

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact

[2025]

EXP 79/2024

DORIA JACQUELINE PANAGARY

(rep. by Joel Camille)

Neutral Citation: *Exp Doria Jacqueline* (Exp. 79/2024) [2025] (9th July 2025).

Before: Pillay J

Summary: Legality of preliminary objections filed by the Attorney General as Ministère Public

Heard: By way of submissions

Delivered: 9th July 2025

ORDER

- [1] The plea raised by Learned counsel for the Applicant stands dismissed.
- [2] However, the Attorney General as the Ministère Public is ordered to refile what it framed as its “Preliminary Objection” with its proper heading being “Conclusions of the Attorney General as Ministère Public”.
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RULING

PILLAY J:

- [1] This Ruling arises from an objection raised by Learned counsel for the Applicant to the Preliminary Objections filed by the Attorney General as the Ministère Public pursuant to section 151 of the Seychelles Code of Civil Procedure.
- [2] Learned counsel for the Applicant submitted that the Preliminary Objections dated 4th December 2024 raised by the Ministère Public is bad in law as it rests on no legal provision for such Preliminary Objections.

- [3] He submitted that section 90 of the Seychelles Code of Civil Procedure allows for a party to raise a point of law relating to the law only. He submitted that the preliminary objections raised do not in any way raise a point of law and on that basis the Attorney General cannot rely on section 90 to justify their preliminary objections.
- [4] He submitted that section 151 of the Seychelles Code of Civil Procedure identifies matters that may be referred to the Attorney General for his conclusions as Ministère Public. He submitted that section 151 makes no provision for the Attorney General in his capacity as Ministère Public to raise any objections in law on any matters referred to him in such capacity. He further submitted that the Attorney General in raising preliminary objections to the application acts ultra vires to its powers under section 151 and such pleadings cannot be condoned and must be dismissed.
- [5] He further submitted that the Preliminary Objections do not seek to object to any point of law but raises queries that should be addressed by way of a request for further and better particulars pursuant to section 86 of the Seychelles Code of Civil Procedure.
- [6] It was his submission that the Attorney General could only seek for further and better particulars under section 86 which is not restricted to only defendants in civil matters.
- [7] On that basis he moved for dismissal of the preliminary objections.
- [8] The Attorney General in his capacity as Ministère Public submitted that matters in relation to the property of minors are in fact delicate issues for the purpose that no transactions with respective property is done to the detriment of the minor, hence why any dealings with the same needs to be approved and granted by a court of law.
- [9] Learned counsel relied on the case of *Louise v Barbier and Ors* (307 of '998) [2005] SCSC 11 (4 October 2005) wherein the learned judge opined that the Supreme Court of Seychelles plays a quasi-judicial role as "Ministère Public". However, she submitted that in the instant case it is not the Court but the Attorney General who is acting as Ministère Public pursuant to section 151 of the Seychelles Code of Civil Procedure whose role remains the same regardless being to ensure that the best interest of the child is protected and met.

- [10] She submitted that the Applicant's Application is grounded in Article 457 (1) (a) of the Civil Code in accordance with which the Court must be satisfied that there is a rational basis for the Application. She submitted that the Ministère Public who acts synonymously as *amicus curiae* finds that the application is lacking in substance for the court to even consider to hold a hearing.
- [11] She referenced the academic paper of the Learned Justice of Appeal Dr Twomey, submitting that the preliminary objections are raised so that the hearing is not held before all relevant documents are available in order that the hearing can proceed smoothly.
- [12] She submitted that it is sensible that objections are raised at the preliminary stage in order to assist the Court and the other party on the relevant documents necessary. She further submitted that section 151 of the Seychelles Code of Civil Procedure confers on the Ministère Public powers to intercede in a matter. It was her submission that a right is conferred on the Ministère Public to file objections. She submitted that there is no legal provision specifically preventing the Ministère Public from filing objections.
- [13] As regards the issue of section 86 of the Seychelles Code of Civil Procedure it was her submission that the said section applies to Defendants specifically and not the Ministère Public who acts in a dual role as a party looking out for the interests of the minor as well as *quasi amicus curiae*.
- [14] It is not in dispute that the Attorney General appears in this matter in his capacity as Ministère Public in accordance with section 151 of the Seychelles Code of Civil Procedure which provides that:

The following matters shall be referred to the Attorney General for his conclusions as Ministère Public, but there shall henceforth be no obligation upon him to give conclusions as Ministère Public, in any matter referred to him, unless required to do so by the court, and no judgment shall be held to be invalid for want of such conclusions whenever such matter shall have been referred to him according to law:

(a) matters relating to the guardianship of minors;

(b) matters in which one of the parties is represented by a curator;

(c)matters concerning presumed absentees or matters in which such absentees are interested;

(d)matters relating to the interdiction of persons or the appointment of advisers (conseils judiciaires).

