IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC86/2016

[2016] SCSC 616

LINYON DEMOKRATIK SESELWA

Petitioner

versus

THE ELECTORAL COMMISSION

Respondent

Heard: 25 August 2016

Counsel: Mr. A Derjacques for the petitioner

Mrs. S. Aglae for the respondent

Delivered: 28 August 2016

JUDGMENT

D. Karunakaran, J.

[1] This is a petition for "Judicial Review" of an administrative decision of the Respondent, the Electoral Commission (EC), under the provisions of the Registration of the Political Parties (Registration and Regulation) Act, dated 11th August 2016, in which the Respondent apparently allowed the political party in the name of "Linyon Sanzman" to continue to remain on the register of Political parties. The Petitioner (LDS) is an existing, recognised and registered political party, which, in the instant petition, is challenging the

said decision of the EC on the grounds that it is irrational, unreasonable and above all, illegal. The Petitioner contends that the name "Linyon Sanzman" is the same name, which had been in continuous and exclusive use until recently by a particular political alliance - a common law entity - that sprouted from the union of three registered political parties. According to the petitioner, the said name "Linyon Sanzman" had popularly been associated with, publicly known and generally recognised as that of the said union, which has now metamorphosed into a political party, which party currently remains registered in the name of "LDS", the Petitioner in this matter. It is the case of the petitioner that the impugned name "Linyon Sanzman" if used by another political party, is likely to deceive, grossly mislead or to say the least, confuse the members of the public, its party members and supporters, who are potential electorates 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] It is averred in the petition that on the 6th December 2015, the political parties of; a) Lalyans Seselwa, b) Seychelles Party For Social Justice And Democracy, and c) Independent Party represented by Philippe Boulle, formed an alliance with the Seychelles National Party represented by Mr Wavel Ramkalawan for the second round of the presidential Elections held from 16th to 18th December 2015. The said parties mentioned above came up with the name "Linyon Sanzman", as it represented an alliance for change.

[3] The Petitioner made an application for the registration of "Linyon Sanzman" dated 29th January 2016. The Respondent then informed the Petitioner, that another political party had applied for the same name, to which the Petitioner had strongly objected to, through the letters dated 10th and 11th March 2016. Between the 14th and 29th March 2016, the Respondent had made the decision to allocate to the name, "Linyon Sanzman" to another political party which was then registered.

[4] Subsequently, on the 29th March 2016, the Petitioner wrote to the Respondent, to apply for the registration of their party under the name "Linyon 2015". On the 5th April 2016,

the Respondent replied, stating that they had rejected the use of the name “Linyon 2015”, under the provisions of Section 7(l)(b)(ii) of the Political Parties (Registration and Regulation) Act, stating that the name was too similar to that of “Linyon Sanzman” which had recently been registered.

[5] According to the Petitioner, the decision of the Respondent to register another political party under the name "Linyon Sanzman" was unreasonable and irrational as it was likely to deceive the members of the party and the public. The Petitioner had, on numerous occasions used the name widely since the second round of the Presidential Election of 2015, for campaigning as well as for other political activities, events, publications, including calendars. The Petitioner had also used letterheads and communications in television, press and social media, bearing that name.

[6] Aggrieved by the Respondent’s decision to register the new political party led by one Martin Aglae under the name “Linyon Sanzman”, the Petitioner filed an application for judicial review, before the Supreme Court in MC 59 of 2016 whereby on the 1st August 2016, Justice Renaud, allowed the petition and issued a writ of Certiorari, quashing the said decision of the Respondent in registering a political party using the name “Linyon Sanzman”. It was further ordered that the Respondent was to hear both Applicants with the objective of resolving the contentious issues, and to not allow the registration of a political party under the said name unless and until the contentious issues as to the use of that name had been objectively resolved and settled. The Respondent was further directed to give reasons for its decision when resolving the matter.

[7] In pursuance of the said orders made by the Court, the Petitioner submitted to the Respondent as follows:

“… that the Electoral Commission (EC) cannot reasonably and fairly allow any other party to use the name LINYON SANZMAN except the Linyon Demokratik Seselwa political movement and party which I represent. The name continues to be of vital importance to us and we maintain our rightful claim to it.

