

**IN THE CONSTITUTIONAL COURT OF SEYCHELLES**

**[Corum: M. N BURHAN – PRESIDING JUDGE, S. ANDRE – JUDGE AND  
S. NUNKOO - JUDGE ]**

**CP 01/2018**

**[2018] SCCC 13**

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**ALEXANDER GEERS**

Petitioner

versus

**THE ATTORNEY GENERAL (REP BY THE GOVERNMENT OF SEYCHELLES)**

First Respondent

**THE MINISTER FOR HOME AFFAIRS AND LOCAL GOVERNMENT**

Second Respondent

**THE ATTORNEY GENERAL**

Third Respondent

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Heard: 28 May 2018

Counsel: Mr. Anthony Derjacques Attorney at Law for the Petitioner

Mr. Ananth Subramaniam Principal State Counsel for all Respondents

Delivered: 18 September 2018

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**RULING OF THE COURT**

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**Ruling of the Court**[1] This Ruling arises out of Constitutional Petition No. 01/2018 of the 25<sup>th</sup> January 2018, filed by Alexander Geers (*“the Petitioner”*) against the Attorney General representing the Government of Seychelles (*“1<sup>st</sup> Respondent”*), the Minister for Home Affairs and Local Government (*“2<sup>nd</sup> Respondent”*) and Attorney General (*“3<sup>rd</sup> Respondent”*).

[2] The Petitioner is seeking a declaration from the Constitutional Court that the 1<sup>st</sup> Respondent’s refusal or failure to make regulations under the Misuse of Drugs Act 2016 (*“MODA 2016”*) to regulate the possession, use, sale, supply, prescription or other dealing in, or the manufacture or importation or exportation of, any controlled drug for medical or scientific purposes, is a contravention of the Constitution more particularly Articles 16, 18 and 24 thereof.

[3] The Petitioner further seeks a writ of mandamus against the 2<sup>nd</sup> Respondent as a Constitutional remedy ordering her to immediately make regulations under the *MODA 2016* to regulate the possession, use, sale, supply, prescription or other dealing in, or the manufacture or importation of, any controlled drug for medical or scientific purposes.

[4] The Petitioner additionally seeks that the 2<sup>nd</sup> Respondent, be ordered to give the regulations retrospective effect; to apply from the 1<sup>st</sup> June 2016 when the *MODA 2016* came into operation and that a writ of certiorari be ordered to curtail and stop the trial in **Criminal Side No. 27 of 2017, in the Republic v/s Alexander Geers & Ors.**

[5] The Respondents on their part have, by way of their reply of the 26<sup>th</sup> February 2018, raised a threefold preliminary objections against the above Petition, as follows:

(i) *Firstly, that the Petition is infructuous in law, in that the Regulations for medical use of controlled drugs in accordance with section 4 of the MODA 2016 are already in place in view of section 55 (3) of the MODA 2016 hence the Petition being infructuous and only to be dismissed; and*

(ii) *Secondly, that the Petitioner has no locus standi to file the Petition, in that there is no violation or likely contravention of any of the Constitutional rights of the Petitioner under the MODA 2016; and that there is no prima facie case of any*

*alleged violation of the Constitutional rights as alleged by the Petitioner and further that the Petitioner does not enjoy any guaranteed/vested right within the framework of the Constitution to pray for mandatory relief from Court without any actual violation of any rights guaranteed in the Constitution.*

(iii) *Thirdly, the nature of the relief prayed for by the Petitioner is beyond the jurisdiction of the Court as it falls especially under the policy decision of the Executive as well as legislative functions of the State. And further, it is respectfully averred that the reliefs sought by the Petitioner is not sustainable under the principle of separation of powers and granting of any reliefs prayed for by the Petitioner would amount to intrusion into the powers and functions of other organs of the State or invalidating the scheme of constitution with reference to judicial powers; and that the Respondents dependent on the ruling on the plea in limine litis reserves the right to file defence on the merits and should the plea in limine succeed in their favour, moves for dismissal of the petition and compensatory costs.*“

