

SUPREME COURT OF SEYCHELLES

Reportable
MC 66/2024

In the matter between:

NICHOL JEAN RUSSELL GABRIEL
Olivier Maradan Street
Victoria
Mahe
Seychelles
(Self-represented)

Petitioner

And

REGISTRAR OF THE SUPREME COURT

1st Respondent

And

THE ATTORNEY GENERAL
Of
The Link Building
Ile du Port

2nd Respondent

Neutral Citation: *Gabriel vs The Registrar of the Supreme Court & Or* (MC 66/2024) (05 March 2025)

Before: Adeline J

Summary: Leave to proceed with judicial review – Supreme Court (Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules – Rules 1 (2), 2 (1), 2 (2), 5 and 6 (1) and 6 (2) – Article 125 (1) (c) of the Constitution.

Heard: 18 December 2024

Delivered: 5 March 2025

FINAL ORDER

Leave to proceed with Judicial Review is denied for the reason that the Petitioner has not pleaded *sufficient interest* in the subject matter of the petition and that the petition is being made *in good faith* as the substantive law under rule 6 (1) of the Supreme Court (Supervisory Jurisdiction Over

Subordinate Courts, Tribunals and Adjudicating Authorities) Rules requires. Accordingly, the petition is therefore dismissed.

RULING

Adeline, J

- [1] The Petitioner in these proceedings, one Nichol, Jean, Russell Gabriel, pursuant to rule 5 of the Supreme Court (Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules (“the Court Supervisory Rules) petitions this court for leave to proceed with judicial review of the decision of the 1st Respondent in these proceedings to further suspend his Legal Practitioner’s License for another period of three years effective from the 26th July 2024, and that should he fail to pay the sum of SCR 56,000.00 his license would be further suspended for another two years to run consecutively.
- [2] By his petition, subject to leave of this court, the Petition seeks to invoke the Supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority of this court, and to exercise its power under Article 125 (c) of the Constitution for the grant of the following reliefs he applies for, namely;
- a) Issue a Writ of certiorari and quash the whole of the decision of the Respondent dated the 26th July 2024.*
 - b) Make an order for costs against the Respondents.*
 - c) Make any further order or remedies under the schedule, that this Honourable Court deems fit in all the circumstances of this case”.*
- [3] The Petition is accompanied by an affidavit in accordance with Rule 2 (1) of the Court Supervisory Rules sworn by the Petitioner himself. It is observed, however, that the

Petitioner has failed to comply fully with the constitutional requirements of rule 2 (2) of the Court Supervisory Rules which is couched in the following terms;

“2 (2) The Petitioner shall annex to the Petition a certified copy of the order or decision sought to be canvassed and originals of documents material to the petition, or certified copies thereof in the form of exhibits”

[4] The subject matter of these proceedings at this stage, is for leave of this court to proceed with Judicial Review. Without leave of this court as a pre-requisite, the current proceedings will stall.

[5] In line with the legal requirement for leave to proceed with judicial review pursuant to rule 5 of the Court Supervisory Rules, the petition although filed inter parte, was listed ex parte. The decision as to whether leave should or should not be granted, has to be made on account of the pleadings and the affidavit evidence.

[6] Therefore, to determine the merits of this application for leave to proceed with judicial review based on the substantive law, Rules 6 (1) and 6 (2) of the Court Supervisory Rules have to be brought into the equation. Rule 6 (1) is couched in the following terms;

“The Supreme Court shall not grant the Petitioner leave to proceed unless the court is satisfied, that the Petitioner has a sufficient interest in the subject matter of the Petition and the petition is being made in good faith” (Underlined emphasis is mine)

[7] Rule 6 (2) is couched in the following terms;

“6 (2) Where the interest of the Petitioner in the subject matter of the petition is not direct or personal but is a general or public interest, the Supreme Court in determining whether the Petitioner has a sufficient interest in the subject matter may consider whether the Petitioner has had the requisite standing to make the application”.

[8] Clearly, therefore, the use of the word “shall” in rule 6 (1) of the Court Supervisory Rules, means, that the court is mandatorily prohibited from granting the Petitioner leave to proceed with judicial review where the Petitioner has failed to satisfy the court that it has “sufficient interest” in the subject matter of the petition, and the petition is being made in

“good faith”. The issue of standing under rule 6 (2) is only called into consideration, where the Petitioner’s interest is a general or public interest in establishing whether the Petitioner has sufficient interest in the subject matter which on the facts of the instant case is personal and therefore does not warrant any consideration.

- [9] What therefore amounts to sufficient interest? There is a plethora of case law authorities in our jurisprudence settling the law. It is first and foremost settled law, that in an application for leave to proceed with judicial review, that every Petitioner must satisfy the courts that he has sufficient interest in the subject matter of the petition. The case of *Rangasamy v Chief Executive Officer of Planning Authority (MC 102/2014) [2016] SCSC 865 (9th November 2016)* at paragraph [24] is one of those cases in point.

- [10] In the case of *The Attorney General v PSAB and Anor (MC 67/2021) [2021] SCSC 1038 (29th October 2021)* at paragraph [8] of its ruling, the court determined that the Petitioner in the petition had sufficient interest in the subject matter of the petition. This was because the Petitioner had sought for judicial review of a decision of the Public Service Appeals Boards, which decision directly affected the Petitioner as it involved a former employee.