1. Our ownership of the name

We established prominent and indisputable common ownership of the name since the second round of the December 2015 presidential election. It was used widely by ourselves, by state entities and the public, even our political opponents. (See my letter of March 10th, 2016 to the EC). As the ruling by Judge Bernardin Renaud in the judicial review pointed out, the EC itself acknowledged that we had used the term Linyon Sanzman but described it as a slogan and not a name. This is not correct. It was a name. I invite the EC to look back at the documents we have submitted in evidence and it will see clearly that it was used as a name. Where a slogan is used, it will come under a name. For instance, if the term is used as a letterhead, it is clearly a name. And clearly also when it is used to refer to a group.

2. Name was part of our political strategy

Our group invested considerable resources in building up this name into a brand. It was a deliberate strategy to harness the support achieved by the presidential candidates in the presidential election. This strategy continues to be important going into the National Assembly elections. So, the name Linyon Sanzman continues to be important.

3. Date of application reasonable

One question that has arisen is why, having collected the forms for registration of a political party on January 29th, we did not submit our application until March 10, 2016. There a perfectly legitimate reason. When we began discussing the registration of the party, I was designated as the Party Leader. As such I set out my own agenda for how the party would be constituted and registered. There were issues of my role as leader of the registered party compared to what role the former presidential candidates would play. There was the issue of how the new party would operate in relation to the existing parties in the group which could not be dissolved immediately. The issue of how candidacies for the National Assembly elections would be apportioned, was for me a top priority. Such issues took time had to be resolved first. This took several meetings. At the same time, we were all preoccupied with the election petition in the Constitutional Court. It never

occurred to me that there was any danger of someone else appropriating the name, given that we had so clearly established our common owner ship of it. I could have reasonably counted on the EC to prevent that.

4. Responsibility for malice

The decision of the EC to register another party under that name was not reasonable and in key places based on false assumptions. This point has been strongly emphasised in the ruling. As noted, some members of the EC recognised that one or other application under that name could have had a malicious intention. It should have been clear where malice was to be found. When the name had been so widely used and recognised by one party, it cannot be malice for that party to continue using it. On the other hand, for another party without the least association with that name to use shows only intention to deceive and to mislead the public. The EC must now take full note of this as it continues to be relevant. That the EC is duty bound to prevent it is evident from the concern with preventing deceit in the Political Parties (Representation and Registration) Act.

5. Aglae not associated with SNP or Linyon Sanzman

The EC has claimed that Martin Aglae was associated with the SNP, conveying the assumption that he had a claim on the name. This is wrong. Mr. Aglae was at one point, and for a short time, a representative for the district of Baie Lazare in the SNP. This is not a position of leadership. The EC has the list of executive committee members of the SNP and can verify that Mr. Aglae has never been in that capacity. Likewise, the EC's assumption that Mr. Aglae's action showed a split in the SNP is completely false. Mr. Aglae was removed as a representative because he acted dishonestly in using his association to take money from people. Removing a dishonest representative does not amount to a split. No one followed Mr. Aglae out of the SNP. Furthermore, any past association with SNP does not justify any claim on Linyon Sanzman, with which Aglae has never been associated.

6. Applications received together

The EC justified its decision to allow Martin Aglae to register under that name on the ground that his application had preceded mine. This would be a reasonable argument if the application had been presented some time before and was at least under consideration when mine was received. But it has been clearly established that the two applications were received on the same day, four hours apart. So both applications were before the EC at the same time and the EC was duty bound to consider both of them together, especially in view of the issues which I raised with the EC. The EC should have realised that the fact the two parties were seeking the same name was not a coincidence but a deliberate move by one to appropriate an identity already created by another.

7. Common ownership is a fact

The fact that the term Linyon Sanzman had not been registered by the Registrar General does not lessen our claim to the name. The EC has to recognise that commonly recognised ownership is real. As the ruling has pointed out, it is common knowledge that certain terms are adopted by a political party and become associated with that party even though they are not registered anywhere. This has been respected through the course of our recent political history and the EC will only be living up to its mandate if it supports that.

