

SUPREME COURT OF SEYCHELLES

Reportable

[2025]

MA 32/2025

(Arising in CS39/2024)

In the matter between:

EURO AVIATION LIMITED

(rep. by Mr Basil Hoareau)

Applicant

And

SEYCHELLES CIVIL AVIATION AUTHORITY

(rep. by Mr Rajasundaram)

Respondent

Neutral Citation: *Euro Aviation Limited and Garry Albert and Anor* (MA 32/2025) [2025] (06 March 2025)

Before: Carolus J

Summary: Substitution of Defendant – Section 177 of Seychelles Code of Civil Procedure

Delivered: 06 March 2025

ORDER

Carolus J

Background

- [1] The petitioner Euro Aviation is also the plaintiff in Civil Suit 39/2024 in which the Seychelles Civil Aviation Authority ("SCAA") (respondent in this application) is cited as the defendant.
- [2] The SCAA was established by section 3 of the Seychelles Civil Aviation Authority 2005 (Act 5 of 2005) Cap 312 ("SCAA Act 2005") as a body corporate. The SCAA Act 2005 was repealed by the Seychelles Civil Aviation Authority Act 2024 (Act 9 of 2024) ("SCAA Act 2024") which came into operation on 1st January 2025 by virtue of the Seychelles Civil

Aviation Authority Act (Commencement) Notice 2024. The long title to the SCAA Act 2024, which sets out its objectives, reads as follows:

An act to provide for the continuation of the seychelles civil aviation authority; to provide for the appointment and functions of the board of the authority; to provide for the control and regulation of civil aviation within seychelles; to provide for the repeal of the seychelles civil aviation authority act; and to provide for other connected or incidental matters.

Emphasis added.

- [3] The word “*Authority*” is defined in the SCAA Act 2024 to mean the Seychelles Civil Aviation Authority referred to in section 4 of that Act. Section 4 provides:

4. *Seychelles Civil Aviation Authority*

(1) The Seychelles Civil Aviation Authority, established under the repealed Seychelles Civil Aviation Authority Chapter 312, shall continue under the same name and with powers and functions as provided for by this Act.

(2) The Authority shall be a body corporate.

Emphasis added.

- [4] CS 39/2024 was filed on 23rd March 2024. At the time the SCAA Act 2005 was still in operation as the commencement date of the SCAA Act 2024 is 1st January 2025.
- [5] On 14th February 2025, the petitioner filed the present petition supported by an affidavit sworn by Abdul Mohamad Jalil, a director of Euro Aviation (the plaintiff/petitioner). The petition is stated to be made pursuant to section 177 of the Seychelles Code of Civil Procedure (“SCCP”) “IN THE MATTER OF AN APPLICATION TO SUBSTITUTING THE DECEASED PLAINTIFF”. It is averred in the petition and supporting affidavit that the petitioner intends to continue the suit against the SCAA created and existing under the New Act; and that it is necessary and in the interests of justice for the SCAA created and existing under the New Act to be substituted for the respondent – created and existing under the repealed Act – in respect of the suit. The petitioner prays for the substitution of the SCAA created and existing under the New Act for the respondent.

- [6] The respondent filed a Reply Affidavit sworn by Garry Albert in his capacity as the Chief Executive Officer of the SCAA. He raised only a procedural issue as to form, but did not address the substantive issue raised in the petition, namely whether the SCAA created under the SCAA Act 2005 continued as the same body under the SCAA Act 2024 or it ceased to exist with the repeal of the SCAA Act 2005 and a new body was constituted under the SCAA Act 2024. In essence Mr Albert avers that he is advised by the SCAA's attorney that the present matter MA32/2025 has been wrongly filed as a petition and should have been brought by way of Notice of Motion. He avers that section 177 of the SCCP allows substitution only in cases of death, bankruptcy, insolvency or change of status or capacity. Further that a petition for substitution of a party is only permitted under section 179 of the SCCP where a plaintiff or defendant has died and the petition is made by the representative of the deceased. In other circumstances substitution should be sought by way of Notice of Motion. On that basis he claims that the petition is improper and defective. The SCAA therefore prays for dismissal of the petition and direction as to the proper form for substitution and for costs of these proceedings to be paid to the respondent.
- [7] Both parties made oral submissions. Counsel for the petitioner, Mr Houareau addressed the court on both the substantive issue raised in the petition and the question of form raised by the respondent.
- [8] He explained that the petition is to substitute the defendant in CS39/2024 with another, but that this was a mere formality because the defendant would still remain the same i.e. the Seychelles Civil Aviation Authority. The only difference would be that at the time the suit was filed up to the time of substitution pursuant to the present application, the defendant would be the SCAA created under the SCAA Act 2005, whereas after substitution the defendant would be the new SCAA created under the SCAA Act 2024.
- [9] He addressed the issue of whether there was continuity between the SCAA created under the SCAA Act 2005 and the one existing since 1st of January 2025 when the SCAA Act 2024 came into operation. He stated that section 4(1) of the SCAA Act 2024 gives the impression that there is continuity, and that the SCAA which existed before the 1st of January 2025 continues under the SCAA Act 2024 because it states that "*the Seychelles*

