

SUPREME COURT OF SEYCHELLES

Reportable
MC 48/2025

In the matter between:

LAURA MARIE-CLAUD BESSIE HELEN WORTH
Of

La Digue
Seychelles

(Represented by Mr Frank D.R Ally)

Petitioner

and

THE PLANNING AUTHORITY
Independence House
Victoria, Mahe
Seychelles

Defendant

Neutral Citation: *Worth vs The Planning Authority* (MC 48/2025) (10 July 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), 6(1) and 6(2) – Article 125 (1) (c) of the Constitution.

Heard: 2 July 2025

Delivered: 10 July 2025

RULING

Adeline, J

[1] By way of a petition dated 5th June 2025, filed in court on the 10th June 2025 pursuant to Rule 1(2) read with Rule 2 (1) and Rule 5 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules (“the Rules”), Laura Marie-Claud Bessie, Helen, Worth, (“the Petitioner”) commenced legal proceedings for judicial review against The Planning Authority (“the Respondent”).

[2] In its petition, the Petitioner prays this court for the grant of the following reliefs;

“(1) To grant the Petitioner leave to proceed with this petition.

(2) Upon the granting of leave, to direct the Respondent and the Appeals Board Secretariat to forwards to this Honourable Court the full record relating and incidental to this matter.

(3) To issue a writ of mandamus compelling the Respondent to issue the development permit in favour of the Petitioner.

(4) Order the Respondent to pay the Petitioner damages in the sum of SCR 225,000/- and continuing.

(5) To make such other order as this Honourable court shall deem just and proper in all the circumstances of the case.

(6) Award cost in favour of the Petitioner”.

- [3] In seeking for those reliefs, the Petitioner effectively invokes this court’s supervisory jurisdiction over subordinate courts, tribunals and adjudicating authorities, as well as calling on this court to exercise its powers under Article 125 (1) (c) of the constitution.
- [4] The Petitioner’s petition, is supported by an affidavit deposed by the Petitioner herself, in compliance with Rule 2 (1) of the Rules to which affidavit are exhibited the necessary documents in support of the averments therein, for compliance with Rule 2(2) of the Rules.
- [5] To comply with the legal requirements for leave to proceed with the petition for judicial review, in accordance with Rule 5 of the Rules, the petition was listed ex parte.
- [6] To determine whether leave to proceed with the petition should be granted as prayed for based on procedural and substantive law, it is absolutely imperative for this court to have regard to Rule 6(1) and 6(2) of the Rules. Rule 6(1) of the Rules is couched in the following terms;

“6 (1) The Supreme Court shall not grant the Petitioner leave to proceed unless it is satisfied, that the Petitioner has a sufficient interest in the subject matter of the petition, and that the petition is made in good faith”. (emphasis added)

- [7] Rule 6 (2) of the Rules 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 the requisite standing to make the petition”.

- [8] Thus, the use of the word *shall* in rule 6 (1) of the Rules, suggests, that the court is not permitted by law to grant the Petitioner leave to proceed with judicial review, where it is satisfied, that the Petitioner has not satisfied the court that it has *sufficient interest* in the subject matter and that the petition is being made in *good faith*. The issue of standing as a consideration under Rule 6 (2) of the Rules, only arises, where the Petitioner's interest is a general or public interest in establishing whether the Petitioner has sufficient interest in the subject matter and standing is an option which the court must have regard to.

- [9] In essence, an application for judicial review is governed by the Rules of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules 1995. The applicable procedure under the Rules requires a two stage approach. Firstly, the leave stage to proceed with the petition, and secondly, the merit stage of the petition. There is a plethora of case law authorities for this proposition (see *Karunakaran v Constitutional Appointment Authority* (SCA 33 of 2016) [2017] SCSC 9 (14 April 2017), *Registrar of the Supreme Court v Public Service Appeals Board and Ors* (SCA CL 6 of 2020) [2021] SCCA 11 (30th April 2021), *Airtel (Seychelles) Ltd v Review Panel of the National Tender Board & Anor* (SCA 70 of 2018) [2021] SCCA 36 (13 August 2021)).

- [10] The case of *Karunakaran* (Supra) and the *Registrar of the Supreme Court* (supra), instructs us, that the rules applicable at the leave stage are Rules 2-6 of the Rules. According to

Airtel (Seychelles) Ltd v Review Panel of the National Tender Board & Anor, the applicable rules are 5-6.

