

CONSTITUTIONAL COURT OF SEYCHELLES

Reportable

MA 119/2025

(Arising in CP 05/2025)

In the matter between:

MUKESH VALABHJI

(rep. by France Bonte)

1st Petitioner/Applicant

LAURA VALABHJI

(rep. by Samantha Aglae)

2nd Petitioner/Applicant

and

THE REPUBLIC

1st Defendant/Respondent

THE ATTORNEY GENERAL

(rep. by Hashini Naidu)

2nd Defendant/Respondent

Neutral Citation: *Mukesh Valabhji & Anor v The Republic & Anor* (MA119/2025) (Arising in CP 05/2025) (01 August 2025)

Before: Burhan J (Presiding), Pillay J and Adeline J

Summary: Application for stay of proceedings.

Heard: 22 and 24 July 2025

Delivered: 01 August 2025

ORDER

The Application for stay of proceedings is dismissed. Parties to bear their own costs.

RULING

BURHAN J (Presiding), PILLAY J, ADELINE J concurring

BACKGROUND

- [1] This is an application filed by the Petitioners/Applicants (Applicants) seeking a stay of proceedings from the Constitutional Court in respect of an ongoing trial before the Chief Justice (Trial Judge) in CR 04 of 2022.
- [2] In their joint affidavit, the Applicants aver that they are the 1st and 2nd accused in the said case CR 04 of 2022. They state that the case for the defence has been heard since 10 March 2025 and that their lead Counsel Mr James Lewis was compelled to withdraw his appearance in CR 04 of 2022 because the Trial Judge failed to follow the rules for recusal, following his ruling in the *voire dire*. The Applicants aver that the said ruling, amounted to a prejudgment determination of the 1st Applicant, giving rise to bias by the Trial Judge. They further complain that the 1st Applicant is being forced to accept Counsel chosen by Court and also being compelled to share legal representation without safe guarding their different interests.
- [3] It is averred by the Applicants at paragraph 5, of their affidavit *“that the Chief Justice despite acknowledging that the 1st Petitioner have raised a constitutional point in the manner he dealt with the recusal failed, to refer the matter to the Constitutional Court.”* The Applicants further aver that they were advised by Counsel that as the trial in CR04 of 2022 has not come to a finality and judgment has not been delivered, that it is proper for the proceedings in CR 04 of 2022 be stayed, to allow the Constitutional Court to determine the constitutional petition and to ascertain the full extent of the prejudice and contraventions averred in the petition, and to prevent further contravention of the right to a fair hearing in CR 04 of 2022.
- [4] It is further stated in the affidavit that in order to meet the ends of justice, it is necessary that the court order a stay of proceedings in CR 04 of 2022, before judgment is delivered to address those violations and prevent further violations from occurring. They further state that a stay is necessary in order to properly challenge the infringement of their right to a fair hearing, otherwise irreparable harm would be caused resulting in the Applicants suffering great prejudice.

- [5] The Respondents in reply filed objections to the said application on 01 July 2025 stating that the notice of motion order to stay the proceedings in case CR 04 of 2022 is not sustainable in law or on facts and there is no statutory basis or jurisdictional foundation for the application.
- [6] The Respondents further state in their objections that the Applicants have not produced any evidence in support of their allegations and the application is defective for want of proper affidavit in support. Further, the Applicants have failed to include the third and fourth accused who are also facing trial in CR04 of 2022 and who may seriously be prejudiced by any stay orders as prayed for.
- [7] It is further averred in their objections there is no *prima facie* case of any alleged violation or likely contravention of any of the constitutional rights of the Applicants to pray for the relief from this Court. The Respondents move for the said application and petition to be dismissed as it is frivolous, vexatious and an abuse of process, whereby the Applicants are not entitled for any relief prayed for in the application.

Analysis and Findings

- [8] We will deal with the submissions made by the Applicants and Respondents in our analysis of the facts and law and in our findings.
- [9] At the very outset, we observe the main basis of this application before this Constitutional Court is based on an order made by the Trial Judge dismissing a recusal application following his ruling given in a *voire dire* on the admissibility of a document. It is alleged by the Applicants that the ruling made by the Trial Judge in the *voire dire* amounted to prejudgment determination of the 1st Applicant, giving rise to bias by the Trial Judge. A copy of the said ruling dated 26 May 2025 has been attached to the main petition. It is clear from the said ruling that the Trial Judge had after considering the submissions of both parties dismissed the application on the basis that it is incompetent, is frivolous and vexatious and also made a finding that it does not come under Rule 4 of the Recusal Rules and that there is no factual and legal basis for recusal.

