

**SUPREME COURT OF SEYCHELLES HELD AT ILE DU PORT**

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**Reportable**

[2019] SCSC 846

CS 97/2019

In the matter between:

**LIZANNE REDDY & OR**

*(rep. by Samantha Aglae)*

**Plaintiff**

and

**WAVEL CHARLES RAMKALAWAN**

*(rep. by Anthony Derjacques)*

**Defendant**

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**Neutral Citation:** *Lizanne Reddy & Or vs Wavel Ramkalawan* (CS 97/2013) [2019] SCSC 846  
(2 October 2019).

**Before:** Govinden J

**Summary:**

**Heard:** 2 October 2019

**Delivered:** 2 October 2019

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**ORDER**

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**RULING**

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**GOVINDEN J**

[1] The Seychelles Court of Appeal has in its judgment in Civil Appeal (CA) 7 of 2016, delivered on the 23<sup>rd</sup> of August 2019, has made the following order in penultimate paragraph of its judgment.

[2] *“For the reasons enumerated above. I order that the Supreme Court case CS 97 of 2013 which was the subject matter of appeal in Court of Appeal case CA 7 of 2016 be remitted back to the Supreme Court with a further order that another Judge of the Supreme Court*

*refers the two constitutional questions raised to the Constitutional Court for determination of the two constitutional questions”.*

[3] The Learned Chief Justice has assigned to me this case following the remitting of the case from the Court of Appeal to the Supreme Court and the direction above mentioned.

[4] Having entertained some doubts as to whether I have the powers and jurisdiction to make such kind of an order as directed by the Court of Appeal, I have invited Counsels for the Plaintiffs and the Defendant to address me on the issue. I have carefully consider their submissions and I have further scrutinised the relevant provisions of the Constitution and the relevant Court of Appeal Judgment in which it has referred this case back to the Supreme Court.

[5] Having done so I have considered that I do not have the powers to act in accordance with the direction of the Court of Appeal.

[6] This Court has been tasked by the Court of Appeal to, as a Supreme Court Judge, refer two Constitutional Court questions raised in CA 7 of 2016 to the Constitutional Court for the determination of the two constitutional questions.

[7] Though not specifically referred in the judgment I assume that the Court of Appeal wants this Court to act under the provisions of Article 46 (7) of the Constitution. Article 46 (7) of the Constitution provides as follows:

(i) *“When the course of any proceedings in any Court other than the Constitutional Court or the Court of Appeal a question arises with regards to whether there has been, was likely to be a contravention of the charter, the Court shall, if it is*

*satisfied that the question is not frivolous or vexatious or has already been the subject matter of a decision of the Constitutional Court or the Court of Appeal immediately adjourn the proceeding and refer the question for determination by the Constitutional Court”.*

[8] It is clear from the above provision that the Supreme Court is not and does not simply act as a conduit and pass on a case to the Constitutional Court. Things has to happen before this Court before it can refer a question to the Constitutional Court for determination. If these things do not happened, this Court will not be able to act under the said article even if ordered by the Court of Appeal because to do so would be an abuse of the supreme law. The events that have to take place before this Court are as follows:

- (i) *There should be a proceeding before the Supreme Court.*
- (ii) *In the course of this proceeding a question or questions should arise with regards to whether there has been or is likely to be a contravention of the charter.*
- (iii) *The Court must be satisfied that the question or questions is or are not frivolous or vexatious or has already been the subject matter of a decision of the Constitutional Court or the Court of Appeal.*

[9] These conditions have not arison before me as a Judge of the Supreme of Court. Therefore, I find myself unable to act, as to do so will result in a Constitutional contravention. In paragraph 13 of its judgment the Learned Justices of appeal held that they did not refer the matter to be considered by the Constitutional Court itself because it was proscribed from doing so by the wording of Article 46 (7) of the Constitution.

[10] The constraints faced by the Court of Appeal is similar felt by this Court as a simple reading of Article 46 (7), will make it patently clear that the Supreme Court would be unable to remit this case as the Court of Appeal ordered.

Signed, dated and delivered at Ile du Port on 2 October 2019

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Govinden J