

CONSTITUTIONAL COURT OF SEYCHELLES

Reportable
CP12/2022

In the matter between:

MUKESH VALABHJI
(rep. by France Bonte and Samantha Aglae)

Petitioner

and

THE REPUBLIC

1st Respondent

THE DEFENCE FORCE OF SEYCHELLES

2nd Respondent

THE POLICE FORCE OF SEYCHELLES

3rd Respondent

THE ATTORNEY GENERAL
(rep. by Ria Alcindor)

4th Respondent

Neutral Citation: *Valabhji v The Republic & Ors (CP 12 of 2022) (25 June 2026)*

Before: Burhan J (Presiding), Adeline and Esparon JJ

Summary: Application pursuant to Article 46 (1) and Article 130 of the Constitution, read with Article 16, 27, 161 and Article 163 of the Constitution.

Heard: 03 November 2025, 09 December 2025, 01 March 2026

Delivered: 25 June 2026

ORDER

For reasons given herein, this Court proceeds to dismiss the petition. The dismissal includes the claims of compensation in a sum of SCR 3,000,000.00 (three million) each against the 1st Respondent (Republic), 2nd Respondent (Defence Forces) and 3rd Respondent (Police Force) and all other reliefs claimed in the prayers to the petition.

JUDGMENT

M Burhan J with B Adeline J and D Esparon J, concurring.

[1] The Petitioner filed this petition on 09 December 2022, under Article 46(1) and Article 130 of the Constitution of the Republic of Seychelles (Constitution). The 1st Respondent is the Republic of Seychelles, the 2nd Respondent the Defence Forces of Seychelles and the 3rd Respondent the Seychelles Police Force. The 4th Respondent, the Attorney General, is joined in accordance with Rule 3(3) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules (the Rules) and section 29 of the Code of Civil Procedure Act, in his capacity as the representative of the Government of Seychelles.

[2] The Petitioner alleges that the Respondents violated his constitutional rights under Articles 16, 27 and 48, 161, 163 and seeks the following reliefs and orders from this Court as set down below and in the prayer to the petition. The Petitioner moves Court to:

- i. *"Interpret The Charter in such a way as to not be inconsistent with any international obligations relating to Human Right and freedoms, particularly The United Nation Covenant on Civil and Political Rights which Seychelles acceded to in 1992.*
- ii. *Interpret The Charter in line with Article 48 (a) to (d) of the Constitution.*
- iii. *To order that this case shall take precedence over other matters before the Supreme Court and be heard as a matter of extreme urgency pursuant to Articles 18 (9) and 125 (2).*

And I further prays this Honorable Court to be pleased to:

- iv. *Declare that my rights above mentioned have been contravened under Articles 16 and 27 of the Charter.*
- v. *Declare that the acts and omission of 1st 2nd and 3rd Respondents above-mentioned contravened my rights.*
- vi. *Declare that the acts, omissions and orders of the members of the 2nd Respondent contravened Article 163 of the Constitution.*

- vii. *Declare that failure of the 3rd Respondent to have measures and safeguards in place to prevent members of the 2nd Respondent from having access to, terrorizing, traumatizing and causing fear to myself and subjecting me to degrading treatment contravened Article 161 of the Constitution.*
- viii. *Declare the use of Armed Foreigners to assist in my arrest, detention, searches and escort to be unlawful and violated the Articles 16 and 27 of the Charter.*
- ix. *Make such declaration, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the Charter and disposing of all the issues relating to the application.*
- x. *Make such additional order under this Constitution or as may be prescribed by law to give effect and to enforce my fundamental rights.*
- xi. *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.*
- xii. *Award me compensation in the sum of SCR 3 million from each of the 1st 2nd and 3rd Respondents.*
- xiii. *The whole with costs of this Application”*

[3] The Respondents in reply filed preliminary objections dated 06 March 2023 and submissions on 31 March 2023. A ruling was given by the Court on 01 August 2023 stating at [7];

"This Court holds the view that these preliminary objections raise issues of mixed law and facts so that determination on such objections can only properly be made after hearing of the matter on merits."

