Petitioner and the 1st Respondent concerted approach and their stance of complete agreement with each other regardless of the merits of their contentions. It appears, although not specifically pronounced by the 1st Respondent, that there were two CAAs, the previous one which took the decision to appoint a Tribunal of Inquiry, and the

current one which seeks to have the appointment of the Tribunal of Inquiry declared unconstitutional, null and void *ab initio*.

[9] The Constitutional Appointments Authority (CAA) was created by Article 139 of the Constitution which states:

> *Article 139(1) There shall be a Constitutional Appointments Authority which shall perform the functions conferred upon it by this Constitution and any law.*
>
> *(2) Subject to this Constitution, the Constitutional Appointments Authority shall not, in the performance of its functions, be subject to the direction or control of any person or authority.*

[10] It is our considered opinion that not only is the CAA not subject to the direction and control of any person or authority but also that the powers and duties vested in the CAA are not powers and duties vested in the individuals appointed to the CAA. Hence any act done or decision taken by the CAA remains the act and the decision of the CAA regardless of who the appointed members are. They are powers to be exercised and duties to be performed by the CAA and not personal and private matters to be performed by the members.

[11] It is appropriate at this stage to consider the position of the Interveners. The Interveners were granted the right to intervene by judgment of the Court of Appeal. In the words of Renaud J A. at paragraphs 32 and 33 of his judgment:

> *"It is my considered judgment that the intended Interveners are entitled to be heard in the pending Petition for the simple reason that they ought not to be denied the opportunity to be heard in the Petition without being given the opportunity to explain how, what, and when they considered the complaint against the Petitioner prior to appointing the Tribunal. As such, in the rule of audi alteram partem or the rule of natural justice or fair hearing, they are entitled to be given a right of reply. Their reply to that specific issue will assist the Court in its determination of he fundamental matter in suue.*
>
> *In the interest and justice and fair hearing, I exercise my inherent discretion and grant the Intended Interveners the right to be heard in reply to the two pertinent paragraphs of the Affidavit of the 2nd Respondent to the Petition and to the deposition in paragraph 5 of the Affidavit of Mrs Marie-Nella Azemia dated 26th June 2017"*

[12] The affidavit of Marie-Nella Azemia contains the following averments:

i. *The 1st Respondent, as constituted at the time, did receive a letter of complaint and supporting documents from Chief Justice Mathilda Twomey against the Petitioner.*

ii. *I do recall a meeting when the members of the 1st Respondent, as then constituted, did consider the letter from Chief Justice and the accompanying documents. I cannot with any certainty state the date of that meeting.*

iii. *I did sign a set of minutes dated 3rd October 2016 agreeing to the appointment of a Tribunal of Inquiry.*

iv. *I was on an overseas mission from 4th to 9th October 2016 and was not present at any deliberations of the 1st Respondent, as then constituted, which took place over that period.*

v. *I can confirm that Judge Duraikannu Karunakaran, the Petitioner was never given the opportunity to address the 1st Respondent, as then constituted, in respect of the complaints made against him by the Chief Justice.*

vi. *None of the members of the 1st Respondent, as then constituted, had any legal background and knowledge.*

[13] It is already admitted by all parties that the Petitioner did not address the CAA on the complaints received against him and was not requested by the CAA to do so at any time. The Affidavit also makes it clear that the CAA deliberated over the complaints received and on whether to appoint a tribunal of inquiry. The deliberations were minuted and signed by the appointees to the CAA.

