
LINYON DEMOKRATIK SESELWA
Petitioner

versus

THE ELECTORAL COMMISSIONER
(Rep. by Hendricks Gappy)
Respondent

Heard:

Counsel: Mr. A. Derjacques for petitioner

Ms. S. Aglae for respondent

Delivered: 1 August 2016

RULING

Renaud J

Introduction

- [1] The Petitioner is a registered Political Party intending to participate in elections in Seychelles. It wanted to have its party registered by the Respondent under the name “Linyon Sanzman”. Its application was not approved by the Respondent hence it adopted

the present name “Linyon Demokratik Seychellois”. Aggrieved by the decision of the Respondent in allowing another political party to be registered using the name “Linyon Sanzman”, it is now seeking a judicial review of the decision of the Respondent.

- [2] The Respondent is for all intent and purpose, an Adjudicating Authority, inter alia, invested with statutory authority to register political parties.
- [3] With leave of the Court, the Petitioner’s request for a judicial review was granted.
- [4] The Court invited the Respondent to produce the file and all documents related to or connected with the decision making process in this matter. The Respondent accordingly complied.

Petitioner’s Case

- [5] The Petitioner averred that on 6th December, 2015 political parties including Lalyans Seselwa, Seychelles Party for Social Justice and Democracy as well as Independent Party represented by Philippe Boule formed an alliance to support the Seychelles National Party represented by Mr. Wavel Ramkalawan for the second round of the Presidential Elections on the 16th to 18th December, 2015. That alliance came up with the name of “Linyon Sanzman” as it represented an alliance for ‘change’.
- [6] In the afternoon of 10th March, 2016 the Office Bearers of the Petitioner applied for registration of their political party under the name of “Linyon Sanzman”. They received information that another political party had already applied earlier that same morning for registration under the same name – “Linyon Sanzman”.
- [7] The Petitioner addressed three letters to the Respondent on 10th, 11th and 29th March, 2016 by which the Petitioner strongly objected to the registration of any other political party under the name of “Linyon Sanzman” other than its own.
- [8] By their letter of 10th March, 2016, they enlisted their strongest objections to any other party using that said name and also against any approval by the Respondent of that name for use of any other party. They expressed their belief that there are compelling reasons for

their objections and urged the Respondent to consider their objections when processing the two applications. They set out the following reasons before the Respondent:

1. The name “Linyon Sanzman” has been used by the political movement they are associated with since the second round of the Presidential Election of 2015.
2. They have used the name widely for the campaign as well as for other political activities, events and publications, including a calendar, since then.
3. They have used the name widely by way of letterhead for communication to official organizations and private correspondents.
4. The name has been used by themselves and others widely in television, press and social media.

[9] By the same letter they claimed that have established a common law ownership of that name which is widely and exclusively associated with their group nationally. They argued that it would therefore be deliberately misleading and confusing for any other party to use it or to be allowed to use it. They believe that should these happen they would have strong grounds for challenging them in Court.

[10] They expressed the hope that the Respondent must work to avoid any misrepresentation or confusion and that it will be able to decide in the only way that will not be harmful to the political process in our country. They also asked the Respondent to kindly settle the issue.

[11] On 11th March, 2016 the Office Bearers of the Petitioner wrote another letter of objection to the Respondent. They re-emphasised their objections to the registration of any other political party under the name “Linyon Sanzman” other than their party. They also brought some references from the Act which they stated gave solid grounds for the Respondent to reject the other application.

[12] They submitted that the application of the other applicant is unlawful because in view of the common law ownership by their party of the name already, it can only meant to deceive the public by another party assuming that identity. They further submitted that an

application under the name “Linyon Sanzman” by any other person or persons not associated with their political movement nationally recognized as “Linyon Sanzman”, is misleading because it has the intention of deceiving the public.

