

CONSTITUTIONAL COURT OF SEYCHELLES

Reportable

[2019] SCCC 05

CP 04/2018

In the matter between:

JEAN JOSEPH MELLIE

(rep. by Alexia Amesbury)

Petitioner

and

GOVERNMENT OF SEYCHELLES

Herein representing the Attorney General,

C/o National House

Victoria

(rep. by Brigitte Confait)

1st Respondent

ATTORNEY GENERAL

(rep. by Brigitte Confait)

2nd Respondent

Neutral Citation: *Mellie v Government of Seychelles & Ors* (CP04/2018) [2019] SCCC
(25 June 2019)

Before: Burhan, Dodin, Vidot JJ

Summary: Right to a fair hearing within a reasonable time by an independent and impartial Court established by law – Allegation that the Supreme Court and Court of Appeal failed to consider alleged irregularities which negatively impacted upon the Petitioner’s constitutional right to a fair trial - Where a constitutional issue in the context of criminal proceedings is raised constitutional jurisdiction is not appellate in nature, and the Constitutional Court does not have jurisdiction to retry the case – Petitioner failed to prove alleged irregularities - Petition dismissed

Heard: 29 January 2019 and 28 February 2019

Delivered: 25 June 2019

ORDER

Petition dismissed. No order in respect of costs.

JUDGMENT OF THE COURT

[1] The Petitioner has filed this petition on the basis he was unlawfully arrested, detained and convicted in 1997 for trafficking in a quantity of cannabis resin. The Petitioner claims that the controlled drug was “planted” in his shop by the police and that his resulting conviction therefore constituted a gross miscarriage of justice. The Petitioner was released after eight years of imprisonment on 8 March 2005. The Petitioner is now seeking redress from the Constitutional Court by way of this petition dated 8th June 2018.

[2] The Petitioner in his prayer seeks the following reliefs:

- i) *Interpret the Charter in such a way as not to be inconsistent with any international obligations relating to Human Rights and freedoms, particularly the United Nations Covenant on Civil and Political Rights which Seychelles acceded in 1992.*
- ii) *Interpret The Charter in line with Article 48 (a to d) of the Constitution.*
- iii) *Interpret the Charter in such a way as not to confer on any person or group the right to engage in any activity aimed at the suppression of a right or freedom contained in the Charter Article 45.*

- iv) *Declare the acts and omissions of the agents of the 1st Respondent to be a contravention of the Petitioner's rights under articles 18 (1), 18 (10) and 19 (1) and 19 (2) (a).*
- v) *Make such a declaration or order, issue such writ and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the Charter and disposing of all the issues relating to the application.*
- vi) *Award such sums of money as is reasonable for the purpose of compensating the Petitioner for any damages suffered as per Article 19 (13) which is SCR 5000/ per hour of unlawful detention for a period of 2922 days and compensation for the contravention of his other rights as mentioned above.*
- vii) *The whole with interest and costs of this application.*
- viii) *For leave to file the petition out of time*
- ix) *For leave to join the ombudsman as a party pursuant to Schedule 5(1) (d).*

[3] Articles 18(1), 18(10), 19(1), 19(2) (a) and 19(13) of the Constitution of the Republic of Seychelles (Constitution) are set down below and read as follows:

Article 18(1),

Every person has a right to liberty and security of the person.

Article 18 (10),

A person who has been unlawfully arrested or detained has a right to receive compensation from the person who unlawfully arrested or detained that person or from any other person or authority, including the State, on whose behalf or in the course of whose employment that unlawful arrest or detention was made from both of them.

Article 19 (1),

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.

Article 19 (2) (a),

Every person who is charged with an offence –

(a) Is innocent until the person is proved or has pleaded guilty;

Article 19 (13),

Every person convicted of an offence and who has suffered punishment as result of conviction shall, if it is subsequently shown that there has been a serious miscarriage of justice, be entitled to be compensated by the State according to law.