8. Deceit of the public — primary concern

The EC has also claimed its decision was based on article 7 of the Act which states that it may refuse to register a party "whose name so nearly resembles the name of a political party whose application so nearly resembles the preceding application as to be likely to deceive the members of the party or the public". The EC should have noted that the focus of this article is on not allowing people to be deceived. It was therefore duty bound to ask "Where is deceit going to come from in this situation?" Certainly not from the ones who had been using the name already but by the one attempting to steal the name. It is clear

that it is Aglae who is using the name to deceive members of the existing Linyon Sanzman and the public at large.

9. Aglae has no reason to justify use of name

In his letter responding to the queries of the EC, Martin Aglae has stated that his reason for choosing the name Linyon Sanzman was because it was 'the right name for his party'. This is no reason at all. Why is it the right name? Why does it have to be the same name that has been used widely by another group? He does not have the slightest valid justification why he should be allowed to use the name.

10. Restoration of name to our group is vital

The use of the Linyon Sanzman name continues to be an important issue. Its use by Martin Aglae has caused us considerable damage and if he is allowed to continue, it will cause us further damage. On the other hand, we need to use that name to clear up the confusion, by reassuring people that the term refers to the groups of parties that used it consistently since December 2015. We believe our claim to the name is indisputable and we want to continue using it. We want the EC to restore to us the rightful use of that name."

[8] The Respondent in its letter dated the 11th August 2016, copied to the Petitioner on the 16th August 2016, decided as follows:

"RESOLUTION OF THE ELECTORAL COMMISSION - LINYON SANZMAN

Reference is made to the ruling of the court in respect of Linyon Demokratik Seselwa v Electoral Commission CS.No.57 of 2016 which states as follows:

1. A writ of certiorari is hereby issued quashing the decision of the Respondent in registering a political party using the name of "Linyon Sanzman".

2. The following directions are 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 authorised 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) - by the Respondent.*

The Electoral Commission in compliance with the court direction proceeded as follows:

<u>In compliance with direction (a)</u>

Both Roger Mancienne and Martin Aglae were written to on the 8 August 2016, and they were requested to meet with the Electoral Commission on 9 August 2016. Both applicants were asked to submit their reason as to why their application to be registered under the name "Linyon Sanzman" should be granted and both were given a copy of each other's letters to make their comments.

<u>In compliance with direction (b) and (d)</u>

The Electoral Commission wrote to Martin Aglae on 2nd August 2016 to advise him of the court order and to notify him not to use the name Linyon Sanzman.

In compliance with direction (c)

The Electoral Commission heard both applicants and requested that they also submit their arguments in writing. The Electoral Commission met on 11th August 2016 to deliberate on the arguments raised by both applicants and the evidence placed before them. The Electoral Commission resolved that the Martin Aglae is allowed to register his political party using the name "Linyon Sanzman" for the following reasons:

1. Linyon Demokratik Seselwa has been registered as a political party, they have campaigned under that name, nominated candidates under that name and they had informed their supporters and the public accordingly.

2. Linyon Demokratik Seselwa has stated that they cannot register under the name Linyon Sanzman and they do not want to be registered under that name as this will do more harm than good to their political party.

3. Linyon Demokratik Seselwa would like to reserve that name and to use it at a later stage.

4. Under article 16 (2) clearly states that " A political party or any other combination of persons shall not electioneer, or authorise a person to act on its behalf, in connection with, or take part in a specified election unless it is a registered political party". Consequently the use of "Linyon Sanzman" for electioneering during the second round of the Presidential Election 2015 by Mr. Roger Mancienne and his group was illegal as the name was not a registered political party.

5. For Martin Aglae, he has already started his campaign under that name, nominated candidates under that name and already made known to his supporters and the public who are associated with his political party.

6. The court did not in the order de-register the political party under the name Linyon Sanzman and under the Political Parties (Registration and Regulation) Act the Electoral Commission can only de-register a political party as per section 9 of the said Act. Article 9 (b) &(c) states as follows:

> *(b) on proof to the satisfaction of the Commission that the registration of the party has been obtained by fraud or mistake;*
>
> *(c) on proof to the satisfaction of the Commission that the party has a purpose or object which is unlawful.*

There has been no evidence of fraud or mistake. The documents submitted for the application to register the political party were in accordance with Article 5 of the Political Parties Registration and Regulations Act.