- [13] They also submitted that their application can be refused only if it is likely to deceive the members of the party or public, which according to them is clearly not the case because their party has been clearly and unmistakably known as “Linyon Sanzman”.
- [14] They argued that references in the Act to -“deceiving the public”- is a primary concern of the law so it has therefore to be a primary concern of the Respondent in such a case.
- [15] They concluded by stating that the Respondent will realise that allowing the use of the name “Linyon Sanzman” by any party other than their own would be against the law and totally against the course of natural justice. They also invited the Respondent to give the points they had submitted its careful consideration.
- [16] On 11th March, 2016 the Petitioner issued a ‘Press Release’ informing the public that “Linyon Sanzman” had established structures as an effective political organisation. Mr. Roger Mancienne was appointed Chairman, Mr. Clifford Andre as Secretary-General and Mr. Roy Fonseka as Treasurer of “Linyon Sanzman” which will be fielding candidates at forthcoming elections and will be the official liaison with the Respondent.
- [17] On 14th March, 2016 the Chairman of the Respondent acknowledged receipt of the letters of the Petitioner dated 10th and 11th March, 2016 and advised them that the two applications were being processed and that the Petitioner will be informed of the outcome.
- [18] The Respondent eventually took the decision to register the political party, other than that of the Petitioner, under the name of “Linyon Sanzman”.
- [19] The Office Bearers of the Petitioner averred that **the allocation of the name - “Linyon Sanzman”** by the Respondent to another political party is **unreasonable** and **irrational** as it is likely to deceive the members of its party and the public. They claim that this is so, as the Petitioner, on numerous occasions, had widely used that name:
- a) Since the second round of the Presidential Election of 2015.

- b) For campaigns as well as for other political activities, events and publications, including a calendar, since then.
- c) By way of letterhead for communication to official organizations and private correspondents.
- d) By the Petitioner and others widely in television, press and social media.

[20] They appended to their Petition a list of 25 documents as evidence in support of their objections. They also attached a copy of each such document to their Petition before this Court. The list is as follows:

List of Documents

1. Linyon District Representatives
2. Broadcasts and advertisements dated between the 9th and 13th December as follows:
 - a) All broadcasts begin and end with LinyonSanzman banner
 - b) Freedom square rally advert: 2 additional references to LinyonSanzman
 - c) Round 2 advert 3: 3 additional references to LinyonSanzman
 - d) Round 2 advert 8: 2 additional references to LinyonSanzman by Patrick Pillay and Philippe Boule
 - e) Round 2 advert 10: 1 additional reference to LinyonSanzman
 - f) Round 2 advert 13: 1 additional reference to LinyonSanzman
3. LinyonSanzman newsletter dated on the 9th December 2015
4. Letter to SBC for the announcement for political meetings dated on the 10th of December 2015
5. Le Seychellois newspaper article dated on the 11th December 2015

6. Nation newspaper article dated on the 14th December 2015
7. Le Seychellois newspaper article dated on the 17th December 2015
8. Nation newspaper article dated on the 22nd December 2015
9. LinyonSanzman newsletter
10. Meeting between the SBC Board and the Opposition Party dated on the 27th of January 2016
11. Formal application for the registration of LinyonSanzman dated on the 29th January 2016
12. Letter to SBC for the announcement for political meetings dated on the 3rd February 2016
13. Approval letter for picnic and political meeting by the Commissioner of Police dated on the 4th of February 2016
14. Objection to the registration of the name LinyonSanzman by another political party by the petitioner dated on the 10th March 2016
15. Objection to the registration of the name LinyonSanzman by another political party by the petitioner dated on the 11th March 2016
16. Letter from the respondent on the application for the registration of political party date on the 14th March 2016
17. "People Plus" newsletter dated on the 15th March 2016
18. Letter to the respondent for the registration of the name Linyon 2015 dated on the 29th March 2016
19. Letter from the respondent in regards to Linyon 2015 dated on the 30th March 2016
20. Press release document dated on the 5th April 2016

21. Letter from the respondent objecting the name Linyon 2015 dated on the 5th April 2016
22. Email setting a meeting date dated on 5th April 2016
23. “Linyon Demokratik Seselwa” newsletter dated on the 17th May 2016
24. Calendar with “Linyon Sanzman” logo
25. Use of the name “Linyon Sanzman” by opposition groups document

Remedies sought

- [21] The Petitioner prayed this Court to issue a Writ of Certiorari quashing the decision of the Respondent for registering another political party under the name “Linyon Sanzman”, and to also issue a Writ of Mandamus to compel the Respondent to allow “Linyon Demokratik Seselwa” to use the name “Linyon Sanzman”, and an order for costs.