Civil Aviation Authority established under the repealed Seychelles Civil Aviation Authority Chapter 312 shall continue under the same name and with powers and functions as provided for by this Act”.

- [10] However, he pointed out that section 20(1) of the SCAA Act 2024 goes on to address the transfer of staff thereby making a distinction between the SCAA existing under the repealed SCAA Act 2005 and the SCAA created and which is in existence under the SCAA Act 2024. If there had been continuity of the body created under the SCAA Act 2005, there would have been no need to provide for the transfer of staff from that body to the one under the SCAA Act 2024 because they would continue to be employed by the body created under the SCAA Act 2005 which continues under the SCAA Act 2024. He submits that the transfer of staff indicates that, contrary to the impression given by section 4 (of continuity) there is in fact no continuity of the SCAA created under the SCAA Act 2005 under the SCAA Act 2024: as the law stands the SCAA created under the SCAA Act 2005 ceases to exist and a new SCAA comes into being under the SCAA Act 2024. It is further submitted that this is confirmed by section 21(4) of the SCAA Act 2024. Mr Hoareau submits that if there was continuity of the SCAA created under the SCAA Act 2005 and the SCAA under the SCAA Act 2024, there would have been no need for a provision to the effect that existing or pending cases against the SCAA created under the SCAA Act 2005 would continue against the SCAA under the SCAA Act 2024. It is submitted that section 4 of the SCAA Act 2024 is drafted with the intention of providing for continuity between the two bodies but then the intention is removed altogether by sections 20(1) and 21(4) of the SCAA Act 2024. When the Act is read as a whole, there is no continuity because section 4 which provides for continuity is diluted by the general provisions, especially by sections 20(1) and 21(4).

- [11] For convenience and clarity, sections 20 and 21 of the SCAA Act 2024 are reproduced below:

20. Transfer of staff

- (1) *As from the date of commencement of this Act, persons employed immediately before the date in the Seychelles Civil Aviation Authority under the repealed Act shall be transferred to the Seychelles Civil Aviation Authority under this Act on terms and conditions not less favourable than those enjoyed by them immediately before the transfer.*
- (2) *As from the date of commencement of this Act, persons employed immediately before the date in the Seychelles Civil Aviation Authority and directly involved in the functioning of airports and aerodromes and all airport, air navigation, and related services shall be transferred to the service of the authority responsible for airports on terms and conditions not less favourable than those enjoyed by them immediately before the transfer.*

21. Other transitional matters

- (1) *From and after the date of commencement of this Act, any reference in the Control of Obstructions Act or Civil Aviation Act to the Director or Chief Executive Officer of the Seychelles Civil Aviation Authority, the Directorate or the Seychelles Civil Aviation Authority, or any of its officers, shall be deemed to be a reference to the Chief Executive Officer of the Authority appointed under this Act, the Authority, or the corresponding officer.*
- (2) *All deeds, bonds, agreements, and arrangements subsisting immediately before the date of commencement of this Act, specifically identified in a directive by the Minister, relating to civil aviation related services by the Seychelles Civil Aviation Authority or to any person transferred to the service of the Seychelles Civil Aviation Authority, shall continue in force on and after that date and shall be enforceable by or against the Seychelles Civil Aviation Authority as if the Authority had been named in them and had been a party to them under this Act.*
- (3) *All deeds, bonds, agreements, and arrangements subsisting immediately before the date of commencement of this Act, specifically identified in a directive by the Minister, relating to airports, air navigation, and related services by the Seychelles Civil Aviation Authority or to any person transferred to the service of the Seychelles Airports Authority, shall continue in force on and after that date and shall be enforceable by or against the Seychelles Airports Authority as if the Seychelles Airports Authority had been named in them and had been a party to them.*