[15] The question to my mind is this; what is the role of the Ministère Public and what is envisaged in the “conclusions” to be provided by the Ministère Public pursuant to section 151 of the Seychelles Code of Civil Procedure?

[16] Learned counsel for the Applicant argues that there is no legal basis for the Ministère Public to provide preliminary objections. He added that the Ministère Public can only make a request for further and better particulars in line with section 86 of the Seychelles Code of Civil Procedure which provides as follows:

A defendant may apply on the day fixed in the summons to appear and answer to the claim or prior thereto, for further particulars of the plaintiff's claim, and the court shall direct the furnishing of such particulars as appear to be necessary and may make such order as to costs and the time within which such particulars shall be furnished as may seem just.

[17] The Seychelles Code of Civil Procedure provides no definition of Ministère Public. Generally, however, Ministère Public is one who defends the collective national interests. Ministère Public is a concept of the French legal system whereby the role is one of an inquisitor. As such the Ministère Public is not limited to simply providing an opinion on a matter. The Ministère Public has the mandate to ensure that the interests of all are safeguarded. The defender of collective national interests, and in the context of an application of this nature ensuring that the interest of the minor is protected, in the Republic of Seychelles that is the Attorney General. In that sense the Attorney General as Ministère Public, having access to the institutions of state as well as both civil and criminal information in the country, can investigate and inform the Court as to the propriety of any orders it may consider granting affecting a minor.

- [18] In her Thesis, *Legal Metissage in a Micro-jurisdiction: the Mixing of Common Law and Civil Law in Seychelles*, the Learned Twomey-Woods JA, in explaining the various legal roles within this jurisdiction notes that:

Public Prosecutors are, unlike those with the same title in Anglo-American jurisdictions, also civil servants presenting the state's case in criminal actions. They also intervene in proceedings between private individuals as guardians of general interest and of public policy (Ministere Public).¹⁸⁶ Typically these would be in cases involving personal status and family law matters.

- [19] I cannot say that I agree entirely with the argument of the Learned counsel representing the Attorney General but I do agree with the rationale, that the Attorney General is granted powers to intercede in matters such as the current one in order to protect the interests of a minor and as such is not barred from preliminary objections.

- [20] Indeed, the Attorney General as *Ministere Public*, as stated by his Lordship Karunakaran J in *Louise* above has;

.... [a] combined role intended for protecting the interests and property of the minors and the interdicted, is more of ministerial, advisory, regulatory and supervisory in legal effect and substance, rather than adjudicative, assertive, declarative or determinative of the legal rights and liabilities of any party/parties in relation to the property in question.

- [21] In my humble opinion the Attorney General, when acting pursuant to section 151 of the Seychelles Code of Civil Procedure, is not subject to section 86 nor section 90 of the Seychelles Code of Civil Procedure. The Attorney General is neither a Defendant nor appearing in the role as *amicus curiae*. The Attorney General as the *Ministère Public* pursuant to section 151 of the Code above is a totally different legal creature. By his conclusions, he may bring to the Court's attention defects in the application, whether they be legal or factual, in his role as the guardian of general interests.

- [22] The issue to my mind is merely a matter of the heading given to the matters brought to the Court's attention by the Attorney General as the *Ministère Public*. Some frame it as submissions, others frame it as preliminary objections, yet others frame it as conclusions. Section 151 of the Seychelles Code of Civil Procedure provides for 'conclusions' to be

given. In my view these ‘conclusions’ may include any information relevant to the matter at issue, including but not limited to any legal or factual content. So I find.

[23] In the result, it cannot be said that the Attorney General as the Ministère Public, the guardian of general interest and public policy, is barred from making objections.

[24] With that said, the plea raised by Learned counsel for the Applicant stands dismissed.

[25] However, in line with the above finding, the Attorney General as the Ministère Public is ordered to refile what it framed as its “Preliminary Objection” with its proper heading being “Conclusions of the Attorney General as Ministère Public”.

Signed, dated and delivered at Ile du Port on 9th July 2025

