

CONSTITUTIONAL COURT OF SEYCHELLES

Reportable
CP09/2022

In the matter between:

MUKESH VALABHJI
(rep. by *France Bonte*)

Petitioner

and

THE REPUBLIC
MR. WAVEL RAMKALAWAN
MR. AHMED AFIF
MR. ROGER MANCIENNE
THE ATTORNEY GENERAL
THE ATTORNEY GENERAL
(rep. by *Ria Alcindor*)

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent

THE ANTI-CORRUPTION COMMISSION
(rep. by *Michael Skelley*)

7th Respondent

THE DEFENCE FORCES OF SEYCHELLES
(rep. by *Ria Alcindor*)

8th Respondent

Neutral Citation: *Valabhji v The Republic & Ors* (CP 09/2022) (27th June 2025)

Before: M Burhan J (Presiding), B Adeline J, D Esparon J

Summary: Application to dismiss petition

Heard: 27th January 2023; 30th January 2023; 6th March 2023; 4th February 2025;
25th March 2025; Written submissions,

Delivered: 27th June 2025

RULING

M BURHAN J (Presiding), B ADELINE, D ESPARON J concurring

[1] The Petitioner, Mukesh Valabhji, filed a constitutional petition on 18 November 2022, seeking the following reliefs as set down in the prayer to the petition:

WHEREFORE the Petitioner pray this Honourable Court to:

A. Interpret The Charter:

- i) *in such a way as not to be inconsistent with any international obligations relating to Human Right and freedoms, particularly the Covenant on Civil and Political Rights which Seychelles acceded to in 1992, the European Convention on Human Rights and the American convention on Human Rights*
- ii) *in line with Article 48 (a to d) of the Constitution.*

B. To grant the following orders:

- i) *A Declaration that Act 9 of 2022 is inconsistent with and contravenes Article 19 of the Charter, in the alternative the relevant provisions of Act 9 of 2022 that contravenes Article 19.*
- ii) *A Declaration that section 3(8) of the Anti-money Laundering Act, 2006 is inconsistent with the Constitution and therefore void.*
- iii) *A Declaration that the consequential amendment to section 3(8) of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020 is inconsistent with the Constitution and therefore void.*
- iv) *A Declaration that the process of enacting Act 9 of 2022 contravenes Article 85, 86 and 87 of the Constitution.*
- v) *A Declaration that the acts and omissions of the 1st, 2nd, 3rd, 4th, 5th and 7th Respondents as particularized contravene the Constitution and provisions of Article 19 and 27 of the Charter*
- vi) *Order the repeal Act 9 of 2022.*
- vii) *A Declaration that the charges against the Petitioner namely Counts 7,8,13 are inconsistent with Articles 19 and 27 of the Charter and therefore void.*
- viii) *A Declaration that all the charges against me be withdrawn as the actions and omissions of the 1st, 2nd, 3rd, 4th, 5th and 7th Respondents as particularized contravene the Constitution and provisions of Article 19 and 27 of the Charter*
- ix) *A Declaration that the Petitioner is being denied a fair hearing*
- x) *Declare that the restrictions entered against all assets of the Petitioner and of all entities which he has an interest therein to be contrary to Article 19 and 27.*
- xi) *Order the removal of all restrictions entered against all assets of the Petitioner and of the entities that he has an interest therein.*
- xii) *Make such declaration, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the Charter and disposing of all the issues relating to the application.*
- xiii) *Make such additional order under this Constitution or as may be prescribed by law.*

- xiv) *Award a token compensation of Seychelles Rupee One only, to the Petitioner for miscarriage of justice as given the state of the current economic situation of the country, the Petitioner does not wish to claim any compensation from tax payers.*
- xv) *Grant any remedy available to the Supreme Court against any person, or authority which is the subject of the application or which is a party to any proceedings before the Constitutional Court, as the Court considers appropriate.*
- xvi) *Award cost of this Application to be payable by the 2nd, 3rd, 4th Respondents and the Commissioner of the 7th Respondent.*

[2] The 1st, 2nd, 3rd, 4th, 5th, 7th and 8th Respondents filed preliminary objections. Thereafter on an application made by the Petitioner (MA 205 of 2023), a stay of proceedings in this case was granted, pending determination of the motion filed by the 7th Respondent to amend charges in CR114 of 2021 before the Chief Justice in the trial court. The Chief Justice by Ruling dated 22 April 2024 ordered that the charge sheet be amended in accordance with the said order (*The ACCS v Valabhji & Ors* (CO 114 of 2021) [2024] SCSC 117 (22 April 2024)). The 7th Respondent thereafter filed the amended charges in accordance with the Ruling of the Chief Justice dated 22 April 2024 and moved for an application that the charge sheet be accepted. The Petitioner objected to this application in the trial court and sought further stay of proceedings in this case in (MA134 of 2024), pending determination of his objections which was refused by this Court. The said amendments to the charges were granted by the Chief Justice in his Ruling dated 19 July 2024 (*The ACCS v Valabhji & Ors* (CO 114 of 2021) [2024] SCSC 137 (19 July 2024)). The Chief Justice's Ruling further specified that certain charges remain on the Court's record until determination of CP 9 of 2022.

