

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 258/2016**

**(arising in MC87/2016)**

**[2016] SCSC 597**

---

**LINYON DEMONKRATIK SESELWA  
(REP BY MR. ROGER MANCIENNE)**

Petitioner

versus

**THE ELECTORAL COMMISSION  
(REP BY ITS CHAIRMAN, MR HENDRICK GAPPY)**

Respondent

---

Heard: 17 August 2016

Counsel: Mr. A. Derjacques for petitioner

Delivered: 17 August 2016

---

**RULING**

---

**D. Karunakaran, J**

[1] This is a petition for “Judicial Review” of an administrative decision of the respondent, the Electoral Commission (EC), in registering a political party in the name of “LSD” (Lafors Sosyal Demonkratik) under the provisions of the Registration of the Political Parties (Registration and Regulation) Act. The petitioner, “LDS” (Linyon Demonkratik Seselwa), an existing, recognised and registered political party is challenging the said decision of the EC on the grounds that the said decision is irrational, unreasonable and

above all, illegal. The Petitioner contends that the name “LSD” is identical or so nearly resembles the name of an existing registered political party “LDS”, or is so close and similar, or appears to be the same as, or is likely to be confused with, or mistaken for, the name of the petitioner “LDS”, which is an existing, recognised and registered political party. The impugned name “LSD” according to the petitioner is likely to deceive, mislead or to say the least confuse the members of the public, its party members and supporters, who are potential electorates and soon going to exercise their voting rights in the forthcoming election to elect the members of the National Assembly. Such deception, misleading and confusion would cause irreparable loss, hardship, prejudice and irreversible adverse consequences to the petitioner.

[2] Be that as it may. Having thus filed the main petition for Judicial Review, the Petitioner has now come before this Court, by way of an interlocutory application for an *urgent, ex parte interim order*, in the nature of a prohibitive and/or a mandatory injunction directing the Respondent (EC) that the name “LSD” is not allocated to the political party led by Mr. Charles Jimmy Gabriel and not to accept, approve or register any nomination of candidate/s nominated or submitted by “LSD” to contest in the forthcoming elections for the National Assembly.

[3] I carefully perused the affidavits filed in support of the interlocutory application. I meticulously analysed the arguments advanced by counsel Mr. Derjacques for the Petitioner. I gave due consideration to the relevant provisions of law, case law and our jurisprudence. Though relevant to the main petition, the arguments presented have indeed given rise to many an issue based on facts and on points of substantive, as well as procedural law. If this Court now embarks on an attempt to determine all those issues canvassed by the Petitioner in this interlocutory application, particularly at this stage of the proceeding, certainly, such an attempt would in effect, dispose of the main petition itself. That would be tantamount to putting the cart before the horse. This, the Court should not and cannot do. Indeed, in the thin disguise of determining the interim injunction, the Court should not determine the very fate of the main petition before giving the respondent and other interested parties ample time and opportunity to present their respective cases in full, and on the merits of the petition before the Court.

- [4] First of all, I am satisfied of the reasons given by the petitioner inviting this Court for an urgent hearing of the interlocutory application in this matter. Given the fact that today is the day specifically allotted for the filing of nominations, the urgency is apparent and justified. Consequently, I find it just and necessary that this matter should be heard urgently *ex parte* for the reasons stated *infra*.
- [5] Having said that, I note in matters of interlocutory interim injunctions, the Court must be satisfied *prima facie* that the claim is *bona fide*, not frivolous or vexatious; in other words, that there is a serious question to be tried *vide: American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504 at p. 510*. Unless the materials available to the court at the hearing of the application for an interlocutory injunction, disclose that the petitioner has a real prospect of succeeding in his claim at the trial, the court should not go on to consider whether the balance of convenience lies in favour of granting or refusing the interim injunction that is sought. In considering the balance of convenience, the governing principle is whether an award of damages, which the respondent would be in a financial position to pay, would adequately compensate the petitioner and if so, the interim injunction should not be granted. On the other hand, where and when there is doubt as to the adequacy of remedies in damages available to a party, the court would lean to such measures as are calculated to preserve the status quo and prevent irreparable loss and damage the applicant may suffer. Besides, in the instant case I do not find the relevant record in the case file relating to the impugned decision of the respondent, as yet to be received from the respondent in this matter. However, on the face of the pleadings in the petition, and the averments made in the affidavits, it is so evident and any reasonable man with average intelligence or the *man on the Clapham omnibus* would obviously find that the name/acronym “LSD” does appear to be very similar or the same as, or is likely to be confused with, or mistaken for, the name/acronym of “LDS” which is the name of an existing registered and recognized political party.
- [6] Furthermore, it is pertinent to note that Section 7(1) of the Political Parties (Registration and Regulation) Act reads thus:

