

SUPREME COURT OF SEYCHELLES

Reportable
MA 168/2025
(Arising in MC 9/2025)

In the matter between:

BAR ASSOCIATION OF SEYCHELLES
(Represented by Mr Divino Sabino)

Applicant

Versus

**THE HONOURABLE CHIEF JUSTICE,
SUPREME COURT**
(Represented by Mr Frank Elizabeth)

1st Respondent

And

MS NADINE SONIA CAMILLA ALLEEAR
(Represented by Mr Frank Elizabeth)

2nd Respondent

And

THE HONOURABLE ATTORNEY GENERAL

3rd Respondent

Neutral Citation: *Bar Association of Seychelles vs The Honourable Chief Justice & Ors* (MA 168/2025) (26 November 2025)

Before: Adeline J

Summary: Leave to appeal against decision refusing leave to proceed with judicial review – Article 2(1) and Article 8 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunal and Adjudicating Authorities) Rules

Heard: By Submissions

Delivered: 26th November 2025

FINAL ORDER

The application is allowed, and accordingly leave is granted to the Applicant to appeal to the Court of Appeal against the decision of this court refusing leave to proceed with judicial review.

ORDER ON MOTION

Adeline, J

FACTUAL AND PROCEDURAL BACKGROUND

- [1] By Notice of Motion dated 30th July 2025, filed into court on the very same day, pursuant to Rule 8 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, the Bar Association of Seychelles applies for leave of this court to appeal to the Court of Appeal against the decision of this court not to grant it leave to proceed with judicial review for the exercise of its jurisdiction over subordinates courts, tribunals and adjudicating authority under Article 125 (1) (c) of Part III of the Constitution in accordance with rule 2 (1) of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, “the Rules”.
- [2] Although not an issue presented for consideration and for a determination, it is observed, that the application for leave should have been made by petition rather than by motion, as provided under Rule 2 (1) read with rule 8 of the Rules, and more so, given the words “*the Petitioner may appeal to the Court of Appeal*” in Rule 8 of the Rules.
- [3] The Applicant supports its application for leave to appeal to the Court of Appeal by an affidavit duly deposed by one Jean-Marc Lablache (“the deponent”) of Beau Vallon, Mahe. In his deposition, *inter alia*, the deponent makes the following averments;

“3. The Applicant was the Petitioner in an application for leave to seek judicial review of an order of the Honourable Chief Justice made on the 11th November 2024, admitting the 2nd Respondent as an Attorney-at-law.

4. The basis for the said application was the Applicant’s contention that the 2nd Respondent did not fulfil the requirements set out in the Legal Practitioners Act (“LPA”), specifically the requirement to serve a period of pupillage as prescribed by the Act.

5. *The 1st and 2nd Respondents took notice of the proceedings and filed a notice of preliminary objections dated 27th February 2025 and filed written submissions dated 1st April 2025. The matter of leave to proceed progressed through written submissions and the Petitioner filed written submissions dated 7th May 2025. By a ruling dated the 16th of July 2025 (a copy of which is produced and shown to me as exhibit JML 1), the learned Judge dismissed the application, finding that the Supreme Court has no jurisdiction under the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules to grant the relief sought.*

6. *The Applicant contends that the learned Judge erred in its finding, as the Supreme Court does indeed possess jurisdiction to review administrative decisions made under the LPA, such as the admission of an attorney, which are administrative and not judicial in nature.*

7. *The proposed grounds upon which the Applicant intends to appeal the said order are more fully particularised in the Draft grounds of Appeal, a copy of which is produced and shown to me as exhibit JML 2.*

8. *The Applicant avers that this matter is of significant public interest, as it concerns the proper administration of the legal profession and will clarify the scope of the Supreme Court's Supervisory Jurisdiction over administrative acts performed under statutory authority, and that it will further reinforce the Applicant's standing and interest in such matters, as a statutorily-referenced body mandated under the procedures set out in the LPA (amongst other statutes and regulations).*

9. *The Applicant prays this Honourable Court to be pleased to grant the Applicant leave to appeal from the order of the 16th of July 2025".*

[4] The 1st, 2nd and 3rd Respondents all opted not to file and affidavit in reply, nor to object or oppose the application. They also did not tender any submissions.

[5] The Applicant did tender written submissions.

ARGUMENTS OF COUNSEL FOR THE APPLICANT BY WAY OF WRITTEN SUBMISSIONS

- [6] In its written submissions, learned counsel for the Applicant contends, that in its view, “the court decided the issue of leave to proceed on a very particular grounds, that it has no jurisdiction under Article 125 (1) (c) of the Constitution read with the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules to review its own decision.
- [7] Referring to the wordings of Article 125 (1) (c) of the Constitution and giving it its own construction, learned counsel submits that “the Supervisory Jurisdiction of the Supreme Court covers that of subordinate courts, tribunals and adjudicating authorities. It refers to Article 125 (7) of the constitution, and contends, that an adjudicating body or authority established by law which performs a judicial or quasi-judicial functions. Learned counsel cites few case law authorities which it submits is part of our jurisprudence in this area of law, notably, the case of *Government of Seychelles v Public Service Appeal Board & Anor (MC 87/2018) [2018] SCSC 654 (31 July 2019)* and cases from other jurisdictions. It is the submission of counsel, that these case law authorities state that “self-review or self-challenge is a common feature of judicial review.
- [8] Learned counsel also adds, that in *Government of Seychelles* (supra), the court also stated, that “self-review or self-challenge” is a principle that would be applicable in any constitutional democracy. It quotes paragraph 8 as stating, *inter alia*, that “no public body is above the law in that regard”. In terms of case law from other jurisdictions, learned counsel cites the South African case of *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Limited (CCT91/17) [2019] ZACC 15:2019 (6) BCLR 661 (cc) (16 April 2019)*, in which case he states that “the constitutional court of South Africa found that organs of the state may have their own decisions reviewed under the principle of legality”.
- [9] Supporting its view that it is trite law that right of appeal can be created only by an express statutory provisions by case law, citing amongst others, the case of *Amalgamated Tobacco Co (Sey) Ltd v MESA CS No 35 of 1995*, and making special mention of Section 3 and Section 5 of the Legal Practitioner’s Act, learned counsel submits, *inter alia*, that there is no

statutory provision under the Legal Practitioners Act conferring right of appeal or otherwise relating to the admission of an Attorney-at-law.

