

CONSTITUTIONAL COURT OF SEYCHELLES

Not Reportable
[2020] SCCC 553
CP 05/2020

In the matter between

BARBARA POIRET
(Represented by Mr. Serge Rouillon)

1st Petitioner

SYLVIA POIRET
(Represented by Mr. Serge Rouillon)

2st Petitioner

and

THE SEYCHELLES PENSION FUND
(Represented by Mr. Oliver Chang Leng)

1st Respondent

MARIE ANGE WAYE-HIVE
(Represented by Mr. Oliver Chang leng)

2nd Respondent

ATTORNEY GENERAL
(Represented by Ms. Eveline Ameida and Stefan knights)

3rd Respondent

Neutral Citation: *Poiret & Or v The Seychelles Pension Fund & Or* (CP 05/2020) [2020] SCCC 553 (21 July 2020).

Before: Vidot Presiding Judge, L. Pillay J, E. Carolus J

Heard: 21 July 2020

Delivered: 21 July 2020

REMARKS

Vidot J, Pillay J, Carolus J

[1] We have some remarks which we wish to address to counsels in regards to their role and duty *vis a vis* the Court and the Administration of Justice and as officers of the Court. We

further would like remind counsels of the Legal Practitioners Act and Rules of conduct which regulate their profession.

[2] A litigant who is dissatisfied by a judgment has clear avenues to follow, including lodging an appeal against the said judgment. Section 120 (2) of the Constitution entrenches the right of appeal to the Court of Appeal from a judgment, direction, decision, declaration, decree, writ or order of the Supreme Court, subject to any other applicable legislation. This means that Petitioners have an avenue to appeal against judgments without attacking the integrity of the judge. Raising issue of bias and misdirection by the trial judge before the Constitutional Court is clearly misplaced. An allegation that a trial Court misdirected itself on the application of the law is a clear ground of appeal. Where the allegations of bias are unfounded, it must be noted that the attacks have the effect of undermining the authority of the Court and can create a distrust in the capacity of all judges in the administration of justice.

[3] The Legal Practitioners Act and the Rules of Conduct under the Act regulate the conduct of legal practitioners as officers of the Court. A legal practitioner has an overriding duty as an officer of the Court, to uphold the rule of law and to facilitate the administration of justice.¹ In addition, the legal practitioner must not engage in any conduct that is prejudicial to the administration of justice.² A legal practitioner is further prohibited from making any allegation against a person's reputation or allowing any documents to be lodged which alleges criminality, fraud or other misconduct, unless he/she has reasonable grounds to believe the factual material available to the practitioner provides a *prima facie* case for the allegation.³

1. Legal Practitioners Act (Professional Conduct Rules 2013), Rule 4(1), read with Rule 14(1).

2. Legal Practitioners Act (Professional Conduct Rules 2013), Rule 4 (3) (d).

3. Legal Practitioners Act (Professional Conduct Rules 2013), Rule 17 (3).

- [4] An officer of the Court who fails to uphold this standard may be charged with contempt of Court. At its core, the crime of contempt of Court entails violating the dignity, repute or undermining the authority of the Court.⁴ In *Mancienne vs Government of Seychelles* it was held that “...contempt of Court strikes at the very roots of the rule of law. It undermines public confidence in the Courts of law by lowering their integrity and dignity. In short, it is detrimental to the democracy itself...”⁵ These rules were designed to ensure that the public have confidence in the administration of justice.
- [5] In the District Court of Appeal of Florida, the Appellant’s attorney had predicated his petition with the following remarks “*This Appellate Court has either ignored the law or is not interested in determining the law.*” The statement was found by the majority of the Court to be offensive and the language used to be contemptuous. The same Court found in a similar case that “...*ethical rules that prohibit attorneys from making statements impugning the integrity of judges are not to protect judges from unpleasant or unsavoury criticism. Rather, such rules are designed to preserve public confidence in the fairness and impartiality of our system of justice.*”⁶ Importantly, the rules regulating the Florida Bar, Rule 4-8.2 (a) contains a provision similar to the Legal Practitioners Rules, which prohibits any lawyer from making reckless statements and thereby abusing the Court process.⁷
- [6] One may still ask the question as to why Judges must be sacrosanct? The answer to this relates in part to the constitutional order that places the judiciary as an arm of government and an independent pillar of the state.

4. See in South Africa *Fakie NO v CCII Systems (Pty) 2006 (4) SA 326 SCA para 6.*

5. *Mancienne v Government of Seychelles (10 of 24) (of) [2005] SCCA 11(19 May 2005), para 47.*

6. The *Florida Bar v Ray* So. 2d 556 558-559; see also Louisiana Laws of Civil Procedure (2009) Art 222 (3) which prohibits using insulting, abusive, or discourteous language by an attorney or other person in open Court, or in a pleading brief, or other documents filed with the Court in irrelevant; see also the following judgments from the State of Louisiana *Brunet v Magnolia Quarter* 97-187 (LA.APP. 5 CIR. 3/11/98); *Nungesser v Nungesser*, 558 So.2d 695, 701 (La.App 1st Cir 1990).

7. Legal Practitioners Act (Professional Conduct Rules 2013), Rule 17(3).

Unlike the executive and the legislature, the judiciary has no real political power. Its power comes from moral authority, and without such power, it cannot perform or discharge its functions effectively.⁸ This position reflected under the Constitution, which vests judicial power in the Judiciary and establishes it as an independent institution, which is only subject to the Constitution and the other laws of Seychelles.⁹ With these Constitutional provisions in mind, the judiciary can function effectively when it commands the public's faith and trust. To build this confidence in the judiciary, it is clear that judges account to the public through their judgements and their conduct in an open courtroom.¹⁰ In addition to this accountability mechanism, rules and mechanisms have been developed to protect the judiciary from attacks or vilification particularly from Officers of the Court. Statements that are designed to cast doubt on the independence of a judge, including accusations of favouritism, personal and corrupt motives among others clearly undermine the proper administration of the judiciary.

Signed, dated and delivered at Ile du Port on 21st July 2020.

Vidot J,

Pillay J,

Carolus J,

8. See *S v Mamabolo* 2001 (3) SA 409 (CC) para 16; see also *R v Almon* in which the following was said of the offence:

“The arraignment of the justice of the judges, is arraigning the King's justice; it is an impeachment of his wisdom and goodness in the choice of his Judges, and excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the Judges, as private individuals, but because they are the channels by which the king's justice is conveyed to the people. To be impartial, and to be universally thought so, are both absolutely necessary for the giving justice that free, open and uninterrupted current, which it has, for many ages, found all over this kingdom, and which so eminently distinguishes and exalts it above all nations upon the earth.”

9. Constitution of the Republic of Seychelles, s 119 (1) and (2).

10. *S v Mamabolo* 2001 (3) SA 409 (CC) para 19.