- [4] The 1st, 2nd and 3rd Respondents filed their defence on 19 September 2023 together with the 4th Respondent.
- [5] On 2 October 2023, learned Counsel for the Petitioner, Mr. Bonte, made an application for a *"request for further and better particulars."* The said application was subsequently withdrawn and an application to file a further affidavit was made on the 14 May 2024.
- [6] After hearing both parties this Court by Order dated 10 April 2025 granted the Petitioner's application to file a further affidavit and an opportunity was given to the Respondents to reply same. Thereafter, the Petitioner again made a request for further and better particulars in respect of the reply affidavit of Mr Michael Rosette filed on behalf of the 2nd Respondent. This application was dismissed by this Court on 30 September 2025.
- [7] Thereafter, the Petitioner filed written submissions on merits on 03 November 2025 and the Respondents filed their reply submission on merits on 09 December 2025. The Petitioner was given the right to reply and filed his final submissions on 01 March 2026.
- [8] This Court observes that by ruling dated 01 August 2023, the bench hearing the case at that time, held that the preliminary objections raised mixed issues of law and facts and therefore determination of such issues could only be made after hearing of the merits of the case. Having heard the merits of the case, this Court will now proceed to first rule on the preliminary objections taken by the Respondents. Prior to doing so, it will set down briefly the salient facts of the case.

BACKGROUND FACTS

- [9] The Petitioner avers that he was arrested in Pointe Larue Mahe, Seychelles, by Anti-Corruption Commission (ACCS) officers and unidentified armed foreigners recruited by State Security Officer Captain Luke Fonseka, who is a member of the 2nd Respondent under the Commander in Chief's direct command. He complains that he was thereafter detained

by them at the Prohibited Immigrant Centre at Seychelles International Airport. He states that at the time he was suffering from hypertension, diabetes, a stent, heavy blood thinners, and high cholesterol. He had requested medical assistance upon arrest and admits a doctor was brought in but several hours later. On 19 November 2021, the ACCS obtained a 14 day remand order from the Supreme Court of Seychelles for the Petitioner's detention at the Central Police Station.

- [10] The Petitioner further held that on 20 November 2021, officers of the 3rd Respondent, including Sergeant Simeon, Sergeant Eulentin, and Deputy Commissioner Ron Bonnelame, took him to Felicite Island where they were met by armed personnel, four of whom had British accents and a search was conducted on various places and he was escorted around during the search by these individuals. He was thereafter detained at the Central Police station on 23 and 24 November 2021 and avers that during that time officers of the 2nd Respondent had one night screamed at him and threatened to do a body search and cell search on him. When one of the security personnel had unbuckled his holster, he had a fear that he was going to be assassinated.
- [11] The Petitioner further states that he was shaken by what had happened and fearful of his life. He feared being killed during hospitalization or lethally injected, and was unable to sleep that night or several nights. He had made a complaint to the Central Police Station and thereafter he was moved to the Takamaka police station. This he states increased his fear and anxiety as he believed the station's lack of manpower and only one gate with a padlock was intended to facilitate his assassination, injury, or torture without witnesses or hindrance.
- [12] The Petitioner was incarcerated at Takamaka Police Station with a camera recording his movements, causing him to lose privacy and dignity and further increase his anxiety. He had relayed his fears to another detainee who agreed to keep watch over him while he slept. He further states he experienced distress, fear, intimidation, and anxiety when being transported to court or hospital by at least half a dozen heavily armed officers of the 2nd Respondent.

- [13] The Petitioner states that he continues to experience frequent sleep difficulties, headaches, anxiety, and anguish a year after an incident in November 2021 at the Central Police station. The Petitioner's lawyer informed the Supreme Court of threats and intimidation by state security and Special Forces personnel of the 2nd Respondent, who entered his cell in November 2021. However, the Court failed to prevent further intimidation or investigate the complaint, leaving the Petitioner fearing for his life, and the life of his daughter, and wife.
- [14] The Petitioner further sets out that the 2nd Respondent, as per Article 163 of the Constitution of the Republic of Seychelles (Tenth Amendment) Act, 2022 (Act 13 of 2022), which came into force on the 20 June 2022, was tasked with defending Seychelles, fulfilling international obligations, assisting civil authorities during emergencies, and maintaining public order. They also performed other civil services to contribute to national development and improvement as directed by the President.
- [15] Furthermore, the 2nd Respondent's functions are regulated by the Defence Forces Act, 1981 (DFA), specifically provided for under section 5 of the DFA. Section 6 of the DFA mandates that the 2nd Respondent's members must obey the Commander-in-Chief's orders and use force, including lethal force, when necessary and lawful. The 2nd Respondent's members are granted legal immunity to execute lawful orders under section 6(3) of the DFA.
- [16] The Petitioner avers that since his arrest and detention, masked and heavily armed 2nd Respondent members have been accompanying him to court for further remand applications contrary to their functions under Article 163 of the Constitution, causing fear and intimidation to the Petitioner. It is on this basis, he states his fundamental rights under Articles 16, 27 and 163 have been contravened.
- [17] The Petitioner avers that the 1st and 3rd Respondents have not conducted any investigation into the mental anguish, torture, and threats against the Petitioner's life by the 2nd Respondent acting for the 1st Respondent. The Petitioner avers that no investigations have been conducted or explanations given regarding the use of Armed Foreigners and the 2nd

Respondent members for the arrest, guarding, and escorting the Petitioner contrary to Article 163 of the Constitution.