[6] In support of the above argument relating to the purported upsetting of the principle of separation of powers the Respondents made reference to the following cases: (***Republic v Albert Geers & Ors (2018) SCSC 39***), (***Khanaiya Lal Sethia & Or v Union of India & Anor of the 4<sup>th</sup> August 1997; Academy of Nutrition Improvement and others v/s Union of India Writ no 80 of 2006 Ruling***), and (***Centre for Health Human Rights and Development (CEHURD) and Ors v/s Attorney General (Constitutional Petition No. 16 of 2011) Ruling of the 5<sup>th</sup> June 2012***). It is also the contention of Learned Counsel for the Respondents that this constitutional petition was deliberately filed by the Petitioner after he was charged in the Supreme Court in case CS27/2017, in order to delay and derail the proceedings against him in the said case.

[7] The Petitioner on his part submitted, in answer to the above preliminary objections that firstly, the Respondents failure or refusal to pass the regulations is depriving many terminally ill Seychellois access to this revolutionary alternative medical treatment and therapy, that his right to fair hearing has been and continues to be infringed by the

Respondents refusal or failure to enact the required regulations under the Act. Further it is the Petitioner's contention that a purposeful reading of *MODA 2016* especially section 4 (1) and 4 (2), offer a valid and outright defence under *MODA 2016* had the Respondents complied with the *MODA 2016* and passed the pertinent regulations, it would have provided additional defence and legal and lawful protection to the acts of the Petitioner.

[8] The Petitioner further submits that the Petitioner's prayers as set out at paragraphs 1 to 4 of the prayer of the petition be granted, including prayer 4, i.e. the issue of a writ of certiorari to curtail and stop his trial in Criminal Side No. 27 of 2017, in the case of *Republic v/s Alexander Geers and Ors* (supra) whereby he is charged with both cultivation of drugs (cannabis) and trafficking in drugs (cannabis).

[9] The Petitioner with direct reference to the preliminary objections raised, submitted that the Court has jurisdiction to decide an issue between the citizen or legal entity with rights as against the Government, Attorney General or Public Authority should the petition raise a prima facie case (on the face of the petition), that his rights have been contravened or are likely to be contravened by acts or omissions of the Respondent/Respondents in this case.

[10] The Petitioner produced before Court a bundle of 30 documents, setting out to prove that long before the filing of the case against him CS 27/2017, he has always been a supporter of cannabis for medical purposes and was conducting scientific research of cannabis. He has further set out in paragraph 11 of the Petition that he has regular and frequent communications and correspondences with, CARE (represented by Mrs Sarah Rene), Vice President Meriton, Ex-President, James Michel, Dr. Atsyov (representative of WHO), Mr Galen Bresson (ex MNA), Mr. Antoine Onezime (ex CEO SBC), Minister Mitzy Larue, Ministry of Health, Mr. Liam Quine (Deputy CEO of NDEA), Mrs Yvana Theresine (Director of Drugs and Alcohol Abuse Council), and the entire Drugs and Alcohol Abuse Council.

[11] The Petitioner further submits at paragraph 12 of the petition that he organised and held seminars to promote cannabis as a medicine, at the Drugs and Alcohol Council and the

Ministry of Health which was well attended by senior civil servants and medical staff and the media. He further submits that he participated in public debate on the medical use and scientific research of cannabis on television with the SBC, including interviews in the Seychelles Nation and Today's news journals. He contends that during the past several years he has been well known to the Respondents as an established proponent of the medical use of cannabis and for his scientific research on cannabis, and that his 30 documents produced corroborate each and every particular of his correspondences with the Government of Seychelles and Public Authorities.