“7. (1) *The Commission may refuse to register a political party if he is satisfied that -*

*(a) the application is not in conformity with this Act;*

*(b) the name of the party -*

*(i) is identical to the name of a registered political party or a political party which has been cancelled under this Act or a political party whose application precedes the present application;*

*(ii) so nearly resembles the name of a registered political party or a political party which has been cancelled under this Act or a political party whose application precedes the present application as to be likely to deceive the members of the party or the public; or*

*(iii) is provocative or offends against public decency or contrary to any other written law as to be undesirable;*

*(c) any purpose or object of the party is unlawful.”*

[7] I also note that in accordance with the rules of interpretation of statutes (See, Maxwell) and judicial exposition vide *Border R.D.C. v. Roberts [1950] 1 K.B, per Somervell L.J* the word “may” used in Section 7 supra - to the least- as a compulsory force.

[8] In the circumstances, I find that it is a fit and proper case, where an interim prohibitive and mandatory injunction should be granted pending final determination of the main petition for judicial review. Obviously, the injunction is an equitable remedy, and so the one who seeks such a remedy should come before the court with clean hands. The possibility of irreparable loss, hardship and injury if any, the Plaintiff may suffer during the inevitable interval between the commencement of the action and the judgment in the main case, should also be taken into consideration as an important factor in the determination of injunctions.

[9] Since the submissions of the Petitioner’s counsel with regard to other issues involve questions of law and fact, which would be more appropriately argued in the main petition for “Judicial Review”, not at the hearing of this interlocutory application. Suffice it is, for me to say at this stage, that I am of the opinion, based on pleadings, affidavit and submissions that more prejudice would be caused to the Petitioner by refusing the interim injunction, than by granting it. On this score as well, I am inclined to grant the interim injunction sought by the petitioner in this matter.

[10] Having thus given diligent thought to the entire circumstances of the case, and in light of the dictum in **Mareva Compania Naviera SA v. International Bulkcarriers SA [1980] 1 All E. R. at p 215**, I hereby grant an *ex parte* interim injunction, exercising equitable powers and jurisdiction conferred upon this Court by Section 6 of the Courts Act pending final determination of the main petition. The application is therefore, allowed. However, I shall proceed to fix the hearing of the main petition at an early date in the interest of justice.

[11] In summing up, I make the following orders:

- (1) I grant leave to proceed *ex parte* in this matter in terms of Rule 5 of the Supreme Court (Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules 1995.
- (2) In terms of Rule 10 of the Supreme Court (Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, 1995, I direct the Respondent (EC) to forward the relevant record or record of proceedings in this matter to the Supreme Court Registry at the earliest. The EC to be notified accordingly.
- (3) I order an interim injunction prohibiting the Election Commission from allocating the name “LSD” to any political party led by Mr. Charles Jimmy Gabriel or by any other person for that matter, and also I prohibiting the EC from accepting, approving or registering any nomination of candidate/s submitted by “LSD” to contest in the forthcoming elections, for the National Assembly, until further order of the Court.

(4) For the avoidance of doubt, if any nomination of candidate/s submitted by the political party “LSD” has already been accepted, approved or registered, I direct the Election Commission to strike off and cancel such acceptance, approval or registration in this respect, in order to give effect to the interim injunction ordered herein until further order of the Court.

(5) I direct the Registrar of the Supreme Court to serve forthwith, a copy of this order and the petition, on the Electoral Commission. In the interest of justice, I further direct the Registrar to serve copies of this petition and the interim order on Mr. Charles Jimmy Gabriel or the President or the Secretary or any fit and proper person representing the political party “LSD”.

[12] The case is to be mentioned on 21 September 2016 at 9.30am. The parties to be notified of the date accordingly.

Signed, dated and delivered at Ile du Port on 17 August 2016

D Karunakaran  
Judge of the Supreme Court