Furthermore, there has been also no evidence produced to demonstrate that the purpose or object of the political party, represented by Mr Martin Aglae, is unlawful.

7. Mr. Roger Mancienne and his group have been able to register their political party albeit under a different name and they are now electioneering and preparing for the forthcoming National Assembly election.

8. Mr. Martin Aglae cannot, as a political party until a determination is made by the Electoral Commission, electioneer and prepare for the forthcoming National Assembly election using the name "Linyon Sanzman".

9. Consequently, in reference to the Constitution of Seychelles for further guidance. Under Article 23 of the Constitution every person has a right to assemble and to form or belong to political parties. Under article 24 every citizen of Seychelles who has attained the age of 18 has a right:

> *(a) to take part in the conduct of public affairs either directly or through freely chosen representatives;*
>
> *(b) to be registered as a voter for the purpose of and to vote by secret ballot at public elections which shall be by universal and equal suffrage;*
>
> *(c) to be elected to public office; and*
>
> *(d) to participate, on general terms of equality, in public service.*

10. Based on who will be harmed more under article 24, is it Mr Roger Mancienne and his group who is already registered as LDS and electioneering or Mr Martin Aglae who currently cannot electioneer and prepare for the forthcoming election. To de-register the political party of Martin Aglae will be prejudicial to him, against the interest of democracy and will deny him his right to participate in government.

11. The request of Linyon Demokratik Seselwa to reserve the use of the name "Linyon Sanzman" is not within the jurisdiction of the Electoral Commission and not within the provisions of the Political Parties (Registration and Regulation) Act."

[9] In view of all the above, the Petitioner contends that the decision of the Respondent, first above mentioned, is illegal irrational and unreasonable. Therefore, the Petitioner urges this Court to issue a writ of certiorari to quash the Respondent's decision set out in the letter of the 11th August 2016.

[10] On the other side, the Respondent has raised preliminary objections on points of law, as well as on the merits. On points of law, it is the contention of the Respondent that this petition is not maintainable for the following reasons:

> *"1. Leave has to be set aside as the petitioner has not made the application in good faith.*
>
> *2. The matter before the court is res judicata as the case between the same parties, same matters raised and same reliefs were already heard in case number MC No. 59 of 2016, furthermore the petitioner has filed again on the same grounds again before the court.*
>
> *3. The petition is an abuse of the court process, as the Petitioner not being satisfied with the previous decision of the Respondent filed case MC. No.59 of 2016 and now again not being satisfied with the decision of the Respondent has filed again the same case before the court.*
>
> *4. That Linyon Sanzman did not nominate any candidates to take part in the national assembly election.*
>
> *5. The Supreme Court is now ultra petita in respect of the petition filed."*

[11] On the merits, the Respondent has raised the following:

As far as the Respondent is aware the 4 political parties were using a slogan "linyon sanzman" in the last Presidential Election. There is no provision for alliance under the Political Parties (Registration and Regulations) Act, in fact as per definition of political party under s.2 of the said Act and as per s. 16 of the said Act it is an offence for a group of persons to electioneer, they have to register as a political party in order for them to do so. There is no proof of such registration with the Respondent.

The Respondent did not submit its application on 29 January 2016, but rather on 10 March 2016. The date stated on the application was 29 January 2016, but it was

corrected in the presence of the party leader Roger Mancienne. The petitioner submitted his application in the afternoon while Martin Aglae submitted his application in the morning. Both applications bearing the same name, the Respondent informed Roger Mancienne verbally that another applicant had submitted an application to register a political party bearing the same name. The petitioner did send letters dated 10 March and 11 March 2016. Which were considered when following the guidance under case MC.59 of 2016.

The Respondent informed Roger Mancienne in the second round of the presidential election to stop using the letterhead Linyon Sanzman as it was illegal and it was not a registered political party. Private communications made by the Petitioner to other entities and the continuous use of the name Linyon Sanzman was in breach of the Political Parties (Registration and Regulations) Act.