- [11] For ease of references, therefore, it is imperative, at this juncture, to be reminded of the text of Rules 2-5 of the Rules given that the text of Rules 6(1) and 6(2) of the Rules have already been spelt out at paragraph [6] and [7] above. Rules 2-5 of the Rules are couched in the following terms;

“2. (1) An application to the Supreme court for the purposes of Rule 1 (2) shall be made by petition accompanied by an affidavit in support of the averments set out in the petition.

(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.

(3) The petition under Rule 2 shall contain a statement of -;

(a) the name, address and description of the Petitioner.

(b) the relied sought and the grounds upon which it is sought;

(c) the name and address of the Petitioner’s attorney at law, (if any);

(d) the name, address and description of the Respondent or each of the Respondents

(e) a claim for damages, if any, and a pray for costs.

4. A petition under Rule 2 shall be made promptly and in any event within 3 months from the date of the order or decision sought to be canvassed in the petition unless the Supreme Court considers that there is good reason for extending the period within which the petition shall be made;

5. Every petition made under Rule 2 shall be registered by the Registry and shall be listed ex parte for the granting of the leave to proceed”.

- [12] The law on the two stage approach is established and confirmed by various case law authorities cited above in accordance with Rule 6. These are, whether the Petitioner has a *sufficient interest* in the subject matter, and whether the petition is being made in *good faith*.
- [13] The relevant citations from the Court of Appeal decision in *Registrar of the Supreme Court v Public Service Appeals Board and Ors*:

*“[8] Under Article 125 (1) of the Constitution the Supreme Court has supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority. Judicial Review is governed by the Rules of the Supreme Court (Supervisory Jurisdiction Courts, Tribunals, Adjudicating Bodies) Rules 1995 (the “Rules”). **Application for Judicial Review undergoes two stages: the leave stage and the merits stage. The Rules applicable to leave stage are Rules 2-6. Rule 5 provides that the petition made under Rule 2 shall be listed ex-parte for the granting of leave to proceed. Rule 6 provides two matters to be considered when deciding whether to allow or reject the application for judicial review: whether the petitioner has sufficient interest in the subject matter and whether the petition is being made in good faith.***

[9] At the leave stage therefore the petition is listed ex-parte and the Court considers matters referred to by Rule 6. The Respondent under Rule 7 may take notice of application being registered under Rule 5 at any time and object orally or in writing to the grant of leave to proceed, or if leave to proceed had been granted object to the application at any time before the time fixed by Rule 12 for filing objection.

*[10] It was correctly stated in the case of Derrick Chitala v Attorney General (1995) ZR that **the purpose of the leave stage is to eliminate claims that are frivolous, vexatious or hopeless.** In R v Secretary of State for Home Department, ex-parte Cheblak [1991] 1 WLR 980 Lord Donalds explained that the process operates as **a filter to eliminate unarguable cases and if an arguable issue emerges, the Courts grant the leave** (Island Development Company v Marine Accident Investigation Board (MA90/2019, arising in MC19/2019) [2020] SCSC 37).”*

(emphasis added)

- [14] In *Karunakaran v Constitutional Appointment Authority* the Court of Appeal held that at the leave stage the Court filters the application as follows: “*if prima facie reasons exist, he grants it forthwith; if the matter is wholly unarguable, he rejects it. If it falls in between, he seeks an inter partes hearing.*” The Court held the following:

*“[20] A Judicial Review action in Seychelles is derived from English law and practice. A litigant challenging the decision of a public authority which affects him **undergoes a process comprising two stages: the Leave Stage and the Merits Stage.** There are Rules which govern the procedure and common law jurisdictions have similar rules. They are found in Rules of the Supreme Court (Supervisory Jurisdiction Courts, Tribunals, Adjudicating Bodies) Rules 1995 (“The Rules”). **The Rules applicable to Leave Stage are Rules 2 to 6.** The action is by way of petition and an affidavit to which he has to attach all the materials on which he relies. This is important as it is the materials on which the judge will rely one way or the other to grant or not to grant leave.*

...

*[22] This is derived from English law that **no application for judicial review shall be made unless leave or permission of the court has been obtained.** An application for leave is made **ex-parte** to a judge who may determine whether or not to grant the leave for judicial review without a hearing.*

*[23] The leave stage “**enables the court to prevent abuse by busybodies, cranks, and other mischief-makers**” as was stated in *R v Inland Revenue Commissioners, ex p. National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617. The purpose of the requirement for permission is **to eliminate at an early stage claims that are hopeless, frivolous or vexatious and to ensure that a claim only proceeds to a substantive hearing if the Court is satisfied that there is a case fit for further consideration**: see *The White Book*, para 54.4.2. This practice has been adopted in comparable jurisdictions: see for example, *Derrick Chitala v Attorney General* (1995) ZR where it was said that this up-front screening was meant -*

- a. to eliminate at an early stage any applications which are either frivolous, vexatious or hopeless; and*
- b. to ensure that an applicant is only allowed to proceed to a substantive hearing if the court is satisfied that there is a case fit for further consideration.*

*[24] There has also developed what is referred to as the ripeness **doctrine whereby a case is justiciable if the harm asserted has matured sufficiently to warrant judicial intervention**: *Warth v Selding* 422 U.S 490 1975. Hence, if a dispute is only at the brewing stage and a decision is yet to be taken, the court should not be bothered until the matter is ripe or justiciable.*

...