[3] This Court having dismissed the application for a further stay of CP 9 proceedings by its Ruling dated 27 November 2024 (*Valabhji v Republic & Ors* (MA 134 of 2024 (Arising in CP 09 of 2022)) [2024] SCCC 6 (27 November 2024)), granted the Petitioner an opportunity to amend the Petition, to be in accordance with the new amended charge sheet filed in CR114 of 2021. The Petitioner, however, chose not to do so.

- [4] This Court by its Ruling dated 25 March 2025 dismissed the Respondents' application to dismiss the petition on the ground that the Petitioner had failed to amend the petition, and the matter was fixed for ruling on the preliminary objections.
- [5] This Ruling is in respect of the preliminary objections raised by the Respondents.
- [6] At this stage, it would be pertinent for this Court to also refer to the submission of the 7th Respondent filed on 27 January 2023 and the part titled 'Second Submission' in support of the application to dismiss the petition filed on 4 February 2025. In addition to the preliminary objections raised, further objections dated 4 February 2025 state that if the court is against the 7th Respondent's primary submission, it should proceed to determine the preliminary objections forthwith, by immediately dismissing any prayers within the petition which can no longer be sustained or determined in view of the amendment to the charges in CR114/2021. The 7th Respondent submitted that the following prayers should now be dismissed as a result of the Petitioner's election not to amend the petition:
- (i) *Prayer B(vii) which identifies counts 7, 8 and 13 as being inconsistent with Articles 19 and 27 of the charter. These charges no longer exist in the form complained of by the Petitioner, as this Honourable Court has twice noted.*
 - (ii) *Prayer B(viii) which requests a declaration that 'all the charges against me be withdrawn'. The charges in CR114/2021 have now been substantially amended by the rulings of the learned trial judge and this prayer is no longer sustainable in respect of the previous form of charges.*
 - (iii) *Prayer B(ix) which request a declaration that the 'Petitioner is being denied a fair hearing'. To the extent that this prayer relies on the proceedings in CR114/21, and the trial of the amended charges in CR114/2021 which has not taken place, this ground is premature. In failing to elect to amend his petition, the Petitioner is impliedly not challenging the rulings made by the learned trial judge in April and July 2024. This prayer is accordingly no longer sustainable.*
 - (iv) *Prayers B(x) and B(xi) which request declarations that the 'restrictions' entered against all assets of the Petitioner are contrary to the Articles 19 and 27 and should be*

‘removed’. The restriction notices issued pursuant to section 60 of the Anti-Corruption Act 2016 came to the end of their permitted statutory duration in March 2023. The restriction notices no longer exist and no order for ‘removal’ is accordingly possible. Despite applications being made by the Petitioner to vary the restrictions notices during their existence, he never made any application to the Supreme Court to discharge them.

Submissions – 1st, 2nd, 3rd, 4th, 5th, and 8th Respondents

- [7] It is submitted that the preliminary objections are filed on behalf of the 1st, 2nd, 3rd, 4th, 5th, and 8th Respondents (the ‘Respondents’) pursuant to Rule 9 of the Constitutional Court (Applications, Contraventions, Enforcement or Interpretation of the Constitution) Rules 1994 (the ‘Rules’). The Respondents state that these submissions are not filed on behalf of the 6th Respondent (i.e. the Attorney General in his role as *amicus curiae* under Rule 3(3) of the Rules). Respondents submit that, at present, a single State Counsel from the Attorney General’s Office represents the 1st, 2nd, 3rd, 4th, 5th, 6th and 8th Respondents in this matter.
- [8] It is submitted by the Respondents that the Attorney General will keep under review whether a separate State Counsel should act as *amicus curiae* under Rule 3(3) of the Rules, noting that this Court held in Umarji and Sons (Pty) Ltd v Government of Seychelles & Ors [2017] SCCC 3, at paragraph 7, that:
- “[...] as the principal legal adviser to the Government of Seychelles he [the Attorney General] has the right to defend the Government of Seychelles when there is no conflict of interest between the position he will be taking up as amicus curiae and in relation to the defence he will be raising for the Government.”*
- [9] The Respondents submit that, to the extent that any conflict may be said to arise, the Attorney General may take the decision that separate Counsel should act as *amicus curiae* in this case.
- [10] The Respondents’ position in summary is that the Petition should be dismissed on the following grounds:
- (a) the Petitioner has failed to properly particularize a number of the grounds that are brought against the Respondents;

- (b) the Petitioner has raised grounds of challenge as against some or all of the Respondents that are entirely unarguable and/or raise no reasonable prospect of success;
- (c) certain grounds fall to be dismissed on the basis that the Petitioner is out of time and no application has been made for an extension of time under Rule 4(3) and (4) of the Rules;
- (d) the Petitioner has failed, in respect of certain grounds of challenge, to exhaust all other remedies before the Supreme Court, such that this Court should not entertain the challenge; and/ or
- (e) certain grounds are premature.