- (4) *Any proceeding or cause of action pending or existing immediately before the date of commencement of this Act by or against the Seychelles Civil Aviation Authority or any person acting on its behalf may be continued and enforced by or against the Authority, and the Authority shall assume the rights, duties, and obligations of the Seychelles Civil Aviation Authority in such proceedings.*

[12] Mr Hoareau then dealt with the procedural point raised by the respondent that the present application ought to have been brought by way of a Notice of Motion and not by way of a petition. He submitted that the application is brought under Section 177 of the SCCP. Section 177 falls under the title “Abatement” together with several other provisions, as follows:

Abatement

176. *A cause or matter shall not become abated by reason of the death, bankruptcy or insolvency, or change of status or of capacity, of any of the parties, if the cause of action survives; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the hearing and the judgment.*
177. *In case of the death, bankruptcy or insolvency, or change of status or of capacity, of a party to a cause or matter, the court may order that any necessary party be added or that any person entitled to represent the party who has died or become bankrupt or insolvent, or being the successor in interest of any such party, be substituted for such party.*
178. *Any person claiming to be the representative of a deceased plaintiff or for a deceased defendant may apply to the court to substitute his name on the record for that of the deceased plaintiff or the deceased defendant, as the case may be. The application shall be by petition served on the defendant or the plaintiff, as the case may be.*
179. *Any plaintiff or defendant may apply to the court to substitute any person alleged to be the representative of a deceased defendant or of a deceased plaintiff for the deceased defendant or the deceased plaintiff, as the case may be. Such application shall be by petition served on the person whom it is desired to substitute.*

180. *If the court order any party to be added or any person to be substituted under sections 177, 178 or 179, the cause or matter shall proceed in the same manner as if such person or parties had been parties at the commencement of the cause or matter.*

181. *When the plaintiff or defendant in a cause or matter dies and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant or the person against whom the cause or matter may be continued may apply by summons to compel the plaintiff or the person entitled to proceed within such time as may be ordered; and in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued.*

[13] Mr Hoareau stated that section 177 of the SCCP applies to applications for substitution of parties in cases of death, bankruptcy, insolvency, or change of status or capacity, but that the present case has more to do with change of status and capacity. He concedes that in the case of change of status or capacity, the law is silent as to how the application should be made: there is no provision stating that an application should be made by petition. On the other hand, in cases of death, section 178 of the SCCP expressly states that applications made by a person claiming to be the representative of a deceased plaintiff or a deceased defendant “*shall be by petition*”. Similarly, section 179 of the SCCP provides that in cases of death, applications made by a plaintiff or a defendant for substitution “*shall be by petition*”.

[14] It is submitted however that, when one reads the SCCP especially the provisions dealing with non-abatement as a whole, it is clear that the intention of the legislator was for applications in cases of “*change of status or of capacity*” under section 177 to be made by way of petition. It is submitted that this is so although section 177 is silent as to how an application is to be made in those circumstances whereas applications under sections 178 and 179 are specifically required to be made by way of petition. Mr Hoareau submits that there is no valid reason as to why substitution of a deceased plaintiff or defendant by the representative of such deceased plaintiff or defendant should be made by way of petition, and for substitution of a plaintiff or defendant by another plaintiff or defendant by reason

of change of status or capacity of the first mentioned plaintiff or defendant should be made otherwise than by petition. He submits that reading 177 together with 178 and 179 of the SCCP as a whole, which all deal with the same issue of non-abatement (in cases of death or change in status or capacity of a party), there is no reasonable explanation as to why in cases of death an application should be by way of petition and in cases of change in status or capacity an application should be by way of Notice of Motion. Mr Hoareau states that in terms of section 180 of the SCCP, the end result is the same whether the substitution took place as a result of the death or change in status or capacity of a party (i.e. the cause or matter shall proceed in the same manner as if such person or parties have been parties at the commencement of a cause or matter) which reinforces the argument that there is no reasonable explanation as to why two different procedures should be followed.