[12] The Petitioner further submits that he does have locus standi before this Court in that his action is properly filed under Article 130 (1) of the Constitution. It is his contention that the exceptions to *locus standi* as set out in the case ***Cahill vs Sutton 190 1 IR 269*** which include the litigious person or a crank, the obstructionist, the meddlesome person or the officious man of straw referred to therein are not applicable to him. The Petitioner further relies on the findings of the Seychelles Court of Appeal in the case of ***Michel and Ors v Dhanjee (2012) SLR 258*** where it was held, “*It would seem to us that in all cases of this nature the petitioner must in his petition demonstrate that his interest is likely to be affected in some way.*” (In other words he has locus standi in judicio to seek redress). Therefore it is the contention of the Petitioner that if a person has a personal interest that is likely to be affected by the contravention and he cannot obtain redress in another Court, his application before this Court is not frivolous and vexatious.

[13] Applying the law and the facts as rehearsed, it is the Petitioner's contention that the operation of section 4 of *MODA 2016*, envisages that should it be proven that the said drugs was for medical or scientific purpose, such, is a defence in law and therefore he contends that his right to a fair trial are in great and immediate peril, as by the conduct and continuation of the said trial in the absence of Regulations pertaining to section 4 of *MODA 2016*, the Petitioner may be convicted and sentenced to several years of imprisonment. It is also submitted that it is incumbent for the Court to properly determine this petition on its merits, failure of which injustice may be caused, should this petition be summarily dismissed.

- [14] This Court having duly considered the illustrated points of law and fact in line with the submissions of both the Petitioner and the Respondents, finds as follows:
- [15] With regards to the first preliminary objection in that the petition is infructuous, this Court upon a very careful scrutiny of the pertinent provision section 4 and in particular the saving provisions contained in section 55(3) read with section 54, dealing with regulations of the *MODA 2016*, find that ex-facie the wording and contents of these relevant provisions in the new *MODA 2016* are dissimilar to the wording and content of the provisions in the previous *MODA 1990*. It is our view that this dissimilarity gives a legitimate right to the Petitioner, to enlighten this Court as to the necessity of new enabling Regulations under the new *MODA 2016*, which the Petitioner alleges, if not regulated, is a breach of the stated Articles of the Constitution.
- [16] On the above basis, we find that the petition is not infructuous in law, hence the first *plea in limine litis* is misconceived.
- [17] With regards to the second preliminary objection, in that, the Petitioner has no locus standi to file the Petition, as there is no violation or likely contravention of any of the Constitutional rights of the Petitioner under *MODA 2016* and lack of a prima facie case of any alleged violation of the Constitutional rights as alleged by the Petitioner and further that the Petitioner does not enjoy any guaranteed/vested right within the framework of the Constitution to pray for mandatory relief from Court without any actual violation of any rights guaranteed in the Constitution, this Court endorses the distinguished observations of Learned Justice Domah in ***Chow v Attorney General and Ors SCCA 2/2007***, in that, “*the concept of locus standi which encapsulates the enabling provisions of Articles 46 and 130 should not be used to restrict or disable the provisions, if used thus it is improperly used*”.
- [18] We further endorse the Learned Justice’s observation that, “*it may be tempting to decide the Petitioner has no locus standi and the petition is frivolous and vexatious and that it is the end of the matter. The Courts will discharge its function as a Court honourably by doing so. 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 the constitutional Court that will not hide behind an honourable exit.”*

[19] Further, in line with the reasoning of the Constitutional Court in the case of **Ralph Volcere vs Michel Felix & Ors CP 04/2017**, wherein the Cahill case was quoted as illustrated above, it is this Court’s view that the right of a citizen to act or be heard before the Courts has become, *‘one of the most amorphuous concepts in the entire domain of public law’*. We note in this petition that the Petitioner brings this petition in line with the provisions of Article 130 (1) of the Constitution which reads thus, *“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.”*

[20] The Petitioner in the Petition more particularly at paragraphs 19, 20, 21 and 22 thereof, claims that, the provisions of Articles 16, 19, 24 and 29 of the Constitution have been contravened in the 1<sup>st</sup> Respondent’s refusal and failure to make Regulations under MODA 2016 to, *“regulate the possession, use, manufacture or importation or exportation of, any controlled drug for medical or scientific purposes”* and *“the said alleged inaction, failure and negligence of the Respondents in not practically providing legal framework has deprived him of a defence under MODA 2016 hence breach of his right to a fair trial being directly affected”*.