- [4] Details as set out in the petition, indicate the Petitioner was convicted of trafficking in a quantity of 391 grams (g) 840 milligrams (mg) of cannabis resin on the 31st of March 1997. He was sentenced to a term of 12 years imprisonment. The Petitioner alleges that he was a victim of a gross miscarriage of justice as he was illegally charged, arrested and detained. He further avers that the said controlled drug was planted on him by the drug squad but his defence was rejected by the Trial Judge and the Seychelles Court of Appeal.
- [5] It is the Petitioner's contention that his arrest and detention was a violation to his right to liberty under Article 18 (1) as the controlled drug was planted and the conviction was a violation of his rights under Article 19 (1) and 19 (2) (a) as he had not received a fair trial by an independent and impartial court. It is further alleged at paragraph 8 of the petition that there were material and serious discrepancies in relation to the weight of the controlled drug which the Learned Trial Judge failed to consider. The Petitioner also refers to an analyst report bearing the same case number 37/97 which was an analyst report in respect of resinous material weighing 200 mg which was detected by Officer

Miloufer Benoiton (Niloufer Benoiton as per report) who was not called as a witness in this case.

- [6] The Petitioner further alleges at paragraph 14 of the petition that his arrest, charge, prosecution, conviction despite there being several material discrepancies and the dismissal of the appeal and sentence was a conspiracy between the government represented by the 1st Respondent, the police and the judiciary resulting in a contravention of his rights under Article 18(1), 19(1) and 19 (2) (a) of the Constitution. The Petitioner has further averred that the illegal imprisonment he had to undergo has also affected his right to vote as safeguarded by Article 24 (1) (b) of the Constitution. He further avers that his right to property under Article 26 was contravened as due to him being illegally imprisoned, he had lost his house and property as well.
- [7] Learned Counsel for the Petitioner further relied on a report filed by the Ombudsman in support of her application.

Petitioner's submissions.

[8] In her submissions Learned Counsel Mrs Amesbury stated that the reason she states that the Petitioner did not get a fair hearing by an impartial and independent Court was because there were several important anomalies and discrepancies in the case which were disregarded by the Court. In her submissions she referred to the report of the Ombudsman and referred to anomalies in respect of the weight of the exhibit as given by ASP Mousbe in his affidavit was 391g 284 mg and that of the analyst Mr. Gobin being 391g 840 mg. She also referred to a report of Niloufer Benoiton which refers to a quantity of 200 mg of cannabis resin being taken into custody in the same case 37/97. She further stated that the weights appearing in the report of Mr. Gobin had not been properly added up by him. It is the contention of Learned Counsel Mrs. Amesbury that the report of Niloufer was produced as Exhibit 2 but it is relevant to note at this stage that the proceedings of 31st March 1997 at 2.50p.m clearly indicate that the report produced as exhibit 2 was in respect of an analysis done on a piece of wood which on analysis was found to contain trace amounts of cannabinoids. She also referred to the discrepancy in the weight in the affidavit of Maxime Payet. Mr Payet in his affidavit dated 26th February 1997 refers to the weight as 391g 84 mg. She further referred to the amendment of the charges made by the prosecution on the 27th of March 1997 and 31st of March 1997 as being unfair. She also referred to the evidence of Officer Songoire in respect of a box (match box) being entered against the name of the Petitioner erroneously in the Occurrence Book.

Respondent's submissions.

[9] Learned Counsel for the Respondent submitted that the detection occurred on the 25th of February 1997, the affidavit of ASP Mousbe is dated 28th of February 1997, the amendment to the charge was done on the 31st of March 1997. The Court of Appeal had dismissed the Petitioner's appeal as far back as 9th of April 1997. She further submitted that the alleged breach that occurred in 1997 cannot be considered to be a continuous breach as submitted by the Petitioner. She further submitted that the main contention of the Petitioner was that his right to a fair trial had been infringed as the controlled drug had been planted on him and was also relying on discrepancies in the evidence and the affidavits filed in respect of the weight of the controlled drug. She submitted these were question of fact which had already been determined by the trial Court and upheld by the Court of Appeal. She further stated the fact that the discrepancies in respect of the analyst in his report not adding up the amounts correctly are matters that should have been dealt with in cross examination when Mr. Gobin was giving evidence and in the Seychelles Court of Appeal. Learned Counsel for the Respondents submitted that the Petitioner by challenging these facts, is attempting to have an attempt at a second appeal in the guise of a constitutional case.

