

**SUPREME COURT OF SEYCHELLES**

---

**Reportable**  
MA268/2023  
(Arising in MC49/2023)

In the matter between:

**NICHOLE FANCHETTE**  
*(represented by Mr. Joshua Revera)*

**Petitioner**

and

**PUBLIC SERVICE APPEAL BOARD**

**Respondent**

---

**Neutral Citation:** *Fanchette v Public Service Appeal Board* (MA268/2023) (14 March 2024)  
**Before:** Adeline j  
**Summary:** Leave for Judicial Review  
**Delivered:** 14 March 2024

---

**RULING**

---

**Adeline j**

[1] By way of a petition dated 10<sup>th</sup> July 2023 supported by an affidavit filed in Court on the 11<sup>th</sup> July 2023, one Nichole Fanchette of Perseverance, Mahe, Seychelles (“the Petitioner”) invokes the Supervisory Jurisdiction of this Court conferred upon it by Article 125(1)(c) of the Constitution, read together with the Supreme Court (Supervisory Jurisdiction over Subordinates Courts, Tribunals and Adjudicating Authorities) Rules (SI40 of 1995) seeking, inter alia, the issuing of a writ of mandamus quashing the order made by the Public Service Appeal Board, (“the Respondent”) dated 10<sup>th</sup> day of April 2023.

[2] On the very same day, 11<sup>th</sup> July 2023, the Petitioner, through Counsel, applies to this Court by way of notice of motion supported by an affidavit for leave for him to proceed with the petition for judicial review of the decision of the Respondent.

[3] By an amended petition dated 12<sup>th</sup> November 2023 supported by an affidavit, the Petitioner amends the reliefs sought in the initial petition. The reliefs being sought for in the amended petition read as follows;

*“1. To issue a writ of certiorari quashing the order made the Respondent dated the 10<sup>th</sup> day of April 2023.*

*2. To issue a writ of mandamus order the Respondent to hear matters filed before it by the Petitioner, and*

*3. For this Honourable Court to make any other order that it shall deem fit in all the circumstances of this case and costs”*

[4] The Petitioner has now, by notice of motion supported by an affidavit in substitution of his original notice of motion dated 10<sup>th</sup> July 2023 filed as MA268/2023, filed in Court an “amended Application for leave under Rule 5 read with Rule 6 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules (“the Rules”).

[5] At this juncture, it is pertinent to quote the provision of Rule 1(2) which is couched as follows;

*“These Rules provide for practice and procedure of the Supreme Court in respect of an application for the exercise of the Supervisory Jurisdiction of the Court over Subordinate Courts, Tribunals, and Adjudicating Authorities.”*

[6] I have firstly read the initial and the amended petition proper. I observe, inter alia, that few paragraphs therein are legal averments, and it is my considered view, that this is contrary to the rules that pleadings must state facts but not law. In fact, my reading of Rule 3 of the Rules as regards to the particulars that have to be in the petition confirms that law is not to be part of the pleadings.

- [7] I also observe, that an amended petition has been filed, presumably, under Section 146 of the Seychelles Code of Civil Procedure (Cap 213) (“the SCCP”) although it doesn’t appear that leave of this Court had been obtained prior.
- [8] Clearly, therefore, the amended application for leave for the Petitioner to proceed with judicial review filed as MA268/2023 has been made by way of notice of motion instead of a petition as required by Rule 2(1) of the Rules. For that particular reason, therefore, the application for leave is adjudged to be incompetent and unsustainable in law, and is accordingly dismissed.
- [9] As regards to the amended petition proper, put aside the fact that leave of this Court was not sought for prior, any motion to amend the initial petition would have been misconceived as in my considered opinion, the provisions of Section 146 of the SCCP applies where the remedies being sought for is in private law as opposed to public law, as in the instant case, unless it is expressly provided for that it applies.
- [10] I say so because there exists no similar expressed provisions as under Rule 2(2) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules under the Supreme Court (Supervisory Jurisdiction and Adjudicating Authorities) Rules. For ease of reference Rule 2(2) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitutional Rules reads;
- “2(2) Where any matter is not provided for in these Rules, the Seychelles Code of Civil Procedure shall apply to the practice and procedure of the Constitutional Court as they apply to civil proceedings before the Supreme Court”*
- [11] In the final analysis, therefore, it is the finding of this Court, that no provision exists in law to amend a petition for Judicial review made under the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules and as such, the amended petition is dismissed.

Signed, dated and delivered at Ile du Port on 14<sup>th</sup> March 2024

---

Adeline J