[26] . . . An ex parte application did not mean that the matter was to be decided in the absence of the defendant. It only meant that it is to be listed as an ex parte application but the applicant still needs to appear and satisfy the court that the orders prayed for in the ex parte application may justifiably be given ex parte, account taken of the rules of natural justice and constitutional rights of those against which the orders were sought. We did state in the case that there is no such

thing as an *ex parte* hearing properly speaking. There is such a thing as an *ex parte* listing in a context where the defendants even remained unnamed. It would appear that learned counsel in this case is still under that misapprehension that orders in an *ex parte* application are to be given as a matter of course where the Judge is a mere conduit pipe. That is not so. That was made clear in the case of *Ex parte Fonseka* SCA 28 of 2012.

[27] The law is quite settled as regards the manner in which an *ex parte* application, with regard to Leave Stage in Judicial Review should be dealt with. The case of *R v Secretary of State for the Home Office Ex parte Doorga* (1990) C.O.D. 109 is the classical authority for same. This case was an *ex parte* application before the Judge, as the reference itself suggests. Lord Donaldson of Lymington MR laid down the following procedure for same. The Judge should undertake an up-front screening as follows:

- “(a) those in which there are prima facie reasons for granting judicial review;***
- (b) cases that are wholly unarguable and so leave must be refused;***
- (c) an intermediary category where it was not clear and so it might be appropriate to adjourn the application and hold a hearing between the parties.”***

[28] In short, Judges make a preliminary assessment on the application with the affidavit as a screening exercise. ***He filters it as follows: if prima facie reasons exist, he grants it forthwith; if the matter is wholly unarguable, he rejects it. If it falls in between, he seeks an inter partes hearing.*** This is exactly what the learned judge did in the matter. It is not in the nature of the judging that Judges should be mere conduit-pipes of *ex parte* applications.”

(emphasis added)

- [15] In *Airtel (Seychelles) Ltd v Review Panel of the National Tender Board & Anor* (SCA 70 of 2018) [2021] SCCA 36 (13 August 2021),¹ the Court of Appeal reiterated the two key requirements at the leave stage: (1) sufficient interest and (2) good faith. The Court of Appeal adopted a liberal approach by stressing that access to the courts should not be unduly impeded at the leave stage unless the matter is clearly frivolous. Furthermore, the Court elaborated on the requirement of good faith, emphasizing that the issues raised must disclose an arguable case. The detailed reasoning is set out at paragraphs [13] – [29], with the key excerpts cited below:

“[13] The law governing judicial review is found in the Rules of the Supreme Court (Supervisory Jurisdiction Courts, Tribunals, and Adjudicating Bodies) Rules 1995,

¹ <https://seylil.org/akn/sc/judgment/scca/2021/36/eng@2021-08-13>

and the jurisprudence of this Court. The rules make it clear that judicial review application comprises of two stages: the leave stage and thereafter the merits stage.

[14] Rules applicable to the leave stage are Rules 5 to 6. . . .

[16] It is settled law in this jurisdiction that **once an applicant shows that he has sufficient interest, the application passes the first test. The second test is that the application should be made in good faith.** The applicant should show by his affidavit and the materials he has attached thereto that the case he makes on the material produced is **a genuine case as opposed to a frivolous one.**

[17] Under the **good faith** requirement this court has explained that the applicant should show that **the issue/s raised in an application are arguable.** If these two tests are met the judge makes an order for the case to move to the Merits Stage. (*Karunakaran v The Constitutional Appointment Authority SCA 33/2016*).

[18] **The purpose of seeking leave is not to deny litigants access to the courts (something that should not be done lightly) but to weed out vexatious and wholly unmeritorious litigation by busy bodies, what the Romans called “meddlesome interlopers”.**

[19] In the English case of *R v Inland Revenue Commissioners, ex parte National Federation of the Self Employed and Small Businesses Ltd* [1982] AC 617 it was stated that the leave stage also “enables the court to prevent abuse by busy bodies, cranks, and other mischief-makers”.

