

IN THE CONSTITUTIONAL COURT OF SEYCHELLES

[Corum: Burhan J and Dodin J]

CP 11/2010

[2013] SCCC

CLIVE LAWRY ALLISOP
Petitioner

versus

THE FINANCIAL INTELLIGENCE UNIT
First Respondent

ATTORNEY GENERAL
Second Respondent

Heard: 29 October 2013

Counsel: Mrs. Alexia Amesbury Attorney at Law with Mr. Frank Elizabeth
Attorney at Law for petitioner

Mr. Khalyaan Karunakaran State Counsel for respondents

Delivered: 12 November 2013

RULING

Burhan J and Dodin J

[1] This is a ruling in respect of an application made by the Petitioner to amend the petition which was filed as far back as the 1st of December 2010. In the original petition filed the

Petitioner sought to challenge the constitutionality of section 3 (1) and section 9 (1) of the Proceeds of Crime (Civil Confiscation) Act, Act 19 of 2008 (herein after referred to as the POCC Act) on the grounds that it contravened Article 19 (1), 19 (2) and 26 (1) of the Constitution of the Republic of Seychelles. The Respondents filed their submissions on the 8th of December 2012. Thereafter the Petitioner filed this application to amend the petition on the 18th of September 2013.

[2] A perusal of the amended petition shows that the Petitioner now seeks by the amendment to challenge the constitutionality of section 3 (3), section 4 (1) (b) (i), section 9 (3) and section 9 (1) of the POCC Act as being inconsistent with Article 5 of the Constitution and that the sections violate provisions of the Charter of Fundamental Rights and Freedoms. The other relief prayed for is a writ of mandamus against the 1st Respondent compelling them to return the Petitioner's property with interest and costs.

[3] An analysis of the amended petition reveals that the challenge in respect of the constitutionality of section 3 (1) of the POCC Act has been dropped by the Petitioner. The new sections that are being challenged in the amended petition are section 3(3), section 4 (1) (b) (i) and section 9 (3).

[4] In terms of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules (hereinafter referred to as the Constitutional Court Rules), Rule 2 (2) reads as follows;

1)

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.*

[5] Learned counsel for the Petitioner seeks to rely on this Rule and submits that in terms of section 146 of the Seychelles Code of Civil Procedure she be permitted to amend her petition.

[6] However Rule 5 (3) of the Constitutional Court Rules reads as follows;

The Court shall not permit an amendment of a petition which seeks to include any new matter not pleaded in the petition.

[7] Therefore Rule 5 (3) specifically refers to an instance which precludes the amendment of a petition. It cannot be said therefore that the Constitutional Court Rules do not provide for a matter concerning the amendment of a petition. Therefore it is our view that section 146 of the Civil Procedure Code does not apply when specific and relevant provisions exist in the Rules in respect of the amendment of a petition.

[8] The next issue to decide would be whether the amendment contains “*any new matter not pleaded in the petition*”.

[9] It is clear that no relief has been sought in respect of section 4 (1) (b) (i) and 9 (3) in the original petition filed and therefore this would amount in the view of this court to a “*new matter*” for court to determine as relief has not been sought in the original petition.

[10] We also draw attention to Rule 4 (1) (c) of the Constitutional Court Rules which reads as follows;

4(1)Where the petition under rule 3 alleges a contravention or a likely contravention of a provision of the Constitution, the petition shall be filed in the Registry of the Supreme Court.

a)

b)

c) in a case where the likely contravention arises in consequence of any law within 90 days of the enactment of the law.

[11] The amended petition seeks to challenge contraventions arising in consequence of the POCC Act 5 years after the enactment of the law. Be that as it may, in addition, in this instant case, it is apparent that the amendment of the petition is being sought to introduce a new matter after the submissions of the Respondents have been filed. In the submissions of the Respondents they have clearly indicated their stance on the original

petition and the fact that all the matters the Petitioner intends challenging in his original petition have already been decided by the highest forum, the Seychelles Court of Appeal which upheld the judgment of the Constitutional Court of Seychelles in *Hans Josef Hackl v The Financial Intelligence Unit CC 1 of 2009*. It is therefore quite obvious that the Petitioner now intends to introduce “*new matters*” to circumvent this issue raised by the Respondents in their submissions. This cannot be permitted.

[12] Considering the facts peculiar to this case, the application to file an amended petition is denied. The case will proceed on the merits of the original petition filed.

Signed, dated and delivered at Ile du Port on 12 November 2013

M Burhan
Judge of the Supreme Court

G Dodin
Judge of the Supreme Court