[14] The Interveners in their Statement of Demand as amended, raised 4 points of contention, namely;

i. That the Petition is out of time under the Constitutional Court Rules in that the decision to set up the Tribunal of Inquiry was known to the Petitioner on the 7th October, 2016.

ii. That the Petition is made contrary to Article 130(2) of the Constitution in that the same matters raised in the Petition have been raised and decided upon by the Supreme Court in *MC No.111/2016 Duraikannu Karunakaran v The Constitutional Authority* and the decision upheld by the Court of Appeal in SCA 33/2016 *Duraikannu*

iii. That the 1st Respondent is not required to hear the Petitioner on the allegations made against him in terms of Article 134(2) of the Constitution as the complaints were to be investigated by the Tribunal of Inquiry which may or may not recommend removal of the Petitioner from office and therefore the decision of the CAA to set up a Tribunal of Inquiry was fair, legal and constitutional based on the limit of the mandate of the 1st Respondent under Article 134(2) of the Constitution.

iv. That the Petition, a letter dated 12 May 2017, a press release of 21 May 2017 preceding this Petition were false, misleading and calculated to injure the reputation and integrity of the interveners and further showed that the 1st Respondent was not going to defend this Petition and acted in collusion with the Petitioner.

[15] It is obvious from the conduct of proceedings in this case that neither the Petitioner nor the 1st Respondent made any direct allegation against the Interveners personally although as we stated in paragraphs 8 to 10 above, the 1st Respondent seemed to be implying that there was a previously constituted CAA of which the Interveners were members and a newly constituted CAA which is the 1st Respondent. As stated above we do not subscribe to that view and we find the CAA responsible for any act done or decision taken regardless of its composition. Hence the integrity of the Interveners do not come up for consideration in the circumstances.

[16] The 2nd Respondent, the Attorney General, made 3 strong points of contention which are summarised as follows:

i. Under Article 142(6) of the Constitution the CAA may regulate its own proceedings. In absence of any other law, rules or procedures relating to consideration of complaint it can be presumed that the CAA has acted correctly in their consideration of the question of if removing a Judge from office ought to be investigated in accordance with Article 134(2) of the Constitution and hence the maxim of *Omnia praesumuntur rite esse acta*(all things are presumed to be done in due form) shall apply.

ii Since Article 142(6) provides that the CAA may regulate its own proceedings of which such article gives a discretion to the CAA to decide on the procedure to be adopted when a complaint is received depending on the facts and circumstances of each case. Hence under

Article 134(2) of the Constitution the CAA may decide to request the Judge concerned to comment on the contents of the complaint before deciding to act under Article 134(2) but where there are multiplicity of clear and unambiguous serious charges which ex-facie requires a comprehensive inquiry by the tribunal there would be no necessity to require the Judge concerned to be called to a preliminary inquiry by CAA.

iii The delay in filing the Petition should start running from the date of the appointment of the Tribunal, that is from the 7th October 2016. The 2nd Respondent further avers that it is in the discretion of the Constitutional Court to decide as to whether leave should be granted to file the Petition out of time in terms of Rule 4(4) of the Constitutional Court (Application, Contravention Enforcement or interpretation of the Constitutional Rules) in the event that the Petitioner shows sufficient reason to extend the time in filing the Petition under Rules 4 (3) in view that the Petitioner sought relief from the wrong forum by filing an application for Judicial Review, instead of filing a petition before the Constitutional Court, hence causing the delay.

[17] In their respective submissions the Petitioner and the 1st Respondent maintained that the CAA's decision to appoint a Tribunal of Inquiry without first giving the Petitioner a right to be heard by the CAA was unconstitutional and in breach of the *audi alteram partem* principle. (Let the other side be heard as well).

[18] The strong points made by the Petitioner and the 1st Respondent were that the 1st Respondent had failed to perform its constitutional obligation when <u>*considering*</u> the question of removal of the Petitioner which was in contravention of Article 134(2) of the Constitution. The objective, independent and unbiased test to be performed by the 1st Respondent at the consideration stage is couched in clear terms in Article 134(2) by the use of the word *"ought"*.

[19] The word *"ought"* imports a significant and important constitutional obligation to be performed by the 1st Respondent at the due process of consideration as a gatekeeper to ensure that malicious, biased, false, vexatious, frivolous complaints are dismissed, whilst matter that *"ought"* to be investigated are investigated by a Tribunal appointed by the 1st Respondent. The 1st Respondent has failed to perform its mandatory constitutional test in

gross contravention of Article 134(2) of the Constitutional by arbitrarily, automatically and unconstitutionally appointing the Tribunal.

