

CONSTITUTIONAL COURT OF SEYCHELLES

Reportable
[2019] SCCC 12
MA 221/2019 arising in
CP 07/2019

In the matter between:

ASSEMBLIES OF GOD
(rep. by Anthony Derjacques)

and

THE GOVERNMENT OF SEYCHELLES
(rep. by Georges Thachett)

1st Respondent

ATTORNEY GENERAL
(rep. by Georges Thachett)

2nd Respondent

And

CHANTAL ROSE
(rep. by Basil Hoareau)

1st Applicant

WILLS LESPERANCE
(rep. by Basil Hoareau)

2nd Applicant

and

ASSEMBLIES OF GOD
(rep. by Anthony Derjacques)

1st Respondent

THE ATTORNEY GENERAL
(rep. by Georges Thachett)

2nd Respondent

THE ATTORNEY GENERAL
(rep. by Georges Thachett)

3rd Respondent

Neutral Citation: *Assemblies of God v Gov of Sey & Anor* (MA 221/19) [2019] SCSC 12 (26 November 2019).

Before: Burhan, Govinden, Dodin JJ

Summary: Application for intervention. The underlying thread of contention of the Association in filing this application in the Constitutional Court, is based on the failure of the Assemblies of God (Association) to obtain permission from the relevant Government authorities to construct a church and due to the warning received from the Planning

Authority in respect of noise pollution. The applicants have based their request for intervention on the basis of a constitutionally protected right, namely, the right to enjoy their personal and private property owned by them. In the interests of justice in order to assist the Court to come to a correct and final decision in this case, the applicants must be permitted to intervene and must be heard in order to protect their interest.

Heard: 15 October 2019
Delivered: 26 November 2019

ORDER

1st and 2nd Applicants allowed to intervene.

RULING

BURHAN J (GOVINDEN DODIN JJ concurring)

- [1] This is an application for leave to intervene by two residents of Baie St Anne, Praslin, Ms Chantal Rose and Mr. Wills Lesperance. The two applicants wish to intervene in a constitutional petition which was brought by the Assemblies of God against the Government of Seychelles in which the Assemblies alleged infringement of its right to property and the right to freedom of conscience. These two rights are protected under Articles 26 and 21 of the Constitution of Seychelles.
- [2] The Assemblies of God is a registered Association (hereinafter also referred to as the Association), and landowner of parcel PR 849 situated at Baie St Anne, Praslin. It purchased this land in January 2015 from Mrs Bella Morgan, at approximately SCR 2.7 million. It intended to build a church on the property. Prior to this sale, it rented the premises for 10 years, and conducted its church services in a make shift shed. The property is in a residential area, and is in close proximity of the properties of Ms Chantal Rose and Mr. Wills Lesperance the applicants in this application to intervene.
- [3] The Association previously owned parcel PR 3285. Their plea for an exchange of land owned by the Association namely parcel PR 3285 with the Government having failed in 2011, the Association a few years later, in August 2014, informed the Principal Secretary

of the Ministry of Finance of its intention to purchase land parcel PR 849 from Mrs. Bella Morgan and the purchase was finalised in January 2015.

- [4] Following the sale, the Association made its building application to the Planning Authority in August 2016. It wanted to build a church on parcel PR 849 which is situated in a residential area. The Authority rejected the building project in December 2016 stating that the proposed development would lead to noise pollution to the disadvantage of neighbouring properties, and that the parcel in question was earmarked solely for residential use. The Assemblies of God appealed this decision with the Minister of Land Use and Habitat in January 2017, on the basis that the noise levels for church activities would be controlled, and that the government has, in the past, granted permission to other denominations to build churches in highly populated areas. The Minister dismissed the appeal in May 2017.
- [5] Pursuant to this dismissal, in January 2019, the Association received a letter from the Planning Authority apprising it of complaints that it received from neighbouring properties about loud noises resulting from the church activities. The letter further cautioned that if noise levels were not reduced to an acceptable level, the Planning Authority would immediately close all non-residential activities on the land without further warning. After this letter, the Assemblies of God lodged a petition in this Court in April 2019, seeking to enforce its religious and property rights. It is this petition that the two applicants, residents of Baie St Anne, Praslin, Ms Chantal Rose and Mr Wills Lesperance wish to be allowed to intervene in.
- [6] The intervention application was filed in July 2019, and a supporting affidavit by Ms Chantal Rose provided the basis for the request to intervene. She made several allegations to show that she had an interest in the outcome of the petition. For instance, she alleges that her property adjoins parcel PR 849, and that her house is a mere 15 meters away from the building which the Assemblies of God currently use as a church. She avers that when the said Association carries out its church activities, it causes noise pollution and nuisance, which disturbs her and her family. She states that she has complained to authorities like the Ministry of Environment about the noise pollution and nuisance, and