- [10] It is contended by learned counsel, that the only appeal route that exists under the legal Practitioner's Act is under Section 6 A(8), and therefore, where redress is sought as a consequence of the illegal administration of the legal Practitioners Act, including the admissions of Attorneys, it has to be my way of judicial review. In learned counsel's view, if that is construed not to be the case, the Supreme Court "would not be amenable to any form of judicial scrutiny and would effectively fall outside the realm of legal control".
- [11] It is also the view of learned counsel, that the fact that there are provisions for appeal under Section 6 A (8) of the Legal Practitioners Act to appeal against a decisions to suspend, revoke or refuse the renewal of an Attorney-at-law's license to practice, similar provisions would have existed to challenge the admission of an Attorney-at-law, and in the absence of such provision judicial review is the appropriate option available.
- [12] Addressing the law on leave to appeal, learned counsel submits, that the Supreme Court may, in its discretion, grant leave to appeal if, in its opinion, the question involves in the appeal is one which ought to be the subject matter of an appeal, making reference to Section 12 (2) (b) of the Courts Act.
- [13] Learned counsel relies on the case of *Re: Ailee Development Corporation Ltd* (2008) SLR 87, stating that, "a court may grant leave for a number of reasons, even if it is not satisfied that the appeal is likely to succeed". Learned counsel cites the case of ***Smith v Cosworth Casting Processes Ltd [1977] 1 WLR 1538*** which was cited in the case of *Ailee Development* (Supra) in which case Lord Wolf MR, provides guidance as to how to go about determining whether leave to appeal should be granted or not. Learned counsel cites the following paragraphs as guidance from *Smith V Cosworth*;

"1. The court will only refuse leave if satisfied that the Applicant has no realistic prospect of succeeding on the appeal. This test is not meant to be any difference from that which is sometimes used, which is, that the Applicant has no arguable case. Why however this court

has decided to adopt the former phrase is because the use of the word “realistic” makes it clear that a fanciful prospect or an unrealistic argument is not sufficient.

2. The court can grant the application even if it is not so satisfied. There can be many reasons for granting leave even if the court is not satisfied that the appeal has any prospect of success. For example, the issue may be one which the court considers should in the public interest be examined by this court or, to be more specific, this court may take the view that the case raises an issue where the law requires clarifying”.

- [14] It is the submissions of learned counsel, that in Ailee Development (Supra) the Supreme Court held that this foregoing pronouncement of Lord Wolf in Smith (Supra) is consistent with Section 12 (2) (b) of the Courts Act, thus affirming it as the guiding principle on the test for the grant of leave to appeal”.
- [15] In essence, the Applicant’s contention, is that the Supreme Court has jurisdiction to judicially review its decisions, which in the instant case, is a decision made under the Legal Practitioner Act.

COURT’S REASONING AND ANALYSIS

- [16] The Ruling of this court which the Applicant seeks leave to appeal against is a ruling delivered on the 16th July 2025. As correctly submits by learned counsel for the Applicant in paragraphs 4 of its written submissions, this “court decided that the issue of leave to proceed on a very particular ground: That it has no jurisdiction under Article 125 (1) (c) of the Constitution read with the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules to review its own decision”.
- [17] Learned counsel also refers to paragraph 15 of the said ruling, and states that, “the court questions whether it can judicially review decisions of the Supreme Court when exercising its powers under the Legal Practitioners Act. Learned counsel goes on as to say that, “the court then concludes in paragraph 18 of the Ruling that it may not do so by judicial review and that challenging the decision in particular, made under Section 3 (1) of the Legal Practitioners Act, ought to have been done by way of an appeal to the Court of Appeal”.

- [18] In its supporting affidavit to the motion, the deponent avers, that decisions made under the Legal Practitioners Act such as the admission of an Attorney – at law under section 3 of the Act is an administrative decision not a judicial decision, and as such is subject to judicial review.
- [19] Generally, judicial decisions are distinct from administrative decisions although the line can blur in certain situations. It is therefore, my considered view, that when the supreme court exercises its statutory power presided by the chief justice and admit an Attorney – at – law under Section 3 of the Legal Practitioners Act, it effectively carries out a judicial function based on a judicial decision. For this particular reason, I am unable to subscribe to learned counsel’s view, that the decision to admit a person as an Attorney – at – law under section 3 of the Legal Practitioners Act is an administrative decision and is therefore subject to judicial review.

HOLDING AND IMPLICATION

- [20] As to the merit of the Appeal itself, I have carefully considered the submissions of learned counsel, particularly on the law on leave to appeal which is supported by case law authorities. In search for clarity and to bring about certainty as to the interpretation of procedural and substantive law surrounding the provisions of Section 3 of the Legal Practitioners Act, I allow the appeal, and accordingly grant the Applicant leave to appeal to the Court of Appeal against the decision of this court refusing the Applicant leave to proceed with judicial review.

Signed, dated and delivered at Ile du Port 26th November 2025.