- [15] Mr Hoareau went on to state that even if the application had been wrongly brought by petition, the application should still not be dismissed on the basis of the principle that procedure is the handmaid of justice and not its mistress. In that regard he relied on the Court of Appeal cases of *Moncherry v Quilindo* and *Illiescu v Petrescu*, in which the principle was applied. He stated that in the unlikely event that this court was to conclude that the present application ought to have been commenced by Notice of Motion, it should not dismiss the petition simply because of a wrong procedure, whereas all the necessary facts have been averred. On that basis he urged this court to grant the motion.
- [16] Mr Rajasundaram appearing for the respondent submitted that while section 177 of the SCCP applies to substitution of a plaintiff or defendant “[i]n case of death, bankruptcy or insolvency or change of status or capacity of a party”, sections 178 and 179 which state how the application for substitution should be done i.e. by petition, applies only in the case of death of a party and not to bankruptcy or insolvency or change of status or capacity of a party. He submitted that the intention of the legislator is clear that only in the case of death of a party that substitution should be made by way of petition as sections 178 and 179 mentions only death and not those other instances. He stated that in the present case we are dealing with substitution by reason of change of status which is not mentioned in these sections. He therefore submits that in the absence of clear reference to, or mention of,

applications for substitution by reason of change of status to be made by way of petition, the proper procedure is for such application to be made by way of Notice of Motion. It is Mr Rajasundaram's submission that although the law is silent and makes no reference to such applications being made either by petition or Notice of Motion, the latter form should be preferred by virtue of the legislator's intention which is shown by the unambiguous wording of sections 178 and 179 which make no reference to change of status of a party but are confined to circumstances of death of a party. In the absence of any reference to the word petition insofar as it concerns change of status of a party, it is implied that this procedure cannot be used and that a Notice of Motion is the proper procedure.

[17] As for Mr Hoareau's argument that the Court of Appeal has in several cases followed the principle that procedure is the handmaid and not the mistress of justice, Mr Rajasundaram stated that the same Court of Appeal has held that where affidavits are found to be defective, such defect is fatal and the case falls without the need to even consider the merits of the case. On the basis of the same reasoning he submits that the improper procedure adopted by the applicant – namely proceeding by way of petition instead of Notice of Motion – is a defect which is fatal to the petition.

[18] In reply Mr Hoareau stated there is a difference between an affidavit and a petition, plaint or Notice of Motion. While the last three are pleadings, an affidavit is evidence. This is why when an affidavit is defective, it is said that it is bad in law with the consequence that the application that it purports to support is unsupported by evidence and the application falls. He submits that defective pleadings are another matter.

Analysis

[19] I will first deal with the form in which the application was made. Sections 121 to 125 of the SCCP deal with incidental motions made "*in the course of [a] suit*". These provisions provide as follows:

121. Either party to a suit may, in the course of such suit, apply to the court by way of motion to make an incidental demand.

122. *The motion shall be accompanied by an affidavit of the facts in support thereof and shall be served upon the adverse party.*

123. *All incidental demands shall be made at the same time. The costs of any subsequent incidental demand made on grounds which already existed at the time when a prior demand was made shall be borne by the party making such demand.*

124. *The court may, in its discretion, give judgment in the principal demand only, if the incidental one be of a nature unjustly to delay the plaintiff in the principal demand, and afterwards give judgment upon the incidental demand.*

125. *If the adverse party contests the incidental demand he shall file an affidavit in reply, unless the court otherwise direct.*

[20] The term “*incidental demand*” is not defined but is to be contrasted against the term “*principal demand*”. The “*principal demand*” is obviously the relief sought in terms of the principal suit i.e. for instance the plaint. Any other demands which are related to and incidental to the principal suit must be considered as an “*incidental demand*”. In my view an application such as the present one to substitute a party for another is an “*incidental demand*”. Given that no specific provision is made for the form of making an application for substitution of the original defendant to a suit by another by reason of the change of status of the original defendant, it is my view that the general law should apply. I therefore find that the application should have been made by way of Notice of Motion.

[21] Having made the above finding the next question is whether the defect in the form of the application is fatal.