- [18] The Petitioner further states that the failure of the 1st Respondent to have measures and safeguards in place to guarantee the safety, security, and prevent inhuman or degrading treatment of the Petitioner while on remand, violates Articles 16 and 27 of the Charter.
- [19] The Petitioner states that the actions and omissions of the 1st, 2nd and 3rd Respondents violated Articles 16 and 27 of the Charter in respect of the Petitioner. The Petitioner further contends that the 1st, 2nd and 3rd Respondents violated Articles 2, 7, 10 and 27 of the International Covenant on Civil and Political Rights (ICCPR), by not safeguarding the right of the Petitioner while in detention, not safeguarding the Petitioner from being discriminated against, and depriving the Petitioner from being treated with humanity while in detention.
- [20] The Respondents in reply to the aforementioned allegations filed preliminary objections and their response addressing the averments pleaded in the Petition. For the avoidance of doubt, the Respondents do not plead to any averments contained in the Petitioner's response to the preliminary objections, given that none of the matters raised in the response were supported by affidavit evidence.
- [21] The Respondents admit that the Petitioner was arrested on 18 November 2021 by officers of the Anti-Corruption Commission Seychelles "the ACCS", a corporate body established under the Anti-Corruption Act, 2016, and that he was subsequently detained at the Prohibited Immigrant Centre. It is however denied that the 2nd Respondent (Seychelles Defence Forces) (SDF) were involved in, or assisted the ACCS with the arrest.
- [22] The Respondents admit that certain armed security consultants were present at the time of the arrest of the Petitioner in order to provide additional security and protection to the Petitioner and others who were present. Further, security consultants were engaged and employed by the ACCS and were under the command, direction and control of the ACCS and not the SDF. It is also denied that any of the SDF were foreign officers.

- [23] It is admitted that Captain Fonseka, as a former British soldier, referred persons to ACCS to be considered for engagement by ACCS as security consultants, but was not otherwise involved in their engagement nor did they report to him or the 2nd Respondent in any way. In referring the persons to ACCS, Captain Fonseka was not acting in his capacity as a member of the 2nd Respondent and his reference was purely from his personal connection.
- [24] It is admitted that armed members of the 3rd Respondent were present at the Prohibited Immigrant Centre to guard the Petitioner. Sentries from the 2nd Respondent who were under the supervision and control of the 3rd Respondent and the security consultants engaged by the ACCS were also present at the Prohibited Immigrant Centre in order to ensure the safety and security of the Petitioner.
- [25] The Respondents affirm that a doctor attended to the Petitioner whilst he was at the Prohibited Immigrant Centre. The Respondents admit that the Petitioner was taken by officers of the 3rd Respondent to Felicite Island on a boat operated by the 2nd Respondent (SDF) and that officers of the 2nd Respondent were on hand in the boat in case assistance was required to be given to the 3rd Respondent in relation to the identification of weapons or ammunition. It is further denied that there were at least four armed foreigners on the boat who had been recruited or deployed by the 2nd Respondent.
- [26] The Respondents in their reply state the no members of the 2nd Respondent were involved in the transportation of the Petitioner to and from court. Rather, the Petitioner was accompanied by members of the 3rd Respondent. It appears from the affidavit filed by the then Commissioner of Police, Ted Barbe, that the officers accompanying were an additional security precaution as the accused was considered a high profile person.
- [27] The Respondents aver that it was a special constable ("*the Special Constable*") and two other officers of the 3rd Respondent who conducted a security search of the Petitioner's cell late on 23 November 2021. No members of the 2nd Respondent entered or otherwise took part in the search of the Petitioner's cell. Rather, the 2nd Respondent's officers remained in the corridor in the detention area of Central Police Station and waited for the Special Constable and two police officers to conduct the searches. Moreover, none of the 2nd Respondent's officers spoke to or had contact with the Petitioner or any other detainee.

