

**IN THE SEYCHELLES COURT OF APPEAL**

**[Coram: A. Fernando (J.A) , B. Renaud (J.A), F. Robinson (J.A)]**

**Constitutional Appeal SCA CP 01/2018**  
**(Appeal from Constitutional Court Decision CP 04/2017)**

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Ralph Volcere

Appellant

Versus

Annette Georges

1<sup>st</sup> Respondent

Simone De Commarmond

2<sup>nd</sup> Respondent

The Constitutional Appointments  
Authority

3<sup>rd</sup> Respondent

Wavel Ramkalawan

4<sup>th</sup> Respondent

The Hon. Attorney General

5<sup>th</sup> Respondent

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Heard: 03 December 2018

Counsel: Mr. Elvis Chetty standing in for Miss Alexandra Madeleine for the Appellant

Mr. Anthony Derjacques for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents

Mrs. Alexia Amesbury for the 4<sup>th</sup> Respondent

Mr. Chinnasamy Jayaraj for the 5<sup>th</sup> Respondent

Delivered: 14 December 2018

**JUDGMENT**

**F. Robinson (J.A)**

## The Background

1. The appellant is a citizen of Seychelles. The appellant filed a petition accompanied by an affidavit in support thereof, which was amended on the 17<sup>th</sup> October 2017, seeking constitutional redress under article 130 of the Constitution of the Republic of Seychelles (hereinafter referred to as the "*Constitution*").
2. The third respondent is a constitutional body established under article 139 (1) of the Constitution. The first and second respondents are members of the third respondent. The fourth respondent is the Leader of the Opposition in the National Assembly, appointed in terms of article 84 of the Constitution. The fourth respondent appointed the first and second respondents to the third respondent in terms of article 140 (1) of the Constitution, on the 24<sup>th</sup> April 2017. The fifth respondent is the Attorney General, joined to this petition in terms of Rule 3 (3) of the Constitutional Court (Application, Contravention, Enforcement, or Interpretation of the Constitution) Rules (hereinafter referred to as the "*Rules*").
3. The remedies claimed are as follows:
  - "(a) Declare that the appointment of the first and second respondents to the third respondent by the fourth respondent was a contravention of the Constitution and therefore invalid and void;
  - (b) Declare that any actions taken by the third respondent whilst the *second and third respondents* were appointed to it were invalid and void (sic);
  - (c) make such other declaration or orders, issue such writ and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the Constitution and disposing all the issues relating to the application; and/or and
  - (d) make such additional orders under this Constitution as may be prescribed by law."
4. The respondents raised preliminary objections denying the locus standi of the appellant to maintain the amended petition. Among the submissions made on behalf of the respondents in the Constitutional Court as a basis to this objection of an absence of locus standi was that the appellant had failed to show that the Constitution (other than a provision of Chapter

III – Seychellois Charter of Fundamental Human Rights and Freedoms) has been contravened and that his interest is being or is likely to be affected by the contravention.

5. The Constitutional Court delivered a judgment dismissing the petition "*to the extent that the petitioner has failed to demonstrate his locus standi before [it] in his amended petition*" (hereinafter referred to as "*The Judgment of the Constitutional Court*"). The Constitutional Court was of the view that "*the petitioner has been unable to show that his personal interest has been affected or is likely to be affected by the appointment of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents [the first and second respondents]*".

### **The grounds of appeal and submissions of Counsel**

6. The appellant being dissatisfied with The Judgment of the Constitutional Court has filed an appeal against the same on three grounds as follows.
7. Firstly, in The Judgment of the Constitutional Court, the learned Judges erred in law and on the evidence in dismissing the amended petition on the grounds that the appellant, as a concerned citizen, had failed to show that his personal interest is being or is likely to be affected by the contravention, and that the amended petition is a case that has exceptional circumstance so as to enable him to meet the exceptional test of *Michel v. Dhanjee* [2012] SLR 258, (hereinafter referred to as "*Michel*").
8. Secondly, in The Judgment of the Constitutional Court, the learned Judges erred in law and on the evidence in holding that the appellant had failed to show that his personal interest is being or is likely to be affected by the appointment of the first and second respondents because he had not shown that (i) he was a person who could potentially have been appointed to the third respondent and had been unconstitutionally denied this chance and/or (ii) in view of the fact that the first and second respondents had failed the test of article 134 (1), he fulfilled the same.
9. Thirdly, the learned Judges erred in their application of Michel.