Respondent’s Case

- [22] The Respondent objected to the Petition on the merit and also entered a plea in limine litis as follows –

“Alternative remedy was available for the Petitioner by way of appeal before the Supreme Court against the refusal of the registration of the application under the name “Linyon Sanzman” as required under sections 7 and 8 of the Political Parties (Registration and Regulation) Act, Cap 173, and the appeal had to be made within 21 days after receipt of the notice, and the Petitioner is now barred to do so.”

- [23] On the merit, the Respondent confirmed that on 10th March, 2016 it received two applications for registration of two political parties as follows:
- a) The first application was submitted at 9.06am by Martin Aglae
 - b) The second application was submitted at 1.36 pm by Roger Mancienne.

- [24] The Respondent contended that it followed the provisions of Section 5(1) and (2) as well as Section 7(1)(b) of the Political Parties (Registration and Registration) Act, Cap 173 (hereinafter “the Act”) for the approval of the registration of a new political party.
- [25] The Respondent averred that it reviewed the applications by way of priority in submission and also guided by the provisions of Section 7(1)(b) of the Act.
- [26] Prior to approving the application of Mr. Martin Aglae (hereinafter “Mr. Aglae”), the Respondent enquired from the Registrar General whether the name “Linyon Sanzman” was registered in any of the registers by any persons. The Registrar General confirmed that there was none.
- [27] The Respondent stated that it went further and queried Mr. Aglae as to how he came about in choosing the name “Linyon Sanzman” and the Respondent found that his response provided was satisfactory.
- [28] The Respondent stated that it also gave consideration to the letters dated 10th and 11th March, 2016 and determined that, though the Petitioner was using the name as a slogan in the political campaign and the use of slogans by political parties is a common practice during elections, the Petitioner had no ownership of the name used in the slogan and made no attempt to register a political party under the name “Linyon Sanzman”, other than upon the submission of its application on the 10th March, 2016.
- [29] The Respondent averred that after reviewing the Application of Mr. Aglae under the name of “Linyon Seselwa”, it found that his application met the requirements of Sections 5 and 7 of the Act, as no other entity has been registered with the Registrar General under that name.
- [30] The Respondent stated that it considered the letter dated 29th March 2015(sic) by the Petitioner, who was concerned at this stage with the registration of their political party and that their concern was no longer with the name of the party being submitted by Mr. Aglae. The Application of Mr. Aglae was therefore approved on 5 April 2016.

- [31] The Respondent contended that in registering the political party bearing the name “Linyon Sanzman”, it followed the requirements of sections 5 and 7 of the Act, and that its interpretation is utterly legal, reasonable, just, fair and valid and not irrational.
- [32] On 5th April, 2016 the Respondent by letter informed the Petitioner that it has approved the registration of a new political party bearing the name “Linyon Sanzman”, as the application was submitted first before the Petitioner’s application and that the other application met the requirements of the Act. In the light of this the Respondent considered the Petitioner’s letter of 29th March, 2016 in respect of the new name “Linyon 2015”. After its deliberations the Respondent having considered Section 7(1)(b)(ii) of the Act found it to be so nearly resembles the name of an already registered political party. The Respondent requested the Petitioner to submit another name for its consideration.
- [33] The name “Linyon Demokratik Seselwa” was proposed by the Petitioner and was eventually approved by the Respondent on 7th April, 2016.
- [34] The Respondent further stated that its interpretation of Section 5 and 7 of the Act is utterly legal, reasonable, just fair and valid and not irrational.

Respondent’s Prayer

- [35] The Respondent invites this Court to uphold the decision of the Respondent in respect of the registration of the political party “Linyon Sanzman” to the first applicant, and, to dismiss the Petition with costs.

Plea in Limine Litis - Ruling

- [36] The right of a litigant to either appeal against the decision of an Adjudicating Authority or to proceed by way of a judicial review is entirely at its discretion. In this jurisdiction both the right to appeal against, or to seek a judicial review of, a decision of an Adjudicating Authority, are constitutional rights. Our Court in order to avoid possible abuse of process prefers that a party exhausts all other available avenue for redress prior to seeking judicial review, but that is not mandatory. The situation in our jurisdiction is somewhat different to that prevailing in the United Kingdom where there is parliamentary supremacy. In the

instant case I find no reason for this Court to require the Petitioner to proceed by way of an appeal instead of judicial review. In the circumstances I find no merit in this plea in limine litis. The plea is accordingly dismissed.