The Respondent followed the guidance of the court in case MC.59 of 2016 and heard both interested parties and resolved the issues and came a conclusion that the name Linyon Sanzman is to be allocated to Martin Aglae. As per submission of Roger Mancienne he wanted to reserve that name for future use if need be as he did not want to give a lot of attention to that name but to give as little capital as necessary as this will cause more confusion and damage. He has already submitted candidates under the name of the new party Linyon Demokratik Seselwa. The Respondent gave its decision and reasons for its decision in a letter dated 11 March 2016. Both parties were written notice and asked to appear in person before the Respondent and to submit their arguments in writing, while the Respondent listed to both parties and questioned both parties to deal with the contentious issues.

The Respondent has brought the same subject matter before the same court, between the same parties. This is an abuse of the court process when the very same court has already decided on this matter. The remedy of judicial review is concerned with reviewing not the merits of the decision but the decision making process to ensure that the person has been given a fair treatment by the authority to which he has been subjected and that it is no

part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted in law to decide the matters in question. Chief Constable of North Wales Police v Evans 1982 1 WLR 1155. The court will not on a judicial review act as a court of appeal from the body concerned, nor will the court interfere in anyway with the exercise of any power or discretion which has been conferred on that body, unless it was exercised in a way which is not within that body's jurisdiction. There has been finality in case MC.59 of 2016, a writ of certiorari was issued and directions were given to the Respondent and they were followed. The petitioner cannot keep coming back to the same court, against the same parties for the same redress.

[12] For these reasons, the Respondent seeks this Court for an order to set aside the leave to proceed granted by the court in this judicial review, and urges this Court to dismiss the petition with costs.

[13] I carefully perused the pleadings, and affidavits filed in support of, and against, the petition. I diligently scrutinised the records forwarded by the Respondent to the Court, in this matter. I meticulously considered the arguments advanced by learned counsel for the Petitioner and the Respondent. I diligently analysed the relevant provisions of law, case law and our jurisprudence in this respect.

[14] At the outset, I wish to mention that the Ruling delivered earlier in MA 257 of 2016 vide MC 86 of 2016 be read *mutatis mutandis* as part of the Judgement given herein in this main petition.

[15] Considering, firstly, the preliminary objections raised by the Respondent in this matter, as regards the setting aside of the grant of leave to proceed, I have already found, in my ruling granting the interim injunction, that the Petitioner had presented a bonafide claim ex facie the petition. I found then, that the petition was made in good faith, and I am satisfied that that finding still stands. Hence, I decline to set aside the leave to proceed in this matter.

[16] On the issue of res judicata, for the plea of res judicata to be upheld, there must be the three-fold identity of subject matter, cause and parties, between the first and the second

case, vide *Corporation v. Petrousse 1987 SLR.* In this particular case, although the parties are the same, the cause of action and the subject matter are different. The first case relates to the decision of the Respondent on 1st April 2016, while the second, present, case relates to the Respondent's decision on the 11th August 2016, on a different subject.

[17] Having found that res judicata does not apply in this matter, it goes without saying, that the argument for the abuse of process, should fall. I find that the present case is the only legitimate avenue available to the Petitioner for redress, and that the current proceedings therefore do not constitute an abuse of process.

[18] As to the Respondent's contention that "Linyon Sanzman" did not nominate any candidates to take part in the national assembly election, I find that it has no bearing in relation to the maintainability of this petition, in law.

[19] As I see it, with due respect to counsel, the allegation that this Court is ultra petita does not make any legal sense at a stage before the Court makes a final adjudication on issues raised in the petition.

[20] For these reasons, I dismiss the preliminary objections raised by the Respondent, in its entirety.

[21] Having said that, before I consider the Petition on the merits, I would like to restate herein what I have stated in ***Cousine Island Company Ltd Vs Mr. William Herminie, Minister for Employment and Social Affairs and Others - Civil Side No. 248 of 2000.*** Whatever the issue factual or legal that may arise for determination following the arguments advanced by counsel, the fact remains that in matters of Judicial Review, the Court is not sitting on appeal to examine the facts and merits of the case heard by the administrative or adjudicating authority. Indeed, the system of judicial review is radically different from the system of appeals. When hearing an appeal, the Court is concerned with the merits of the case under appeal. However, when subjecting some administrative decision or act or order to judicial review, the Court is concerned only with the "legality", "rationality" (reasonableness) and "propriety" of the decision in question ***vide the landmark dictum of Lord Diplock in Council of Civil Service Union Vs Minister for the***

Civil Service (1985) AC 374. On an appeal the question is "right or wrong?" - Whereas on a judicial review the question is "lawful or unlawful?" – Legal or Illegal? "Reasonable or Unreasonable"? – "Rational or Irrational?"