[10] Learned Counsel for the Respondents further submitted that while the Ombudsman report could be used as a guide, it is not part of the proceedings or evidence in the original case. She further submitted that the exhibits in respect of the case were what officer Ange Michel had taken into custody on the 25th of February 1997 from the shop of the Petitioner in his presence. The report of Officer Niloufer Benoiton concerning the 200 mg was a detection made on the same raid but the Petitioner was not charged in respect of the said quantity as he was charged only with the quantity taken into custody by Officer Ange Michel from his shop in his presence. The match box which had been entered in the book by mistake as borne out by the evidence of officer Stanley Songoire was also recovered from the scene as it had been brought together with the other exhibits but was not part of the charge against the Petitioner. It is apparent that the charge as borne out by the evidence is based on the contents of the two packets recovered from the shop and does not relate to anything in a match box. She further submitted that the police number in the case 37/97 was the registration number given by the Cascade police to the case and all exhibits taken from the scene. The Supreme Court case number was 11 of 97 as borne out by the Registrars report and not 37/97. The analyst report of Niloufer Benoiton was not relevant to the case. She further submitted that the amendments to the charge were granted in accordance with the law and based on the analyst report, after due consideration by the Trial Judge. The discrepancies shown were not fatal to the case of the prosecution. She also submitted that the Petitioner had failed to show this Court that a miscarriage of justice had occurred during the trial or that his right to a fair trial had been infringed.

[11] Learned Counsel for the Respondents relied on the following cases: *Talma & Ors v Michel & Ors* (2010) SLR 477, *Darrel Green v SLA & Ors* CP03/1997, *Duraikannu Karunakaran v Constitutional Appointment Authority & Ors* CP3/2017, *Nora v Minister of Land and Habitat & Ors* CP10/2001, *Robert Poole v Government of Seychelles & Ors* CP04/2012, *Haron Ondicho Sagwe v Attorney General SCA* CP02/2015, *Frank Simeon v The Republic* CP02/2002 and a certified certificate copy of the Register of the Criminal Registry of the Supreme Court of Seychelles in respect of Court case numbers 11 of 1997, and 37 of 1997.

Findings of this Court

[12] This Court would first analyse the anomalies and discrepancies referred to by Learned Counsel for the Petitioner which she claimed resulted in his right to a fair trial by an impartial and independent Court being infringed.

[13] In determining whether an irregularity amounts to a miscarriage of justice, we refer to the Canadian case of *R v Khan* 2001 SCC 86, where alleged irregularities and their impact on fair trial rights was discussed. It was held that if it is found that an irregularity did occur, the Court should assess the materiality of the irregularity in determining whether fair trial rights were violated and/or they amounted to miscarriage of justice. Guidelines on how to assess an irregularity as set out in the said judgment are summarised below:

- a) Whether the irregularity can be said to constitute a miscarriage of justice when the irregularity was severe enough to render the trial unfair or create the appearance of unfairness.
- b) Whether the irregularity pertained to a question that was central to the case against the accused. An irregularity that is related to a central point of the case is more likely to be fatal than one concerning a mere peripheral point.
- c) Whether the irregularity or cumulative effect of the irregularities have an effect on the final verdict.
- d) Whether the irregularity may have been remedied, in full or in part, at the trial.
- e) The attitude of defence counsel if and when he was confronted with the irregularity. If defence counsel had an opportunity to object to the irregularity and failed to do so, this militates in favour of finding that the trial was not unfair.

[14] The first major discrepancy she refers to is the difference in weights referred to by Mr. Maxim Payet as in his affidavit he states it is 391g 84 mg. ASP Mousbe refers to the weight as 391g 284 mg. It is clear from the evidence given in Court that neither of these officers actually weighed the exhibit themselves and they were relying on information received by them from the police analyst. The police analyst Mr. Gobin, having weighed the exhibit personally refers to the total weight as 391g 840 mg. The weight of the analyst

is what counts as it was he who personally weighed the exhibits. The prosecution has correctly amended the charge to read the weight as mentioned in the analyst report and not the weights set out in the affidavits filed by Maxim Payet or ASP Mousbe. This is the correct procedure and therefore no prejudice has been caused to the Petitioner as the charge was based on the correct weight as given by the analyst who personally weighed the exhibits and submitted his report accordingly. The discrepancies in the weights either due to typographical errors or otherwise given by ASP Mousbe and Mr. Payet in their affidavits are therefore not material to the charge as they were not the officers who analysed or weighed the exhibits. Therefore we see no prejudice being caused to the Petitioner nor any resulting miscarriage of justice against the Petitioner.