- [28] It is denied that the officers of the 2nd Respondent were acting contrary to Article 163 of the Constitution. The military sentries were assigned to, and placed on duty at, Central Police Station in order to support the 3rd Respondent that night. This was because of the high-profile nature of the Petitioner's case. At all times it was the 3rd Respondent who was responsible for the detention of the Petitioner.
- [29] It is reiterated that it was Officers of the 3rd Respondent who undertook a routine security search of the Petitioner's cell. Officers of the 2nd Respondent were not involved in the search. The members of the 2nd Respondent were in the corridor to provide additional security and assistance to the 3rd Respondent. It is further denied that the Petitioner was asleep, that the Special Constable and the police officers burst into his cell, and/or that they screamed at him.
- [30] The Respondents admit that a security search was undertaken in the Petitioner's cell in order to check the bags that were in the cell. There was no commotion and neither the Special Constable nor the other officers in the cell unbuckled their holster and reached for their gun while staring straight at the Petitioner. No female police officer shouted at the members of the 2nd or 3rd Respondents, as alleged by the Petitioner. The Respondents deny that the 2nd or 3rd Respondent sought to elicit a confession and no threats, as alleged or at all, were made to the Petitioner.
- [31] The Respondents aver that nothing occurred that could have caused the Petitioner to fear for his life if he was to have been taken to hospital. Moreover, the Respondent contends that the averment that the Petitioner might otherwise have been lethally injected at the hospital is not properly grounded in fact and is entirely misconceived.
- [32] No formal complaint was "filed" by the Petitioner. It is averred that the Petitioner spoke to the Deputy Commissioner of Police the next day and that the Deputy Commissioner conducted an inquiry into the allegations that were made by the Petitioner.
- [33] The Respondent further contends that it is not within the Respondents' knowledge whether the Petitioner had nightmares. As to the averment that the Petitioner had no "group support"

from other detainees, it is averred that this is simply irrelevant to this Petition and cannot properly be said to give rise to any constitutional breach on the part of the Respondents.

- [34] The Respondent submits that the Petitioner was properly protected during his detention, and that the 3rd Respondent took his safety and security seriously. The Respondents also admit that the Petitioner was transferred to Quatre Bornes Police Station, Takamaka, which has only two cells. It is denied that there was only one police officer on duty at any one time. There were armed officers on duty at the station and, for a period of time following the Petitioner's transfer, there were also military personnel on duty as deployed by the 2nd Respondent. As such, it is averred that the security provided at Quatre Bornes Police Station was sufficient to ensure the Petitioner's safety.
- [35] The Respondents admit that the cell in which the Petitioner was placed at Quatre Bornes Police Station had a CCTV camera in it. The cameras at Quatre Bornes Police Station were installed during the renovation of the station, and well before the arrest of the Petitioner. It is denied that the CCTV camera stripped the Petitioner of his dignity, in circumstances where he could otherwise change in the toilet area. The purpose of the cameras was to ensure the safety of detainees and officers of the 3rd Respondent at all times. The camera was placed in the cell for justifiable and lawful purposes, namely to ensure the safety and security of detainees and officers of the 3rd Respondent. In any event, it is averred that, whilst the footage had been preserved, by the time the above-mentioned request was made, the CCTV footage had become corrupted and could no longer be viewed.
- [36] The Respondents deny that the Petitioner was transported to court or hospital appointments, by armed officers of the 2nd Respondent. It is averred that the Petitioner was accompanied by armed officers of the 3rd Respondent. As to the averment that the Petitioner suffered or experienced distress, fear, intimidation and anxiety as a result of being transported by armed officers of the 3rd Respondent, it is not within the Respondents' knowledge as to how the Petitioner felt, but the purpose of having those officers on hand was to ensure his safety and security, given the high-profile nature of the case.
- [37] The Respondents' knowledge as to whether the Petitioner continues to have frequent bouts of difficulty sleeping or that he suffers from headaches, anxiety and anguish as a result of

the alleged incident on 23/24 November 2021. In further answer, it is denied that the incident, which amounted to a normal security search of the cell, could give rise to such feelings, in any event.

- [38] The 3rd Respondent has undertaken an inquiry, which concluded that there was no malicious intent in respect of the search of the Petitioner's cell on the night of 23/24 November 2021. In further answer, it is denied that the Petitioner could have suffered from mental anguish or that the incident gave rise to torture, cruel, inhuman and degrading treatment, given that no threat was made against the Petitioner's life.

