

CLOSING REMARKS AT THE DECEMBER 2025 SESSION

BY JUSTICE ANTHONY FRANCIS T. FERNANDO, PRESIDENT OF THE COURT OF APPEAL

I welcome you all to the closing of the session of the Court of Appeal for the year 2025.

I wish to inform you at the outset, of the status of appeals that have been filed and disposed of during this year and presently pending before the Court, as I always do in my closing remarks at the conclusion of a session.

With the delivery of judgments today we would have disposed of **15** out of **17** criminal cases and **29** out of **37** civil cases filed this year. We have also disposed of **one of the two** constitutional cases filed this year. In addition to the **45** appeal cases disposed of, we have also disposed of **14** miscellaneous applications both civil and criminal.

Therefore, there will be as at today, **12** appeals left to be heard in the Court of Appeal, which I intend to dispose of during the 2026 April session, along with any other short appeal cases that may be filed after today. Of the **12** appeals, there is **1** application seeking a review of one of our judgments, **another** appeal in respect of a constitutional matter, **8** appeals arising from civil cases, and **2** appeals from criminal cases. All **12** appeals listed for the April 2026 session, were filed after the 18th of August 2025 and 3 of them during the last three weeks. This will indicate how serious this Court is concerned in keeping up to the Constitutional commitment of ensuring a fair hearing within a reasonable time. It is and has always been my vision to dispose of an appeal within 4 to 6 months of filing, bearing in mind the Court of Appeal sits only three times a year. To achieve this objective, I need the cooperation of my sister and brother Justices, the Bar, and the staff both at the Supreme Court and the Court of Appeal.

The Provisional List of the appeal cases to be heard during the April 2026 session, was sent out last Friday the 12th of December to all lawyers and litigants, who had filed appeals and I believe all of you are in receipt of it by now. I kindly ask you to go through the provisional list of cases early, and where possible, keep the Registry informed, of any appeals that are likely to be withdrawn, or, where consent judgments are likely to be filed. There would then be no need, to prepare the appeal briefs, which is time consuming and at an expense to the Government. We therefore kindly request of you to discuss with your clients of any possibility of withdrawal or arriving at a settlement, without going into a hearing, no sooner you receive the briefs. I believe that we all appreciate, that settlement is the best way forward, in those cases where it is a possibility. You must be bold to tell your clients when they have no chance in appeal that it is best to agree to a settlement with the other party, rather than concentrating on the financial benefits you may gain.

We shall be delivering judgments today, in **14** appeals that were heard during this December session. As I did mention in my Opening Remarks originally, there were **21** appeals listed to be heard during this session but **7** of the said appeals were withdrawn before the commencement of the session. Although we do welcome the withdrawal of appeals, as I always keep on mentioning it is preferable if the Registry of the Court is informed before the preparation of the court briefs of such withdrawals, which leads to unnecessary wastage of time and government resources.

I did mention in my Opening Remarks that **SI 94 of 2025** was published on the 1st of December, making a few amendments to the Court of Appeal of Seychelles Rules 2023, bringing in more clarity to the Rules and making provision for electronic filing of Written Submissions. These amendments were made in accordance with article

136(1) of the Consultation and in consultation with all three Seychellois Justices and with their approval.

Subsequent to the publication of **SI 94 of 2025**; **SI 98 of 2025** was published on the 9th of December empowering the Court of Appeal to make awards of wasted costs against appellants and where appropriate against their lawyers, where the Court determines that the filing or pursuit of an appeal is frivolous, vexatious, devoid of merit, brought for an ulterior purpose, intended to delay the proceedings or otherwise amounts to an abuse of the process of the Court. This amendment was also made in accordance with article 136(1) of the Consultation, and in consultation with all three Seychellois and the four foreign Justices and after obtaining their written comments and their approval. Both **SI 94 of 2025** and **SI 98 of 2025** will be applicable after mid-January 2026 in respect of proceedings before the Court of Appeal. We therefore wish to inform all lawyers and litigants to familiarize them with the amendments to the Rules and ensure compliance with them. For the convenience of all lawyers and those litigants who have their appeals listed for hearing during the April 2026 session, **SI 94 of 2025** and **SI 98 of 2025** have been annexed to the Provisional List that was sent out.

The publication of **S.I. 98 of 2025** making an amendment to the Rules has become necessary to deal with cases which in the opinion of the Court is a clear abuse of process, meaning the misuse or perversion of legal procedures for a purpose other than what the legal process is intended for and which results in the wastage of the time and resources of the Court. Unfortunately, there is no way to prevent a person filing a bogus case before a court or a hopeless appeal, merely to delay and frustrate the decision of the Trial Court. Therefore, this is to discourage litigants and their lawyers from engaging in wasteful, purposeless and malicious litigation. It should

never be viewed as discouraging litigants or lawyers from pursuing novel or meritorious arguments. We are fully conscious and certainly honour a person's right to appeal that is enshrined in the Constitution, and therefore shall use the Court's power only where there has been a clear abuse of process. The power shall be exercised when all three Justices who hear a case or a majority of them, at the conclusion of the hearing of a case come to the firm determination that there has been clear and substantial evidence of improper conduct amounting to abuse of the court process; and not on the subjective thinking of any single Justice of Appeal. This is not something new or unusual but a practice adopted in many other jurisdictions and this Court too has in the past made such orders, reprimanded and imposed sanctions on lawyers using the discretionary powers of the Court. Empowering the Court through specific provisions in the Rules, promotes consistency and transparency.

