

SUPREME COURT OF SEYCHELLES

Reportable
MC 35/2024

In the matter between:

THE BAR ASSOCIATION OF SEYCHELLES
(Represented by Mr Divino Sabino)

Petitioner

vs

THE HONOURABLE CHIEF JUSTICE
SUPREME COURT
ILE DU PORT, MAHE

1st Respondent

And

MS ZEINA JABBI
OF
PREMIERE BUILDING, VICTORIA, MAHE

2nd Respondent

And

THE HONOURABLE ATTORNEY GENERAL
OF
THE LINK, ILE DU PORT, MAHE

3rd Respondent

Neutral Citation: *The Bar Association vs The Chief Justice & Ors* (MC 35/2024) (13 January 2025)

Before: Adeline J

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

Heard: By submissions

Delivered: 13 January 2025

FINAL ORDER

The petition for leave to proceed with judicial review fails for the reason that the Petitioner has not pleaded a *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 of the Supreme Court (Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules required. Accordingly, the petition is therefore dismissed.

RULING

Adeline, J

- [1] By petition filed in court pursuant to rule 1 (2) read together with rule 5 of the Supreme Court (Supervisory Jurisdiction Over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules (“the court Supervisory Rules”) on the 3rd July 2024, the Bar Association of Seychelles (“the Petitioner”) commenced legal proceedings against the Honourable Chief Justice of the Supreme Court, Ms Zeina Jabbi an Attorney-at-law and the Honourable Attorney General seeking to invoke the court’s supervisory jurisdiction over subordinate courts, tribunal and adjudicating authority as well as calling for the exercise of its powers conferred upon it by virtue of Article 125 (1) (c) of the Constitution.
- [2] The petition is supported by an affidavit as required by rule 2(1) of the Court Supervisory Rules sworn by one Alexandra Benoiton, to which affidavit are exhibited the necessary documents purported to be in compliance with Rule 2 (2) of the Rules. It is however observed, that the documents exhibited are neither the originals, nor certified copies as required by rule 2 (2) of the Rules.
- [3] In line with the legal requirement for leave to proceed with the petition for judicial review, pursuant to rule 5 of the Court Supervisory Rules, the petition was listed *ex parte* and the decision as to whether leave should or should not be granted to proceed has to be made on account of the pleadings and the affidavit evidence.
- [4] To make a determination on the merits of the current application for leave to proceed with judicial review based on the substantive law, it is appropriate, at this juncture, to add rules 6 (1) and 6 (2) of the Court Supervisory Rules to 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 that the petition is being made in good faith.” (underlined emphasis is mine).

- [5] 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 had the requisite standing to make the application”

- [6] In essence, therefore, by the use of the word “shall” under rule 6 (1) of the Rules, the court is mandatorily prohibited from granting the Petitioner leave to proceed with judicial review where the Petitioner has not satisfied the court that it has a sufficient interest in the subject matter, and the petition is being made in good faith. The issue of standing as a consideration under rule 6 (2) 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 may consider.

- [7] The question that is called for answers, is what amounts to “Sufficient Interest”? The answers to this question are found in a myriad of case law authorities in our jurisprudence. First and foremost, this court has stated, countless times, that every Petitioner must satisfy the courts that he has sufficient interest in the subject matter of the petition. See for example, *Ramgasamy v Chief Executive Officer of Planning Authority (MC 102/2014) [2016] SCSC 865 (9th November 2016)* at paragraph [24].

- [8] In the case of *The Attorney General vs PSAB and Anor (MC 67/2021) [2021] SCSC 1038 (29 October 2021)* at paragraph [8] of its ruling, the court determined, that the Petitioner in the petition has sufficient interest in the subject matter of the Petition. This is 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.

