

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 1143
MA 48/2021
(Arising in MC 17/2021)

In the matter between

ASSEMBLIES OF GOD OF SEYCHELLES
(rep. by Guy Ferley)

Petitioner

And

THE ATTORNEY GENERAL
(rep. by Georges Thatchett)

Respondent

Neutral Citation: *Assemblies of God of Seychelles v The Attorney General* (MA209/2021)
(Arising in 17/2021) [2022] SCSC (28 September 2018).

Before: Vidot J

Summary: Judicial Review; Grant of Leave to Proceed pursuant to Rule 2(1) of the Supreme Court (Supervisory Jurisdiction over Subordinate Court, Tribunal and Adjudicating Authorities) Rules

Heard: Counsels filed submissions

Delivered: 14 October 2022

ORDER

On appeal from the xxx Magistrates' Court, Seychelles (xxx (name of Magistrate sitting as

RULING

VIDOT J

Background

[1] The Petitioner, a Christian faith-based association registered on the 25th April 1991 seeks leave to proceed on an application for judicial review. On 03rd March 2021, the Applicant filed a Notice of Motion supported with an affidavit of Mr. Pascal Payer representing the

representing the Applicant for such Order. The judicial review application, case no. CS17/2021 was filed on the same date.

- [2] The Judicial Review application concerns the decision of the Town and Country Planning Authority (“TCPA) to refuse the Applicant’s application to use their property, land parcel PR849 on which to erect a building to be used as worshipping venue for its congregation. Actually, on 25 August 2016, the Applicant lodged with the TCPA its application together with architectural drawings to develop the construction. The TCPA communicated its decision refusing the application through a letter dated 20th December 2016. The Applicant appealed against that decision to the Minister of Land Use and Habitat on 18th January 2017. On 29th May 2017, the Applicant received a letter from the said Minister rejecting the Appeal. This letter is the impugned document that is subject of the judicial review.
- [3] Mr. Payet’s affidavit dated 26th May 2021, in support of the application avers that the Petitioner has sufficient interest in the matter and a bona fide, fair and justified claim.
- [4] The Respondent objects to the application mainly on the basis that the application for leave to proceed was filed out of time. This means that the application is prescribed. The Respondent further objects on grounds that the Petitioner has not sought leave of the Court to file the application for leave out of time. They also argue that the application for leave to proceed is not in good faith and that there is no arguable case for the Petitioner. The Respondents challenges the application as being frivolous and vexatious. Finally the Respondent states that the Petitioner does not have a cause of action against the Respondent.
- [5] The Petitioner admits that it filed the application outside the 3 months prescriptive period for bringing such application for judicial review. It claims that on 03rd March 2021, it filed an application seeking an order to grant leave to file the Application out of time. I have thoroughly looked through all files involving the Petitioner and the Respondent in my possession and have not found any such application for leave to file the application out of time. I also note that the proceedings show that at no point in time did Counsel indicated to Court that the Application was prescribed and that an application seeking leave to allow the filing out of time was filed. So, I take it that such application was not filed

Leave to Proceed on an Application for Judicial Review

[6] An application for leave to proceed on judicial review is made under Rule 6(1) of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules (“the Rules”). Rule 7 (1) provides for circumstances whereby there can be opposition to the granting of leave. It provides as follows;

“Upon an application being registered under Rule 5, the respondent or each of the respondents may take notice of it at any time and object to the grant of leave to proceed, or if leave to proceed had been granted object to the application at any time fixed by Rule 12 for filing objections and the Supreme Court may make such order on the objections as may deem fit.”

[7] When considering whether or not to grant leave, the Court shall satisfy itself, as per Rule 6(1) that the Petitioner has sufficient interest in the subject matter of the petition and as per Rule 6(2) where the petitioner has sufficient interest in the matter, to consider whether the petitioner has the requisite standing to make the application.

[8] The application for leave was made ex-parte. At this stage the Court filters out the application to satisfy itself that prima facie reasons exists for the grant of leave. Normally, the Judge should grant if forthwith, if it is arguable. If it is not it is rejected and if it falls in between, an inter partes hearing is held. It makes no allowances for busy bodies. It assesses whether the petitioner is in good faith and has locus standi. When addressing good faith the petitioner must show that the issue(s) it raises in the application is / are arguable. The concept of arguability also serves as a filter against useless and frivolous applications. Leave will not be granted unless the petitioner demonstrates an arguable point; see **R v Secretary of State for Home Department, ex-parte Cheblak 1 WLR 8980**.

