

## CONSTITUTIONAL COURT OF SEYCHELLES

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**Reportable**  
CP14/2022

In the matter between:

**LAURA VALABHJI**  
(rep. by *Samantha Aglae*)

**Petitioner**

and

**MR WAVEL RAMKALAWAN**  
(rep. by *Georges Thachett*)

**1<sup>st</sup> Respondent**

**MR AHMED AFIF**  
(rep. by *Georges Thachett*)

**2<sup>nd</sup> Respondent**

**THE ATTORNEY GENERAL**  
(rep. by *Georges Thachett*)

**3<sup>rd</sup> Respondent**

**THE ANTI-CORRUPTION COMMISSION**  
(rep. by *Michael Skelley/Edmund Vickers*)

**4<sup>th</sup> Respondent**

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**Neutral Citation:** *Valabhji v Republic & Ors* (CP14/2022) (19 October 2023).

**Before:** Burhan J (Presiding), Vidot and Adeline JJ

**Summary:** Preliminary objection that Petition is time-barred

**Heard:** 19-05-23, 05-07-23, 06-07-23 (written submissions)

**Delivered:** 19 October 2023

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### ORDER

The preliminary objection that the Petition is out of time is sustained. The Petition stands dismissed. Parties to bear their own costs.

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### JUDGMENT OF THE COURT

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**BURHAN J (Presiding), VIDOT, ADELINE JJ**

[1] The Petitioner Mrs Laura Valabhji filed a Constitutional Petition dated 13<sup>th</sup> December 2022 against the 1<sup>st</sup> Respondent, President of the Republic of Seychelles Mr Wavel

Ramkalawan, the 2<sup>nd</sup> Respondent, Vice President of Seychelles Mr Ahmed Afif, the 3<sup>rd</sup> Respondent the Attorney General and the 4<sup>th</sup> Respondent the Anti-Corruption Commission (the ACCS).

[2] The Petitioner alleges numerous violations of the Constitution in relation to her arrest by the ACCS' officers; the ACCS' jurisdiction and powers to charge and prosecute; the Order of the Court dated 19<sup>th</sup> November 2021 in XP21/2021 SCSC 776; the Petitioner's continuous remand and non-withdrawal of charges against the Petitioner pending the amendment to the Anti-Corruption Commission (amendment) (No. 3) Act, 2021, Act 58 of 2021 and Bill 8 of 2022 now Act 9 of 2022.

[3] The Petitioner seeks the following reliefs:

*A. Interpret The Charter:*

- i) in such a way as not to be inconsistent with any international obligations relating to Human Right and freedoms, particularly the Covenant on Civil and Political Rights which Seychelles acceded to in 1992, the European Convention on Human Rights and the American convention on Human Rights and the American Convention on human Rights.*
- ii) in line with Article 48 (a to d) of the Constitution.*

*B. To grant the following orders:*

- i) A Declaration that the actions and omissions of the 15, 2nd, 3rd and 4th Respondents contravened Articles 18, 19 and 27 of the Charter.*
- ii) A Declaration that the rights of the Petitioner under Articles 18, 29 and 27 of the Charter were contravened.*
- iii) Award compensation to the Petitioner in the sum of SCR 4 million or as the court deems appropriate.*
- iv) Make such declaration, issue such writs 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.*
- v) Make such additional order under this Constitution or as may be prescribed by law.*

*vi) Grant any remedy available to the Supreme Court against any person, or authority which is the subject of the application or which is a party to any proceedings before the Constitutional Court, as the Court considers appropriate.*

*vii) With cost of this Application.*

- [4] The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents filed preliminary objections, dated 24<sup>th</sup> February 2023; and the 4<sup>th</sup> Respondent filed preliminary objections, dated 23<sup>rd</sup> February 2023.
- [5] The 1<sup>st</sup> to 3<sup>rd</sup> Respondents' principal objection is that Petition is time-barred under the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules (the Rules) and as the Petitioner has failed to seek leave to proceed out of time prior to filing the Petition, the Petition should be dismissed. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents' further contend in their preliminary objections that the Petition should be dismissed on the basis that (a) the Petitioner has failed to properly particularise the grounds that are pleaded against the Respondents; and (b) the Petitioner's grounds of challenge as brought against the Respondents are entirely unarguable and/or raise no reasonable prospect of success.
- [6] The 4<sup>th</sup> Respondent too takes up the principal preliminary objection that the Petition is time-barred under Rule 4 (1) of the Rules and should be dismissed.
- [7] The Petitioner filed submissions dated 16<sup>th</sup> May 2023 in reply to the preliminary objections raised by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, and submissions dated 19<sup>th</sup> May 2023 in reply to the preliminary objections raised by the 4<sup>th</sup> Respondent.
- [8] This Court will first proceed to determine whether the Petition is time-barred.