that the Ministry visited her property and that of her neighbour to measure the noise levels complained about. In support of the allegation, she attached a letter from the Ministry dated April 2019 which recorded the sound levels produced by church activities during their spot checks. Ms Rose also signed a petition opposing the Association plans to construct a church on parcel PR 849. The undated petition, which was sent to the Planning Authority, constitutes objections to the building project, and contains signatures of approximately 25 persons. The second applicant in the intervention application, Mr Wills Lesperance is also a signatory of the petition.

- [7] Ms Rose also attached to her application a report that she made and sent to the Planning Authority. The report appears to have been made following a community meeting that was held by the Planning Authority regarding the proposed construction of the church. In it, she raised several objections against the building, citing factors like the noise and nuisance caused by church services on Sundays and noise caused during Saturdays and in the week from rehearsals and prayer sessions. She also complained that no proper notification had been given about the meeting. Ms Rose also highlighted the proximity of the intended building to her and Mr. Lesperance's properties and further, that her family have continuously been affected by the noise pollution and nuisance.
- [8] Finally, she contends, both the rights to property and to freedom of conscience are subject to democratically prescribed limitations. Such limitations include the interest of public health which includes the right not to be subject to unhealthy noise pollution and the right to peacefully enjoy ones' own property.
- [9] The Association opposed the intervention application, stating that the application did not disclose a contravention or likely contravention of a constitutional right, and that no constitutional remedy may be granted with respect to the private civil rights between two private individuals. The Association avers that noise pollution and nuisance is a civil right, and not a fundamental human right. Further, that the correct forum for a remedy was the Supreme Court, and not the Constitutional Court. On this basis, it contends that the intervention application should fail with costs.

- [10] In the Associations' skeleton arguments, it expounds on the above objections to the intervention. Reliance is placed on this court's ruling in *Volcere v Felix & Ors* (CP 04/2017) [2018] SCCC 4 (30 January 2018) for the submission that the applicants have failed to establish that they have an interest in the petition and that they have established a contravention or likely contravention of the Constitution. In so far as the objection that the application does not disclose a contravention of a constitutional right as envisaged in the Constitution, the Assemblies of God submits that the right pleaded is a civil right governed by Art 1382 and 1383 of the Seychelles Civil Code and was not a constitutional right. Thus, the appropriate forum is the Supreme Court, not the Constitutional Court.
- [11] Learned Counsel for the interveners, Mr Hoareau made oral submissions. He submitted that the interveners relied upon their right to property and to a healthy environment. In his view, these two rights could be breached by the Associations' plans to build a church in such close proximity to the interveners' properties.
- [12] The question that this court has to decide is whether or not it should allow the two adjoining neighbours, Ms Rose and Mr Lesperance's, leave to intervene in the constitutional petition by the Assemblies of God in other words do the two applicants have an interest in the constitutional petition.
- [13] The Constitutional Court (Application, Contravention, Enforcement or Interpretation of Constitution) Rule 2(2) of the Constitutional Court Rules state that where any matter is not provided for in the 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. On the basis as both the Constitution and relevant Rules are silent on the issue of intervention, sections 117 to 120 of the Seychelles Code of Civil Procedure which regulate interventions by third parties in civil proceedings applies to interventions in constitutional petitions.
- [14] Section 117 of the of the Seychelles Code of Civil Procedure (SCCP) reads as follows:

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.

[15] The procedure to intervene is set out in section 118 and 119 which read as follows:

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 thereof.