The Granting of Leave

[9] When this Court granted leave to the Petitioner to proceed, it did so, ex-parte. At that time, when granting leave, the Court did not look at the application in depth but merely considered the judicial review application briefly and the affidavit attached to the application for leave. Based on those, the Court concluded that the Petitioner had interest

in the matter and only on that basis leave was granted. It did not have the benefit of the Respondent's objections to appreciate the reasons for such objections. However, at that stage the Court ordered that the Respondent be served and stated that should the Respondent have any objections, the Court would hear such objections. It is only through the affidavit of the Respondent that the Court appreciated the case in a different perspective.

[10] However, it was also after full consideration of the main case MC17/2021 and MA 209/2021 the Court was better able to appreciate the Application for Leave. The nature of the application indicates that the Petitioner has an interest in this matter. It is after the Court has satisfied itself that the Petitioner has sufficient interest in the matter, that it considers that second test which is good faith. Looking at the two other cases mentioned above, it is clear that the Petitioner does not bring that application in good faith and the Court notes the Petitioner does not come with clean hands.

[11] When addressing good faith, the Petitioner must show that the issue it raises in the application is arguable. The Petitioner must show that the case they make on material produced is a genuine case as opposed to a frivolous one. In **Omaghomi Belive v Government of Seychelles & Or [2003] SLR 140**, good faith is described thus

"the concept of 'good faith' is not to be considered in contra-distinction with the concept of 'bad faith'. It involves the notion of 'uberrima fides' to the extent that the petitioner when filing the petition should have had an 'arguable case'. That is an objective consideration which has to be assessed by court in deciding whether leave to proceed should be granted or refused."

[12] It was held in **Durai Karunakaran v CAA SCA33 of 2016** that *"... if the issue raised in the application is arguable, it would follow that it has been made in good faith. If the issue is not arguable and only made frivolously, with levity and with the intention of challenging authority simply for the sake of it, it is made on an ego trip and there is no arguability consequently no good faith."* In **Cable & Wireless (Seychelles) Ltd. v Minister of Finance and Communications & Ors CS 377 of 1997**, it was held that *"the concept of 'good faith' required under Rule 6 aforesaid is not to be considered in contra distinction*

with the concept of “bad faith”. It involves the concept of ubberime fides to the extent that the petitioner when filing the petition should have had an arguable case. This is however an objective consideration that has to be assessed by court deciding whether leave should be granted or refused.”

- [13] It is evident from the affidavit filed that the Petitioner has not demonstrated that he has an arguable case. The constitutional issues in respect of right to right to property pursuant to Article 26(1) and right to freedom of conscience under Article 21(1) raised by the Petitioner before the Constitutional Court and which have bearing on the present application have already been adjudged on. That Court found that there weren't any breaches of such rights. Allegations that the acts of the Respondent was unreasonable due to the fact that other faith based denominations have set up worshipping venues in residential areas does not hold water. Even if such averment was so, it does not mean that there cannot be policies put in place to prevent construction of such venues in residential areas. The Respondent has already conducted tests for noise pollution and it concluded that same exists. Apart from these the Petitioner does not present any more to demonstrate that it has an arguable case. Arguability is a question of fact based on materials. The documents presented with the Application for Exercise of Supervisory Jurisdiction does not demonstrate that.

Findings

- [14] The Petitioner filed an Application for leave to judicially review decision delivered by the TCPA and the Minister of Land Use and Habitat. However, that Application was filed in contravention of Rule 4 of the Rules. It was filed outside the limitation period. The Petition did not make application to leave to file the Application out of time. That is fatal. Furthermore, despite Counsel for the Petition alleging that such an application was filed, no such application was on file and therefore, I concluded that there wasn't such an application. Counsel further did not address Court of any application seeking leave to file the Application out of time. The Respondent has raised much procedural mistake as an objection to the grant of leave to proceed to judicial review. Therefore, in terms with Rule 7(1), I refuse the application to proceed on judicial review.

[15] Furthermore, I find that the Petitioner does not have any arguable case and I have explain the same above.

[16] The Application is disallowed.

Signed, dated and delivered at Ile du Port on 14 October 2022

A handwritten signature in blue ink, appearing to read 'M. Vidot', is written over a horizontal blue line.

Vidot J