#### **Objections/Submissions of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents**

- [9] The 1<sup>st</sup> to 3<sup>rd</sup> Respondents submit that under Rule 4 (1) of the Rules a petition must be brought within three months of the date of the alleged contravention and further the present Petition is time-barred as the criminal charges against the Petitioner were withdrawn by the 4<sup>th</sup> Respondent as far back as 19<sup>th</sup> May 2022, which was over seven months before the

Petition was filed. Therefore, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents submit that the Petition was filed more than four months out of time with no explanation of delay or extension of time sought.

- [10] Further, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents argue that none of the grounds pleaded demonstrate that any alleged contravention can amount to continuing breaches of the Constitution. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents refer the Court to the decision in *Talma v Michel* [2010] SCCC 6 in which they submit the Court held that a “continuing contravention” *“is different from a contravention that is a completed transaction, for instance, holding a person in custody beyond the permitted period of 24 hours without being produced before a court of law. If he is held for 3 days and then released, the contravention is complete and is not continuing.”*

- [11] The 1<sup>st</sup> to 3<sup>rd</sup> Respondents further refer the Court to paragraphs [17]-[18] of *Mikael Esparon v Electoral Commission & Ors* [2022] SCSC 1; a case where the Court had to consider the argument that the objection that the petition was out of time could be “cured” by an application for leave and it held:

*[18] Furthermore, allowing parties to rectify a complete lack of diligence on their part would open floodgates to parties completely disregarding rules of procedure and getting away with it. The Court cannot not condone parties who sleep on their rights and also not making due effort to exercise their rights in the prescribed manner. Therefore, the Application should not be entertained. [...]*

- [12] It is further submitted by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents that whilst Rule 4 (3) provides the Court with a discretion to extend time, such permission to file out of time shall be granted *“not as of course but only if the applicant shows sufficient reasons to justify an extension of time”* (reference made to *Darrel Green v Seychelles Licensing Authority and Government of Seychelles* CA 43/1997). The Respondents submit that the Petitioner has not applied to extend the time. It is further submitted that even if such application was filed at this stage the Petitioner would not be able to demonstrate any “sufficient reason” to explain the delay. The Respondents submit that the Petitioner, who is an attorney-at-law herself, should be aware of the procedural requirement and has shown a complete lack of diligence in not filing the Petition within the relevant procedural timeframe and therefore in effect has slept on her rights (reference to paragraph [18] of *Esparon (supra)*).

### Objections/Submissions of the 4<sup>th</sup> Respondent

- [13] With regards to the objection that Petition is time-barred, the 4<sup>th</sup> Respondent refers the Court to the decision *Hydra III Maritime Co vs. The Republic of Seychelles* (Constitutional Case No 8 of 1994) where the Court held that the time limit in Rule 4 (1) is mandatory. It is submitted that in that case the respondent did not furnish any reasons for the delay and the Court held:

*"This court has on several occasions held that the stipulation of the time limit of 30 days...' [now amended to 3 months] was mandatory. In exercising the discretion under Rule 4(4), the court has to be conscious that Rule 4(2) is not merely a rule of procedure but more basically a statutory bar designed to prevent frivolous and vexatious applications of persons so that the legislative process of the government is not unnecessarily hampered."*

- [14] The 4<sup>th</sup> Respondent submits that *"in addition to the hampering of the legislative process, the pursuit of vexatious alleged Constitutional contraventions may also unnecessary delay in substantive proceedings before the Supreme Court"*. The 4<sup>th</sup> Respondent further submits the judgment in *Hydra III Maritime* was approved and applied by the Constitutional Court in *Poole v Government of Seychelles* [2013] SCCC where the Court held:

*"Rule 4(1) provides a mandatory time limit, but where the petitioner became aware of the alleged act or omission which constitutes the contravention of the Constitution only on a later date, the 90-day period would commence from that date."*