Lawyers have a professional and ethical duty not to advance improper appeals. They should not be complicit in the abuse of the appellate process. A lawyer's duties to the court as an officer of the court are paramount and can sometimes conflict with the client's wishes or perceived interests. The potential for conflict arises when a lawyers' duty to the court clashes with their clients' desire to win at all costs by refusing to accept the inconvenient truth. Undoubtedly lawyers must zealously represent their clients, but must do so within the bounds of ethical and legal principles, acting with integrity, honesty, and respect for the court and recognizing that their duty to the court, the profession and the public interest ultimately outweighs their duty to their client in cases of conflict. This means upholding the rule of law and ensuring the fair administration of justice. It is to be noted that, law like medicine and teaching are called noble professions requiring public avowals of faith. They are dignified by that title and set apart from other occupations because

they are more than a livelihood: they represent a calling to some higher satisfaction than a commercial gain. Justice is all about conscience, not a personal conscience but the conscience of the whole community. Those who honestly recognize the voice of their own conscience, should also recognize the voice of justice and truth. We all should have only one true goal, only one quest, no matter how difficult it may be and that is to ensure that Justice is done. As stated at chapter **19:15 Leviticus**, “Do not pervert justice” and as **Psalm 33.3** says “The Lord loves righteousness and justice”. Justice has more to do with what comes out of a court room, than what goes on, in a courtroom. Our judgments are an echo that lingers beyond the courtroom doors.

Filing or perusing baseless applications before the Court shows disrespect to the Court and amounts thereby to undermining the Court in the eyes of the public. The new rule serves as a clear reminder that litigation is not a game of procedural maneuvers but a disciplined pursuit grounded in law, evidence, and the highest standards of professional ethics and with only one goal, namely to ensure that justice is done. It also encourages a culture of candour and responsibility, in which attorneys advise their clients honestly on the prospects of success and refrain from filing appeals that lack factual or legal foundation. This is not merely a duty owed to the client; it is a duty owed to the Court, to the administration of justice, to the other party to the case, and to the wider public, whose confidence we must preserve. We need to think of the other party to the case, the Respondent, when an appeal that is frivolous, vexatious, devoid of merit, brought for an ulterior purpose or intended to delay the outcome of the judgment of the Trial Court is filed. The Respondent is waiting to see a finality to the case. In the case of the Respondent to a civil appeal, he is waiting to enjoy the fruits of the judgment and in the case of a criminal appeal

both the Republic and the victim party is waiting to see that justice is done to the victim.

Judges should be able to control court proceedings if it is to do justice between the parties and to maintain decorum in the courts and the court process. Judicial restraint does not require judicial silence in the face of conduct that undermines the integrity of the system. That is why courts may, when required, call out conduct that falls below the standard expected of practitioners, strike out proceedings that amount to an abuse of process, or make appropriate costs orders. A judicial reprimand or an order for wasted costs is not an attack on the independence or dignity of the legal profession; it is a necessary complement to it. The objective is not to punish but to protect the integrity of the judicial process so that every litigant, and the wider public, can have confidence that cases are heard fairly, efficiently, and with due regard to the rule of law.

The courts are not run according to the dictates of the litigants or a few errant lawyers, but those of the Judges who preside over the courts. Judges have every right to call in question the unethical behavior of litigants and such errant lawyers. Just as much there should be a time table for litigation, there should also be a code of conduct for court proceedings. Justice and Fairness flourishes in a court, where a judge remains unmoved by applause or arrows. We Judges should inspire faith in the Justice system while remaining anchored through every storm. Justice demands of us as Judges, courage, not only in delivery of judgments but in maintaining the decorum of the Court and its process and not to be deterred in any way by the salvos thrown at us by disgruntled litigants or a few errant lawyers who are willing to sell their ethical principles, merely for financial gain.

It is to be remembered that to take the lead in the introduction of a new order of things is difficult as there would be critics who resist change. Let me therefore conclude in the words of Martin Luther King, “Cowardice asks the question, ‘Is it safe?’ Expediency asks the question, ‘Is it politic?’ And Vanity comes along and asks the question, ‘Is it popular?’ But Conscience and Justice asks the question, ‘Is it right?’ And there comes a time, when one must take a position that is neither safe, nor politic, nor popular, but one must do it because Conscience and Justice says it is right.

In conclusion, I am grateful to you my colleagues on the Bench and the lawyers who made it possible to dispose of the cases that were listed for hearing during this session. And finally I am very grateful to the staff of the Court of Appeal, namely the cleaner, drivers, receptionist, security officers, law clerks, the court reporters, the IT and maintenance personnel, the Deputy Registrar and my Personal Assistant without whose support we could not have succeeded. We need to understand that whatever life throws at us, our individual responses will be all the stronger, from working together, and that our success comes from unity and not division, for no one can whistle a symphony, for it takes a whole orchestra to play it.

Finally, I wish you all present and your families, a blessed and happy Christmas and a bright and prosperous New Year.

May God bless and guide us always.

Thank you.

