

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 287

MC 109/2019

In the matter between:

ROSITA PARCOU

(rep. by S. Rouillon)

Petitioner

and

JILL LAPORTE

(rep. by B. Georges)

Respondent

Neutral Citation: *Parcou v Laporte* (MC 109/2019) [2020] SCSC 287 (22 May 2020).

Before: Carolus J

Summary: Petition for new trial under section 194 of the Seychelles Code of Civil Procedure

Heard:

Delivered: 22 May 2020

ORDER

1. The petition for a new trial must be fixed for mention so that the parties can inform the Court whether they want to proceed by way of written or oral submissions.
2. There are no grounds for this Court to reasonably make a finding that “*a question arises with regard to whether there has been or is likely to be a contravention*” of the Constitutional right to protection of families enshrined in Article 32 of the Constitution, and refer the matter to the Constitutional Court under Article 46(7) of the Constitution.

RULING

CAROLUS J

- [1] The petitioner and respondent were defendant and plaintiff respectively in CS 128/2018, an action for simultaneous declaration of *recherche de paternité* and *desaveu de paternité* in which the Learned Chief Justice gave judgment for the plaintiff/respondent on 11th November 2019 and declared her to be the child of Julien Kaven Parcou, the husband of the defendant/ petitioner.
- [2] The petitioner has now filed this petition for new trial under section 194 of the Seychelles Code of Civil Procedure (“SCCP”) on numerous grounds including that new and important evidence having come to the knowledge of the petitioner after the trial.
- [3] Counsel for the petitioner has raised the point that a constitutional issue arises from this petition that ought to be referred to the Constitutional Court in terms of Article 46(7) of the Constitution. After a thorough perusal of the petition the only reference therein to what may possibly be considered a constitutional issue is the following:
3. *The Petitioner avers that the case should be reheard in a new trial for the following reasons:*
- 3.1 *The Petitioner has been legally advised and believes that the said judgment is another among a series of dubious, speculative and dangerous judgments in paternity cases recently (copies of the three judgments attached ...:*
- a. ...
[...]
- i. *The said dubious judgments are contrary to the constitutional right to protection of the family by inserting, by subjective, arbitrary interpretations of the law, new members into a family without evidential proof of such facts causing great emotional and financial damage to the recipient family.*
- [4] I note that the matters reproached of the 3 judgments referred to in the above paragraph 3 in subparagraphs (a) to (h) among other things, relate to the conduct of the cases and

subjective interpretations of the law, going against established procedures in such cases, relying on unreliable and weak evidence, failing to give due importance to relevant evidence, wrongly reversing burden of proof and making unjustified findings by the trial judges.

[5] Article 46(7) reads:

(7) Where in the course of any proceedings in any court, other than the Constitutional Court or the Court of Appeal, a question arises with regard to whether there has been or is 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 of a decision of the Constitutional Court or the Court of Appeal, immediately adjourn the proceedings and refer the question for determination by the Constitutional Court.

[6] In *Chow v Bossy* (SCA 11/2014) [2016] SCCA 20, the Seychelles Court of Appeal stressed that the raising of a constitutional issue does not require the immediate referral of the issue to the Constitutional Court. The Judge must be satisfied that the application for reference to the Constitutional Court is: (a) neither frivolous; (b) nor vexatious; (c) nor is it one that has already been the subject of a decision of the Constitutional Court or the Court of Appeal. The Court of Appeal observed that:

“The referral Court does not play the role of an automatic transmission gear but one of judicious judicial screening. It should be satisfied in the first place that the application is one worth sending for a decision to the Constitutional Court.”

[7] It is not sufficient that the alleged constitutional issue has not been the subject of a decision in the Constitutional Court or Court of Appeal. A determination as to whether the issue, and the manner in which it is raised and argued, must be considered to determine whether request for the referral is frivolous or vexatious. In *R v Agathine* (CO 38/2005) [2007] SCSC 128 the Court of Appeal stated that the “*terms "frivolous" and "vexatious," in their legal connotations mean, cases or issues that are obviously unsustainable.*”

- [8] Learned Counsel makes reference to a series of decisions that he believes are legally flawed and violate Article 32 of the Constitution. This Court does not have the jurisdiction to evaluate the constitutional correctness of decisions that have not been overturned by a superior court. The manner in which this issue has been raised cannot therefore sustain a referral to the Constitutional Court. Litigants who genuinely believe that a constitutional issue arises in the course of their case must ensure that their request for a referral is sufficiently argued to enable the Court, as observed by the Court of Appeal, to engage in “judicious judicial screening” of a constitutional questions.
- [9] I am of the view that the above reveals no grounds for this Court to reasonably make a finding that “*a question arises with regard to whether there has been or is likely to be a contravention*” of the Constitutional right to protection of families enshrined in Article 32 of the Constitution, and refer the matter to the Constitutional Court under Article 46(7) of the Constitution.
- [10] The respondent having filed an answer to the petition for a new trial, the matter must be fixed for mention so that the parties can inform the Court whether they want to proceed by way of written or oral submissions.

Signed, dated and delivered at Ile du Port on this 22nd May, 2020.

Carolus J