*The appellant's submissions*

10. With respect to the first ground of appeal, it is the submission of Counsel for the appellant that the learned Judges' dismissal of the amended petition in limine was not justified after they had found that the appellant's amended petition raised a genuine dispute based on facts that presented a legitimate concern and that the said amended petition was not frivolous and vexatious. In that regard, Counsel emphasised that the learned Judges, having come to such a finding, ought to have adopted a liberal and generous approach to locus standi consonant with Michel given the constitutional importance of the issues raised.
11. Counsel emphasised that the appellant brought the amended petition under article 130 of the Constitution in his capacity as a concerned citizen of Seychelles alleging important constitutional violations raising constitutional issues:
  - (i) the appointment of persons to the third respondent who do not meet the qualification requirement of article 141 of the Constitution requiring that members should be of proven impartiality in view of their strong personal and political interests which undermine their ability to discharge their duties in an impartial manner and without bias; and
  - (ii) subjecting the third respondent to the direction and control of the political party led by the fourth respondent in the National Assembly contrary to article 139 (2) of the Constitution and the doctrine of separation of powers by the unconstitutional appointment of persons having strong active political ties to the said party.
12. Counsel went on to submit that these questions are of concern to each and every citizen of this country who has the inherent duty to uphold and defend the Constitution. Therefore, it is the submission of Counsel that the learned Judges failed to appreciate that, in the higher interest of the Constitution, the right of every citizen of this country is likely to be contravened by any unconstitutional appointment to the third respondent, which is an institution constitutionally mandated to recommend appointment of persons to key constitutional posts.

13. In that regard, it is the submission of Counsel that ex-facie the amended petition and the affidavit in support that the interest of the appellant and the exceptional circumstance of the amended petition were clear. The amended petition and supporting affidavit made out the violations of articles 139 (2) and 141 of the Constitution and of the doctrine of separation of powers implicit in our constitution.
14. With respect to the second ground of appeal, it is the submission of Counsel that in so holding, the learned Judges clearly overlooked, firstly, the fact that the appellant brought the amended petition as a concerned citizen. As a citizen of this country alone, he had the constitutional duty to uphold the constitution and the right to come to court in the event of constitutional violations. That his interest and the interest of all citizens are infringed by the constitutional violations alleged in the amended petition having regard to the constitutional mandate of the third respondent.
15. Secondly, that the amended petition and the affidavit raised questions of exceptional importance comparable to the questions raised in the case of Michel and which, in the higher interest of the constitution, should have proceeded for a determination on the merits instead of being dismissed in limine. Counsel is of the view that in so doing the learned Judges adopted a restrictive approach to locus standi not consonant with the guidance given in Michel.
16. Counsel for the appellant submitted that the learned Judges' requirement that the appellant should have shown by this amended petition that, firstly, he was eligible for appointment to the third respondent and had been denied this chance or, secondly, that he was qualified for appointment to the third respondent whilst the first and second respondents were not, restricts the freedom of concerned citizens of this country to "*ester en justice*" in the event of constitutional violations of exceptional circumstance as in the case of the amended petition and in the exercise of their constitutional duty to uphold and defend the constitution.

17. With respect to the third ground of appeal, Counsel submitted in essence that, in considering the exceptional test, the learned Judges were misguided as to the exceptional circumstances that they should take into consideration.

*The respondents' submissions*

18. With respect to the appellant's contention that the learned Judges' had adopted a restrictive approach to locus standi not in accordance with the guidance given in Michel, Mr. Derjacques and Mrs. Amesbury submitted that the learned Judges had correctly applied the test to the appellant's amended petition and found that *"the petitioner seems to be a concerned citizen but he has failed to demonstrate that his is a case that has exceptional circumstances so as to enable him to meet the exceptional test of the Michel case."*
19. Counsel for the fifth respondent emphasised that the reasoning in Michel is not the only reasoning to be applied, by the learned Judges of the Constitutional Court, on the question of locus standi. Relying on article 130 of the Constitution, he has urged that a determination as to whether or not the appellant has locus standi to bring a claim is to be derived from the express words contained in that article. Therefore, it is his submission that the appellant must show that his personal interest is being or is likely to be affected by the contravention.