[22] On the issue of legality, I note, the entity of law is always defined, certain, identifiable and directly applicable to the facts of the case under adjudication. Therefore, the Court may without much ado determine the issue of "legality" of any administrative decision, which indeed, includes the issue whether the decision-maker had acted in accordance with law, by applying the *litmus test*, based on *an objective assessment* of the facts involved in the case. On the contrary, the entity of "reasonableness" cannot be defined, ascertained and brought within the parameters of law; there is no *litmus test* to apply, for it requires *a subjective assessment* of the entire facts and circumstances of the case under consideration and such assessment ought to be made applying the yardstick of human reasoning and rationale.

[23] On the question of legality of the impugned decision in this matter, firstly, it is evident that the writ of certiorari issued by the Supreme Court in MC 59 of 2016, in its Judgment dated 1st August 2016 quashed the decision of the Respondent to register the political party known as "Linyon Sanzman". The said judgment is still in force and stands as it is and shall continue to stand having the force of law unless and until set aside or annulled or stayed by any lawful order made by the appellate court. See, Mancienne v. Government of Seychelles SCA 10 & 10 (2) Consequently, the political party, the legal entity that was known as "Linyon Sanzman", no longer existed after the 1st August 2016. The minutes of the meeting of the Electoral Commission held on 9th August 2016, subsequent to the meeting with the representatives from both sides, shows that the EC had decided to meet next on the 11th August 2016 to reach a decision on the issue as to the legal consequences of the writ on the existence of "Linyon Sanzman". However, in the meeting of 11th August 2016, on a careful perusal of the minutes, I find that the EC did not take any decision on any legal steps so as to give a new lease of life to the then dead legal entity known as "Linyon Sanzman". Even the official communication from the EC to the Petitioner by way of a letter dated 11th August 2016 quoted supra betrays the fact that the EC did not comprehend the consequence and effect of the ruling of Justice

Renaud. That the Court had not "de-registered" the political party under the name "Linyon Sanzman", was immaterial and irrelevant. The quashing of the Respondent's impugned decision meant that "Linyon Sanzman" was never registered, to begin with. To date, that entity remains non-existent in the eye of law as it has not been registered after the writ effectively put an end to its existence.

[24] What the members of the EC did on 11th August 2016 meeting was not only unlawful and illegal but also outrageous, irrational and unreasonable given the circumstances. They obviously, usurped the powers of the appellate court, impliedly gave life to the dead entity and decided thus which I quote:

> *"we should grant him (Mr Aglae) the name ("Linyon Sanzman") and allow him to participate (in the forthcoming national assembly elections)"*

[25] (Within brackets, all mine). In fact, the decision to be made by the EC was never whether Mr Aglae was to be permitted use of the name "Linyon Sanzman" nor whether he was permitted to participate in the forthcoming elections. The only decision they were to make, was on the issue of whether "Linyon Sanzman" would be registered as a political party, or not. This, they miserably failed to do.

[26] Despite objections and interventions from two members of the EC which are pertinent, lawful and accord with reasoning, common sense and justice, this irrational decision was taken. In response to the issue that use of the words "Linyon Sanzman" would create more confusion, one member Mrs. Purvis, said:

> *"My proposal is (that) for the duration of this election, nobody can use that name ("Linyon Sanzman"). After (the) elections, whoever want(s) to come and register, they can do so."*

[27] It is interesting to note, this is the exact line of thinking that the Court took in MC 59 of 2016, when Justice Renaud issued the direction to the Respondent in his orders. It should also be noted, that this Court took the exact line of thinking in making the interim ex parte injunctions in MA 257 of 2016 and MA 258 of 2016, in MC 86 of 2016 and MC 87 of 2016, respectively.

[28] In the same discussions of the meeting, Mrs. Purvis had identified and pointed out to other members, the intent of Mr. Aglae in his insistence to use the name “Linyon Sanzman” was malicious, deceptive, and served to add confusion.