[22] Mr Hoareau, on behalf of the applicant has sought support from the case of *Mary Quilindo and Ors v Sandra Moncherry and Ors*, SCA 29 of 2009, delivered on 7th December 2012, for his contention that procedure is the handmaid of justice and not its mistress, and that even if the correct procedure was not followed this is not a fatal defect. This case concerned an appeal against a decision of the Supreme Court in an *action en recherche de paternite naturelle* filed pursuant to Article 340 of the Civil Code of Seychelles 1976. The matter was brought by way of petition. Since Article 340 (3) provided that “[a]n action under this

Article may be brought ...”, it was argued before the Supreme Court that since (1) “action” falls under the definition of “cause” which is in turn defined as including “any action, suit or other original proceedings between a plaintiff and a defendant” and (2) section 23 of the Civil Procedure Code states that “[e]very suit shall be instituted by filing a plaint in the registry”, therefore actions to prove paternal descent must be begun by plaint. One of the grounds of appeal was that “[t]he learned trial judge erred in law in holding that the action to prove paternal descent had been properly instituted on the basis of a Petition”. In that regard Twomey JA stated:

21. *We agree with the learned trial judge that the word action in article 340 (3) should be given its generic definition but that does not solve the problem of pleadings as dictated by the Civil Procedure Code. There is no specific procedure in any law indicating how affiliation proceedings should be brought. Hence it would appear that the general rule of bringing such an action by Plaint under the Civil Procedure Code would apply. In England, however, affiliation proceedings are brought by petition. It would appear the same applies to Canada as is evident from the authorities submitted by Ms. Aglae (see for example O'Driscoll v McLeod 1986 10 BCLR (2d) 108). It seems to be the same for other common law countries including the United States. It is easy to see where the confusion arises in Seychelles. The provisions relating to affiliation proceedings in the Seychelles Civil Code are both transplants from a civil law country (France) and a common law country (England). The Seychelles Code of Civil Procedure was also transplanted from England and one would assume that rules in relation to affiliation proceedings would therefore be similar to those in England. That would not seem to be the case.*

22. *In the case of Medine v Vidot c.s. 266/2004 (unreported) Karunakaran in a ruling in a similar case stated:*

... it is a truism that neither the Civil Code nor the Seychelles Code of Civil Procedure contains any explicit provision stipulating the procedure that should be adopted by a party while seeking a declaratory relief in respect of paternal descent under Article 340 of the Civil Code. It could even be perceived as an ambiguity in the statute ... In the absence of it, when an ambiguity or silence or defect appears in a statute a judge cannot simply blame the draftsman or the lawmaker. He must set to work on the constructive task of finding

the intention of the legislature, and he must do this, not only from the language of the statute, but also from a consideration of the fact that what if the makers of the statute had themselves come across this ambiguity, how they would have cleared it out. The judge must do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases in the structure of the statute. Approaching this case on hand in that way, I cannot help feeling that if the legislature had known that someone might in future misconceive the procedure and seek a relief under Article 340 by way of an application, the legislature would have certainly, expressly stated in the statute itself that such a relief should be sought by way of plaint. In the circumstances, I conclude that a party seeking a declaratory relief in respect of paternal descent under Article 340 of the Civil Code, should commence the action by way of plaint. In my view, this is the proper procedure, which must be adopted in all cases of this nature, and failure to follow this procedure meant that the court has no jurisdiction to try the matter. See, Chippy Vs. Chippy SLR 1956 p.162.

23. *The Chippy case did discuss the anomaly caused by the fact that the Civil Procedure Code enacted in 1920 contained procedures that were altered in subsequent legislation. The best example is the Matrimonial Causes Act which introduced the process for divorce by petition. That is not the case for affiliation proceedings. Although some English common law concepts were introduced in the Civil Code, corresponding procedural rules were not introduced by Act or amendment of the Civil Procedure Code. In the case of divorce where the procedure is clearly laid that actions are commenced by petition, failure to follow this mandatory provision would result in the Court having no jurisdiction in the case and the case being dismissed.*

[23] Twomey JA went on to state:

24. *In the present case we do not find the matter as clear cut. True the Civil Procedure Code indicates that the matter should be brought by plaint but it also states that where there are other provisions made in law, section 22 does not have to be followed. As we have stated the introduction of English affiliation concepts logically implies English procedural rules. Can we as a Court of Equity (viz sections 5 and 6 of the Courts Act (Cap. 52) deny the Respondents the right to be heard because they have brought the action by*

petition instead of a plaint when the procedure for the same is not clear? We think not.

[24] Twomey JA proceeded to refer to the case of *Toumany and Anor v Veerasamy*, as follows:

25. *In a recent judgment of the Privy Council reacting to the Mauritian case of Toumany and anor v Veerasamy [2012J UKPC13 Lord Brown stated [21 - 24]:*

"The Board has sought in the past to encourage the courts of Mauritius to be less technical and more flexible in their approach to jurisdictional issues and objections ... Let the Board now state as emphatically as it can its clear conclusion on this appeal. In cases like these, where mistakes appear in documentation as which particular jurisdiction of the Supreme Court has been involved, those mistakes should be identified and corrected without penalty unless they have genuinely created a problem) as soon as practicable and the court should proceed without delay to deal with the substantive issues raised before it on the merits."