[21] It is evident thus upon a careful reading and scrutiny of Article 130 (1) of the Constitution, that the Petitioner brings this petition on his own behalf, in view of his alleged breaches of his constitutional rights as alleged, hence his personal interest being or likely to be affected by the alleged contravention is apparent in view of the pending criminal prosecution against him.

[22] This Court notes the Ruling in the Constitutional Court case of *Voclere (supra)* wherein the Court explored the issue of locus standi under the provisions of Article 130 of the Constitution in defining the criteria for the application of the ordinary restrictive test and the exceptional restrictive test as determined by our local case law. We find in the light of the legal standing as to locus standi in the **Chow case** and the **Volcere case** as to the

ordinary restrictive test definition that Article 130 (1) of the Constitution applies with regards to the standing of the Petitioner directly in this matter, noting the undeniable averments as submitted at paragraphs 11, 12 and 13 of the Petition, showing clearly, the direct involvement of the Petitioner in the alleged research in cannabis for a scientific and medical purposes.

[23] It follows thus, that the second point of law as raised is hereby dismissed as per above analysis and Court rules that the Petitioner has locus standi to file this Petition in his own personal interest.

[24] Finally, in relation to the last preliminary objection raised by the Respondents in that, *“the nature of the relief prayed for by the Petitioner is beyond jurisdiction of the Court as it falls especially under the policy decisions of the executive as well as legislative functions of the state. And further, it is respectfully averred that the reliefs sought by the Petitioner would amount to intrusion into the powers and functions of other organs of the state or invalidating the scheme of constitution with reference to judicial powers”*, this Court notes, clearly the reliefs and prayers sought by the Petitioner in the amended petition and considers that at this stage of the proceedings **‘it would be premature’** for this Court to decide on whether the prayers sought are indeed within the exclusive precincts of a *“political question”* as alleged, hence solely within the discretion of the Executive and or the Legislature. The prayers and reliefs sought are to our mind within the legal parameters of Article 46 (5) of the Constitution. The contents and or the substance and nature of the reliefs granted by the Court shall only be determined at the stage of the hearing on the merits only and in that light, it is the duty of the Court to avoid encroaching and or usurping the sacrosanct principle of separation of powers rather if the need arises, engage in an *“institutional conversation”* in terms of the *“checks and balances”* with the other arms of the government *in the national interest and within the realms of the constitutional mandate of the Court*, in an attempt to reinforce rather than jeopardize the principle of separation of powers.

[25] Thus in view of the premature nature of the third legal objection of the Respondents, it fails accordingly.

[26] For all the reasons which we have given above, we take the view that the Petitioner has the necessary locus standi as has been laid out in the pleadings and that the petition is not infructuous, frivolous or vexatious. Hence, the preliminary objections are overruled and the Respondents are hereby called upon to file their defence on the merits. Thereafter the Court shall fix a date for hearing accordingly.

[27] It is to be noted further, that in view of the above stance of this Court at this stage of the proceedings, it is also premature for us to decide on the sought “*retrospective effect of the regulations as sought and the prayer as to the writ of certiorari to curtail and stop the trial in Criminal Side No. 27 of 2017.*”

Signed, dated and delivered at Ile du Port on 18 September 2018

M. Burhan  
Judge of the Supreme Court

S. Andre  
Judge of the Supreme Court

S. Nunkoo  
Judge of the Supreme Court