Jurisdiction of Court

- [37] In our jurisdiction Judicial Review is provided for in Article 125(1) of our Constitution. It is governed by the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authority) Rules. Article 125 (1) (c) empowered the Court to issue injunctions, directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto, as may be appropriate for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction.
- [38] After concluding its investigation, the Court is empowered to issue a **Writ of Certiorari**. This Writ if issued has the effect of quashing the decision of the Adjudicating Authority.
- [39] The Court may also issue a **Writ of Mandamus**. This Writ if issued has the effect of ordering the Adjudicating Authority as to what decision it should now give instead of the one it had given.

Ambit of Judicial Review

- [40] In matters of judicial review, the Court reviews only the decision-making process of the Adjudicating Authority. In the instant matter, the Election Commission which is entrusted with the authority of registering political parties under the Act, is such an Authority, hence it falls within the jurisdiction of this Court.
- [41] In carrying out such reviews the Court is generally guided by certain principles, including – illegality; irrationality, procedural impropriety and fair hearing or rule of natural justice. These principles form the benchmark of judicial review. The Court therefore investigates the decision making process as to how the Authority made its decision with a view to assess whether it has taken into consideration all relevant matters which it ought to have taken, or conversely whether it has refused or omitted to take into consideration matters which it ought to.

- [42] The Court in its investigation also considers whether there was any evidence of deception or bad faith, and, whether in making the decision the Authority had the legal or constitutional power to make such decision.
- [43] The Court further considers whether the Authority had, after taking into consideration all relevant matters that it should have, nevertheless come to a conclusion so unreasonable that no reasonable person or Authority could ever have come to it.
- [44] **Illegality** arises when the Authority failed to correctly understand the law that regulates its decision-making power and giving effect to it.
- [45] **Irrationality** is when a decision is deemed to be irrational because it is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question could have arrived at.
- [46] **Procedural impropriety** includes the failure of the Authority to act judiciously. Acting judiciously entails giving the party an opportunity to be heard before it proceeds to make its final decision. That rule is of universal application and is founded on the plainest principles of natural justice.

Decision-making Process

Pre-Registration

- [47] The Petitioner submitted its application to the Respondent on 10th March, 2016 at 1.46pm to register its political party under the name of “Linyon Sazman”. On that same day at 9.06 am Mr. Aglae as leader of another political party applied to register a political party under the name of “Linyon Sanzman”.
- [48] On 10th March, 2016 the Chairman of the Respondent forwarded the two applications and documents to the Learned Attorney-General (hereinafter AG) seeking his advice as to whether the applications were in conformity with our Constitution.
- [49] On 11th March, 2016 the AG confirmed by a letter that both applications were in conformity with Articles 23 and 24 of the Constitution. He however advised that two

political parties cannot bear the same name. The AG also informed that the Respondent should be able to exercise its powers under Section 7(1) of the Act to ensure that this does not happen. The AG concluded that the advice was being given in his capacity as AG and it may not necessarily bind the Respondent and as such the Respondent was free to seek any further independent legal opinion that it may wish in that respect.

[50] On 21st March, 2016 the Registrar General acknowledged a letter from the Chairman of the Respondent dated 14th March, 2016 and confirmed that the name “Linyon Sanzman” is not on any of its Registers.

Respondent’s Minutes of Meetings – 21st March, 2016

[51] The Respondent held its meeting on 21st March, 2016 at 5 p.m. with all its 5 members present. Lawyer Mrs. Samantha Aglae was also in attendance.

[52] Pertinent excerpts of the minutes of that meeting are reproduced verbatim in order that the decision making process of the Respondent may be put in perspective. The paragraph numbers are taken from the minutes.

2.1 Two applications for the registration of political parties have been lodged to the EC. However, it was noted that both applications had the same name “Linyon Sanzman”.

2.2 The first application was submitted by Martin Aglae on 10 March 2016 at 9.06 am, accompanied by Dave Jeanne (Vice-President) and in the presence of the Chairman. The second application was submitted by Mr. Roger Mancienne on 10 March 2016 at 1.36 pm accompanied by Mr. Fonseka and Mr. Clifford Andre, in the presence of the Chairman and Samantha Aglae. It was noted that Mr. Mancienne’s application was dated 20/1/2016, however, as the date of submission was 10th March, 2016 the appropriate correction was made by the Chair in their presence.

