

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2019] SCSC 120

MA 221/2018 arising from

MA 291/2017 and (DC 151/2014)

In the matter between:

MYRNA MICHEL   Petitioner  
(*rep. by Anthony Derjacques*)

and

JEAN CLAUDE MICHEL   1<sup>st</sup> Respondent  
(*rep. by Frank Elizabeth*)

NINETTE MICHEL   2<sup>nd</sup> Respondent  
(*rep. by Frank Elizabeth*)

And now in the matter of this Application:

**JEAN CLAUDE MICHEL**  
(*rep. by frank Elizabeth*)  
and

**Applicant-Respondent**

**MYRNA MICHEL**  
(*rep. by Anthony Derjacques*)-

**Respondent- Petitioner**

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**Neutral Citation:** *Michel v Michel & Anor* (MA 221/2018) [2019] SCSC (20 February 2019)

**Before:**               Burhan J

**Summary:**   Recusal- The main purpose of a Judge taking this oath peculiar to his office at the time of appointment, is to ensure that the said Judge acts in an independent and impartial manner in the conduct of his official duties as Judge - To give any other interpretation in the absence of any evidence to the contrary, would undermine the sacred official oath taken under the Constitution.

Heard:               12 February 2019

**ORDER**

The application for recusal of the Learned Judge is dismissed. Case to be referred back to the Learned Judge for continuation of hearing.

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**ORDER**

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- [1] By motion dated 10<sup>th</sup> September 2018, Mr. Elizabeth, Learned Counsel for the 1<sup>st</sup> applicant-respondent Mr. Jean Claude Michel (hereinafter referred to as the applicant), filed a motion in MA 221/2018, seeking the recusal of the Learned Trial Judge from case MA 291 of 2017 arising from DC/151 of 2014. The said motion was supported by an affidavit from the applicant Mr. Jean Claude Michel.
- [2] The background facts are that in the main case DC/151 of 2014, the petitioner in the said case Jean Claude Michel filed divorce proceedings against the respondent Myrna Michel. Parties were divorced and an order absolute was entered on the 17<sup>th</sup> December 2014. Thereafter Mrs. Myrna Michel by her Attorney at Law, Mr. Anthony Derjacques, filed an application MA 291/2017 seeking the following relief namely:
- a. *The Court makes an order of full lawful and beneficial ownership of land parcel V8311 and the matrimonial home for and in the entire interest of the Petitioner in accordance with rule 4 (i)(f) and*
  - b. *That the Court makes an order that the Petitioner be granted, forthwith, sole occupancy of land parcel V8311 and the matrimonial home thereon, forthwith, in accordance with rule 4 (i) (j) and*
  - c. *That the Court makes an order restraining the Respondent from entering and remaining on land parcel V8311 and the matrimonial home thereon, forthwith , in accordance with rule 4 (i) (h) (i).*
- [3] On the 11<sup>th</sup> of May 2018, an application MA 126/2018 was filed by Learned Counsel Mr. Frank Elizabeth on behalf of Mr. Jean Claude Michel in MA 291/2017, seeking that the said application MA 291/2017 be summarily dismissed. Thereafter on the 30<sup>th</sup> of May 2018, Mr. Frank Elizabeth Attorney at Law filed another

application MA 133/2018 seeking that Mrs. Ninette Michel be permitted to intervene in MA 291/2017. A statement of demand was also filed in the said application by Mr. Elizabeth dated 21<sup>st</sup> August 2018 after Court granted permission for the said intervention as there were no objections as borne out by the proceedings of 7<sup>th</sup> August 2018. Meanwhile an application for recusal was made by Mr. Elizabeth in chambers on the same date which was turned down by the Learned Judge and the matter of recusal was thereafter referred to the Hon Chief Justice. The application for recusal was further denied by the Hon Chief Justice. Learned Counsel Mr. Elizabeth according to the judgment in the case of *The Government of Seychelles & Anor v The Seychelles National Party & Ors and Viral Dhanjee SCA CP 3 &4 of 2014* now seeks an order from Court in regard to his formal application for recusal of the Learned Judge (MA 221/2018) which was referred to this Court.

[4] In his affidavit dated 7<sup>th</sup> September 2018, the applicant Mr. Jean Claude Michel avers that his father Mr. James Alix Michel the ex- President of the Republic of Seychelles and the father of the Learned Judge Mr. Patrick Pillay who were once in the same party are now fervent political adversaries and that the bitter political enmity between the gentlemen might cloud the judgment of the Learned Judge and lead her to become biased against him. He refers to an article published in the Victoria Times where the integrity and the “political machinations” of the father of the Learned Judge were ferociously attacked. He also avers that her bias is apparent as the Judge has failed to rule on his preliminary point of law that the application for matrimonial property is out of time. He therefore avers that “.... the Judge was (or could be) biased” and therefore the Learned Judge should not proceed to make any decisions in the said case. He further avers that there is a possibility of bias either unconsciously or perceived bias and therefore moves that an order of recusal be made on the Learned Judge.

[5] Prior to analysing the above mentioned grounds set out by the applicant in regard to recusal, it would be appropriate to set out the law in relation to the factors that should be considered in deciding the issue of recusal. Applications for recusal are mainly based on the maxim that Judges are independent and charged with the duty of impartiality in administering justice. In the Seychelles this was discussed in the

landmark cases of *The Government of Seychelles & Anor v The Seychelles National Party & Ors and Viral Dhanjee* (*supra*).