- [10] In the case of The Seychelles Human Rights Commission & Others v The Speaker of the National Assembly of Seychelles & Others (SCA MA21/2023) ((SCA MA21/2023) [2023] (Arising in MA230/2022, Out of CC07/2022) (18 December 2023)) [2023] SCCA58 (18 December 2023) (SHRC Case), the Seychelles Court of Appeal held that a ruling given in a recusal application is an interlocutory order within the meaning of Section 12 (2) (a) (i) of the Courts Act. An application for leave to appeal constitutes the appropriate remedy against such an order.
- [11] Therefore, based on the finding made by the Seychelles Court of Appeal in the SHRC case the remedy available to the Applicants is by way of appeal. This Constitutional Court is bound by the decision in the SHRC case as per Article 7 (1) of the Civil Code of Seychelles Act. Refusal of the Trial Court to recuse itself does not, in and of itself, amount to a constitutional violation but constitutes a matter that is subject to appeal.
- [12] Therefore, it is our considered view that the proper remedy for the Applicants is by way of appeal.
- [13] The Respondents in their submissions state the court may take judicial notice that the Applicants have simultaneously filed a motion for special leave to appeal as SCA 02 of 2025 before the Court of Appeal. A copy of the motion for special leave to appeal the interlocutory ruling of the Trial Judge has been attached to the Respondents final submissions dated 24 July 2025. It is the contention of the Respondents that in doing so the same subject matter lies before the Constitutional Court and the Court of Appeal. The Applicants at paragraph 5 of their affidavit in this application contend “*that the Chief Justice despite acknowledging that the 1st Petitioner have raised a constitutional point in the manner he dealt with the recusal failed to refer the matter to the Constitutional Court.*” We see no merit in this contention as once the Trial Judge has come to a finding that the matter is frivolous and vexatious there is no necessity for him to make any kind of referral to the Constitutional Court as per Article 46 (7) of the Constitution of the Republic of Seychelles.

[14] In Rodomir Prus & Ors v Government of Seychelles & Anor 2020 SCCC 885 (Prus Case) it was held that the imputation of Article 46(7) read with Rule 10 of the Constitutional Court Rules, is that where a question of breach or possible breach of a constitutional right arises in a court other than the Constitutional Court or Court of Appeal, such a question has to reach the Constitutional Court indirectly, using a referral from that court. It is clear to this Court that in this instant case no such referral has been made by the Trial Judge. The Applicants have sought special leave to appeal from the recusal order from the Seychelles Court of Appeal. The proper forum for seeking a stay therefore is from the Seychelles Court of Appeal which according to the documents filed by the Respondents, the Applicants have already done.

[15] It is the Respondents contention in their submissions that it is incorrect for the Applicants to file a fresh petition in the Constitutional Court seeking a stay of proceedings in the Trial Court, when already an appeal exists in the Seychelles Court of Appeal challenging the said recusal order. The Respondents also cite the case of Parcou v Laporte & another (CP 07/2020), where at [26] it states:

“(26) Litigants cannot have recourse to Article 46(1) where a matter is pending before a different forum, like the Supreme Court. The purpose of referrals is to prevent multiple proceedings on the same merits in different courts, since the Constitutional proceedings will impact upon the main proceedings. It discourages abuse of court processes. i.e. rehashing the same issues in multifarious forms and rehashing of the same issues in multifarious forums. See Prus & Ors v Government of Seychelles & Anor supra and Gomme y Maurel & Anor (SCA 06 of 2010) /2012/ SCCA 28 (07 December 2012), Brioche v Attorney-General (2013) SLR 425 para 21; Platte Island Resort v EME Management Services (2013) SLR 225.”

[16] Further in *Rodomir Prus* the Court importantly emphasised the purpose and operation of Article 46 (7) and held:

“[16] When a question has been referred to this Court, the main proceedings to which the question relate is halted. It is paused to allow this Court to determine the question. In this

way, the Court is prevented from making a final determination on legislation or an act that is unconstitutional. The importance of this cannot be refuted. The system envisaged in Article 46 (7) of the Constitution is there to ensure that as far as possible, Courts create constitutional harmony in addressing disputes. Sidestepping this process in our view causes rehashing the same issues in multifarious forms and rehashing of the same issues in multifarious forums.”