3.1 EC agreed on the way forward, was to treat the applications by looking at the first application submitted first and then to proceed to the second application.

3.2 First Application – Martin Aglae

Guided by the Act, the EC went through the conditions to be met by applicant as per section 5 of the Act and found that the application met the requirements.

3.3 Second Application – Roger Mancienne

Guided by the Act, the EC went through the conditions to be met by applicant as per section 5 of the Act and found that the application met the requirements.

3.4 The issue remaining for discussion was the name chosen by both applicants. The EC guided by section 7 of the Act, discussed the lawfulness of the applications. It was felt by some members that there could be malice by either of the two applications, but this is not for the EC to decide. EC noted that it is within common knowledge that Martin Aglae was associated with SNP. Whether there is a split, it is not for the EC to go into the internal affairs of political parties.

3.5 In order to satisfy itself of the lawfulness of the first applicant, it was agreed that EC will seek clarifications from the first applicant.

3.6 It was first decided that every first 10th person from the list of members who signed the application for the first applicant, will be contacted to confirm they have signed the constitution and they agree with the same. A confirmation in writing will be sought from those persons. It was agreed if this step fails, that is those persons advise they wish to remove their name, then the applicant will be given the opportunity to correct the number of signatures required. It was then decided that this approach will not bring out a positive response, as those signatories may refuse or simply do not respond, and this will delay the process and may not be effective.

3.7 It was decided that a letter will be sent to the first applicant seeking an explanation as per section 7(3) of the Act to advise on the following:

- a) How the appointment of the members were (sic) made?
- b) What does the term “national meeting” means

c) How was the name “Linyon Sanman” chosen

3.8 The first applicant is to provide his response by Thursday 24 March 2016, in order for EC to meet on the 28 March 2016.

3.9 The EC also considered the letter written by the Attorney General dated 11 March 2016 in respect of the first application.

4.1 It was RESOLVED that a letter will be written to the first applicant seeking an explanation as per section 7(3) of the Act to advise on the following:

a) How the appointment of the members were (sic) made?

b) What does the term “national meeting” means

c) How was the name “Linyon Sanman” chosen

4.2 It was RESOLVED that the first applicant is to provide his response by Thursday 24 March 2016, in order for EC to meet on the 28 March 2016.

[53] There being no further business, the Meeting then concluded.

Response of Mr. Aglae

By letter dated 28th March, 2016 Mr. Aglae responded to the letter of the Respondent dated 22nd March, 2016 inter alia stating that –

“The name “Linyon Sanzman” has been chosen because we believe that this is the right name for our political party as that name is not a registered name of any current political party and therefore we find it appropriate to use that name”.

Mr. Aglae also stated that –

“Secondly, The committee was elected after a group of people who came together with the idea of forming a new political party and the aim of this committee is to register the party and lead it up to its first national meeting of which we intend to do as soon as the Party is registered”.

- [54] The Respondent met again on 4th April, 2016. The minutes of that meeting included the following pertinent points:
- 2.4 Response letter from Martin Aglae dated 28 March 2016 was tabled for discussion.
 - 2.5 Letter dated 29 March 2016 from Roger Mancienne advising new name “Linyon 2015” was tabled for discussion.
 - 3.1 The response of Mr. Martin Aglae was found to be satisfactory to EC.
 - 3.2 EC also considered the letter from the Registrar General, and was satisfied that no person had ownership of the name “Linyon Sanzman” by any other means.
 - 3.3 EC then approved the registration of the application submitted by Martin Aglae bearing the name “Linyon Sanzman”.
 - 3.3 (sic)EC considered the new name proposed by Roger Mancienne and found that the name was contrary to section 7(1)(b), that is “Linyon 2015” so nearly resembled the new political party “Linyon Sanzman”.
 - 3.4 There were discussions as to whether the appointment of the members by Roger Mancienne was itself correct, as during the press conference they informed it was a Council who appointed members.
 - 4.1 It was RESOLVED in respect of the two application (sic) for registration of political party as follows:
 - a) To inform Martin Aglae that his application has been approved and to issue his certificate.
 - b) To write to Roger Mancienne and inform him that the first application i.e. the application submitted by Martin Aglae has been approved and the basis for the approval. Mr. Mancienne is to also be informed that his chosen name “Linyon 2015” has not been approved as it is contrary to section 7(1)(b) by being so

nearly resembling the name “Linyon Sanzman”, and for him to choose another name.

c) The Chairperson is to follow up the letter with a telephone call to Mr. Mancienne.

d) In order to facilitate the registration process of the application of Mr. Mancienne, EC agreed that they will coordinate the name approval through email communication instead of a meeting, and once approved by all members, Chairperson will communicate with Mancienne who will advise EC his chosen name and the Chairperson will issue the certificate.