**The question in issue**

20. Ex-facie the petition and the affidavit, The Judgment of the Constitutional Court, the grounds of appeal and the submissions of Counsel on both sides, we are satisfied that the sole issue to be decided is whether or not the appellant may bring the amended petition under article 130 (1) of the Constitution, in his capacity as a concerned citizen of Seychelles *"alleging important constitutional violations raising constitutional issues<sup>1</sup>"*. We observe that the appellant has invoked the more generous approach to locus standi now adopted in judicial review proceedings in the United Kingdom and that prevails in relation to constitutional issues in India.

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<sup>1</sup> See paragraph 11 of this judgment.

21. We interject to state that the learned Judges of the Constitutional Court, were satisfied ex-facie the amended petition and the affidavit, that *"the contravention presented by the petition is not frivolous and neither vexatious and accordingly pass the 4<sup>th</sup> condition of the ordinary test"*. In the case of *Seychelles National Party v Government of Seychelles and Another* [2001] LRC 178 the Constitutional Court indicated that *"...article [130] presents no ambiguity. The petitioner can allege that a provision of the Constitution other than a provision of Ch III has been contravened. The petitioner has averred in para 12 of the petition that the appointments complained of contravene article 168(1). This averment is consistent not only with article 130 (1), but also with r 5 of the Constitutional Court Rules. What is required is an allegation that a provision, other than one under Ch III has been contravened. Whether there has been a contravention or not would be a matter to be considered by the court upon hearing submissions on the material facts relied upon by the petitioner and not in limine. To do so at this stage would be to prejudge the issue without a hearing."* In the light of the issue framed for consideration we will refrain from making any pronouncement as to the correctness of the finding of the Constitutional Court.

### **The facts**

22. In order to understand the full importance of the question in issue, it is necessary to set out the facts of the case in so far as they are relevant to the question to be decided. The facts are gathered from the affidavit of the appellant.
23. Paragraph 9 of the affidavit claimed that the appellant is bringing the amended petition because he *"believe[s] that the appointment of the First and Second Respondents to the Third Respondent is in violation of the terms of the Constitution, specifically Article 141 of the Constitution."*
24. Paragraph 10 claimed that he has been *"advised by [his] Attorney-at-Law that [he] is entitled to bring this case because this is a matter of national importance that affects the interests of all Seychellois. The Constitutional Appointments Authority plays a very important role in the Seychelles system and is a safeguard against corruption and*

*nepotism. The appointment of unqualified persons to this important Authority could threaten to undermine the entire Seychelles constitutional system". (Emphasis supplied)*

25. Paragraph 11 of the affidavit stated that the appellant has approached the Constitutional Court as a concerned citizen of Seychelles in terms of article 130 of the Constitution. Paragraph 11 went on to allege *"I am advised by my Attorney-at-Law, and I verily believe that the First and Second Respondents are not qualified to have been appointed to the Third Respondent (CAA) as they are not of proven integrity and impartiality and cannot be, and will not be seen to be, impartial and independent. Therefore, they were appointed in violation of Article 141 of the Constitution."*
26. Paragraph 12 of the affidavit stated *"[m]oreover, I aver that by appointing persons to the CAA with strong political links, the Fourth Respondent has attempted to (or at least may be perceived to have attempted to) subject the CAA to the control or influence of a political party in contravention of Article 139 (2) of the Constitution. This is further in contravention of the doctrine of separation of powers which is implicit in the development of a democratic society and upholding the rule of law as anticipated by the Preamble of the Constitution."*
27. Paragraph 13 of the affidavit stated *"the CAA plays a very important role in the Seychelles democratic system and is a safeguard against corruption and nepotism. The appointment of unqualified persons to this important Authority and the imposition of political influence on the CAA threatens to undermine the entire Seychelles constitutional system. Therefore, I am justified in approaching the Constitutional Court to consider this point"*.
28. Paragraphs 14, 15, 16, 17, 18, 19 and 20 of the affidavit set out in detail the mandate of the third respondent under the Constitution and made the point that it must be independent and its members impartial.
29. Then the affidavit went on to state that the appellant believes that the first and second respondents are not suitable to be appointed to the third respondent and that they were appointed in violation of the Constitution because they do not meet the requirements laid down in article 141 (b) of the Constitution. The appellant averred that *"[t]he two*