[11] From a procedural perspective, the Respondents submit that it is disproportionate for the petition to have been brought against eight individually named Respondents. Instead, it should have been brought solely against the Republic of Seychelles (the 1st Respondent), with the Petitioner, in his pleadings, particularising who is said to have committed the various alleged contraventions of the Constitution of the Republic of Seychelles (the 'Constitution'). It is submitted that if the Court considers that constitutional petitions should, in fact, be brought against named decision-makers, the Respondents make the following submissions:

- a. The Republic (i.e. the 1st Respondent) should be disjoined as a party.
- b. The Vice President (i.e. the 3rd Respondent) should be disjoined from this action for the reasons given in paragraphs 36 to 39 below.
- c. The Speaker of the National Assembly (i.e. the 4th Respondent) is incorrectly-named as a respondent given that he does not assent to legislation that has been passed by the legislature; this power rests in the hands of the President of the Republic of Seychelles.
- d. The Seychelles Defence Force ("the SDF") (i.e. the 8th Respondent) should not be named separately as a respondent. The Attorney General has been named in his capacity as the representative of the Government of Seychelles ("the Government") (as the 5th Respondent) and, as such, there is no need to name the SDF separately. The SDF falls to be considered as part of the Government for these purposes.

- [12] The Petitioner in response to the Respondents objections, submitted that all the Respondents except for the 5th Respondent raised similar preliminary objections and addressed the said objections together as a whole. The Petitioner submitted in this respect that, as per Rule 3(3) of the Rules, the only time that the Attorney General does not need to be made a Respondent to the Petition is when the Attorney General is the one presenting the petition and this is not the case with this petition in CP 9 of 2022. Thus, whilst the Attorney General, as principal legal advisor to the Government, may defend the Government of Seychelles and also act as *amicus curiae* in other matters where there is no conflict, there is a mandatory requirement for the Attorney General to be the *amicus curiae* in Constitutional Petitions. The Petitioner further submits that the 2nd, 3rd, and 4th Respondents are not the Republic but they hold positions within the Government, and accordingly, the Petitioner submits that the contravention alleged against these three different Respondents are very specific as to the violation each of them has committed. Further, there is a conflict between the position of the Attorney General as defender and principal legal advisor to the 1st Respondent and that as defender of the 2nd, 3rd and 4th Respondents. Thus, the Petitioner disagrees with the stance of the Attorney General for a single Counsel to represent all the Respondents, including himself as 5th Respondent, as per the objections filed. It is submitted that, at the very least, the 2nd, 3rd and 4th Respondents cannot be represented by the Attorney General.

Analysis and determination

- [13] Firstly, with regard to the determination whether this petition is time-barred, we observe that the Constitutional Court in Valabhji v Republic & Ors (CP 14 of 2022) [2023] SCCC 7 (19 October 2023) has determined similar preliminary objection of the petition being time-barred. In that case, unlike in this instant case, the charges were withdrawn against the Petitioner and the court held that “*once the charges were withdrawn any potential continuing contravention was completed*”. Consequently, the Petitioner was obliged to file the constitutional petition within the prescribed three-month limitation period following the withdrawal, which was not done, nor was leave to file out of time sought. In the present case, however, the Petitioner remains subject to ongoing charges and is currently in remand. Consequently, we determine that whether alleged contraventions are of a

continuing nature will have to be decided after the consideration of the facts and merits of the case and therefore should be decided at the end of the proceedings.