4.2 It was also RESOLVED that the 15 April 2016 will be the tentative date for the next meeting to discuss other matters.

[55] The Respondent accordingly acted as per the resolutions taken.

Registration of “Linyon Sanzman”

[56] On 5th April, 2016 the Respondent informed Mr. Martin Aglae that it has approved the registration of “Linyon Sanzman” as a political party as the application satisfies the requirements of the Act.

Press Release of Applicant

[57] On 6th April, 2016 the Leader of the Applicant, issued a Press Release condemning as misleading and deceitful the use of the name of “Linyon Sanzman”. On behalf of the opposition parties and groups which united under the name “Linyon Sanzman” at the second round of the Presidential election in December 2015, he expressed their total condemnation and objection at the decision of the Respondent to register another political party under that name. They believe that the use of the name by another group is deceitful and malicious and that the decision is unfair and unreasonable. He added that it is deplorable that the Respondent did not inform them of its decision before making the announcement public. He declared that the Respondent has also not approved the use of the alternative name of “Linyon 2015” which they submitted for registration of their party

on the grounds that it is too close to “Linyon Sanzman”. They consider it unreasonable on the part of the Respondent to block their registration on this ground. They concluded by declaring that they will pursue every option to object to and prevent the misleading use of the name “Linyon Sanzman” by anyone other than the opposition parties and groups which adopted it at the second round of the presidential election while they continue to seek registration of their party under a name appropriate and satisfactory to them.

Registration of “Linyon Demokratik Seselwa”

- [58] Following a resolution taken by the Respondent by post, the Petitioner was accordingly registered as a political party on 7th April, 2016. That decision was ratified by the Respondent at its meeting held on 16th April, 2016 at 9.15 am.

Analysis of the Decision-making Process

- [59] I have carefully analysed the decision making process of the Respondent when it was dealing with the applications for registration of a political party by two different applicants using the same name, “Linyon Sanzman”.
- [60] I am thankful to both Counsels for the submissions which greatly assisted the Court in its analysis.
- [61] Prior to the first meeting of the Respondent, its Chairman forwarded to the AG both applications together with all “the legal instruments” of those applicants and sought the advice of the AG.
- [62] The objections of the Petitioner contained in its letters of 10th and 11th March, 2016 obviously came after the Chairman had already forward the applications and “legal documents” to the AG.
- [63] The Chairman of the Respondent, also wrote to the Registrar General (hereinafter the “Registrar”) on 14th March, 2016 to ascertain whether the name “Linyon Sanzman” is registered with her Office under the name of any person or persons. The Registrar responded on 21st March, 2016 confirming that “Linyon Sanzman” is not on any of their Registers.

- [64] That course of action was not sanctioned by prior decision of the Respondent. Article 115(3) states that – “Subject to this Constitution, the Election Commission shall not be subject to the direction or control of any person or authority in the performance of the functions of the Commission under the Constitution”. It is mandatory that the decision-making process is undertaken by the Respondent as a body and not by one of its members, unless that body had by a prior decision given such authorization.
- [65] The two responses mentioned above, i.e AG’s and Registrar were laid before the Respondent at its meeting on 21st March, 2016 and these obviously had a bearing on and/or influenced the approach taken by the members in their decision-making process. That is made more obvious when it took the next step in its decisions-making process when it decided to what it called “the way forward”, and that was to treat the applications by looking at the first application first.
- [66] At paragraph 3.4 of its minutes the Respondent stated that “*the issue remaining for discussion was the name chosen by both applicants*”. The Respondent also recorded that, “*guided by section 7 of the Act, discussed the lawfulness of the applications. It was felt by some members that there could be malice by either of the two applications (sic), but this is not for the EC to decide*”. (emphasis are mine)
- [67] The Respondent further recorded in that same paragraph that - “*EC noted that it is within common knowledge that Martin Aglae was associated with SNP. Whether there is a split in the party or he is submitting on behalf of SNP, it is not for the EC to go into the internal affairs of political parties*”. (emphasis mine)
- [68] At paragraph 3.5 it is recorded that “*in order to satisfy itself of the lawfulness of the first applicant, it was agreed that EC will seek clarifications from the first applicant*”. (emphasis mine)
- [69] At paragraph 4.1 the Respondent RESOLVED that a letter will be written to the **first applicant** seeking an explanation as per section 7(3) of the Act to advise (sic) on the following: (emphasis mine)

d) How the appointment of the members were (sic) made?