*Respondents have strong personal interests which undermine their ability to perform their duties in an impartial manner."*

30. Against the first respondent, his grievances are as follows —

"24. The First Respondent is a practicing Attorney-At-Law and Notary which creates a strong conflict of interest in her involvement in the appointment and removal of legal persons, including Judges and the Attorney-General. Furthermore, the First ... [Respondent] ha[s] such an active political background and close political ties that [she] [is] seen to be beholden to [her] political part[y] in all work performed for the CAA.

25. The First Respondent is a licensed Attorney-At-Law and Notary and represented the Fourth Respondent in the Election Petition cases in 2016. Her husband is a senior member of the Seychelles Bar and is a likely candidate for the positions for which the CAA nominates candidates. In such a small community of lawyers, her impartiality in the selection of judges likely to be influenced by the fact that she or her husband may appear before persons whom she has assisted to appoint in their courtrooms.

26. Furthermore, the First Respondent is a long-time politician, and was the running mate and Vice – Presidential candidate for the Seychelles National Party ("SNP") which now forms the core of the new Opposition party, Linyon Demokratik Seselwa ("LDS"). She ran alongside the Fourth Respondent in three consecutive presidential elections and was an executive member of the SNP. She continues to attend rallies by the LDS.

27. Her husband, Bernard Georges, is also active in politics and is currently a representative of the LDS in the National Assembly.

28. These close ties to the LDS undermine her ability to remain impartial and independent in the performance of her constitutional duties to the CAA and ought to have disqualified her from candidacy."

31. Against the second respondent, his grievances are as follows —

"[24]The Second ... [Respondent] ha[s] such an active political background and close political ties that [she] [is] seen to be beholden to [her] political part[y] in all work performed for the CAA.

[29] The Second Respondent is an executive member of the LDS and holds the position as the secretary of the Executive of the LDS which the Fourth Respondent represents in the National Assembly and for which he ran as Presidential candidate. Holding a senior position in the LDS and her open political support for the LDS at political rallies undermines her impartiality and independence in the performance of her constitutional

duties on the CAA.

[30] She is a director at the International Business Centre which sets up local and offshore businesses. Being active in the industry creates a conflict of interest as it is likely that the person the CAA recommends for appointment will be called upon to exercise oversight over the companies she assists with offshore work."

32. Paragraph 28 of the affidavit went on to allege that "*[n]ot only do these personal and external factors undermine the impartiality of the First and Second Respondents, but they also lead to a reasonable perception that the members will not be able to act without bias*".
33. Paragraphs 29, 30, 31 and 32 of the affidavit then went on to allege that the appointment of persons who have strong, active, political ties amounts to attempting to subject the third respondent to political control in contravention of article 139 (2) of the Constitution and that it cannot be constitutional to permit any political party to control a body which is constitutionally mandated to be independent.

### **The Analysis**

34. The following provisions of the Constitution are of particular relevance. Article 141 of the Constitution provides for qualification for membership of the Constitutional Appointments Authority, establishing that:

"141. A person is qualified to be a member of the Constitutional Appointments Authority if the person is a citizen of Seychelles who —

- (a) has held judicial office in a court of unlimited original jurisdiction; or
- (b) is of proven integrity and impartiality who has served with distinction in a high office in the Government of Seychelles or under this Constitution or in a profession or vocation."

35. Article 130 of the Constitution provides for the enforcement of rights other than a Chapter III provision. We have reproduced article 130 of the Constitution, so far as is relevant. The criteria are highlighted in bold font below:

"130(1) A person who alleges that any provisions of this Constitution, other than a provision of Chapter III, **has been contravened and that the person's interest is being or is likely to be affected by the contravention** may, subject to this article, apply to the Constitutional Court for redress.

...

(3) Where the Constitutional Court on an application under clause (1) is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned in any other court under any other law, the Court may hear the application or transfer the application to the appropriate court for grant of redress in accordance with law.

