

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**VS.**

**DANIEL CHARLES (Accused/Applicant)**

Criminal Side No. 77 of 2007

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Ms. Micock for the Republic

Mr. D. Lucas for the Accused

**RULING**

**Gaswaga, J**

This accused is applying to have this case referred to the Constitutional Court on the ground that his right to a fair and speedy hearing (Article 19) is being breached by his continued detention in prison and delayed hearing or continuation of the case. I believe Mr. D. Lucas had in mind Article 46(7) of the Constitution which reads as follows:

*"46(7)-Where in the course of any proceedings in any court, other than the Constitutional Court or the Court of Appeal, a question arises with regard to whether there has been or is likely to be a contravention of the Charter, the court shall, if it is satisfied that the question is not frivolous or vexatious or has already been the subject of a decision of the Constitutional Court or the Court of Appeal,*

*immediately adjourn the proceedings and refer the question for determination by the Constitutional Court.”*

The accused (now applicant) was charged with the offence of trafficking in a controlled drug contrary to Section 5 as read with Section 14 and 26(1)(a) of the Misuse of Drugs Act 1990 as amended by Act 14 of 1994 and punishable under Section 29 of the Second Schedule referred thereto in the Misuse of Drugs Act 1990 as amended by Act 14. The particulars allege that Daniel Charles of La Retraite, on the 27<sup>th</sup> November, 2007, at Castor Road, English River, Mahe was trafficking in a controlled drug by virtue of having been found in possession of 133.5gs of cannabis (herbal material) which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking. He pleaded not guilty and for reasons recorded on file the court remanded him in custody till now.

The case first came up for hearing on the 26<sup>th</sup> June and 2<sup>nd</sup> July, 2008 during which days some evidence was heard. It had been planned and therefore anticipated by the Court, prosecution and defence that the case would be completed in that time. However, an objection requiring a detailed ruling (dated 2<sup>nd</sup> July, 2008) was raised by the defence when Dr. Jackaria, the drugs analyst was testifying. It must clearly be state that the defence is not blamed for this. Thereafter all the parties (prosecution and defence) were consulted and their respective diaries reconciled with that of the Court to have continuation dates of 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> June, 2009 fixed. The defence counsel did not reject nor protest the dates then. It is now that the dates which were conceded to, after even this court refusing the bail application are being viewed as being far away and a breach of the applicant's rights. The length of period before the continuation dates

viewed in the prevailing circumstances – when both the state counsel and defence counsel were taken through the court diary and also advised on the number of cases before the court – cannot be considered as a breach or likely breach of the applicant’s rights.

Further, the defence had been advised to lodge an application before the Chief Justice if they needed earlier dates than the ones earlier on agreed to, reserved and fixed by the court.

In these circumstances I am unable to allow this frivolous and vexatious application as it lacks merit.

It is dismissed.

**D. GASWAGA**

**JUDGE**

Dated this 22<sup>nd</sup> day of October, 2008.