- [15] It is further submitted that in the present case, by virtue of the pleadings, the Petitioner was aware of the Supreme Court decision and the legislative amendments giving rise to the alleged contraventions at the time when they occurred and that it is not the case in which they became aware of the alleged contraventions more recently.
- [16] The 4<sup>th</sup> Respondent, the ACCS, too submits that the Petition is out of time in respect of all alleged contraventions. Firstly, it is submitted that all the charges were withdrawn against the Petitioner on 19<sup>th</sup> May 2022, which was seven month and one day before the Petition was filed. Secondly, it is submitted that the Petitioner was arrested on 19<sup>th</sup> November 2021 (reference to Ground 1, paragraph 70 of the Petition) and the three months period for filing the Petition would have expired on 18<sup>th</sup> February 2022. Thirdly, it is submitted that the

prosecution commenced on 19<sup>th</sup> May 2022 (reference to Ground 2, paragraph 71 of the Petition) and three months expiry period would have been on the 19<sup>th</sup> August 2022. Fourthly, it is submitted that the three months expiry period from the date the charges were withdrawn (19<sup>th</sup> May 2022) would have been 19<sup>th</sup> August 2022. Subsequently, it is submitted that the Order of the Supreme Court which allegedly contravened the Constitution (reference to Ground 3, paragraph 72 of the Petition) was dated 19<sup>th</sup> November 2021 and expiry period to file the Petition would have been 29<sup>th</sup> February 2022. Further, the 4<sup>th</sup> Respondent submits that for the contravention due to the alleged absence of jurisdiction to charge on 14<sup>th</sup> December 2021 following amendment to legislation on 15<sup>th</sup> December 2021 (reference to Ground 4, paragraph 73 of the Petition), the expiry period for filing the Petition would have been 15<sup>th</sup> March 2022. Subsequently, it is submitted that for the alleged contravention due to the continuous remand until 6<sup>th</sup> May 2022 pending Amendment to Anti-Corruption Act 2016 by Act 9 of 2022 (reference to Ground 5, paragraph 74 of the Petition), the expiry period would have been 6<sup>th</sup> August 2022. Lastly, it is submitted that for the contravention due to the alleged prejudicial statements made in December 2021 (reference to Ground 6, paragraph 75 of the Petition), the expiry period would have been in March 2022.

- [17] Therefore, according to the 4<sup>th</sup> Respondent, the latest expiry period for filing the Petition would have been 19<sup>th</sup> August 2022, which is three months after the charges against the Petitioner were withdrawn on 19<sup>th</sup> May 2022.
- [18] The 4<sup>th</sup> Respondent referred to the decision in *Talma (supra)* in support of its submissions that the nature of the alleged contraventions do not amount to continuous or continuing breaches. It is submitted that the Petitioner's alleged contraventions are 'completed' and not continuing as she has not faced any charge before the Supreme Court since 19<sup>th</sup> May 2022. It is further submitted that the Petitioner has not applied to extend the time for filing her Petition and therefore there is no 'sufficient reason' within Rule 4 (4) of the Rules for extension and hence the Petition should be dismissed.

### Submissions of the Petitioner

- [19] The Petitioner in her two replies to all the Respondents submits the following regarding outright dismissal of the Petition. She states that while Rule 9 of the Rules confers powers on the Respondents to raise objections by seeking outright dismissal, such powers cannot and should not be used “*just to get a case thrown out just for the sake of it*” and to deprive a petitioner of the right to come before Court for violation of constitutional rights. The Petitioner refers to the decision in *Chow v Attorney General and Ors* [2007] SCCA 2 (25 April 2007).
- [20] The Petitioner further submits that Rule 9 must be read in tandem with Rule 6 and in the event that the Court finds the Petition to be non-compliant with the Rules, this does not automatically render the Petition a nullity because the court has a discretion to allow for the curing of any irregularity. It is submitted that a denial of hearing the Petitioner on the merits of the case will be in breach of the rule of natural justice, when there are allegations that fundamental rights have been contravened in relation to the Petitioner. The Petitioner further submits that dismissing Petition before it is heard on the merits “*is what the Court of Appeal has on numerous occasions called the “tail wagging the dog”, as was held in Chow v Attorney General.*” The Petitioner also relies on the minority decision in the case of *Naddy Dubois and Ors v President of the Republic* (2016) SLR 553 and moves that this Court should take the responsible exit instead of the honorable exit when hearing the objections to this Petition as referred to in the said case.
- [21] With regards to the objection that the Petition is time-barred the Petitioner’s submissions on this point in reply to the 1<sup>st</sup> to 3<sup>rd</sup> Respondents are the same as submissions in reply to the 4<sup>th</sup> Respondent.
- [22] The Petitioner submits that the Petition is not time-barred as the breaches are of a continuous nature. She states that while the charges in CR114 of 2021 have been withdrawn against her, she is still under investigation by the ACCS and that the ACCS still has in their possession all the clients’ case files, work laptop, mobile phones and electronic and data storage devices seized during the course of the investigation under the Penal Code and the Anti-Money Laundering and Countering Financing Terrorism Act 2020 (AMLCFT). It is