[20] **It is settled law that cases that are hopeless or bound to fail, or totally devoid of merit must not be allowed to proceed further. . . .**

[21] **This court opines that in any case where application for leave is sought the court must be careful that it does not unduly impede or frustrate the right to access the court and have the real dispute determined by being too quick to deny a litigant the right to be heard on the merits, unless in situations where the application is plainly useless and a waste of the court’s time.**

[22] Put differently, it seems to us that in all situations **where leave is an issue the best approach is to adopt a liberal and generous approach that facilitates a matter proceeding on the merits than the contrary.** We think that in order to give effect to the right to a fair trial it is good judicial policy that **where there are doubts about whether a case is arguable or not the benefits of such doubt must accrue to the applicant.**

. . .

[27] **An arguable case is one that stands a realistic chance of success – certainly not one that is guaranteed to succeed.** A classic statement of the law is found in the often cited case of *Inland Revenue Commissioners v National Federation of Self*

Employed and Small Business Ltd, where Lord Diplock stated the law in the following terms:

*“If, on a quick perusal of the material then available, the court (that is the judge who first considers the application for leave) thinks that it discloses what might on further consideration turn out to be **an arguable case in favour of granting the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for the relief.** The discretion that the court is exercising at this stage is not the same as that which it is called upon to exercise when all the evidence is in and the matter has been fully argued at the hearing of the application.”*

[28] It is settled law that at the leave stage the perusal of the material need not be thorough, it is sufficient, if on a quick perusal the court takes the view that there is an arguable case.

[29] Lord Diplock puts it more succinctly, in the Inland Revenue Commission, when he stated that:

“So this is a threshold question in the sense that the court must direct its mind to it and form a prima facie view about it upon the material that is available at the first consideration in the light of further evidence that may be before the court at the second stage, the hearing of the application for judicial review itself”

(emphasis added)

- [16] In *Assemblies of God of Seychelles v The Attorney General* (MA 48 of 2021 (Arising in MC 17 of 2021)) [2022] SCSC 1143 (14 October 2022)² the Court granted leave upon finding that the Petitioner had demonstrated sufficient interest, and deferred consideration of good faith requirement to the merits stage. Below are the Court’s considerations regarding the good faith requirement:

[9] When this Court granted leave to the Petitioner to proceed, it did so, ex-parte. At that time, when granting leave, the Court did not look at the application in depth but merely considered the judicial review application briefly and the affidavit attached to the application for leave. Based on those, the court concluded that the Petitioner had interest in the matter and only on that basis leave was granted. It did not have the benefit of the Respondent’s objections to appreciate the reasons for such objections. However, at that stage the Court ordered that the Respondent be served and stated that should the Respondent have any objections,

² <https://seylil.org/akn/sc/judgment/scsc/2022/1143/eng@2022-10-14>

the Court would hear such objections. It is only through the affidavit of the Respondent that the Court appreciated the case in a different perspective.

...

[11] When addressing **good faith**, the Petitioner must show that the Issue it raised ¹¹¹ the application is arguable. The Petitioner must show that the case they make on material produced is a genuine case as opposed to a frivolous one. In **Omaghomi Belive v Government of Seychelles & Or** [2003] SLR 140, good faith is described thus

“the concept of “good faith” is not to be considered in contra-distinction with the concept of “bad faith”. It involves the notion of “uberrima fides” to the extent that the petitioner when filing the petition should have had an “arguable case”. That is an objective consideration which has to be assessed by court in deciding whether leave to proceed should be granted or refused”

[12] It was held in *Durai Karunakaran v CAA SCA33* of 2016 that “... if the issue raised in the application is arguable, it would follow that it has been made in good faith. If the issue is not arguable and only made frivolously, with levity and with the intention of challenging authority simply for the sake of it, it is made on an ego trip and there is no arguability consequently no good faith.” In *Cable & Wireless (Seychelles) Ltd. V Minister of Finance and Communications & Ors* CS 377 of 1997, it was held that **“the concept of “good faith” required under Rule 6 aforesaid is not to be considered in contra distinction with the concept of “bad faith”**. It involves the concept of uberrime fides to the extent that the petitioner when filing the petition should have had an arguable case. This is however an objective consideration that has to be assessed by court deciding whether leave should be granted or refused.”

[13] It is evident from the affidavit filed that the Petitioner has not demonstrated that he has an arguable case. . . .”