[15] It is clear from the evidence before Court that the Petitioner was arrested on the 25th of February 1997 and the exhibits found in his shop as set out in the report of Mr. Gobin produced as E1 namely two packets containing in total 391g 840 mg of cannabis resin, were taken into custody by Officer Ange Michel in his presence, in his shop on the same day. Learned Counsel for the Petitioner referred to a report of Officer Niloufer Benoiton in regard to 200 mg of cannabis resin and a box (match box). The evidence of Officer Ange Michel 2nd April 1997 at 1:45p.m. was that at the time he detected the controlled drugs on the Petitioner during the same raid, another officer took into custody the match box as referred to in the Occurrence Book containing hashish from one Jules Sophie. However it is apparent that as this detection had no relevance to the charge against the Petitioner and quite correctly he was not charged in respect of the quantity found on Jules Sophie. The report of Mr. Gobin in respect of 200 mg of cannabis resin given to Officer Niloufer Benoiton therefore has no bearing on the charge against the Petitioner. Learned Counsel for the Respondents referring to the proceedings in regard to the evidence of Mr. Gobin stated the report of Niloufer Benoiton was never produced at the trial by the analyst though it appears as an exhibit in the Court of Appeal brief. We further note that the Officer Songoire states that the entering of the match box and contents in the Occurrence Book with the same number was a mistake. This is correct as it was recovered from another person during the raid, it should have been given a separate police number and a different entry in the Occurrence book. This mistake however has no bearing on the charge against the Petitioner as the Petitioner was not charged in respect of

the contents of the match box but charged only with the quantity of controlled drug in the two packets taken into custody by Officer Ange Michel in his presence as borne out by the evidence, analyst report and the charge against the Petitioner. We see no prejudice being caused to the Petitioner nor any resulting miscarriage of justice as a result of Officer Niloufer Benoiton not being called by the prosecution as a witness, as the controlled drug taken for analysis by her analysed as 200 mg cannabis resin had no relevance to the charge against the Petitioner.

[16] The other anomaly referred to by Learned Counsel for the Petitioner was that the analyst in his report had not added the quantities properly in his report. According to Mrs. Amesbury the weight in the first packet 103 g and 50 mg when added with the weight in the 2nd packet 288 g and 790 mg should add up to 392 g and 29 mg. This addition by Learned Counsel is incorrect as in our view the addition of Mr. Gobin is perfectly correct in his calculation that the total weight was 391g and 840 mg. Therefore the submission of Learned Counsel Mrs. Amesbury on this issue is incorrect and bears no merit.

[17] Another contention of Learned Counsel for the Petitioner was that the police were aware of the weight before the analyst received the exhibits and before the raid. Once again this is incorrect. The raid on the Petitioner's house was on the 25th of February 1997. At the top of the report relevant to this case E1 in respect of the 391g 840 mg of cannabis resin, the analyst has stated he received the said exhibits on the 26th of February 1997. The affidavits of Mr. Payet and ASP Mousbe are dated 26th of February and 28th of February respectively. Therefore Learned Counsel for the Petitioner's contention that the police were aware of the weight of the exhibit even before the raid or before the analyst received the exhibits is incorrect and therefore unacceptable.

[18] We also note that the procedure observed by the prosecution and the Court in regard to the amendment of the charge was in line with provisions of the Criminal Procedure Code and the decision of the Learned Trial Judge in permitting the amendment after listening to all parties and after due consideration was correct and was not set aside even by the Seychelles Court of Appeal. We are therefore of the view that the aforementioned anomalies and discrepancies are not serious irregularities which are fatal to the case of

the prosecution nor do they indicate that the Petitioner did not receive a fair trial before an impartial and independent Court that resulted in a miscarriage of justice and his constitutional rights being infringed.

[19] Although Learned Counsel for the Respondents objected to the above facts being canvassed before the Constitutional Court on the basis that the Petitioner should have done so in the initial appeal and is now attempting a chance at a second appeal, this Court is of the view that as the Petitioner relies on these discrepancies or anomalies to support his contention that he did not receive a fair hearing by an impartial and independent Court, we decided to look again into the facts and come to our own findings as set out above.