her contention that the Petitioner has no finality arising out of CR114 of 2021 as investigation against her is still ongoing.

- [23] The Petitioner submits that the actions of the Respondents arise from an unlawful act which led to the investigation and charges brought against the Petitioner in CR114 of 2021 and the continuous investigation. The Petitioner refers to decision in *Schrader v Tomlinson*, 311F.Supp.2d 21, 27 (D.D.C.2004) that “[a] continuing violation exists where the discriminatory practices is continuing in nature”.
- [24] The Petitioner further alleges that AMLCFT was amended repeatedly specifically to facilitate the charges against the Petitioner in CR114 of 2021; that despite the charges having been withdrawn against her in CR114 of 2021, the ACCS is still investigating her and relying on the items and material seized. The Petitioner refers to decisions in *Rapf v. Suffolk County*, 755 F.2d 282, 292 (2d Cir.1985), *Inc v Vireland Bd.of Educ.*, 675 A.2d 1077, 1084 (N.J.1996) submitting that with continuing nuisance, there may be a perpetual responsibility to fix the offensive condition. The Petitioner submits that similarly in her case the discriminatory practice continues as long as (a) the ACCS continues to hold the items and materials seized during the investigation and previous charge without finality; (b) the ACCS continues to use the seized items and materials despite charges having been withdrawn; (c) having no finality in the investigation and proper action taken against the Respondents and is still without a remedy for her grievances.
- [25] The Petitioner further referred the Court to decisions in *Virginia Hospital Association v. Baliles* 868 F.2d 653 (4th Cir.1989) and *Palmer v. Board of Education* 46 F.3d 682 (7th Cir. 1995) in relation to continuing violation and court’s decision that statute of limitation would not have begun to run until violation ended and that the statute of limitations clock will not run on the enforcement of an unconstitutional statute.
- [26] The Petitioner states that the ACCS brought to the Court’s attention its limitation to prosecute the Petitioner and the further amendment in its law, yet kept the Petitioner on remand while the ACCS could have withdrawn the charges against the Petitioner when it sought adjournment pending the National Assembly passing the new amendment but it failed to do so.



- [27] The Petitioner further refers to decision in *Assemblies of God and Elke Talma v Michel & Ors* Constitutional Court Case 2 of 2010 which the Petitioner states that “[an] offence or unlawful act continues to inhibit a person to enjoy a right” when considering if Rule 4 (1) (a) of the Rules does not apply to the Petition as there was a continuing violation against the Petitioner. The Petitioner submits that her arrest was unlawful and subjected her to an investigation that is still continuing. It is submitted that she was arrested for investigation under charges that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents ought to have known was not within the jurisdiction of the 4<sup>th</sup> Respondent and were based on false information provided by the 4<sup>th</sup> Respondent.
- [28] The Petitioner subsequently makes submissions, which are in the view of the Court are more relevant to the merits of the case and relate to amendments of the law, discrimination against the Petitioner as she is the wife of 1<sup>st</sup> accused in CR114 of 2021 by making false allegations based on false and malicious statements; prejudicial statements by public officials; lack of jurisdiction of ACCS to charge the Petitioner.
- [29] It is further submitted that the court has the discretion at any time after filing of the Petition to extend the time for filing of a petition under Rule 3 taking into account the length of delay, reasons for the delay, degree of prejudice to the defendant and whether there is an arguable case as was held in *Parcou v Parcou* (1996-1997) SCAR 109, *Germain v R* (2007) SLR 25.
- [30] The Petitioner states that the Petition was filed seven months after the charges in CR114 of 2021 were withdrawn, however, the Petitioner is still undergoing investigation by the ACCS in respect of the same charges. The Petitioner states that she has filed her Petition at the time she did because she was unrepresented at the time the charges were withdrawn and she did not have legal representation to properly advise her on the constitutional petition nor the facility to properly communicate with her lawyers or to draft her own Petition until August 2022 when new counsel marked appearance in court. The Petitioner further submits that there were proceedings before the court in respect of CR114 of 2021 that the Petitioner was not aware of, namely XP21/2021 SCSC 776 and had difficulty in obtaining the proceedings and applications in respect of that matter.