- [11] In the case of *Darad vs Minister of Employment and Social Affairs & Anor (MC 27 of 2023) [2023] SCSC 683 (13 September 2023)* at paragraph [6], the court determined, that the decision which the Petitioner sought for review directly affected the Petitioner and as such, it was adjudged that the Petitioner had sufficient interest in the subject matter of the Petition. Therefore, sufficient interest would be apparent where a Petitioner is directly affected by a decision. This proposition, is reinforced by the case of *Generation Transportation & Logistics (Proprietary) Limited vs Minister for Finance, Economic Planning and Trade (MA 09/2021) [2021] SCSC 874 (12 April 2021)* at paragraph [5].

- [12] Quite interestingly, in the case of *Minister Responsible for Public Administration (Faure) vs Speaker of the National Assembly (Prea) (MA 126/2019) [2019] SCSC 1200 (9th May 2019)* at paragraph [30], the court did look at the characteristics of the Petitioner as a determining factor to find standing and subsequently, personal and public interest in the matter set out in the Petition.

- [13] Therefore, it is abundantly clear from those case law authorities cited above, that a Petitioner seeking for leave to proceed with judicial review must satisfy the courts that it has “sufficient interest” in bringing forth the question. This is determined by factors such as the characteristics of the Petitioner, and how a decision directly affects the Petitioner.
- [14] To that end, for a petition for leave to proceed with judicial review to succeed, the requirement of “sufficient interest” and “good faith” must be pleaded by the Petitioner in its pleadings. It is settled law, that in the event of a failure to plea, the court cannot formulate a case for a party after listening to the evidence, or grant a relief not sought for in the pleadings. In other words, a judge cannot adjudicate on issue which have not been raised in the pleadings (see *Vel vs Knowles* SCA 41/1998 42/1998, LC 136).
- [15] In the case of *Jacobs v Charlot Crecent (Management) Company Limited [2024 EWHC 259 (ch)]* the court reminds us of the significance of pleadings in litigation, stating, that it is “a vehicle for stating one’s case”, in that, they define the issues. In *Jacobs* (supra), at [57] Francourt J, had this to say;

“[57] Where an issue has not been pleaded and was not relied on at the start of the trial, I consider that the onus lies as much on counsel for the party seeking to rely on it as on their opponent to raise the matter with the Judge”

- [16] In addition, at [65] Francourt J had this to say too;

“65. It was not opened to the judge to decide the case in favour of the Defendant on the basis of an unpleaded issue”.

Apart from his conclusion on that issue, the judge rejected all the grounds on which the Defendant relied as reasons for withholding consent.

- [17] I have given consideration to the Petitioner’s petition, and to the averments in the accompanied affidavit evidence. I find that the Petitioner has not pleaded “sufficient interest” and “good faith” in seeking for leave which is the pre-requisites to the proceedings for judicial review. The pleadings show, that all that the Petitioner has sought to do is to aver facts pertaining to a decision made by the 1st Respondent, which decision was

communicated to him by letter dated 26th July 2024, to which were attached the findings and recommendations of the Judicial Committee on Legal Practitioners informing him that his Legal Practitioner's Licence has been suspended for another period of three years, and that should he fail to pay the sum of SCR 56,000.00, his license would be further suspended for another two years to run consecutively.

- [18] Therefore, for the application for leave to succeed, it was incumbent of the Petitioner to plea "sufficient interest" and "in good faith" and to put them in perspective in no uncertain terms. See generally, *Ramgasamy vs Chief Executive Officer of Planning Authority* for guidance. It is for the Petitioner to show the court such interest and not for the court to find that interest on behalf of the Petitioner. In *Minister Responsible for Public Administration (Faure) vs Speaker of the National Assembly (Prea)* sufficient interest was pleaded by the Petitioner at Paragraph [4], and the court simply implied its reasoning to those pleadings to determine sufficient interest a paragraph [30].
- [19] In essence therefore, in the instant case, sufficient interest ought to have been encapsulated at the pleading stage. In other words, the Petitioner should have expressly plead sufficient interest in its petition and make averments to the effect in the supporting affidavit.
- [20] To substantiate this particular aspect with relevant case law authorities, a party would typically submit, whether orally or in writing on this. Nonetheless, submissions would have to be within the bounds of pleadings. In doing so, a Petitioner would be in conformity with the characteristics of the adversarial system which is a fundamental feature of this jurisdiction's court practice. It is to be noted, that the Petitioner in the instant case, tendered no submissions either orally or in writing.
- [21] In sum, in the absence of clear pleadings to show "sufficient interest" and "good faith", and in the absence of submissions within the bounds of such pleadings, this court is unable to find that the pleadings are in order. Therefore, in the light of the case law authorities discussed above, without the Petitioner showing sufficient interest, it cannot be granted leave to proceed with judicial review. On the issue of "good faith" as per rule 6 (1) which is the second requirement which the Petitioner ought to have pleaded, given that there has been no "sufficient interest" shown, it is my considered opinion, that to discuss "good

faith” would simply be a futile academic exercise that would not change the finding of this court and its determination.

[22] In the final analysis, therefore, in view that no “sufficient interest” has been shown on the face of the pleadings, the Petitioner’s petition stands to be dismissed. Accordingly, the petition for leave to proceed with judicial review is dismissed.

Signed, dated and delivered at Ile du Port 5th March 2025.



Adeline J.