[29] Be that as it may. The input of another member to the meeting, one Mr. Lafortune, in writing is very interesting, and worth reproducing in its entirety, below:

> *“Chair and members,*
>
> *I refer to the proposed meeting today and the first item on the agenda for which I participated in all the discussions to date and would like to state my position on the matter.*
>
> *I have not yet received the written submission which was to be sent by Mr. Derjacques, lawyer for LDS. Nevertheless, Mr. Mancienne, in his meeting with us on Tuesday this week has explained their position in detail and I find his explanation and that of Mr. Aglae sufficient in order for me to form a clear opinion on the matter.*
>
> *In the EC's assessment of the original submission, when we had 2 applications on the same day, one a few hours before the other, the EC made its assessment exactly according to the wording of the law. .i.e the application which was received first, namely from Mr. Aglae, was assessed first and was found to comply with all the requirements of the law and the application was approved with the name Linyon Sanzman. This was because the name LS was not that of an already registered political party as stated in law. All members of the EC knew that the name LS had been used extensively by the opposition grouping for several months prior to filing their application but this fact was not considered relevant in our decision making process as we were sticking to wording of the law.*
>
> *Subsequently the application of Mr. Mancienne was then considered and again, by interpreting the law by its exact wording, the EC could not approve this application as the name was exactly the same name as the party already registered.*

Although it was obvious that the application by Mr. Aglae was not a coincidence, the EC applied the law to the letter and came to this decision. I was party to this process and up to now maintain that if we are to apply the law to the letter, our decision was correct.

Mr. Aglae, when we met him, did not provide a convincing argument as to why he chose the name LS and the same colours (blue, green and white) as Mr. Mancienne's group. Mr. Aglae confirmed that the name and colours was just the right ones for his party. He confirmed that even if he had been a political correspondent for Today newspaper, an SNP representative for Baie Lazare, and several other districts, had an office at the SNP headquarters at Arpent Vert, and eventually joined Mrs Amesbury for the last Presidential elections and now has formed a political party of his own, had NEVER heard the name Linyon Sanzman before he submitted his registration papers for the name. he further affirmed that despite being so heavily involved in politics, he did not watch SBC, did not read opposition publications on paper or on social media.

I find the above not only unconvincing, but a blatant lie.

The Court in its judgment, in ordering the EC to hear both parties to resolve the contentious issue, points the EC in the direction of interpreting the spirit of the wording of the law, on the subject of registering a name that would be likely to deceive the members of the party or the public. The Court also states that it was obviously not a coincidence that the same name was used.

If, as we are guided by the Court, that we must consider whether registering Mr. Aglae's party as LS has deceived the members of the public, I would say without any doubt that it has caused much confusion and still does to this day.

Furthermore, both applications were with the EC on the same day and we were able to make such assessment but decided not to do so as we treated the matter on a first come first serve basis.

To note also that Mr. Mancienne had an appointment to submit his papers the day before he and Mr. Aglae submitted together, but had to postpone as one of his members was unavailable.

My conclusion therefore, and as guided by the Court in requesting the EC to resolve the contentious issue 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, is as follows:

1. The reasons given by Mr. Aglae for choosing the name and the colours of LS are my view my view totally unfounded concoctions, and devoid of any merit.

2. This registration has caused much confusion to members of the public and still does today.

3. The EC should withdraw the registration of the name Linyon Sanzman granted to Mr. Aglae and give him the opportunity to use another name.

4. In order not to cause further confusion on the eve of National Assembly elections the name should not be used by any other political party.

5. The name can be available to the party of Mr. Mancienne, AFTER the elections if he so wishes to use this name for a period up to 3 months after the forthcoming elections and if he decides not to make use of it then the name shall be available for any party to use.

The above is my contribution."

[30] It is quite apparent, and safe to conclude, that the contributions of Mr. Lafortune shows a good understanding of the pertinent issues on hand, the technicality of law, reasonableness, which accords with common sense and justice.

[31] This is in stark contrast to the oral discussions of the meeting which simply revolved around their invented concepts of "de-registration" and "re-registration" of "Linyon

Sanzman" which had lost its legal existence 10 days earlier. There was the observation by the EC that the Court had not ordered "de-registration" and further, that Section 9 of the Political Parties (Registration and Regulation) Act provided for cancellation. This shows that there was indeed a lack of understanding of law and the legal consequences of the writ of certiorari issued by the Court.