e) What does the term “national meeting” means

f) How was the name “Linyon Sanman” chosen

[70] It is manifestly evident that at the time of its meeting held on 21st March, 2016 the Respondent was fully aware of the strenuous objections of the Petitioner as contained in its two letters addressed to the Respondent on 10th and 11th March, 2016. The Respondent must have by then been also aware of the Press Release of the Respondent dated 11th March, 2016 regarding ‘*structuring of “Linyon Sanzman” for an effective political party.*’

[71] From the above facts (as emphasized) it is evident that the Respondent went off-track so to speak, when it totally ignored the serious contentious issues raised by the Petitioner with regards to the use of the words “Linyon Sanzman” by Mr. Aglae as the name for its political party. It is my considered judgment that such issues ought to have been resolved one way or another by the Respondent prior to proceeding with making its final decision.

[72] In order to resolve the contentious issues that had arisen, it was incumbent on the Respondent to first of all hear both parties, not only the first applicant. Both parties should have been called upon to give reasons in support of their decisions to choose the identical name of “Linyon Sanzman”. It must have been obvious to the Respondent that such was not simply a matter of coincidence. The minutes of its meeting revealed that certain of its members felt that there was possible malice. The Respondent at paragraphs 7 and 14 of its pleading distinctly admitted that it was aware that the Petitioner had used the name “Linyon Sanzman” as a slogan in its campaign at the second round of the last Presidential Election in as recently as December, 2015.

[73] In my considered judgment, the approach of the Respondent in calling on only Mr. Agale to give his reason as to why he chose the name “Linyon Sanzman”, defy the fundamental rule of natural justice or fair hearing. This failure on part of the Respondent goes against a fundamental element principle of natural justice or fair hearing, which is sufficient for its decision to be quashed.

[74] The Petitioner raised the ground of irrationality and unreasonableness. To establish whether the decision making process can be faulted based on these two grounds, this Court

has to assess whether the final decisions arrived at, taking into consideration all the facts of the case, is *“so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question could have arrived at it”*.

- [75] I have carefully reviewed the contents of the letters of the Petitioner dated 10th and 11th March, 2016 which set out the reasons why the Petitioner objected to the Respondent registering another political party in the name of “Linyon Sanzman”. I have also reviewed the reason given by Mr. Aglae as to why he chose the name “Linyon sanzman” for his political party.
- [76] Section 7(1)(b)(ii) of the Act is taken to mean that the Respondent may refuse to register any political party if it is satisfied that – **“the name of the party so nearly resembles the name of a political party whose application precedes the present application as to be likely to deceive the members of the party or the public”**. (emphasis added)
- [77] It is under the above provision of the Act that the Respondent refused the registration of the application of the Petitioner. Here it is not the case of the name of a political party which nearly resembles the name of a preceding one, but it is rather a case of two political parties trying to register under exactly the same or identical name. Be that as it may, in my view closely resembles is not synonymous with the same or identical. It was obviously not a coincidence in the coining of a name but it was the use of a name that was already coined or composed and also extensively previously used by one of the applicants and its supporters.
- [78] In such situation it was incumbent on the Respondent to resolve the contentious issues in order to ensure that the members of the party or the public are not likely to be deceived by registering one instead of the other.
- [79] This Court will not stand in the stead of the Respondent to establish whether the contents of the two letters of objection of the Respondents were statements of established facts or whether they were unfounded concoctions, frivolous or vexatious and are devoid of any merit. That exercise fell and still falls within the province of the Respondent to carry out proper investigations, after which it will make its decision and giving reasons therefor.

That exercise, in my considered judgment, ought to have been undertaken by the Respondent upon receiving the letters of objections of the Petitioner and before it proceeded to apply the statutory provisions to reach its final decision.

