IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MA 263/2016 and MA 264/2016
MA 267/2016 and MA 268/2016

(arising in MC 86/2016 and MC 87/2016)

[2016] SCSC 614

LINYON DEMOKRATIK SESELWA
Petitioner

versus

THE ELECTORAL COMMISSION & OR
(Rep by its Chairman Mr. Hendrick Gappy)
Respondent

Heard: 23 August 2016

Counsel: Mr. A. Derjacques for petitioner

Ms. S. Aglae for respondent

Mr. Rajasundaram for the Proposed Intervener

Delivered: 23 August 2016

RULING

Karunakaran J

[1] In respect of the two applications filed by (i) LSD (Lafors Sosyal Demokratik), in *Miscellaneous Application 263 of 2016* and (ii) filed by LS (Linyon Sanzman), in *Miscellaneous Application 264 of 2016* for intervention, and also in respect of 2 applications for recusal raised by LSD in *Miscellaneous Application 267 of 2016* and LS in *Miscellaneous Application 268 of 2016,* as I have already indicated to Counsel, that I have consolidated all 4 applications for the purpose of hearing and the ruling hereof.

[2] I gave careful thought to the submission made by learned Counsel Mr. Rajasundaram who is for the applicants in all 4 Miscellaneous Applications. Also I gave diligent thought to the submissions made by learned Counsel Mr. Derjacques, Counsel for LDS in both matters. First of all, I find that neither LSD nor LS have any locus standi in the eye of law to sue or to be sued or to intervene as a party having legal existence in any legal proceedings before any Court of law. It is a fundamental principle of law, even a first year law student would know, that only natural persons or any legal persons or legal entity such as a company incorporated under the Companies Act or a Statutory Body established by a statute or an Act or an Association registered under the Registration of Association Act or a Political Party which remains registered under the Political Parties Registrations and Regulations Act have legal existence for all legal intents and purposes in any legal proceedings to be instituted for or against them. It is evident by virtue of the order made by this Court on the 17th of August in *Miscellaneous Application 258 of 2016* and *257 of 2016* arising out of *Miscellaneous Cause 86 of 2016* and *87 of 2016* that at the time of filing these applications there were no longer legal entities as they had been ordered to be struck off the register by a lawful order of the Supreme Court. Hence, all applications filed by the so called "proposed interveners" or *null and void ab initio* for having geminated from non-entities unknown to our laws, and annulled by the order of the Court. Therefore, in my judgment all applications made by the so called LS and LSD are not maintainable in law. They are incompetent and stillborn in the eye of law and so liable to be dismissed in limine. Accordingly I do so.

[3] Having said that, I wish to add that in matters of judicial review the Court simply scrutinises the legality, rationality and reasonableness of an administrative decision in exercise of its supervisory jurisdiction conferred on it by the Constitution, the supreme

law of the land. This jurisdiction is not conferred by any statute or law. It is the Constitutional prerogative of the Court to issue writs in the nature of certiorari or mandamus which is primarily intended to quash any administrative decision vitiated by illegality, irrationality or unreasonableness, regardless of the fact whether such writs eventually affect or likely to affect the interest of any third parties to the judicial review proceedings. Such third parties in my view have no legal right or locus standi to intervene in those proceedings and it is evident from the Rules that is: the Supreme Court Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authorities Rules, which were made specifically to govern the judicial proceedings in judicial review matters, does not provide for, nor permit any such intervention from third parties to the proceedings. Therefore, no such third party shall be allowed in breach of the said Rules.

[4] In addition, I wish to state as regards to the issue of recusal, the affidavits filed by the parties claiming to be the representative of non-entities, do not contain any material facts to substantiate that this Court is biased. It is common knowledge in civil proceedings the Courts, particularly the Supreme Courts have jurisdiction and powers to issue ex-parte interim injunctions pending the final determination of the petition. This is very normal practice, this happens everyday in civil proceedings. If a person alleges that making such an ex-parte order amounts to bias by a Judge, such allegation is absurd and to say the least, baseless and unsubstantiated, conjunctive and surmise.

[5] Now I would like to move on to the procedural requirement for recusal. First of all this application on the face of it procedurallywrong, irregular and improper. The Court of Appeal has already in the case of *Government of Seychelles and Or Versus Seychelles National Party and Ors, SCA CP3 of 2014, SCA CP4 of 2014,* formulated the procedure in mandatorial terms, which should be adopted by any party who claims that the Judge might be biased against or for or in favour of a party to the litigation. The procedure is well set, which is binding all Judges of the Supreme Courts, the Counsel and the parties who appear before this Court. It is stated in page 7of the judgment, which I read as follows: *"The procedure for recusal."* The Court of Appeal goes on to state that *"we are*

putting in black and white the Rules below; drawn a lot from these suggestions of Lord Stanley. They have to be used with imagination rather then dogmatically."

The Rule number 1 states; *where a party to a case has reasonable grounds to believe that a particular Judge should be spared the embarrassment of sitting in his case on account of bias he should so inform his Counsel to instruct him to consider making a recusal request to the Judge in question.*

Rule number 2 states; *On receiving such instruction Counsel should satisfy himself that the facts put forward by his client are not frivolous but sufficiently cogent for the purpose of making a recusal request.*

Rule number 3 states; *On being so satisfied he should approach the opposing Counsel to indicate his stand and may seek his views on the matter before taking an informed decision whether or not to proceed with a recusal request.*

Rule number 4 states; *Where he has decided to proceed with the recusal request learned Counsel should seek an appointment with the Judge,* I emphasise, *in question, see him in the presence of opposing Counsel and place before him the facts on which his client relies to seek a recusal.*

Rule number 5 states; *On being appraised of the facts, the learned Judge should refrain from being his own Judge in his case but submit them to the administrative consideration of the Chief Justice after giving his own views of the facts and the relevance to the recusal request.*

Rule number 6 states; *It will be for the Chief Justice to decide in his best judgment whether the recusal request should be granted or not. In arriving at his decision the Chief Justice may or may not invite Counsel who are parties to the case for further information in presence of the learned Judge.*

Rule number 7 states; *Irrespective of his own view on the matter, learned Judge should abide by the decision of the Chief Justice following which a communication should be addressed to both Counsel.*

[6] And so on, there are 11 Rules well set by the Court of Appeal in the said case *Government of Seychelles and Or Versus Seychelles National Party.*

[7] In this particular case, this application has been made to the Court in breach of all the above Rules. Hence, I dismiss these 2 applications not only on a point of law, on locus standi but also on the merits so that if there is an appeal against this ruling the Court of Appeal will determine all the issues so that time could be saved in the interest of justice for the so called "proposed intervener".

Signed, dated and delivered at Ile du Port on 23 August 2016

D Karunakaran
Judge of the Supreme Court