[20] Our findings clearly indicate that no material contradictions or discrepancies exist that are fatal to the case of the prosecution and therefore the Petitioner's contention that such discrepancies and irregularities have resulted in the Petitioner not receiving a fair trial from an independent and impartial Court bears no merit. The Seychelles Court of Appeal judgment dated 9th April 1998 states "*On the appeal from the conviction the six grounds of appeal raised by the Memorandum of Appeal were all of fact.*" It is apparent therefore that in his appeal to the Seychelles Court of Appeal, the Petitioner had not set out as a ground of appeal that he had not received a fair trial by an independent and impartial Court resulting in his constitutional rights being infringed but seeks to only now complain, over 20 years later. It should also be borne in mind that the Petitioner was ably represented by two Counsel in the trial before the Supreme Court and both were given opportunities to cross examine the witnesses and therefore cannot complain that the procedure adopted by Court infringed or curtailed his constitutional rights.

[21] In this instant case before us, we are of the view that the anomalies and discrepancies discussed herein taken individually or cumulatively do not amount to material irregularities that would have affected the final verdict. We therefore see no reason to interfere with the findings of the Learned Trial Judge or the Seychelles Court of Appeal that the controlled drug was not "planted" on the Petitioner and the Petitioner was guilty

of the charge against him.

[22] It would be pertinent to mention at this stage that the right to fair trial under Article 19 of the Constitution contains three elements: (i) fair hearing (ii) within a reasonable time; and (iii) by an independent and impartial court. The article further provides for instances of a fair trial that fall within the ambit of article 19, including, *inter alia*, the presumption of innocence, the right to prompt notice of the nature and cause of criminal charges, the right to adequate time and facilities for the preparation of a defense, and the right to examine witnesses. There are two aspects to be considered when examining fair trial rights: the procedural aspect and the substantive aspect.

[23] If we are to consider where the substantive element comes into play under Article 19, this seems to invite a general examination of the term “fair hearing” as used and consideration of the court’s independence and impartiality. It could also encompass the element of unequal treatment or discrimination in the course of the trial. The Namibian case of *Muller v President of the Republic of Namibia and Another*, 1999 NR 190(SC), in its consideration of the notion of fair trial rights referred to the element of unjust or unfair treatment brought about principally by unjustified and illegitimate unequal treatment. This was followed by the Namibian Court of Appeal in *The Government of the Republic of Namibia & Ors v Geoffrey Kupuzo Mwilima & Ors* (SA 29/2001).

[24] In the case of *Beeharry v R* [2012] SCCA 1, the Seychelles Court of Appeal discussed the importance of Article 19:

“In interpreting article 19(1) of the Constitution, the Court of Appeal in *Bacco v R* (SCA 5/2005) stated that the Court had a duty to protect the rule of law and constitutional freedoms and that such a duty falls more heavily on this Court than any other court. It went on to quote Lord Birmingham in *Ashley King* (2002) 2 Cr App R 391 (CA) at 406: [that this Court] “is concerned not with innocence but with the safety of the conviction.” We share that view and we reiterate that whether a constitutional case alleging breaches

of these rights is brought or not, it is incumbent on the Court to safeguard at all times the constitutional rights of accused persons charged with criminal offences.”

[25] In the present case, both the trial and appellate courts were satisfied that the prosecution had met its burden. There does not appear to be any substantiated evidence of unequal treatment or procedural irregularity in from the moment of arrest to rendering of the judgment in this case. Therefore there is no necessity for this Court to revisit all the issues on facts in this case. The issues on facts raised by Learned Counsel for the Petitioner which she alleged amounted to the Petitioner not receiving a fair hearing by an impartial and independent Court have been dealt with by this Court herein and dismissed.

[26] It would be pertinent at this stage to remind litigants about the jurisdictional limits of different courts, in respect of appeals. As Twomey JA aptly summarised this aspect in her dissenting opinion in *Graham Pothin v R (CriminalAppeal SCA 13/2017) [2018] SCCA 17*:

“It is trite that an Appellate Court will not readily overturn the factual findings of a Trial Judge, specifically because the Appellate Court “is disadvantaged in that it has to weigh these matters with only the record of proceedings before it and cannot observe the witnesses at first hand to gauge their truthfulness” *Beeharry v R SCA 28/2009 [2012] SCCA 1* (per Twomey JA) [at para 15].

In *Akbar v R [1998] SCCA 37* this court stated “An appellate court does not rehear the case on record. It accepts findings of facts that are supported by the evidence believed by the trial court unless the trial Judge’s findings of credibility are perverse.”