[80] The golden rule jealously guarded in administrative law by the Courts is that no executive decision adversely affecting the rights of citizen may be taken behind his back, without affording him or her the opportunity to be heard. The Respondent was bound to give the Petitioner an opportunity to be heard before it proceeds to make its final decision. That rule is of universal application, and founded on the principles of natural justice. (see Raihl SCA 6/09). The Respondent was bound to exercise its power judiciously. In the instant case the objections raised by the Petitioner were in fact and for all intents and purposes never heard by the Respondent and resolved one way or the other.

[81] Did Mr. Aglae acted in good faith and without malice when, of all names, he chose the name “Linyon Sanzman”? Can Mr. Aglae reasonably claim that he did not know full well that these two words were coined by, associated with and used by a group of political parties (now LDS) when contesting the second round of the last Presidential election in December, 2015? Was the response given by Mr. Aglae as to why he chose to use the words “Linyon Sanzman” as the name of its political party, sufficient, satisfactory and reasonable?

[82] Respondent specializes in election and is involved with all political parties in Seychelles. The Respondent admitted that it was aware that the words “Linyon Sanzman” were used albeit as a “slogan” by the Petitioner at the second round of last Presidential election in December, 2015. As such the Respondent was fully aware of the prior use of the words “Linyon Sanzman” and by which of the two applicants that was using these words by itself and its supporters.

[83] It is common knowledge that in Seychelles there are words which appertain to or used by a particular political party during its campaign, on its posters or adverts etc. Its supporters adopted such words as being associated with their respective party even though such words having not been registered anywhere. Judicial notice would be taken even these words were

not registered as of right by that party. This convention has been followed, respected and honoured throughout the history of political parties in Seychelles.

[84] From the minutes of the meeting of the Respondent it is evident that certain members had doubt that there existed an element of malice on the part of either one or the party, which in itself imports an element of bad faith. The Respondent at its meeting of 21st March, 2016 made assumptions instead of establishing facts when it stated that it is “common knowledge that Martin Aglae was associated with SNP and that whether there has been a split in the party or he (Aglae) is submitting on behalf of SNP” and adding that “SNP forms part of the Petitioner”. That argument does not hold water because by then the Respondent had in its possession the two letters from the Petitioner which made it clear that that could not be so.

Findings and Conclusions

[85] In the final analysis and for reasons discussed hereinbefore I conclude that there is merit in the Petition of the Petitioner. In my judgment the Respondent committed fundamental procedural impropriety when it failed to resolve the thorny contentious issue as to the use of the name of “Linyon Sanzman” and its failure to adequately or at all resolving such issue before arriving at a definite finding and giving its reasons therefor. The end result is that the decision of the Respondent is so outrageous in its defiance of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it.

[86] As Mr. Aglae is not before the Court as a party in this matter, and he was not heard, it would neither be fair nor in the interest of justice to resolve the contentious issues without giving him an opportunity to be heard. The contents of the two letters of objection from the Petitioner as well as the response of Mr. Aglae as to why he chose the name Linyon Sanzman need to be objectively considered and proper conclusion reached. This ought to be done by the Respondent and not this Court.

Orders

[87] In view of the foregoing analysis, findings and conclusions the following Order is hereby made in terms of Article 125 (1) (c) of the Constitution of Seychelles:

(a) Writ of Certiorari is hereby issued quashing the decision of the Respondent in registering a political party using the name of “Linyon Sanzman”.

[88] In further conformity with Article 125(1)(c) of the Constitution of Seychelles the following directions are hereby issued:

- (a) The Respondent is directed to hear both Applicants with the objective of resolving the contentious issues raised by the Petitioner in its letters of 10th and 11th March, 2016 as well as the response of Mr. Aglae as to why he used the name of “Linyon Sanzman”.
- (b) The Respondent is also directed not to register any political party under the name of “Linyon Sanzman” unless and until the contentious issues as to the use of that name has been objectively resolved and settled.
- (c) The Respondent is further directed to give reasons for its decision when resolving the matter in issue.
- (d) For the avoidance of doubt, no political entity or grouping is authorized to use the term ‘Linyon Sanzman’ as its name for any intent or purpose until the final determination of the contentious issue – referred to in para (a) and (b) above – by the Respondent.

[89] I order accordingly.

Signed, dated and delivered at Ile du Port on 1 August 2016


B Renaud
Judge of the Supreme Court
1/8'