119. Notice of such motion shall be served upon all the parties to the suit.

[16] Section 120 of the SCCP reads as follows:

If leave to intervene is granted by the court, the intervener shall, within the period fixed by the court, file a statement of his demand and of the material facts on which it is based and shall at the same time supply a copy of such statement to the other parties to the suit.'

[17] Section 117 of the SCCP as set out above sets out that persons “*interested in the event of a pending suit*” shall be entitled to be made a party thereto in order to “*maintain his rights*”.

[18] It is our considered view that for purposes of constitutional petitions, a person seeking intervention can intervene, if they make out their interest in the result of a pending petition, and could intervene in order to maintain their rights. On the facts before the Court, it seems clear that interveners are persons whose rights are affected or capable of being affected in a pending petition. By pending petition it is meant that application to intervene must be made before all parties have closed their cases.

[19] The Court of Appeal recently considered the prerequisites to intervene in *Houareau & Ano v Karunakaran & Ors* (Constitutional Appeal SCA CP03/2017) [2017] SCCA 33 (19 September 2017). Renaud JA held at para 24 that an applicant must show what constitutional right has been or is likely to be contravened in relation to him or her;

secondly, they must show that their right will be adversely affected by the petition if they are not allowed to be made a party to the petition in order to defend and/or protect.

[20] MacGregor PCA in the same *Hoareau* case (supra) in his judgment at para 31 held that there was a distinction between discretionary interventions, and an intervention “as of right”. In his analysis, to be granted intervention “as of right,” the intervener must show that: (a) they have an interest related to the property or transaction involved in the case; (b) they cannot adequately protect their own interests unless they are included in the case, and (c) none of the parties already in the case can adequately represent their interests. At para 32 explaining what is meant by interest he held that “interest” in the outcome of the case does not have to be a financial interest, and that a person may intervene in a case to protect a constitutional right or other interest as well.

[21] Having thus analysed the facts before us together with the relevant law and case law we are of the view that the underlying thread of contention of the Association in filing this application in the Constitutional Court, is based on the failure of the Assemblies of God to obtain permission from the relevant Government authorities set out above to construct a church and due to the warning received from the Planning Authority in respect of complaints being made by the surrounding properties owned by the intervenors in regard to the loud noises emanating from the church activities of the Association.

[22] The applicants essentially, take issue with the effect church activities currently have on the peaceful use and enjoyment of their properties, and would continue to have, should the plans for the church building be approved. We are satisfied that the applicants have based their request for intervention on the basis of a constitutionally protected right, namely, the right to enjoy their personal and private property owned by them. We are also of the view that in the interests of justice in order to assist the Court to come to a correct and final decision in this case, the applicants must be permitted to intervene and must be heard in order to protect their interest.

[23] As MacGregor PCA correctly stated in *Hoareau* at para 23, it is in the interest of justice and the public good that litigation on constitutionality entrenched fundamental rights and

broad public interest protection has to be viewed. Narrow pure legalism for the sake of legalism will not do.

[24] It is worth cautioning, however, that not all interested persons who allege that their constitutional right has or may be implicated in a petition will by right be allowed to intervene. The court has an overriding power to grant or to refuse intervention in the interests of justice. There are several factors that the court could consider in this regard. These include the stage of the proceedings at which the application for leave to intervene is brought, the attitude to such application of the parties to the main proceedings, and the question whether the submissions which the applicant for intervention seeks to advance raise substantially new contentions that may assist the court. See the South African Constitutional Court judgment of *Gory v Kolver NO and Others* (CCT28/06) [2006] ZACC 20; 2007 (4) SA 97 (CC); 2007 (3) BCLR 249 (CC).

[25] Thus, the two applicants, Ms Chantal Rose and Mr. Wills Lesperance are allowed to intervene in this constitutional petition between the Assemblies of God and The Government of Seychelles.

[28] The following orders are made:

- (a) The application for intervention in constitutional petition CC 07/2019 is allowed.
- (b) The applicants are directed to deliver their statement of demand within 14 days of this ruling.
- (c) There is no order as to costs.

Signed, dated and delivered at Ile du Port on 26 November 2019.

Burhan J

Govinden J

Dodin J