In *Styles v Attorney General 2006 JLR 210* it was noted that “it is not part of the powers of the Court of Appeal to review the totality of the evidence, sift through points of alleged weakness and attempt to make its own evaluation of that evidence. [at 32-34]. Furthermore, any evaluation of the facts or law which have not been raised in the appeal are ultra petita, and the Court of Appeal has no role in raising these itself and determining

matters which were not properly before the court.”

[27] The jurisdiction of the Constitutional Court is even more limited. Where a constitutional issue in the context of criminal proceedings is raised it is important to stress that this Court’s jurisdiction is not appellate in nature, and the Constitutional Court does not have jurisdiction to retry the case.

[28] The jurisprudence of the South African Constitutional Court provides guidance in this regard. In *Jacobs and Others v S* [2019] ZACC 4, the Court noted the following:

“The applicants must show that this matter is a constitutional matter or that it raises an arguable point of law of general public importance, in order for this Court’s jurisdiction to be engaged. The applicants contend that this Court has jurisdiction on the ground that the matter involves a constitutional issue. But they were unable to explain precisely what the issue was.

Instead the argument appeared to be that the incorrect factual findings in the lower courts negatively impacted upon their constitutional right to a fair trial.”

[29] In *Fraser v ABSA Bank Limited* [2006] ZACC 24

“While the conception of a constitutional matter is broad, the term is of course not completely open ... this Court’s jurisdiction to constitutional matters presupposes that a meaningful line must be drawn between constitutional and non-constitutional matters and it is the responsibility of this Court to do so. The decisions of the Court have recognised the distinction.

A contention that a lower court reached an incorrect decision is not, without more, a constitutional matter. Moreover, this Court will not assume jurisdiction over a non-constitutional matter only because an application for leave to appeal is couched in constitutional terms. It is incumbent upon an applicant to demonstrate the existence of a bona fide constitutional question. An issue does not become a constitutional matter merely because an applicant calls it one. The other side of the coin is, however, that an applicant could raise a constitutional matter, even though the argument advanced as to

why an issue is a constitutional matter, or what the constitutional implications of the issue are, may be flawed. The acknowledgement by this Court that an issue is a constitutional matter, furthermore, does not have to result in a finding on the merits of the matter in favour of the applicant who raised it.”

[30] In light of the above, the Petitioner has failed to cogently raise a constitutional issue, and it cannot be said that a miscarriage of justice has occurred. The right to a fair trial has been facilitated, and the case has been argued in the Supreme Court and Court of Appeal, and we have been unable to discern a constitutional violation. It follows that the conviction and sentence of imprisonment imposed on the Petitioner are not illegal and therefore the Petitioner’s contention that due to the illegal imprisonment his right to vote and right to property under Article 24 and 26 of the Constitution were infringed has no merit. We therefore dismiss the Petition.

[31] We would next deal with the application of the Petitioner for leave to file his petition out of time. No doubt this should have been the first issue to be decided by this Court but it was foremost in the minds of this Constitutional Court that rather than dismiss the issue on a preliminary objection, it would in the interests of justice to give the Petitioner a hearing of the merits of his Petition in regard to his complaint that his constitutional rights had been infringed, considering the persistence of the Petitioner in his plea of innocence. Pursuant to *Darrel Green v Seychelles Licensing Authority and Government of Seychelles CA 43/1997* leave to file an application out of time shall be granted “not as of course but only if the applicant shows sufficient reasons to justify an extension of time”. In *Tarnecki v R SCA 4/1996 LC 89* the Court of Appeal held that the longer the delay, the greater the burden on the applicant.

[32] Having taken into consideration the submissions of both parties in respect of this issue, we are of the view the Petitioner has failed to demonstrate sufficient reasons for his delay. We observe the reason given by the Petitioner for filing the petition out of time in the present case was because he was unaware he could seek redress in the Constitutional Court and instead it appears embarked on an over twenty year long odyssey, during which he approached almost every other conceivable institution except the Constitutional

Court. The Petitioner avers that he was not aware of the fact that he could bring his case in front of the Constitutional Court until the Ombudsman in March 2018 advised him of the possibility. The Petitioner avers that the other institutions had failed to advise him that this was possible.