- [17] It is quite clear to this Court that the Applicants by filing a fresh petition in the Constitutional Court seeking a stay of proceedings in the Trial Court when no referral to this Court exists from the trial court, clearly indicates the Applicants are sidestepping a process and in our view rehashing the same issues in multifarious forms and rehashing of the same issues in multifarious forums.
- [18] Further, giving due consideration to the facts set out in this application and the submissions made, this Court is unable to find a legal basis on which this application has been made to stay the proceedings in CR 04 of 2022. This application for a stay is not based on a stay of proceedings pending execution of judgment of this Court, nor is it based on a stay pending appeal from a judgment or interlocutory order of this Court as also provided for in Article 200 and 230 of the Seychelles Code of Civil Procedure.
- [19] It would be pertinent at this stage to refer to Article 46(7) of the Constitution which gives an opportunity to a party, to seek a referral to the Constitutional Court when a constitutional question arises during the course of any proceedings in a court and require the Court referring the matter to adjourn the case.
- [20] Article 46 (7) of the Constitution reads as follows:

“Where in the course of any proceedings in any court, other than the Constitutional Court or the Court of Appeal, a question arises with regard to whether there has been or is likely to be a contravention of the Charter, the court shall, if it is satisfied that the question is not frivolous or vexatious or has already been the subject of a decision of the Constitutional Court or the Court of Appeal, immediately adjourn the proceedings and refer the question for determination by the Constitutional Court.” [own emphasis added]

- [21] The deliberate use of the word “adjourn” by the legislator shows a clear legislative intent to limit the court’s power in such circumstances to a procedural postponement, rather than to confer a discretion to permanently or indefinitely stay proceedings. Further according to Article 46 (7), an adjournment can be granted only by a court hearing the case and not by another court not hearing the case as requested in this instant application. To read “stay” into the text of Article 46 of the Constitution, would amount to judicial supplementation of a constitutional provision, thereby creating surplusage and undermining and misinterpreting the purposive interpretation of the Constitution. It is our considered view that the use of the term “adjourn” must be afforded its plain and ordinary legal meaning. The Constitution has not contemplated or provided for a stay in such circumstances and the invocation of a stay where adjournment is expressly prescribed would be *ultra vires* the framework and intention of Article 46(7) of the Constitution. Therefore, it is clear to us that it is only by way of referral under Article 46(7) that a court may adjourn its proceedings.
- [22] The Applicants referred to the case of the Republic v Georges (1998) (CO 26/1998) [1998] SCSC 13 (3 September 1998), where they state that the trial was stayed pending the Constitutional Court’s determination of a constitutional violation under Article 19. However, the Constitutional Court in the said case took cognisance of the matter based on the referral from the Trial Court in terms of Article 46(7), unlike this instant case. The case of R v Georges (CO 26 of 1998), relied upon by the Applicants to support a jurisdictional basis for the stay application, does not apply to this instant case, as the Trial Judge in CR 04 of 2022 did not make a referral to the Constitutional Court.
- [23] The Applicants further submit that it would be in their interest for the proceedings in CR 04 of 2022 to be stayed. However, the Court must give due consideration not only to the interest of the Applicants but also to the rights and interests of the other accused in CR 04 of 2022. Granting a stay would occasion substantial delay for all the other accused who also have the constitutional right to a fair hearing within a reasonable time. The Respondents further argue that granting a stay would prejudice the third and fourth accused in CR 04 of 2022, who have not been joined as applicants. The Respondents bring to the notice of this Court that the trial in CR 04 of 2022 commenced in June 2023 and has now

continued for nearly two years. One co-accused remains in custody, while the other is subject to strict bail conditions. The Trial Judge has prioritised this matter over other proceedings in the Supreme Court, resulting in Counsel for the co-accused being unable to appear in other trials. This has caused significant delays in unrelated cases and uncertainty in court scheduling, as other courts refrain from setting dates that may be vacated due to the resumption of the said case. The Respondents submit that this situation has created a serious impediment to the efficient operation of the court. In their view, the trial should proceed expeditiously in the interest of justice, and no compelling reasons have been presented to justify the stay.