- [31] The Petitioner further submits that, in addition, she was not in her normal state of mind and was receiving counselling, which she is still undergoing, to be able to cope with the trauma, stress and anxiety she was facing as a result of the actions of the Respondents and the violations she was encountering and enduring while in detention.
- [32] It is further submitted that should the Court dismiss the Petition she will be without a remedy and uncompensated. The Petitioner states that the unlawful acts continue to inhibit the Petitioner from enjoyment of her rights (reference to *Assemblies of God and Elke Talma v Michel & ors (supra)*).
- [33] With regards to the objection that the Petition is out of time, the Petitioner concludes her submissions stating that, *"Should the Court in the unlikely event deem that the Petition is out of time, the Petitioner is willing at the court's discretion, to apply for leave to file out of time so as to be in compliance with the Rules as the Rules does not bar the Petitioner from doing so even if the Petition is presently before the court."*

#### **Analysis – Whether Petition is out of Time**

- [34] It is pertinent at this stage to refer to the relevant Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules relied upon by the parties:

*"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 3 months of the contravention;*
- (b) in a case where the likely contravention is the result of an act or omission, within 3 months of the act or omission;*
- (c) in a case where the likely contravention arises in consequence of any law, within 3 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.*

*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).*

*9. The respondent may before filing a defence to the petition raise any preliminary objection to the petition and the Constitutional Court shall hear the parties before making an order on the objection."*

[35] From the timeline of alleged contraventions and Petitioner's own submissions, it is clear to this Court that the Petition was not filed within the prescribed three months period from the alleged contraventions. It is the view of this Court that the latest filing date would have been within three months from the date the charges against the Petitioner in CR114 of 2021 were withdrawn, i.e. three months from the 19<sup>th</sup> May 2022, which would have been 19<sup>th</sup> August 2022. The Petitioner in her reply to the preliminary objection that Petition is out of time, stated that she was unrepresented until August 2022. However, no explanation was given as to reasons why the Petition was filed in December 2022 and not August 2022. While this Court is sympathetic with the Petitioner's averments that she was not in her normal state of mind and suffering from stress and anxiety and undergoing counselling, this is neither proven nor known to the Court. Nevertheless, the Petitioner could have still applied for the leave of the Court to file the Petition out of time. From the explanation presented in the submissions in reply to preliminary objections, it is not clear why leave was not sought in December 2022.

[36] With regards to the submission on continuing violation, this Court agrees with the submissions of the Respondents that once the charges were withdrawn any potential continuing contravention was completed (as per findings of the Court in *Talma & Anor v Michel & Ors* (2 of 2010) [2010] SCCC 6 (28 September 2010)). The Petitioner still had

three months to file the Petition since the charges were withdrawn and could have sought the leave of the Court to file the Petition out of time as discussed above. The Petitioner submitted that the violation is continuing as the ACCS retains files and materials seized in relation to CR114 of 2021 and that she is still under the investigation by the ACCS. Firstly, it is neither known nor proven to the Court that the Petitioner is still under the investigation of the ACCS. What is evident is that the charges were withdrawn. Further, it is not within the Court's jurisdiction to order the ACCS to stop investigation against the Petitioner if there is one still ongoing. With regards to the averment regarding seized items, this Court does not find relevance of this averment to the present Constitutional Petition.