ANALYSIS AND FINDINGS

- [39] Having thus set down the salient facts to this case this Court will proceed to deal with the preliminary objections.
- [40] By ruling delivered at the preliminary stage, this Court deferred determination of this issue, observing that the question whether the alleged contraventions were of a continuing nature, could only be properly resolved at the time of dealing with the merits of the case.
- [41] The Respondents raised, at the stage of preliminary objections, the contention that the petition is time-barred pursuant to Rule 4 the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules, specifically Rule 4(1) (a), in that it was filed outside the prescribed three-month period from the date of the alleged contraventions.
- [42] Rule 4 reads as follows:

(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) in a case of an alleged contravention, within 3 months of the contravention;

(b) in a case where the likely contravention is the result of an act or omission, within 3 months of the act or omission;

(c) in a case where the likely contravention arises in consequence of any law, within 3 months of the enactment of such law.

(2) Where a petition under rule 3 relates to the application enforcement or interpretation of any provisions of the Constitution, the petition shall be filed in the Registry of the Supreme Court within 3 months of the occurrence of the event that requires such application, enforcement or interpretation.

(3) Notwithstanding subrules (1) and (2), a petition under rule 3 may, with the leave of the Constitutional Court, be filed out of time.

(4) The Constitutional Court may, for sufficient reason, extend the time for filing a petition under rule 3."

[43] The Respondents further submit that no application has been made to Court by the Petitioner under Rule 4(3) for leave to file the petition out of time. They rely on the case Mikael Esparon v Electoral Commission & Ors [2022] SCSC 1, where it was held that while courts should be slow to hinder access to redress for constitutional violations, "*clear rules of procedure are in place for a reason.*" The Court further held that parties cannot be permitted to show "*a complete lack of diligence*" and then seek to disregard procedural rules.

[44] The Respondents also rely on Viral Dhanjee v James Alix Michel SCSC CP03/2004, where the Court held that applicants might be hurt when petitions or applications are dismissed due to legal technicality, but in the long run, the rule of law would be hurt if procedural irregularities were allowed to continue. The Respondents submitted that Rule 4(3) gives the Court a discretion to extend time, but permission to file out of time shall be granted "*not as of course but only if the applicant shows sufficient reasons to justify an extension of time*", as also held in Darrel Green v Seychelles Licensing Authority and Government of Seychelles CA 43/1997. The Respondents also contend that, even if an application for extension of time were to be made at this stage under Rule 4(3) and Rule 4(4) of the Rules, such an application would, in any event, be bound to fail. They submit that the Petitioner would be unable to demonstrate any "*sufficient reason*" to justify the delay.

- [45] The Respondents contend that each of the pleaded points relates to circumstances or events that took place at the end of 2021, that the Petitioner failed to comply with the strict time limits, and that no attempt had been made to explain the delay or seek an extension of time. The Respondents submitted that none of the grounds pleaded against them can arguably be said to give rise to continuing breaches of the Constitution.
- [46] This Court has given careful consideration to the preliminary objection raised by learned Counsel for the Respondent that the application is time barred.
- [47] The limitation question therefore turns on whether the alleged constitutional violations were completed acts, or whether they constitute continuing contraventions persisting from the time of filing the criminal case *CR 04/2022* against the Petitioner.
- [48] When one considers the relevant facts on which the Petitioner bases his petition, it is clear to this Court that the connected facts are in relation to the manner he was arrested, a search conducted on his properties on Felicite Island, incidents regarding a search conducted on his cell and in respect of a camera connected in his cell when he was at the Quarte Bornes police station. It is clear to this Court that all these incidents occurred and were complete during the period 18 November 2021 and late November 2021 while he was detained in the police cells. The Respondents referred to the case of *Talma & Anor v Michel & Ors (2 of 2010) [2010] SCCC 6*, where the Constitutional Court distinguished a continuing contravention from a completed act. The Court held that a continuing contravention “*is different from a contravention that is a completed transaction*”, giving the example that where a person is unlawfully held beyond 24 hours but later released, “*the contravention is complete and is not continuing.*”
- [49] This Court is of the view that facts on which the Petitioner bases his petition in this instant case, as set out above are completed transactions, done on the dates specified and are not continuing transactions. In *Valabhji v Republic & Drs (CP 09/2022) (14 May 2026)* hereinafter *CP 09/2022*, this Court held that the legality of the prosecution and the validity of their jurisdiction in filing charges in which a person is arrested and continuously detained could be considered to be contraventions of a continuing nature, the facts in this

instant case, as set out above at [48] cannot be considered to be continuing but are in the view of this Court completed transactions.