[33] However we are of the view that the availability of the Constitutional Court at any time as a forum in which a Petitioner can seek redress for perceived injustices is not some secret, hidden-away possibility that one needs to be told of. The availability is stated in the Constitution in plain and simple terms, for everyone to see. The Petitioner has been represented throughout his trial by Learned Counsel. As such, the fact that the Petitioner had failed to recognize that he could have brought his case before the Constitutional Court cannot suffice to excuse his delay of 20 years especially when he had been represented by several able Learned Counsel.

[34] The contention of the Petitioner that the violation of the Petitioner's rights is continuous simply because the Petitioner has not received any remedy is an unacceptable argument: if this were the case it would be impossible to impose any time limit on constitutional petitions, as the lack of remedy is precisely the reason why a petition is brought to Court in the first instance.

[35] It is to be borne in mind that the relevant date for the commencement of the three month time period for filing an application under Rule 4 (1) of the Constitutional Court Rules is the date on which the Petitioner acquired knowledge of the alleged contravention and not the date of the alleged contravention itself, *Hoareau v Government of Seychelles* SCC 3/1998. The alleged contravention in the case at hand relates to the trial conducted in 1997 and the Petitioner's subsequent imprisonment, which ended on the 8 March 2005. The Petitioner was obviously aware of both acts and of all the circumstances that in his opinion amounted to a violation of his rights, as evidenced by his previous attempts to clear his name. The Ombudsman's report did not bring to light any new factual circumstances, but merely constituted the first time someone agreed with his perception of the matter. Using such an arbitrary point as reference for the commencement of the

limitation period would clearly defeat the purpose behind the introduction of the limitation period to increase fairness and certainty to all parties concerned in litigation.

[36] The Petitioner's next contention that the time limits imposed by Rule 4 of the Constitutional Court Rules are not applicable to cases brought under Article 130 of the Constitution would be of no relevance to the Petitioner's case. The Petitioner has not averred the violation of any provision of the Constitution outside of Chapter III. As such he does not have standing to bring a petition under Article 130 of the Constitution. It is to be observed that Article 130 of the Constitution only applies to cases in which "a provision of this Constitution, other than a provision of Chapter III" (emphasis added), was allegedly contravened.

[37] We are therefore of the view that the period of limitation under Rule 4 (1) of the Constitutional Court Rules has elapsed and that the reasons presented are insufficient to warrant the granting of leave to file the petition out of time. The Petitioner's reasoning does not uphold scrutiny and the Petitioner's application is indeed time barred. The petition should therefore be dismissed

[38] We also note in passing that at paragraph 14 of the petition the Petitioner states:

The Petitioner avers that his arrest, charge, prosecution, conviction and sentence, and the dismissal of his appeal was a 'conspiracy' between the government represented by the 1st Respondent, the police, and the Judiciary and a contravention of his rights under Article 18(1), 19(1) and 19(2) (a).

[39] Based on our above findings, we are of the view that this is a desperate, frivolous and vexatious attempt by the Petitioner to bring his petition in line with Article 45 of the Constitution referred to in prayer (iii) of his petition. We further observe that in paragraph 23 of the affidavit of the Petitioner Jean Joseph Mellie in his application pursuant to the Constitutional Court (application or interpretation of the constitution) rules, for leave to file his petition out of time, the Petitioner under oath states:.

I verify believe that the things have changed since October 2016 and that there is now a new political climate and a more real possibility of obtaining justice, including through

the setting up of a Truth and Reconciliation Committee and an Anti-Victimisation Committee. Upon announcement of their creation, I immediately lodged grievances before both bodies....

[40] We would like to state the change of political climate does not determine or have any effect on the decisions given by the Judiciary. The Administration of Justice system sets out the hierarchy of Courts which has an effective appeal system to ensure justice to individuals within the system. The Constitution has abundant provisions and safeguards in place to safeguard the rights of individuals and the independence of the Judiciary. Such remarks are therefore unfair and uncalled for and Learned Counsel should be careful in advising and drafting petitions of such nature especially when such complaints are over 20 years after the occurrence of the events.

[41] Finally, in regard to prayer (ix) of his petition by Ruling dated 29 January 2019, the application to include the Ombudsman as a party to the case was declined after due consideration by this Court.

[42] For all the aforementioned reasons the petition stands dismissed. We make no order in respect of costs.

Signed, dated and delivered at Ile du Port on 25 June 2019.

Burhan J

Dodin J

Vidot J