- [9] In the case of *Darad v Minister of Employment and Social Affairs & Anor (MC 27 of 2023) [2023] SCSC 683 (13 September 2023)* at paragraph [6], this 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. Thus, sufficient interest can be found where a Petitioner is directly affected by a decision. The case of *Generation Transportation & Logistics (Proprietary) Limited v Minister for Finance, Economic Planning and Trade (MA 09/2021) [2021] SCSC 874 (12 April 2021)* at paragraph [5] is instructive on that particular legal point.

[10] Interestingly, in the case of *Minister Responsible for Public Administration (Faure) v Speaker of the National Assembly (Prea) (MA 126/2019) [2019] SCSC 1200 (9th May 2019)* at paragraph [30], the court looked 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.

[11] In reliance on those case law authorities cited above, clearly, a Petitioner seeking for leave to proceed with judicial review must satisfy the courts that it has sufficient interest in bringing forth the petition. This is determined by factors such as the characteristic of the Petitioner, and how a decision directly affects the Petitioner.

[12] Very importantly, for the petition to succeed, these things must be pleaded by the Petitioner in the petition rather than the courts making such findings. In that regard, it is settled law, that in respect of pleadings, a court may not formulate a case for a party after listening to the evidence, or grant relief not sought for in the pleadings. A judge cannot adjudicate on issues which have not been raised in the pleadings (see *Vel vs Knowles SCA 41/1998 42/1998, LC 136*).

[13] In the case of *Jacobs v Charlot Crecent (Management) Company Limited [2024] EWHC 259 (ch)* the court reminds us of the importance of pleadings in litigation as 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”.

[14] Furthermore, at [65] Francourt J had this to say also;

“[65] It was not open 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”.

[15] I have meticulously examined the Petitioner’s petition and the averments in the supporting affidavit. I find that the Petitioner has not shown this court sufficient interest as well as the requisite standing. All that the Petitioner has sought to do is to describe itself as an association of lawyers which protect the interest of its members. In my considered opinion, this hardly offers any insights into sufficient interest and standing, particularly, given that membership to the Bar Association is not compulsory for admitted attorney, and also, because the Bar Association is not a regulatory watch dog.

[16] For this particular reasons, it was incumbent of the Petitioner to explain its sufficient interest and standing in no uncertain terms. See generally, *Ramgasamy v 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) v 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 at paragraph [30].

[17] Clearly, therefore, in the instant case, sufficient interest ought to have been encapsulated at the pleading stage. In other words, the Petitioner should have expressly pleaded sufficient interest in its petition and in the supporting affidavit the Petitioner showing the link between the Petitioner (who is neither the regulator nor a compulsory association of Attorneys) and the subject matter of the Petition.

[18] To substantiate this particular aspect with relevant 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.

- [19] In the final analysis, therefore, in the absence of clear pleadings to show sufficient interest and standing, and in the absence of submissions within the bounds of such pleadings, this court is unable to find that the Petitioner has sufficient interest in the matter. In essence, the Petitioner has not shown this court how the decision of the Chief Justice directly affects it as an association that is neither the regulator of the legal profession, nor a compulsory association for attorneys. Admittedly, 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.
- [20] On the issue of good faith as per rule 6 (1) which is the second requirement after sufficient interest, given that there is no sufficient interest shown, to discuss good faith would simply be a futile academic exercise that would not change the findings of this court.
- [21] In conclusion, therefore, in view that no sufficient interest has been shown on the face of the pleadings, the Petitioner's petition stands to be dismissed which this court accordingly dismiss.
- [22] It may be suggested, that the court has been too technical having clearly looked at the Petitioner's pleadings for its finding that no sufficient interest has been shown as required by rule 6 of the Court Supervisory Rules. Within the realm of the rules of pleadings, parties must plead all the material facts that are relevant to their case, and in an application for leave to proceed with judicial review as in the instant case, they must satisfy the court of those prerequisite such as sufficient interest and good faith which has to be pleaded in the first place.

Signed, dated and delivered at Ile du Port 13th January 2025.