- [50] Therefore, in this instant case any challenges to the alleged contraventions referred to herein, should have been commenced within a period of three months from the date the alleged contravention occurred in November 2021. Therefore this Court holds that the alleged contraventions set out herein are time barred.
- [51] Even though the Petitioner may be time barred he is not precluded from coming to Court. The Petitioner under Rule 4 (3) could have sought leave of the Constitutional Court for the petition to be filed out of time. Rule 4 (4) indicates that the Constitutional Court may for sufficient reason extend the period of three months. However, the Petitioner has failed to make use of this opportunity.
- [52] In the present matter, no application for leave to file the petition out of time has been filed. Therefore, this Court is of the confirmed view that the alleged contraventions are time barred.
- [53] The other preliminary objection raised by the Respondents is that the Petitioner does not have an arguable case. This Court is of the view that it is more a matter to be considered when granting leave to proceed in a Judicial Review application.
- [54] A reading of the petition and affidavit, indicates that the Petitioner alleges contravention of the following Articles of the Constitution.; Article 16 of the Charter, which guarantees the right to dignity and protection from torture, cruel, inhuman, or degrading treatment or punishment; Article 27, which guarantees equal protection of the law and non-discrimination; Article 163, which defines the functions of the Defence Forces; and Article 161, which outlines the duties of the Police Force, including maintaining law and order and safeguarding detainees. He further relies on Articles 7 and 10 of the ICCPR and Article 2 of the Convention Against Torture.
- [55] Article 16 of the Charter provides that: *“Every person has a right to be treated with dignity worthy of a human being and not to be subjected to torture, cruel, inhuman or degrading treatment or punishment.”*

[56] Article 27 of the Charter provides that: *“(1) Every person has a right to equal protection of the law including the enjoyment of the rights and freedoms set out in this Charter without discrimination on any ground except as is necessary in a democratic society. (2) Clause (1) shall not preclude any law, programme or activity which has as its object the amelioration of the conditions of disadvantaged persons or groups.”*

[57] It would be pertinent at this stage to state that this Court also observes that many of the facts as set out in this petition and which the Petitioner relies on are the same facts that were set-out in the petition of Valabhji v Republic & Ors (CP 09/2022) (14 May 2026) (CP 09/2022) which has already been decided by this Court. Some of the re-pleaded facts are set down below;

“The actions of the members of the 8th Respondent to force a confession from the Petitioner contravenes Article 19 and 27 of the Charter (paragraph 86).

The Petitioner avers that while on remand and under investigation by the 7th Respondent, he was guarded and confronted by armed members of the 8th Respondent, acting under the command and control of the 2nd Respondent.

These officers entered the Petitioner’s cell under the pretext of conducting a search, thereby causing fear and intimidation.

During this incident, one officer unbuckled his holster and placed his hand on his firearm while staring at the Petitioner, which amounted to an implicit threat.

The incident occurred in the early hours of the night, leaving the Petitioner in a state of fear and confusion. Other detainees overheard members of the 8th Respondent pressuring the Petitioner to confess, further evidencing an attempt at coercion.”

The involvement of foreign armed personnel and military forces in civilian arrest operations further undermines the legality of the arrest and detention.”

[58] The relief pleaded by the Petitioner appears to arise from substantially the same factual basis as that pleaded in CP 09/2022. In effect, the Petitioner seeks to reframe the alleged violation of his rights on the same facts rather than the provisions relied upon in CP

09/2022 which alleged contravention of his right to fair trial, Article 19 and also discrimination under Article 27 of the Constitution. It should be, most importantly kept in mind that the re-pleading of the same facts on which relief is sought in this case has been done well after the time period prescribed in Rule 4 (1) as set out above.

[59] It is the considered view of this Court that this should not be permitted as it results in there being no finality in litigation, as the same party has brought a petition on the same set of facts that this Court has already made a determination on. The Petitioner is therefore trying to take “*another bite of the cherry*” per verbally speaking by alleging further constitutional violations on the same set of facts already decided on by this Court giving scant respect to the Rules.

[60] Not only does this result in no finality in litigation, a party cannot be permitted to reopen matters which have already been adjudicated upon by a competent court, merely by reformulating the legal basis upon which the same factual complaint is advanced.