And in rejecting the appeal, concluded –

26. *We are of the view that in affiliation proceedings until and unless procedures and forms of pleadings are clearly indicated, an applicant cannot be denied the right of hearing for want of proper pleadings. For the moment it would appear that either a plaint or a petition is acceptable as proper pleadings by which such action might be commenced. The same analogy can be brought to this case. No prejudice whatsoever was suffered by the Appellants by the proceedings being initiated by petition instead of plaint. In fact the issue was not raised until at the close of the Appellant's case. Lord Brown considered these technicalities a blot on the record of Mauritius for the fair administration of justice. We do not need to fall in the same trap.*

[25] It is evident that the same situation does not arise in the present case as in *Quilindo v Moncherry*. Although admittedly no prejudice was caused to the petitioner in the present case by the proceedings being initiated by petition instead of Notice of Motion, in the absence of provisions explicitly stating the mode by which a specific incidental demand should be made, such as for substitution of a party for another by reason of change of status

of that party, our law provides that such incidental demand must be made by way of Notice of Motion. In *Quilindo v Moncherry* on the other hand, procedures and forms were not clearly indicated. Furthermore, in that case Twomey JA specified that in cases where the procedure is clearly laid out, such as in divorce cases brought under the Matrimonial Causes Act where actions are commenced by petition, “*failure to follow this mandatory provision would result in the Court having no jurisdiction in the case and the case being dismissed.*”

[26] In *Petrescu v Illescu* (SCA 22 of 2021) [2023] SCCA 21 (26 April 2023) a petition supported by affidavit was filed before the Supreme Court in which the petitioner claimed that the respondent had fraudulently obtained sole ownership and directorship of an international business company, of which the petitioner was the sole beneficial owner. He prayed for a declaration that the purported change of ownership of the company was unlawful, null and void ab initio, and for him to be declared as the sole beneficiary of the company and for another director to be declared as the sole director of the company. In the course of proceedings in the Supreme Court, the respondent raised a plea *in limine litis* to the effect that the case should have been filed by way of plaint and not by way of petition. The learned Judge of the Supreme Court dismissed the plea *in limine litis* on the basis that the respondent “*has failed to show that the pleadings by way of petition has resulted in any prejudice being caused to the respondent.*” Judgment on the merits was given in favour of the petitioner.

[27] On appeal, the respondent/appellant challenged the judgment on several grounds. Ground 2 was as follows: “[t]he learned judge erred in law in allowing the case to be brought by way of petition instead of a Plaint for simple civil dispute between the parties and he erred in the substantive law and procedural law”. The Court of Appeal (per JA Robinson) found that ground 2 (as well as other grounds) of the grounds of appeal “*are vague and do not give [the petitioner/respondent] fair notice of what case he must be prepared to answer*”.

[28] JA Robinson went on to state that:

48. *Despite having concluded that ground two is vague or general in terms, we state that we have no qualms with the finding of the learned Judge that — "[...] the pleadings by way of petition has not resulted in any prejudice being caused to the respondent." This finding of the learned Judge was grounded, for instance, on the case of Quilindo and Ors v Moncherry & Ors SCA29/2009 (6 December 2012), in which it was held that where no prejudice has been suffered by the case being initiated by petition, where it should have been initiated by way of plaint, "such technical objections should not affect the fair administration of justice".*

- [29] In *Petrescu v Illescu*, the main reason for dismissing ground 2 was because it was vague or general in terms and did not give the petitioner/respondent fair notice of the case against him. It is only after making the above finding that Robinson JA briefly addressed the issue of pleadings merely stating that the Court took no issue with the finding of the Learned Judge of the Supreme Court that "*the pleadings by way of petition has not resulted in any prejudice being caused to the respondent*", such finding having been based "*for instance, on the case of Quilindo and Ors v Moncherry & Ors*". In the circumstances, and in light of the reasons given above in regards to the inapplicability of the reasoning in *Quilindo v Moncherry* to the present case, I am of the view that *Petrescu v Illescu* does not provide much assistance in the issue arising in the present case.
- [30] It would seem therefore that the defect in form is fatal to the petition.
- [31] I now move to the issue of the continuity of the SCAA created under the SCAA Act 2005 and contended by Mr Hoareau for the petitioner to be created anew under the SCAA Act 2024.
- [32] I agree with Mr Hoareau that although section 4 of the SCAA Act 2024 gives the impression of continuity of the SCAA created under the SCAA Act, sections 20(1) and 21(4) of the SCAA Act 2024 tend to give the opposite impression.
- [33] G.C. Thornton, Legislative Drafting, Fourth Edition, at Chapter 12 deals with drafting of legislation establishing or continuing statutory corporations or other bodies. In regards to the continuation of an existing body the learned author explains at pg 253 that:

The phrase “continue to be” in the form that follows is suitable for use where a body which is already in existence is to continue in existence although the legislation under which it was first established is to be replaced. Where a reorganisation requires the functions of a body corporate to be altered and the body itself to be reconstituted, it will probably be preferable to preserve the existing body corporate in existence despite the changes, even if they are extensive. The very considerable advantage of this technique is that the transitional problems that would follow from the dissolution of one body and incorporation of another are avoided.

[34] The learned author goes on to suggest that the following form may be adapted:

- (1) The body corporate constituted under section 7(1) of the Environment Authority Act 1990 as the Environment Authority is preserved and continues to be a body corporate for the purposes of this Act so that its corporate identity and its rights and obligations are not affected by the repeal of that Act.*
- (2) The Authority*
 - (a) under its corporate name has perpetual succession and a common seal;*
 - (b) is capable of suing and being sued in its corporate name;*
 - (c) has the functions conferred or assigned by this Act.*

[35] In contrast, at page 269, examples of legislative provisions for the replacement of an existing corporation by a new corporation are provided. The following provision deals with the dissolution of an existing body:

- (1) The Forestry Research Council established by section 4 of the repealed Act is dissolved.*

[36] Other forms/examples of legislative provisions are provided to deal with the vacation of office of members without compensation, vesting of assets and liabilities, delivery of movables, transfer of records, effect on existing agreements, staff of existing body, continuance of pending legal proceedings, completion of acts commenced by existing body, final accounts and report replaced body, resolution of problems by regulations or ministerial or similar order or certificate, and references in legislation to existing body. At pg 271, it is specified that these forms/examples “refer specifically to the succession of a new

corporation to the functions of an existing corporation.” This is where the existing body is dissolved.

- [37] Chapter 17 deals with savings and transitional provisions which are explained as follows at pg 383:

The function of a savings provision in legislation is to preserve or ‘save’ a law, a right, a privilege or an obligation which would otherwise be repealed or cease to have effect.

The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time that legislation comes into force. Both terms are loosely used with overlapping meanings; there is little or no advantage in seeking to pursue a watertight distinction.

The necessity for savings and transitional provisions is a consequence of change in the law, whether the change is caused by new statute law or by the repeal, repeal and substitution, or modification, of existing statute law. Consideration of whether special savings or transitional provisions are necessary is an important part of every drafting exercise.

- [38] At page 395 he goes he deals specifically with savings and transitional provisions in the context of Bodies Corporate, and states as follows:

A proposal to establish a new body corporate intended to take the place of a an existing body, whether corporate or unincorporated, requires that consideration be given to existing assets and liabilities, contractual and otherwise, existing offices, staff and and pending proceedings. The circumstances may be such that there are other matters that require to be dealt with by specific provision to smooth the transitional process.

- [39] It is clear from all the above that in the case of a body corporate continuing under new legislation as opposed to being dissolved and reconstituted under new legislation, there is no necessity for transitional provisions of the nature of sections 20(1) and 21(4) of the SCAA Act 2024, as contended by Mr Hoareau. However, I do not agree with him that the addition of these provisions negates or dilutes section 4 so that there is no continuity of the the body established by the SCAA Act 2005 under the new SCAA Act 2024.

- [40] Where there is any ambiguity in the law, one has to seek the intention of the legislator. In my view the clear intent of the legislator in this case is found in section 4 and also in the

long title of the SCAA Act 2024 (reproduced at para [...] hereof, which is inter alia “to provide for the continuation of the seychelles civil aviation authority”.