[20] The 2nd Respondent submitted that the CAA was not mandated to hear the complaints against the Petitioner. Its mandate was only to consider whether bases on the complaints before it a Tribunal of Inquiry needed to be appointed to hear the complaints. It would be at the Tribunal of Inquiry that the Petitioner must be afforded the right to be heard. The 2nd Respondent further submitted that the word "ought" does not import a right to be heard by the CAA. It only gives the CAA the power and discretion to decide on the setting up of a Tribunal of Inquiry.

[21] The 2nd Respondent further submitted that the CAA has constitutional authority to regulate its own proceedings and therefore it could adopt the procedures it did when considering whether to appoint a Tribunal of Inquiry in this case. Obviously, in view of the multiplicity of complaints in this case it decided to appoint a Tribunal and then informed the Petitioner accordingly. Hence the 2nd Respondent moved the Court on the merits to find that no right of the Petitioner was violated by the CAA.

[22] With respect to the delay in filing proceedings before the Constitutional Court, the 2nd Respondent is of the view that time should start to run from the date the Petitioner was informed of the setting up of the Tribunal of Inquiry, 7 October 2016, and that the delay was caused by the Petitioner himself who initiated proceedings in the wrong forum and failed to meet the time requirement of the Constitutional Court Rules.

[23] Several cases were referred to in support of their respective submissions, notably *Mafabi Richard v Attorney General CP0014/2012* (Uganda), *George Meerabux v Attorney General of Belize and Bar Association of Belize Action No 65[2001]*, *Judicial Services Commission v Mr Justice Mbalu Mutava and Attorney General* (Kenya), *The President of the Court of Appeal (Ramodibedi) v The Prime Minister and Others* (Lesotho).

[24] We first consider whether the Petitioner should be granted leave to proceed with this Petition out of time. The Petitioner himself admitted that he was first notified of the complaints and the appointment of the Tribunal of Inquiry on the 7th October 2016. The

Petition was received by the Constitutional Court on the 25th May 2017 which is over 7 months from the date the Petitioner became aware of his predicament.

[25] Rule 4 of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules states:

> *4 (1) Where the petition under rule 3 alleges a contravention or a likely contravention of a provision of the Constitution, the petition shall be filed in the Registry of the Supreme Court -*
>
> *(a) in a case of an alleged contravention, within three months of the contravention;*
>
> *(b) in a case where the likely contravention is the result of an act or omission, within three months of the act or omission;*
>
> *(c) in a case where the likely contravention arises in consequence of any law, within three months of the enactment of such law.*
>
> *(2) Where a petition under rule 3 relates to the application enforcement or interpretation of any provisions of the Constitution, the petition shall be filed in the Registry of the Supreme Court within 3 months of the occurrence of the event that requires such application, enforcement or interpretation.*
>
> *(3) Notwithstanding subrules (1) and (2), a petition under rule 3 may, with the leave of the Constitutional Court, be filed out of time.*
>
> *(4) The Constitutional Court may, for sufficient reason, extend the time for filing a petition under rule 3.*

[26] Rule 6 of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules states

> *6.(1) Where a petition which has been presented fails to comply to with the Rules, the Registrar of the Supreme Court shall submit the petition for an order of the Constitutional Court.*
>
> *(2) The Constitutional Court shall hear the petitioner before making an order under subrule (1).*

[27] The reason it seems the Petitioner has taken so long to file his Petition appears to be that the Petitioner initiated proceedings before the Supreme Court and only came to the Constitutional Court when the decision given by the Supreme Court was not in his favour.

We are mindful of the precedents in respect of prescription and the effect on litigation. The case of *Darrel Green v Seychelles Licensing Authority and Government of Seychelles CA43/1997* is one of the leading authorities in which the Court of Appeal stated:

> *"The Constitutional Court may grant such leave not as of course but only if the applicant shows sufficient reasons to justify an extension of time".*

[28] Should we apply Rule 4 strictly, at this stage this Petition should fail. However the Constitutional Court is granted the necessary discretion to allow a petition to be filed out of time provided the Petitioner shows sufficient reasons to justify the extension. Having given careful consideration to this issue we conclude that the importance of the issue to be decided by this Court is of such significance to the working life of the Petitioner and any other Constitutional Appointee that we exercise our discretion to grant leave to proceed with this Petition out of time.