- [24] It is relevant to note that the Applicants have previously sought similar relief in the form of applications for recusal and stay of proceedings before the Constitutional Court alleging numerous constitutional contraventions in respect of trial procedure in respect of the same trial (CR 04 of 2022). However, each of those applications were dismissed after careful consideration of the law and facts before Court. Findings have been made by Court that attempts are being made by the Applicants to delay and derail the trial procedure in CR 04 of 2022. Notably, the Applicants have not exercised their right of appeal in respect of any of those rulings which were against them. As a result, those decisions remain final and binding. The absence of any appellate challenge further undermines the propriety of reintroducing substantially similar arguments in the present forum, as the issues raised have effectively been adjudicated and determined by this Court earlier. (Valabhji & Anor v Republic & Ors (CP 6 of 2023) [2024] SCCC 1 and Valabhji v The Republic of Seychelles & Ors (MA 111 of 2024 (Arising in CP 06 of 2023)) [2024] SCCC 2. Valabhji & Anor v The Republic & Anor (CM 28/2023) [2023] SCSC 396 (01 June 2023)).
- [25] This Court notes that the Trial Judge, in his determination of the recusal application on 26 May 2025, concluded that the issue raised was frivolous and vexatious. Therefore, it is clear that it did not meet the threshold for referral to the Constitutional Court pursuant to Article 46(7) of the Constitution. Consequently, the matter fell outside the ambit of Article 46(7), and thus adjournment cannot be granted.

[26] We have perused the proceedings attached to the petition. We first observe that it is incorrect for the 1st Applicant to state that his lead Counsel was compelled to withdraw his appearance. The proceedings clearly indicate to us that the procedure set out in the Rule 18 of the Legal Practitioners (Professional Conduct) Rules, 2013 (hereinafter “the Rules”) was not followed.

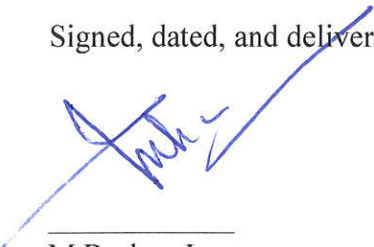
[27] Rule 18 deals with the withdrawal from litigation by a party from litigation and provides as follows:

“Rule 18. Withdrawal from litigation

- 1. Where a legal practitioner intends to withdraw from litigation, the legal practitioner shall give his or her client, the court and all other parties reasonable advance notice of that intention.*
- 2. A legal practitioner may only withdraw from litigation where—(a) his or her instructions have been withdrawn; or (b) he or she is permitted by the court to withdraw.*
- 3. A legal practitioner may seek the court's permission to withdraw from litigation, without disclosing the specific circumstances giving rise to the request, where—(a) the client has instructed the legal practitioner to act in a manner that is or is likely to be contrary to these Rules or the Act; (b) the client has abused or intends to abuse the process of the court, the legal practitioner has advised the client against that course, and the client has declined to act on the legal practitioner's advice; or (c) the relationship of trust and confidence between the client and legal practitioner has irretrievably broken down.*
- 4. A legal practitioner may seek the court's permission to withdraw from litigation, in writing setting out the circumstances giving rise to the request, where—(a) the client has unjustifiably disregarded an agreement or obligation as to the payment of the legal practitioner's costs; or (b) there are other substantial grounds for withdrawal due to personal circumstances of the legal practitioner beyond his or her control.”*

- [28] We observe that scant respect has been paid to the above mentioned Rules and therefore the Applicants cannot fault the Court, in respect of the sudden withdrawal of his Counsel from the case at a late stage of the trial, during the hearing of the case for the defence.
- [29] The Respondents in their submissions maintain that the Applicants have always had representation of their choice and the real issue lies in the refusal to adjourn proceedings to accommodate the Applicant's preference for a different lead Counsel. The Respondents contend that this concern falls outside the scope of Article 19(2) (d) of the Constitution, which guarantees a right to Counsel of choice but does not extend to a right to select a lead counsel. Whether Counsel occupies the lead or supporting role is a matter of internal arrangement and not a constitutional violation. We are inclined to agree with the Respondents on this issue.
- [30] For all the aforementioned reasons and giving due consideration to the law as set out in Article 46 (7) of the Constitution, the relevant case law and the circumstances referred to herein, we proceed to dismiss the application for stay of proceedings in case CR 04 of 2022. Parties to bear their own costs.

Signed, dated, and delivered at Ile du Port on 01 August 2025.



M Burhan J
Presiding



L Pillay J



B Adeline J