[61] In Vijay Construction (Pty) Ltd v Eastern European Engineering Ltd & Anor (CP 10 of 2020) [2020] SCSC 881, the Constitutional Court refused to entertain a constitutional petition where the matter had already been dealt with by a competent court. The Court held that “*The matter brought by the Petitioner was adequately dealt with by a competent court. The Petition amounts to an abuse of the court process.*”

[62] The same reasoning is applicable in the present matter. The Petitioner has already brought a constitutional petition arising from the same factual basis as pleaded in CP 09/2022. The fact that the present petition is now under Articles 16, 27 and 163 of the Constitution does not change the substance of the complaint. The Petitioner is, in effect, seeking to re-litigate the same factual allegations under different constitutional provisions. Further the attempt of the Petitioner to re-litigate and re-plead the action on the same facts outside the time limits prescribed in the Rule 4 (1) and without obtaining the leave of Court cannot be condoned by Court. Time limitations are imposed by the Rules in order to prevent such re-litigating and re-pleading of issues as and when one pleases to do so, thereby bringing a finality to litigation.

- [63] Having considered the pleadings, this Court is satisfied that the present petition against the 2nd Respondent is not a new and distinct complaint. It is founded on the same set of facts previously pleaded and has been determined in *CP 09/2022*. To allow the petition would permit repeated litigation arising from the same factual basis and would undermine the finality of this Court's previous determination. It is therefore, the considered view of this Court that the Petitioner should not be permitted to proceed and the petition should be dismissed in its entirety.
- [64] Even if one is to consider the facts re-pleaded and re-litigated in this case, the arrest of the Petitioner by alleged armed foreign personnel, the treatment of the Petitioner at the Central police station where he alleges he was screamed at, threatening gestures and words made at him in an attempt to get him to confess are facts already been dealt with in case *CP 09/2022* and dismissed for reasons given therein. It cannot be said that a body search or a search of a cell especially when he was noticed to have a bag in his possession, amounts to inhuman or degrading treatment. This Court cannot now once again revisit all these issues as the Petitioner is now time barred from raising the same issues.
- [65] In the European Court of Human Rights case of *Labita v Italy* [GC], 2000, 26772/95 the Court held that "*Treatment has been held by the Court to be "inhuman" because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment*" emphasis added.
- [66] The Petitioner at one stage when he was taken to the Quatre Bornes police station, as it was an isolated place and manned by only a few police Officers, believed the station's lack of manpower and only one gate with a padlock was intended to facilitate his assassination, injury, or torture without witnesses or hindrance. Learned Counsel for the Respondent submitted that the 3rd Respondent has provided extra security to him due to the high profile

nature of the case whilst he was in the Quatre Bornes police station. His fear seems to be more self-inflicted in nature as he does not complain of any actual or attempted torture or injury being done on him or any actual attempt or even threat to assassinate him being done on him by the Respondents. We see no merit in this allegation which also in our view is time-barred.

[67] The Petitioner at the same time in the same petition complains the use of security personnel of the 2nd Defendant as security in his transport from the Court and detention. It should be borne in mind that the cases filed against the Petitioner included serious charges such as the possession of a large quantity of explosives and weapons. In such a situation the additional use of defence forces personnel and expertise and assistance in the search, handling and preserving and disposal of these items is understandable and warranted, considering the limited resources available to the police force. The Respondents admit that the defence personnel were involved in the transport by way of the coast guard to the Felicite Island, the search and identification of the weapons and explosives. In any event matters in respect of his arrest, use of military personnel and attempt at eliciting a confession from him have been already dealt with and determined in CP09/2022.

[68] Further, when this Court takes notice of the background facts set out in this judgment and CP 09/2022, it is clear that not only the Petitioner but several other high profile individuals were taken into custody on very serious charges of Official Corruption (CR114/2021) and it would have been necessary that security measures be enhanced, not only to prevent any attempt at escape but even for the safety of the accused themselves. The need for heavily armed personnel to escort the accused to and from court was a necessity. The Petitioner does not complain of any particular harassment from any of the personnel involved while being transported but yet appears to complain that this was '*inhuman and degrading treatment*' which this Court cannot accept.

[69] Learned Counsel for the Respondent submits that all persons who provided security were under the control of the 3rd Respondent and not the 2nd Respondent. The CCTV footage of the 23 and 24 November 2021 starting from 23:24hrs, produced by the Petitioner, shows military personnel and police officers walking down the corridor, opening, and entering a

wooden door at the Central Police Station. There is no clear audio. The footage does not show the Petitioner being harassed and he is not even seen in the footage. The Petitioner has failed to show how this amounted to inhuman and degrading treatment or discrimination as not only he, but also all the other accused in the case were treated with similar security arrangements. Considering the prevailing medical situation prevailing at the time, this Court cannot agree with the Petitioner that it was their attire in wearing masks and being heavily armed that resulted in him fearing for his life.