(emphasis added)

- [17] However, the court has been reluctant to entertain application for leave to proceed with judicial review where the law provides for alternative remedies. In *Lotus Holding Company Ltd v Seychelles International Business Authority* (121 of 2010) [2010] SCSC 19 (29 July 2010)³, the Court held that where legislation provides a specific statutory review mechanism, that mechanism should be engaged first over the discretionary remedy of judicial review:

³ <https://seylil.org/akn/sc/judgment/scsc/2010/19/eng@2010-07-29>

“[4] Initially I granted leave for the petitioner to proceed under supervisory jurisdiction of the Supreme Court but having heard submissions in the matter and reviewed authorities on the subject I am satisfied that given that the Legislature has provided for a statutory scheme for review of the decisions of the respondent the statutory scheme is to be preferred to supervisory jurisdiction that is discretionary. See R v Chief Constable of the Merseyside Police, ex parte Calveley and Others [1986] 1 All ER 257; R v Birmingham City Council, ex parte Ferrero Ltd [1993] 1 All ER 540; R v Secretary of State for the Home Department ex parte Swati [1986] 1 All ER 717 and Sinclair Gardens Investments (Kensington) Ltd v the Lands Tribunal and others, [2004] EWHC 1910 (Admin).”

- [18] This view was reinforced in Cable and Wireless (Seychelles) Ltd v Department of Information Communications and Technology (CS 58/2019 and 59/2019) [2020] SCSC 490 (8 April 2020),⁴ where the Court dismissed a judicial review application on the ground that an alternative statutory procedure was available to the petitioner and had not been exhausted:

“[31] Furthermore, several cases support the notion that when the legislation provides alternative methods of resolving the issue prior to application for Judicial Review, these methods should be followed. Yve Bossy v Republic (1980) SLR 40 held that where legislation provided for appeal against the decision of any government official or body, it is that method that must be followed and it is not permitted to by-pass that procedure and instead make an appeal to court.

[32] In Sony Labrosse v The Chairperson of the Employment Tribunal (Civil Side No.146 of 2010) [2012] SCSC 49 it was stated that Judicial Review could be refused where the legislature has provided a more suitable channel to challenge decision. In that case the Petitioner could have appealed against the decision of the Tribunal to Supreme Court instead of seeking Judicial Review. Although these cases refer to appeals, they follow the logic that when the legislation provides orderly methods or resolving issues, the order should be followed. Thus, in this case it can be suggested that the Petitioner should have applied to the Minister before pursuing application for Judicial Review.”

- [19] The petitioner has annexed to its affidavit in support of the Petition, a copy of the Notice of Refusal of Permission for development as exhibit P1. The Petitioner has also annexed to its affidavit a copy of the Environmental Authorisation dated 23rd February 2023 as exhibit P2. The Petitioner has further annexed to its affidavit the decision of the Appeals Board dated 20th December 2023 allowing the appeal as exhibit P3. The Petitioner has

annexed to its affidavit, the letter of acknowledgment dated 31st January 2024 of receipt of the resubmitted planning application as exhibit P3A.

- [20] The Petitioner has also annexed to its affidavit a screenshot of the Respondent's online system taken on the 31st January 2025 showing the status of its development application marked as "approved" as exhibit P4. The Petitioner further annexed to its affidavit a screenshot of the Respondent's online system taken on the 5th June, 2025, showing the status of its development application as exhibit P5. Therefore, in light of the affidavit evidence, including the documentary evidence exhibited thereto, I am satisfied, that the Petitioner has established a sufficient interest in the matter having demonstrated that it has been directly affected by the decision sought to be reviewed.
- [21] With regard to the Petitioner establishing *good faith*, in its petition, the Petitioner raises issues of Illegality, Procedural Impropriety and Irrationality which based on the law are well established grounds for judicial review. Based on my reading of the Petitioner's supporting affidavit to the petition and the documents in support of the averments therein, it appears to me, that the issues raised are arguable and not frivolous, thus satisfying the *good faith* threshold requirement.
- [22] In conclusion, given that it is the finding of this court, that at leave stage of these proceedings the Petitioner has demonstrated *sufficient interest* in the subject matter of the petition, and that the petition raises arguable issues which appear to be made in *good faith*, leave to proceed with the petition for judicial review is therefore granted.
- [23] In line with Rule 9 (1) of the Rules, I direct that notice be served on the Respondent together with the petition, as well as the supporting affidavit and all the documents exhibited therewith, all of which shall be furnished by the Petitioner in accordance with Rule 9 (2) of the Rules.
- [24] I also direct, the Planning Authority, the adjudicating Authority made Respondent in this petition, to forward the record of proceedings to the Registry of the Supreme Court in accordance with Rule 10 of the Rules.

Signed, dated and delivered at Ile du Port 10th July 2025.