- [37] The cases relied upon by the Petitioner in support of continuing violation are United States' jurisdiction cases and while their findings that statute of limitation does not begin to run until the violation ends and that the statute of limitations clock will not run on the enforcement of an unconstitutional statute, the Seychelles law Rule 4 (1) clearly provides the time limit of three months in cases of alleged contravention; contravention as the result of an act or omission; and in a cases where the contravention arises in consequence of any law.
- [38] Furthermore, the present case can be distinguished from *Assemblies of God v Attorney General* (CP 6 of 2019) [2020] SCCC 975 (22 December 2020), where preliminary objection regarding petition being out of time was dismissed as the Court found that violation was continuing one. Firstly, the claim in *Assemblies of God* related to alleged infringement of right to freedom of conscience and religion, and right to property. The Court found the following in relation to preliminary objection:

***“ [25] In the current matter, the last correspondence regarding the appeal was sent to the Petitioner on 25 August 2014. The Ministry of Land Use and Housing wrote to the Petitioner informing them that the appeal had been considered and forwarded to the Appeal's Advisory Committee for further processing. It is common cause that to date, the Petitioner has not received the outcome of that appeal. The appeal process has therefore not been finalised yet, since there is no decision.***

***[26] Accordingly, the Petitioner was correct to rely on the reasoning in Talma. Since the decision in the appeal proceedings has not yet been given, the potential***

*breach of their rights is still continuing. Thus, following Talma, the second objection is dismissed. The petition is not time barred.*" (emphasis added)

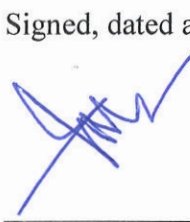
- [39] We find that the circumstances of the present Petition are different from the circumstances of *Assemblies of God* and *Talma* cases in that, since the charges were withdrawn, the alleged contravention stopped being a continuing one and the Petitioner was not deprived of the right to file the Petition on time or apply for the leave of court to file it out of time.
- [40] This Court further agrees with the abovementioned findings in *Hydra III Maritime Co (supra)*; *Poole v Government of Seychelles and Anor (supra)* that time limit set out in Rule 4 is a mandatory one. We further agree with findings in *Esparon v Electoral Commission & Anor (supra)* regarding lack of diligence on the part of the petitioner. Rule 4 gives petitioners an opportunity to file a petition out of time subject to them adhering to procedure and providing sufficient reasons. The choice of the petitioner not to do so indicates lack of diligence.
- [41] This Court also agrees with the findings in *Chow v Attorney General and Ors (supra)* and *Naddy Dubois (supra)* relied upon by the Petitioner. However, the findings in *Naddy Dubois* cited by the Petitioner in the view of this Court relate more to decision of the court that "*the petitioner has no locus and the petition is frivolous and vexatious and that is the end of the matter*". Further, while we agree that, "*Where the Constitution is concerned, its judges should be pro-active*", we are also of the view that this Court cannot simply ignore the mandatory time limit set out in Rule 4 (1) where the Petitioner has neither applied for the leave of the Court to file Petition out of time, nor provided sufficient reasons for not doing so.
- [42] The Court does have discretion to extend the time for filing the Petition under Rule (4) (4). However, this Court agrees with the submissions of the Respondents that such extension is not given as of course. The Court "*...may, for sufficient reason, extend the time for filing a petition...*".
- [43] It is the view of this Court that such sufficient reasons supported by affidavit and annexures were necessary and the leave of the Court should have been sought prior to filing the Petition. It is only in the submissions in reply to the preliminary objection that the Petitioner

states that, *"Should the Court in the unlikely event deem that the Petition is out of time, the Petitioner is willing at the court's discretion, to apply for leave to file out of time..."*. This Court finds that the Petition is filed out of time.

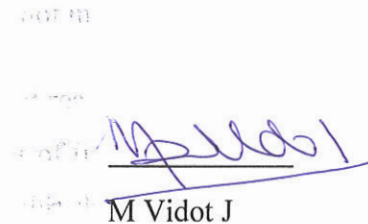
[44] It was further submitted by the Petitioner that under Rule 6, when the Petition does not comply with the Rules, the Court shall hear the Petitioner before making an order. However, Rule 6 does not mean that the Petition must proceed to be heard on merits.

[45] For the abovementioned reasons, we find that the Petition was filed out of time; the leave of the Court to file out of time was not sought and no reasons for not seeking the leave were provided. The Court therefore cannot exercise its discretion to extend the time for filing of the Petition under Rule 4. The preliminary objection that the Petition is out of time is sustained. The Petition stands dismissed. Parties to bear their own costs.

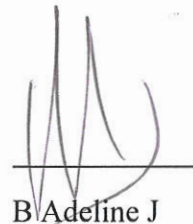
Signed, dated and delivered at Ile du Port on 19 October 2023.



M Burhan J  
(Presiding)



M Vidot J



B Adeline J