[29] We maintain this view despite the contention of the Interveners that Petition is made contrary to Article 130(2) of the Constitution in that the same matters raised in the Petition have been raised and decided upon by the Supreme Court in *MC No.111/2016 Duraikannu Karunakaran v The Constitutional Authority* and the decision upheld by the Court of Appeal in *SCA 33/2016 Duraikannu Karunakaran v The Constitutional Authority*.

[30] We now consider the main contention of the Petitioner that he ought to be afforded the right to be heard before the CAA before the setting up of the Tribunal of Inquiry. The contention goes further in that if this Court determines that the Petitioner ought to have been heard by the CAA, and the CAA has failed to grant the Petitioner that right, the setting up of the Tribunal of Inquiry was not in accordance with law and the principles of natural justice and was in breach of the Petitioner's constitutional right and therefore should be declared void ab initio.

[31] Hence this Court needs to decide the following issues -

i) Was the CAA legally obliged to hear the Petitioner before appointing the Tribunal?

ii) If the CAA was legally obliged to hear the Petitioner, was any prejudice caused to the Petitioner by the failure of the CAA to hear

him at consideration stage, and was that failure fatal in respect of the appointment of the Tribunal?

[32] The affidavit of Marie-Nella Azemia dated 20th October 2017 confirms at paragraph 5 that the CAA "*did consider the letter from the Chief Justice and the accompanying documents*" and at paragraph 8 confirms that the Petitioner "*was never given an opportunity to address the 1st Respondent.*"

[33] Article 19(1) of the Constitution states:

> "*Every person charged with an offence has the right, unless the charge is withdrawn, to a fair hearing within a reasonable time by an independent and impartial court established by law.*"

[34] Article 19(7)

> "*Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority the case shall be given a fair hearing within a reasonable time*".

[35] Article 139

> "*(1)There shall be a Constitutional Appointments Authority which shall perform the functions conferred upon it by this Constitution and any law.*
>
> *(2) Subject to this Constitution, the Constitutional Appointments Authority shall not, in the performance of its functions, be subject to the direction or control of any person or authority.*"

[36] Article 142(6)

> "*The Constitutional Appointments Authority may regulate its own proceedings and may act notwithstanding one vacancy in its membership.*"

[37] Article 134(2) provides

> "(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."*

[38] Article 134 (2) separates the role of the CAA and the Tribunal of Inquiry by establishing a two-step procedure; the first one being consideration by the CAA as to whether a Tribunal needs to be appointed and the second step being investigation by the Tribunal after it has been appointed. The CAA has no powers of investigation, it only has powers of consideration. That mandate for investigation is given to the Tribunal which is mandated to look into the complaints made and make a recommendation as to whether or not the Judge concerned should be removed from office. The CAA is only empowered to consider whether the question of removing the Judge ought to be investigated. [Emphasis ours].

[39] The Cambridge dictionary defines "consider" as "*to think about a particular subject or thing or about doing something or about whether to do something*". The Oxford Dictionary defines "consider" as "*to think carefully about (something), typically before making a decision*". The Cambridge dictionary defines "investigate" as "*to examine a crime, problem, statement, etc. carefully, especially to discover the truth*". The Oxford dictionary defines "investigate" as "*to carry out a systematic or formal inquiry to discover and examine the facts of (an incident, allegation, etc.) so as to establish the truth*". The Collins English dictionary defines "investigate" as "*to inquire into (a situation or problem, esp a crime or death) thoroughly; examine systematically, esp in order to discover the truth*".