[70] The Petitioner next complains about the presence of a camera recording his movements while he was incarcerated at Takamaka (Quatre Bornes) Police Station. He states this resulted in him losing his privacy and dignity and further increased his anxiety. He had relayed his fears to another inmate who agreed to keep watch over him while he slept. In Van der Graaf v the Netherlands, 2004 8704/03, the European Court accepted that permanent camera surveillance in detention constitutes a serious interference with privacy, stating that “*placing a person under permanent camera surveillance whilst in detention... has to be regarded as a serious interference with the individual’s right to respect for his or her privacy*”; however, the Court held that such interference may be justified where it is lawful, limited and supervised, noting that the domestic rules “*limit the validity of a decision to impose permanent camera surveillance to a period of two weeks*” and require the decision to be brought to the attention of the Supervisory Board, and therefore concluded that “*the interference complained of may be regarded as having been necessary in a democratic society in the interests of public safety and for the prevention of disorder and crime.*”

[71] From the facts before this Court, the camera was placed for security purposes and was fixed long before the Petitioner was brought in. Learned Counsel for the Respondent submits that this does not affect the privacy of the Respondent as he could change in the toilet area. The Canadian Supreme Court in Weatherall v Canada (Attorney General), [1993] 2 SCR 872, the Court stated that “*imprisonment necessarily entails surveillance, searching and scrutiny*” and that “*a substantially reduced level of privacy is present in this setting.*” Similarly, in the case of in R v Stillman, [1997] 1 SCR 607, the Court held that “*an accused*

person will have a lower expectation of privacy following his or her arrest and subsequent custody.”

[72] In any event the Petitioner complains of this only whilst he was detained in Quatre Bornes station and he himself states despite the camera, he still feared for his security and wanted one of the inmates with him to stand guard while he slept. It is clear that the Petitioner does not complain of permanent camera surveillance and it is apparent from the submissions of the Respondents that it was installed long before the Petitioner was brought to the precinct and was installed for security purposes for all detainees.

[73] In Gäfgen v. Germany [GC], 2010, § 108 it was decided that the classification of whether a given threat of physical torture amounted to psychological torture or to inhuman or degrading treatment depended upon all the circumstances of a given case, including, notably, the severity of the pressure exerted and the intensity of the mental suffering caused.

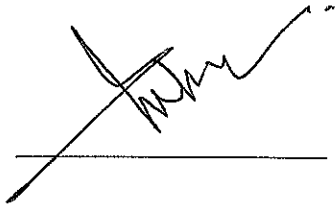
[74] From the above this Court is satisfied that none of the individual acts or the acts taken as a whole amounts to “inhuman” or “degrading”, treatment or that the Petitioner underwent suffering or humiliation beyond the suffering or humiliation inevitably connected with a given form of “*legitimate treatment or punishment*” as set out in the ECHR Labita v Italy [GC] supra. We see no violation of his constitutional rights.

[75] The Petitioner states that he has made complaints to the higher-ranking Officers in respect of these complaints. If the Petitioner is not satisfied with the decisions or manner in which the inquiries are proceeding, he is not precluded from having them reviewed by Courts.

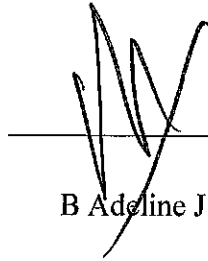
[76] For reasons given herein, this Court proceeds to dismiss the petition. The dismissal includes the claims of compensation in a sum of SCR 3,000,000.00 (three million) each against the 1st Respondent (Republic), 2nd Respondent (Defence Forces) and 3rd Respondent (Police Force) and all other reliefs claimed in the prayers to the petition.

[77] Both parties to bear their own costs.

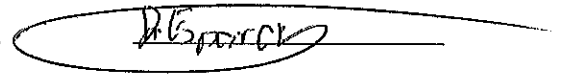
Signed, dated and delivered at Ile du Port on the 25 June 2026

A handwritten signature in black ink, appearing to be 'M Burhan J', written over a horizontal line.

M Burhan J (Presiding)

A handwritten signature in black ink, appearing to be 'B Adeline J', written over a horizontal line.

B Adeline J

A handwritten signature in black ink, appearing to be 'D. Esparon J', written over a horizontal line.

D. Esparon J