- [41] At pg 193 of his book G.C. Thornton explains the function and importance of the long title as follows:

Every Act begins with a long title the function of which is to indicate the general purposes of the Act. The long title is part of the Act, being considered, enacted, and subject to amendment, by the legislature. It is important because it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope (Vacher & Sons Ltd v London Society of Compositors [1913] AC107 at 128). It may not however, be looked at to modify the interpretation of plain and unambiguous language (Re Wykes' Will Trusts [1961] Ch 229 at 242; Ward v Holman [1964] 2QB 580, [1964] 2 All ER 729).

[...]

Apart from parliamentary considerations, a comprehensive long title may serve a valuable purpose in assisting to communicate the intended spirit and scope of the Act. The long title presents one opportunity to the drafter to say in plain terms what he or she is about ...

- [42] To my mind, in view of the long title (reproduced at para [2] hereof) and section 4 (reproduced at para [3] hereof) of the SCAA Act 2024, the SCAA created under the SCAA Act 2005 continues under the new SCAA Act 2024. The latter Act does not create a new body. No provisions of the SCAA Act 2024 other than sections 20(1) and 21(4) suggest otherwise, and I can only surmise that they were added out of a misplaced overabundance of caution.
- [43] In contrast the long title of the SCAA Act 2005 which created the SCAA reads “*AN ACT to establish the Seychelles Civil Aviation Authority and to provide for connected matters*”. Similarly, section 3 of that Act, which falls under Part II thereof titled “*Establishment of the Authority*” provides that:

3. There is hereby established a body corporate to be known as the Seychelles Civil Aviation Authority.

- [44] Furthermore, the “EXPLANATORY STATEMENT ON THE OBJECTS AND REASONS FOR THE [SEYCHELLES CIVIL AVIATION AUTHORITY] BILL”, Bill No.8 of 2024

(“Explanatory Statement”), makes it clear that that the SCAA Act 2024 was enacted to remove the functions of the SCAA relating to service provision so that it would only continue to carry out its regulatory functions. Its service provision functions would be transferred to Seychelles Airports Authority which is created under the Seychelles Airports Authority Act, Act 8 of 2024. The Explanatory Statement states in relevant part:

The proposed legislation aims to remove provisions relating to service provision from the purview of the civil aviation authority (in separate legislation) in order to, provide for an airports authority as a separate entity. The Seychelles Civil Aviation Authority in this Bill, shall retain regulatory and oversight functions related to aviation safety, security and facilitation. This will encompass the enforcement of regulatory standards, diligent monitoring of compliance, and providing effective oversight. The airports authority shall then be responsible for service provision in management, operation and development of airports in Seychelles including the provision of airports infrastructure, facilities, services and related commercial activities. By bringing in a clear separation between the functions of the Seychelles Civil Aviation Authority and the Seychelles Airports Authority, it is expected to mitigate potential conflicts of interest, ensure the highest levels of safety standards and promote compliance with international aviation agreements to which Seychelles is a party.

- [45] In such a case I see no reason why a new body should be created under the SCAA Act 2024. It is understandable why provisions were added under the SCAA Act 2024 (1) for the vesting of airports and aerodromes in the “*authority responsible for airports and aerodromes*” and the transfer of assets, rights and obligations from the SCAA to that authority (section 19); (2) for the transfer of staff “*directly involved in the functioning of airports and aerodromes and all airport, air navigation and related services*” from the SCAA to the authority responsible for airports (section 20(2)); and (3) for deeds, bonds and arrangements relating to airports, air navigation and related services by the SCAA or to any person transferred to the Seychelles Airports Authority to continue in force and be enforceable against the Seychelles Airports Authority (section 21(3)). However, it is unclear why the transitional provisions under section 20(1), 21(2) and 21(4) were added. These provisions were not necessary given that the SCAA created under the SCAA Act 2005 is stated to continue under the SCAA Act 2024, which I find is the intent of the legislature.

- [46] In the circumstances and for the reasons given above, no substitution of the SCAA created under the SCAA Act 2005 is required, as that body continues under the new SCAA Act 2024. The latter Act does not create or establish a new SCAA. There was therefore no necessity for the filing of this petition, as although CS39/2024 was filed whilst the SCAA Act 2005 was still in operation against the SCAA created under that Act, the same SCAA *continues* in existence under the SCAA Act 2024.
- [47] Therefore even if this Court had not found that this application was wrongly filed by way of petition, the end result would have been the same.

Decision

- [48] The Petition is accordingly dismissed.

Signed, dated and delivered at Ile du Port on 6th March 2025.



Carolus J