[40] We are of the firm opinion that the CAA's sole role is to look at the complaints and make a decision as to whether the matter should move forward to the next step being investigation. It is not the role of the CAA to hear the Judge concerned or to come to a decision as to the truth of the complaints. That is for the Tribunal. However. Since the CAA regulates its own proceedings, the CAA is not prevented from hearing any person who is

the subject of complaints just as it is not obliged to hear the same person. Each case would depend on its own level of complexity. CAA may request the Judge concerned to comment on the contents of the complaints before deciding to act under Article 134 (2) but where there are multiplicity of clear and unambiguous serious charges which ex-facie requires a comprehensive inquiry by the Tribunal there would be no necessity to require the Judge concerned to be called to a preliminary inquiry by CAA.

[41] The first step, the consideration stage, is similar to a Judge deciding whether a case should proceed to defence. Is there prima facie evidence that the Defendant should answer the allegations against him? It is not the volume of complaints that is important but the nature of the complaint. The CAA merely sifts through the complaints and sends it on to the next stage if it finds that the complaints are such that they fall within the two grounds for removal under Article 134 (1) being (i) inability to discharge functions of the office or for (ii) misbehavior.

[42] The Tribunal on the other hand is mandated to test the veracity of each complaint made and to find out its truth and thereafter make a finding as to whether or not the complaints have been found to be true or not, and in the event they have been found to be true whether they are of such seriousness that it necessitates that a recommendation be made for the removal of the Judge. By virtue of the fact that a Tribunal is appointed it does not necessarily follow that a recommendation for removal will be made. The Judge concerned retains the right to be heard, to defend himself/herself before the Tribunal. In spite of the fact that there are no rules in place and the Tribunal can regulate its own proceedings it is still bound by the rules of natural justice.

[43] We note *en passant* that by letter dated 12th October 2016 the CAA informed the Petitioner of the complaints against him and invited him to answer the specific allegations and lodge a response to the Secretary of the Tribunal within 21 days. We are of the view that such procedure was not improper or illegal. We are also not averse with any practice which the CAA might put in place to hear persons subject to complaints and we in fact support the view that a person against whom a complaint has been made be notified in good time of the same but we cannot apply commendable good practices as legal requisite.

[44] We therefore conclude that the CAA has very limited decision-making powers which are to consider whether in respect of complaints before it a Tribunal of Inquiry ought to be appointed or not. The CAA does not determine the existence or extent of a civil right or obligation which would require it to ensure that it abide by the principle of *audi alteram partem*. Since the CAA is not conferred by law to investigate, the proceedings per se are not conducted before the CAA and the right to a fair hearing does not arise at the receipt of a complaint by the CAA nor at the time the CAA considers referring the matter to a tribunal.

[45] We have considered all the cases mentioned above but do not find any which would lend support to the contention of the Petitioner as the powers and authority of the Constitutional or administrative bodies in question varied considerably from the CAA's. The closest we could actually get was the cases of *The President of the Court of Appeal (Ramodibedi) v The Prime Minister and Others* (Lesotho) and *Judicial Services Commission v Mr Justice Mbalu Mutava and Attorney General* (Kenya). We could not put our conclusion any clearer that Githinji J A. who stated thus in the latter case:

> *"The JSC's role, after satisfying itself, prima facie, that a reasonable ground has been established for the removal of the Judge, is to pass the baton to the tribunal which will then be required to conduct a full hearing where cross-examination of witnesses will be the judge's unfettered right."*

[46] We therefore find that the CAA was not under any legal requirement to hear the Petitioner before or at the time it met to consider whether a Tribunal of Inquiry needed to be set up to hear the complaint. Therefore the Petitioner's right to a fair hearing or the doctrine of *audi alteram partem* were not violated by the CAA. The appointment of the Tribunal of Inquiry was therefore in accordance with the provisions of the Constitution and the law.

[47] Consequently, this Petition is dismissed.

[48] We make no order for costs.

Dated this 26th day of June 2018.

SUPREME COURT * SEAL OF THE SEYCHELLES

C G Dodin J. (Presiding)

M A Vidot J.

L Pillay J.