[32] The quashing of the Respondent's decision to register "Linyon Sanzman", meant that all acts that flowed from the decision were null and void ab initio. This was not a cancellation under Section 9 of the Political Parties (Registration and Regulation) Act, since in a judicial review process, the Court cannot and will not step into the shoes of the statutory authority and effect the cancellation under the statue. This was not an order to "de-register" either, as was misconstrued and evidenced by the minutes of the meeting and letter to the Petitioner dated 11th August 2016. The effect of the quashing of the Respondent's decision to register "Linyon Sanzman" only reverted the Register of Political Parties, to the state it was in before the registration of "Linyon Sanzman", i.e. reverting to a point in time before "Linyon Sanzman" had even come into existence, in the eye of the law. Therefore, the question of granting of the name "Linyon Sanzman" and allowing Mr Aglae to participate cannot even arise, without first making the decision to register "Linyon Sanzman" as a political party. That decision was never taken.

[33] In view of all the above, I find that the impugned decision of the EC dated 11th August 2016 is not only illegal, but also irrational and outrageous.

[34] Having said that, I will now, look further into the second issue, as to "reasonableness" of the decision in question. What is the test the Court should apply in determining the reasonableness of the impugned decision in matters of judicial review?

[35] First of all, it is pertinent to note that in determining the reasonableness of a decision one has to invariably go into its merits, as formulated in ***Associated Provincial Picture Houses V Wednessbury Corporation [1948] 1 KB 223.*** Where judicial review is sought on the ground of unreasonableness, the Court is required to make value judgments about the quality of the decision under review. The merits and legality of the decision in such cases are intertwined. Unreasonableness is a stringent test, which leaves the ultimate

discretion with the judge hearing the review application. To be unreasonable, an act must be of such a nature that no reasonable person would entertain such a thing; it is one outside the limit of reason (Michael Molan, Administrative Law, 3 Edition, 2001). Applying this test, as I see it, the court has to examine whether the misguided decision of the EC in permitting one Mr Aglae to use the name "Linyon Sanzman" as a political party, and to participate in the forthcoming elections, is unreasonable having regard to all the circumstances of the case.

[36] At the same time, one should be cautious in that, the "Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made. Thus, the judicial review is made effective by the court quashing an administrative decision without substituting its own decision and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer." ***Per Lord Fraser Re Amin. [1983] ZAC 818 at 829, [1983] 2 All E R 864 at 868, HL.***

[37] In determining the issue of reasonableness of the decision in the present case, the court has to make *a subjective assessment* of the entire facts and circumstances of the case and consider whether the impugned decision of the EC is reasonable or not. In considering reasonableness, the duty of the decision-maker is to take into account all relevant circumstances as they exist at the date of hearing, i.e. on 9th August 2016, when both the Petitioner and Mr Aglae appeared before the EC. This must be done, in what I venture to call, "*a broad common sense way as a man of the world, and come to his conclusion giving such weight, as he thinks right to the various factors in the situation. Some factors may have little or no weight; others may be decisive but it is quite wrong for him to exclude from his consideration matters, which he ought to take into account*" ***per Lord Green in Cumming Vs. Jansen (1942) 2 All ELR at p656.***

[38] In my considered view, the EC in arriving at its decision, has excluded from its consideration matters, which it ought to have taken into account, in spite of the fact that those matters were brought to the attention of the EC, especially by Mr. Lafortune, as marshalled in his written contribution to the EC during the decision making process.

[39] For the reasons stated hereinbefore, I find and conclude that the impugned decision of the EC dated 11th August 2016 is illegal, irrational, improper and to say the least unreasonable. Consequently, I make the following orders:

(1) I allow the petition and issue a writ of certiorari quashing the said impugned decision of the EC accordingly.

(2) I confirm and hereby make permanent the Ex parte interim injection granted in this petition in respect of the relevant and operative part of it mutatis mutandis to form part of the orders made hereof, in this judgment; and

(3) I make no orders as to costs

Signed, dated and delivered at Ile du Port on 25 August 2016

D Karunakaran
Judge of the Supreme Court