(4) Upon hearing an application under clause (1), the Constitutional Court may –

- (a) declare any act or omission which is the subject of the application to be a contravention of this Constitution;
- (b) declare any law or the provision of any law which contravenes this Constitution to be void;
- (c) grant any remedy available to the Supreme Court against any person or authority which is the subject of the application or which is a party to any proceedings before the Constitutional Court, as the Court considers appropriate.

(5) Where the Constitutional Court makes a declaration under clause 4(b), the Court shall, subject to any decision in appeal therefrom, send a copy of the declaration to the President and the Speaker...". (Emphasis supplied)

36. The majority opinion of Michel is at the heart of the issue for consideration in the present appeal. We reproduce the majority opinion of Michel, in part, framed in the context of the present appeal:

**"The petitioner [Mr. Dhanjee] in this case alleged a contravention of the Constitution by the CAA and the President of the Republic of Seychelles in the exercise of their constitutional powers... It is clear from the above provision[] [130 (1)] that in matters raised by the present case certain conditions have to be met before the Constitutional Court could proceed to a full hearing. The clear and concise test to be applied**

to decide if a prima facie case is made out as contained in the provisions stated above may be summarised thus:

- (a) there is a contravention or likely to be a contravention of the Constitution
- (b) the person has a personal interest that is being or likely to be affected by the contravention (in other words he has locus standi in judicio to seek redress)
- (c) the person whose interest is likely to be affected by the contravention cannot obtain redress for the contravention under any other law
- (d) the question raised by the petitioner is not frivolous or vexatious.

Then and only then can the case proceed to hearing. The test is of significant importance with the purpose of establishing if the petitioner has a bona fide argument for relief. **The appellant contends that the reasons given by the appellant (sic), namely that he is a past, present and future litigant and that the appointment of the fourth appellant as a judge is likely to affect his interests, are perverse and are neither legitimate nor lawful.** There is some merit in this submission. If the appellant had been able to show clear bias in the past by the fourth appellant we would have had no difficulty in understanding this proposition. The case given as an example of Justice Domah's bias concerns a unanimous decision by a full court of five judges of appeal. **Is the respondent intimating that all Judges of the Court of Appeal are somehow prejudiced against him or that the court is biased against anyone who loses a case? Such a preposterous proposition cannot be upheld and fails entirely.**

...

**Despite these findings, we find that the modern rule as to standing is expressed in R v Inland Revenue Commissioners ex parte National Federation of Self-Employed And Small Businesses [1982] AC 617 by Lord Diplock when he said there would be a grave lacuna in public law if "outdated technical rules of locus standi" prevented a person bringing executive illegality to the attention of the courts. Locus standi should therefore not be used to prevent a litigant from arguing the substance of his case.** The respondent has also stated that he is a citizen of Seychelles, domiciled and resident in Seychelles. Whilst judicial review is not a tool for busybodies or opportunist litigants to challenge the decisions of decision making bodies simply because one does not agree with the decision, it must be possible for genuinely concerned citizens of breaches of democratic rights to bring actions. This is a balancing exercise that must be performed by the court in each individual case...

...

**In the present case the petitioner is a citizen of Seychelles. While it would normally not be sufficient to claim standing and sufficient interest by stating that one is a citizen and resident of Seychelles, we have decided to adopt a liberal and generous approach in this case given the exceptional importance of the issues raised. In the circumstances we are prepared to accept that the first respondent truly brings this case as a concerned citizen.**" (Emphasis supplied)

37. The learned Justices of Appeal in Michel applied the test set out in the said case to decide whether or not a prima facie case is made out and found that Mr. Dhanjee had no standing to bring the petition alleging a contravention of the Constitution. Nonetheless, despite their finding, the learned Justices of Appeal applied *"the modern rule as to standing"*, adopted in judicial review proceedings in the United Kingdom and concluded that Mr. Dhanjee had brought the petition in his capacity as a *"genuinely concerned citizen[] of breaches of democratic rights..."*.
38. The learned Judges of the Constitutional Court in The Judgment of the Constitutional Court, applied the test set out in Michel and concluded:
- (a) that there is a contravention of the Constitution;
  - (b) that the question raised by the petitioner is not frivolous or vexatious;
  - (c) with respect to the question as to whether or not the appellant has a personal interest that is being or is likely to be affected by the contravention, that:

"The Petitioner is a concerned citizen. However, he needs to show that his personal interest is being or is likely to be affected... Upon scrutinising the petition, the objections and the submissions of the parties we find that the Petitioner has been unable to show that his personal interest has been affected or is likely to be affected by the appointment of the 2<sup>nd</sup> and 3<sup>rd</sup> respondent. The Petitioner has not managed to show and it is at any rate not his case that he was a person that could potentially have been appointed to the 4<sup>th</sup> respondent and that he was unconstitutionally denied this chance and/or that in view of the fact the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have failed the test of 134 (1) and that he fulfils same. This could have been evidence of personal interest.";

- (d) that *"though the petitioner seems to be a concerned citizen he has failed to demonstrate that this is a case that has exceptional circumstance"* so as to enable him to meet the exceptional test of Michel.
39. In this context, we now consider the question that arises for consideration. Ex-facie the amended petition and the affidavit, we observe that the appellant has invoked the modern rule as to standing. Paragraph 10 of the affidavit stated that he has been *"advised by [his] Attorney-at-Law that [he] is entitled to bring this case because this is a matter of national importance that affects the interests of all Seychellois"* and paragraph 11 stated that he has approached the Constitutional Court as a concerned citizen of Seychelles in terms of article 130 of the Constitution. The appellant explained in his written submissions that, as a citizen of this country alone, he has the constitutional duty to uphold the Constitution and the right to come to court in the event of constitutional violations.
40. The majority opinion of Michel relies on principles of locus standi in relation to judicial review. In Michel the learned Justices of Appeal opined *"... we find that **the modern rule as to standing is expressed in R v Inland Revenue Commissioners ex parte National Federation of Self-Employed And Small Businesses [1982] AC 617 by Lord Diplock when he said there would be a grave lacuna in public law if "outdated technical rules of locus standi" prevented a person bringing executive illegality to the attention of the courts. Locus standi should therefore not be used to prevent a litigant from arguing the substance of his case"**. (Emphasis supplied)*. With respect, we do not subscribe to this view.
41. When the People of Seychelles adopted and conferred upon themselves the Constitution on the 21<sup>st</sup> June 1993, as the fundamental and supreme law of their Sovereign and Democratic Republic<sup>2</sup>, they adopted articles 46 and 130 of the Constitution, which provide the procedural measures aimed at enforcing the protection of the rights of the People.

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<sup>2</sup> See the Preamble to the Constitution.

42. This appeal concerns article 130 of the Constitution, which deals with constitutional questions. The Rules provide for the practice and procedure of the Constitutional Court in respect of matters relating to the application, contravention, enforcement or interpretation of the Constitution. Article 130 (1) of the Constitution sets out the test governing locus standi of any person entitled to claim redress and expressly provides that the person seeking redress must have a personal interest at stake, failing which he will have no locus standi.
43. In the *Bar Association of Seychelles and Anor v President of the Republic and Ors (unreported) SCA 7/2004* a bench of this court in interpreting article 130 (1) of the Constitution, said "[i]n *Ulufa'alu v Attorney General and Others* [2002] 4 LRC 1 at 14b-h Palmer Ag CJ said:
- "Locus standi ... is a threshold question to be determined at the beginning of a case to weed out frivolous or vexatious claims or in which it is shown an applicant has no interest or insufficient interest"... The reason for the requirement of standing was also emphasized in the judgment of the Supreme Court of Zambia in *Mwamba and Attorney-General of Zambia* [1993] 3 LRC 166 where the majority of the Supreme Court ... said at 170g: "[o]n the question of locus standi, we have to balance two aspects of the public interest, namely the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging meddlesome private "Attorney -General's" to move the courts in matters that do not concern them".
44. With respect to article 130 (1) of the Constitution, we opine that judgments must adopt the required approach to locus standi, insisting that a person who alleges that any provision of the Constitution, other than a provision of Chapter III, has been contravened, must show that the person's interest is being or is likely to be affected by such contravention. For instance, the dissenting opinion of Michel stated "*in an application under article 130 (1) the test is not stringent. All that one has to show is that there is a contravention and that **the person's interest is being or is likely to be affected by such contravention***" (*emphasis supplied*). See, also the *Seychelles National Party (supra)* in which the Constitutional Court stated that the argument that there had been a contravention of a Constitutional provision and that the contravention was likely to affect the interests of the petitioner was therefore consistent with the requirements of article 130 (1) of the Constitution.