[6] The test to apply as set down by various authorities, also referred to in the many authorities referred to by Learned Counsel Mr. Elizabeth, is whether a fair minded and informed observer having considered the facts, would conclude that there was a real possibility that the tribunal was biased. Some of the factors to be considered by a Judge challenged with recusal in deciding his partiality or impartiality include whether the Judge:

- a) *has personal interest or personal knowledge in respect of the case,*
- b) *has a personal interest in the outcome of the case.*
- c) *is related to a party or attorney in the case.*
- d) *is a material witness in the case.*
- e) *has previously acted as an attorney for either party.*

It is apparent from the facts stated in the affidavit of the applicant that none of the above factors exist in this instant application for recusal.

[7] One of the main grounds relied on by the applicant Mr. Jean Claude Michel is the “bitter political enmity” between his father and the father of the Learned Judge concerned which according to the applicant existed since the year 2014. Much water has flowed under the bridge since then. Court could take notice that at present Mr. James Alix Michel is no more the President of the Republic of Seychelles and Mr. Patrick Pillay is no more the Speaker of the National Assembly. Therefore there exists no reason for the continued existence of the “bitter political enmity” that the applicant refers to in his affidavit, especially considering, the passage of time and events since the occurrence of the event referred to in paragraph [4] herein. Further whatever the feelings that exist between them, one cannot jump to the conclusion that the Learned Judge too is involved or affected by these feelings.

[8] One could take notice that the Learned Judge concerned was a career Magistrate serving the Judiciary of Seychelles well before 2014 making orders, rulings and judgments spanning over several years, including the period of time referred to by the applicant 2014. She would have no doubt come across very many cases before

her concerning persons who opposed her father's political views. No instances have been brought to the notice of this Court where the Learned Judge against whom the recusal application has been made, has been found to have been biased or where any party has complained of perceived bias in any orders, rulings or judgments given by the Learned Judge or even at the time she was a Magistrate.

[9] I also observe in the proceedings dated 7<sup>th</sup> August 2018 (Chambers) that one of the grounds given by the Learned Judge in her refusal to recuse is reminding Learned Counsel for the applicant that she had taken the official oath prior to her appointment as Judge to act without fear, favour, affection or ill will.

[10] It would be pertinent at this stage for the benefit of the applicant, to set down the Constitutional Oath as set out in the 1<sup>st</sup> Schedule of the Official Oaths Act.

*“I ..... do swear that I will well and truly serve the Republic of Seychelles in the office of ..... and that I will do right in accordance with the Constitution of Seychelles as by law established, and in accordance with the laws of the Republic **without fear or favour, affection or ill will** (Emphasis mine).  
SO HELP ME GOD.”*

[11] The main purpose of a Judge taking this oath peculiar to his office at the time of appointment, is to ensure that the said Judge acts in an independent and impartial manner in the conduct of his official duties as Judge, whoever the appointing authority may be. It is the considered view of this Court that one should not treat this oath of office lightly. In the absence of factors for the recusal of Judge as set out in paragraph [6] herein, this sacred oath is of paramount importance in the discharging or performing one's official duties independently and impartially as a Judge. To give any other interpretation in the absence of any evidence to the contrary, would undermine the sacred official oath taken under the Constitution.

[12] I also observe that the applicant has referred to the Learned Judge being biased as the Judge has failed to rule on his preliminary point of law that the application for matrimonial property is out of time. When one considers the proceedings of 24<sup>th</sup> May 2018, the application made by the applicant's Learned Counsel that day Mr. Chetty was to hear his application MA 126 of 2018 (which requested that the application for

matrimonial property be dismissed on the basis it is baseless, frivolous, vexatious and without merit) at the end and the motion could be part of the submission at the end. Thereafter trial commenced on the 24<sup>th</sup> of May 2018 but was adjourned, due to both parties agreeing to attempt Mediation to resolve the dispute which failed and was soon thereafter, followed by the application for recusal. It is also to be noted that in the answer filed, there is a mention that the application is out of time but not set down as a plea in limine nor addressed accordingly. Therefore the applicant's contention that the Learned Judge failed to rule on a preliminary point i.e. that the application was out of time is incorrect and bears no merit.

[13] It would be pertinent at this stage to refer to the case **Livesey v New South Wales Bar Association (1985) L.R.C (Const) – 1107** it was held:

*“-----, it would be an abdication of judicial function and an encouragement of procedural abuse for a Judge to adopt the approach that he should automatically disqualify himself whenever he was requested by one party so to do on the grounds of possible appearance of prejudgment or bias, (emphasis mine) regardless of whether the other party desired that the matter be dealt with by him as the Judge to whom the hearing of the case had been entrusted by the ordinary procedures and practice of the particular Court.”*

[14] I am satisfied having considered all the aforementioned circumstances set out by the applicant, that a fair minded and informed observer having considered all the circumstances peculiar to this case, would not come to the conclusion that there was a real possibility of the Learned Trial Judge being biased **Re Medicaments No 20 [2001] 1 LWR 700 and The Government of Seychelles & Anor v The Seychelles National Party & Ors and Viral Dhanjee (supra)**.

[15] I therefore proceed to decline and dismiss the application for recusal.

Signed, dated and delivered at Ile du Port on 20 February 2019.

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Burhan J