- [14] It is pertinent to note that the Petitioner was given ample opportunity and time to amend the petition following the amendment of charge sheet in CR 114 of 2021. The Petitioner, however, chose not to amend the Petition. As this Court has already observed in its prior Rulings, the substance of prayer B (vii), namely "*A declaration that the charges against the Petitioner namely, Counts 7, 8, 13 are inconsistent with Article 19 and 27 of the Charter and therefore void*", is untenable. This is for the reason that the prayer specifically refers to the charge numbers in the former charge sheet, which have since been amended. Therefore, at the outset of this Ruling, it is our determination that prayer B (vii) of the petition be dismissed.
- [15] In respect of the 7th Respondent's submissions that prayer B(viii), requesting all charges to be withdrawn should be dismissed at this stage as these charges have now been substantially amended, this Court finds that certain charges remain on the trial Court's record until determination of CP 9 of 2022. Consequently, the determination of this prayer will be left for the conclusion of the proceedings, after the parties have been heard on the merits.
- [16] Further, it was submitted that prayers B(ix), requesting a declaration that the Petitioner is being denied a fair hearing should be dismissed at this stage as the trial has not taken place yet. The Petitioner submitted that the very trial court before which he raised the issues regarding the jurisdiction of the 7th Respondent allowed the 7th Respondent to stay the proceedings and agreed to allow time for the 4th Respondent to pass the necessary retrospective amendments in Bill 8 of 2022 and then, consequently, to amend the charges against the Petitioner, resulting in him being charged under the said amended laws. We find that this prayer is connected to the determination of the constitutional validity of the impugned legislative provisions and its effect on the alleged charges against the Petitioner; and thus will be decided at the conclusion of the proceedings, after the parties have been heard on the merits.

- [17] The 7th Respondent also submitted that prayers B(x) and B(xi), which request declarations that the ‘restrictions’ entered against all assets of the Petitioner are contrary to the Articles 19 and 27 and should be ‘removed’, and dismissed at the stage of preliminary objections as the restriction notices came to the end of their permitted statutory duration in March 2023 and therefore no longer exist. The Petitioner has not specifically addressed this issue raised by the 7th Respondent. Thus, this Court is of the view that it should hear more submissions in respect of this matter and, therefore, it is too premature to dismiss this prayer without hearing the parties on the merits.
- [18] After careful consideration of the parties’ submissions in relation to the remaining prayers, this Court is of the view that these prayers are either directly connected to or interrelated with the constitutional validity of the impugned legislative provisions. The Respondents’ submissions address the alleged violations on the merits. Given the complexity and significance of these alleged violations, it is prudent that these pleadings be considered at the end of proceedings when considering the merits of the petition, and not during the preliminary objections stage. This Court is satisfied that the Petitioner has established a *prima facie* case sufficient to proceed to the next stage of the determination of the merits.
- [19] It was submitted on behalf of the 1st, 2nd, 3rd, 4th, 5th, 6th, and 8th Respondents that it is disproportionate for the petition to have been brought against eight individually named Respondents. Instead, it should have been brought solely against the Republic of Seychelles (the 1st Respondent). It was submitted that the 1st, 3rd, 4th, and 8th Respondents be disjoined as parties.
- [20] The Petitioner, however, submitted that in accordance with Rule 3(2) of the Rules, each and every person against whom relief is being sought in the petition has to be made a Respondent. It is submitted that contraventions are alleged against, and relief is being sought from, each of the different Respondents in their own capacity.
- [21] Further, the Respondents state that submissions were not filed on behalf of the 6th Respondent (i.e. the Attorney General in his role as *amicus curiae* under Rule 3(3)) and at present, a single State Counsel from the Attorney General’s Office represents the 1st, 2nd, 3rd, 4th, 5th, 6th, and 8th Respondents in this matter. It is submitted that the Attorney General

will keep under review whether a separate State Counsel should act as *amicus curiae* under Rule 3(3) of the Rules. Further, it is submitted that to the extent that any conflict may be said to arise, the Attorney General may take the decision that separate Counsel should act as *amicus curiae* in this case.

[22] Rule 3 states:

3. (1) *An application to the Constitutional Court in respect of matters relating to the application, contravention, enforcement or interpretation of the Constitution shall be made by petition accompanied by an affidavit of the facts in support thereof.*

(2) *All persons against whom any relief is sought in a petition under subrule (1) shall be made a respondent thereto.*

(3) *Except where the petition under subrule (1) is presented by the Attorney-General, the Attorney-General shall be made a respondent thereto.*

[23] We find that the determination of whether each of the Respondents should be named separately, or whether certain Respondents should be disjoined, relates to considerations of the merits of the allegations against each of the Respondents, and thus will be considered at the end of these proceedings.

[24] With regard to *amicus curiae* issue, we observe that the Attorney General is named as Respondent in different capacities. At the stage of preliminary objections, one State Counsel is representing 1st, 2nd, 3rd, 4th, 5th, and 8th Respondents. It was submitted that the Attorney General will keep under review whether a separate State Counsel should act as *amicus curiae* under Rule 3(3) of the Rules. We find that the Petition should proceed to be heard on the merits and therefore, the Attorney General can determine whether a separate State Counsel should act as *amicus curiae* at the stage of filing the reply on the merit.

Signed, dated and delivered at Ile du Port on the 27th June 2025



Burhan J
Presiding



B Adeline J



D Esparon J