45. Sections 17 (1)<sup>3</sup> and 83 (1)<sup>4</sup> of the Constitution of Mauritius, to the extent relevant for present purposes, are similar to articles 46 (1) and 130 (1) of the Constitution of Seychelles, respectively. We observe that sections 17 (1) and 83 (1) of the Constitution of Mauritius have consistently been applied restrictively.
46. In the case of *Mirbel and Others v State and Others* [2010] UKPC 16<sup>5</sup> the Board of the Privy Council considered *inter alia* whether or not section 17 of the Constitution of Mauritius is the "appropriate vehicle for a general challenge to a legislative provision or an administrative act brought in the public interest". The facts in the *Mirbel* case were as follows. "Section 18 of the Finance Act 2006 created a new tax, the national residential property tax ('the NRPT'), first becoming payable in the year of assessment 2007 to 2008. The appellants, four citizens of Mauritius who owned land on the island, brought proceedings seeking constitutional redress under s 17(1) of the Constitution against the State, the Ministry of Finance and Economic Development and the Mauritius Revenue Authority. The appellants alleged that the introduction of the NRPT infringed their rights to protection from deprivation of property without compensation under ss 3 and 8 of the Constitution. Before the NRPT took effect, its provisions were significantly amended by s 17 of the Finance Act 2007. That did not cause the appellants to make any amendment to their claim. The respondents filed a plea in limine litis, seeking the dismissal of the proceedings on the ground that, *inter alia*, the appellants had no locus standi to bring their claim. The respondents succeeded in the Supreme Court, which held that the appellants had averred that they fell 'within the net and conditions provided for' by the NRPT in its original form; those conditions had been amended but the pleading had not, with the result that the claim did not aver that the conditions of liability to pay the tax laid down by the

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<sup>3</sup> Article 17 of the Constitution of Mauritius provides for Chapter II rights - "PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL": "17 Enforcement of protective provisions: (1) Where any person alleges that any of sections 3 to 16 has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress..."

<sup>4</sup> "Article 83. Original jurisdiction of Supreme Court in constitutional questions - (1) Subject to sections 41 (5), 64 (5) and 101 (1), where any person alleges that any provision of this Constitution (other than Chapter II) has been contravened and that his interests are likely to be affected by such contravention, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for a declaration and for relief under this section..."

<sup>5</sup> Mauritius, Privy Council (27 April, 21 July 2010) (hereafter "*Mirbel*"). The judgments of the Privy Council and the Mauritian Courts are not of course binding, but they are of persuasive authority.

*NRPT in its amended form were satisfied. The appellants appealed by permission of the Board to the Privy Council, before which it was common ground that the appellants had to prove that they were liable to pay the NRPT if they were to be entitled to relief under s 17 (1) of the Constitution".*

47. In making submissions in support of the part of the plea in limine litis that claimed that the appellant's pleading did not disclose a cause of action, which was found to be closely linked with the challenge to locus standi, Mr. Bhaukaurally submitted that there was no averment that the appellants fell within the tax threshold needed to give them standing for relief. He submitted that the plea as a whole tended to show that the appellants were trying to establish a case of public interest litigation, which was not acceptable in Mauritius.
48. Paragraph [21] of Mirbel stated "[t]hat suggestion appeared to receive some support when Mr. Gayan SC began his submissions for the appellants. He invoked the relaxed approach to **locus standi** that now prevails in judicial review proceedings in the United Kingdom and a similar approach that he submitted prevailed in relation to constitutional issues in India. He submitted that it would be a pity if a pressure group, or even a public spirited taxpayer, were prevented by "outdated technical rules" of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and to get the unlawful conduct stopped."
49. The Board of the Privy Council held "[26] ... the section provides a personal remedy for personal prejudice. It is not an appropriate vehicle for a general challenge to a legislative provision or an administrative act brought in the public interest. This is made clear by the phrase "in relation to him" in s 17 (1). It has also been repeatedly emphasised by the Supreme Court... Mr. Gayan's attempt to rely on principles of locus standi in relation to judicial review was misconceived".
50. *Quedou K. v State of Mauritius* 2004 SCJ 40, stated:

"It has been clearly laid down by the Supreme Court that public interest litigation does not obtain in Mauritius. Both sections 17 and 83 of the

Constitution which prescribe the procedural measures designed to enforce the protection of the rights of parties clearly set out the condition governing locus standi of any party entitled to claim redress or relief. Section 17 of the Constitution, which would govern an application for redress in breach of section 3 or 16 of the Constitution which deals with discrimination, provides the following in its first sub-section:

*"17(1) Where any person alleges that any of sections 3 to 16 has been, is being likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress."*

It is clear from a reading of section 17 that the person seeking redress must be directly affected by the alleged contravention in that any of his rights guaranteed under Chapter II of the Constitution is being or is likely to be contravened personally in relation to him. Section 83 (1) of the Constitution, which deals with a contravention to a constitutional provision other than under Chapter II, also expressly provides that the person seeking relief must have a personal interest at stake, failing which he will have no locus standi.

...

The same principle was reiterated by the Supreme Court in **Noordally v. Attorney-General** [1986 Mr 2004] and in **Hon. Duval v. Hon. Seetaram** [1981 MR 21] where the Court pointed out in precise terms what should be the appropriate locus standi in such cases:-

"... ..., a person who seeks constitutional relief under section 17 for an alleged infringement of Chapter II (which includes section 3), as opposed to somebody who avers that a clause of the Constitution occurring in any other Chapter has been thwarted, can only succeed if he shows that the provision has been contravened in relation to him and to no one else."

It is significant to note that such a requirement has not changed with the advent of the "Republican" Constitution following the amendments which were brought to the Constitution by Act No. 48 of 1991 and which were meant to give Mauritius the status of a Republic. In the recent case of **Tengur v. Ministry of Education & Ors.** [2002 MR 66] the plaintiff had in the first instance claimed that the tax paid by him was used by the State to provide grants to school which practiced discrimination in the recruitment of pupils. The Court considered that, "what the plaintiff was in effect trying to do by his plaint, is to bring an action in Court to litigate a matter of general public interest." before reaching the conclusion that "public interest litigation is alien to our jurisdiction". The court found that the plaintiff did not have a sufficient interest and had not been able to establish his standing to bring an action against the defendants...

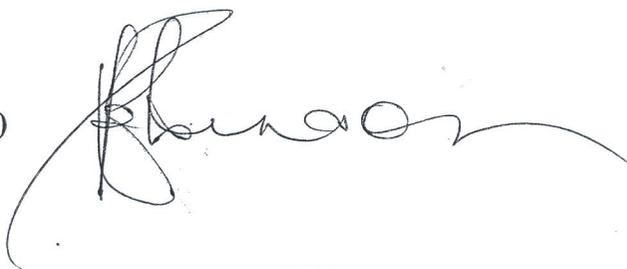
The situation is different in India with the development of 'Public Interest Litigation... but Mauritius, like many other Caribbean Commonwealth States, has remained committed to the doctrine which states that an individual has no right to bring an action in Court to litigate a question which is of general public interest. He or she must have relevant personal interest in order to be given locus standi. In other words, he has to show that he himself is personally and directly affected by the alleged contravention and not merely dissatisfied with an act or decision".

51. In the circumstances, we consider that the only averment made by the appellant in his amended petition and the affidavit in relation to his standing is that he is a citizen of Seychelles. We also consider that the appellant, by his amended petition, was attempting to bring an action in the Constitutional Court to litigate a matter of general public interest. We hold the view that public interest litigation is alien to our jurisdiction. For the reasons given above, we conclude that the challenge to the appellant's locus standi has been made out and uphold the decision of the Constitutional Court that *"the petitioner has failed to demonstrate his locus standi before this court in his amended petition"*.

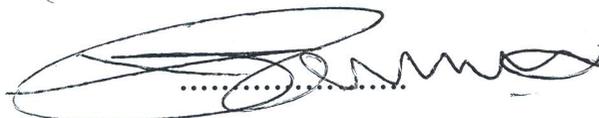
#### The decision

52. For the reasons given above, we dismiss the appeal.

F. Robinson (J.A)



I concur:.



B. Renaud (J.A)

Signed, dated and delivered at Ile du Port on 14 December 2018