

In the Supreme Court of Mauritius

(Application for constitutional relief pursuant to ss17 and 83 of the Constitution)

In the matter of:

Lindsey Claire Collen Seegobin, residing at Ragoo Lane, Bambous

Plaintiff

-v-

1. **The State of Mauritius**, service upon the Honourable Attorney-General of Renganaden Seeneevassen Building, Port Louis,
2. **The Honourable Prime Minister of Mauritius**, responsible, *inter alia*, for Home Affairs, service at the Prime Minister's Office, Port Louis,
3. **The Honourable Attorney General of Mauritius**, of Renganaden Seeneevassen Building, Port Louis.

Defendants

Plaint with Summons

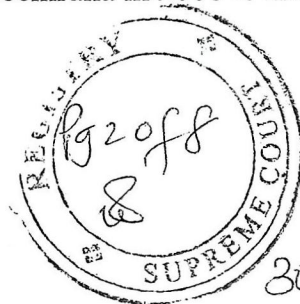
1. Plaintiff is South African by birth, born from South African parents, who were born from parents born in England and Scotland.
2. In 1970 Plaintiff obtained a B.A. from the University of Witwatersrand, in 1971 a B.A. (Honours) from the same University and in 1973 a Post-Graduate Diploma from the London School of Economics.
3. On 13 December 1973 Plaintiff was civilly married to Dr Deoprasad Seegobin (also known as Dr Ram Seegobin), who is a Mauritian citizen by birth whom Plaintiff civilly married when both were residing in London. Following her aforesaid civil marriage to Dr Seegobin, who at the time was also a British citizen, on 7 January 1974 Plaintiff was registered as a British citizen.
4. Since the end of 1974 Plaintiff and her husband have permanently settled in Mauritius. Once domiciled in Mauritius, Plaintiff took up lessons in 'Kreol' and within 6 months became fluent and literate in 'Kreol'. Plaintiff and her husband have always resided in Bambous initially in rented premises and since 1978 on a plot of land which they have purchased and where they have built their home.
5. On 27 May 1986 following a visit by an Immigration Officer at plaintiff's home and on the officer's suggestion the Plaintiff applied for Mauritian citizenship. Plaintiff simultaneously renounced her British citizenship. On 15 September 1986 plaintiff was registered as a Mauritian citizen.



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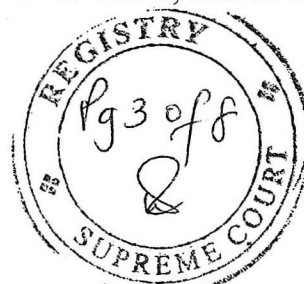
AYESHA JEEWA
 ATTORNEY
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6. From February 1975, Plaintiff's husband, Dr Ram Seegobin together with villagers in Bambous worked to set up a unique health co-operative. From May 1975, the '*Bambous Health Project*', a registered association, which was managed and financed by the villagers, employed Dr Ram Seegobin as their village doctor for the next 25 years, while renting a consultation room from a family and organizing health education gatherings under mango trees. Plaintiff participated in the co-operative. Plaintiff was one of the 15 volunteers who collected monthly dues for a region of Bambous, and, over the years, Plaintiff got to know the 25 families on her "*karné*" very well, adding a new-born's name to the membership card, noting the death of a grandparent, and following families that broke up and re-formed new family units. Plaintiff accompanied her husband on emergency visits. The experience of being inside the private homes of families in a time of crisis contributed to the plaintiff's knowledge of and love for Mauritian society which has enriched her as a novelist.
7. In 1975 Plaintiff taught General Paper and Economics to Form VI Girls at the Bhujoharry College. Plaintiff contributed towards setting up the *Union of Private Secondary Education Employees* ('UPSEE'), part of the trade union movement that has been and is an important part of the Mauritian social fabric.
8. Plaintiff then worked part time at *Trinity College* and for the *Mauritius College of the Air*, now developed into the *Open University*. Now, in 2022, Plaintiff is, and for the past decade has helped to develop a course for professionals at the *Open University* on '*How to write and read Mauritian Kreol*'.
9. In 2013, Plaintiff was part of the team that the Institute for Judicial and Legal Studies ("IJLS") contracted to train the court transcribers in how to write Mauritian *Kreol*, a course held at the IJLS centre.
10. However, Plaintiff's main pursuit has been as a writer. Plaintiff has written seven novels, 2 of which won her the Commonwealth Writers' Prize for Africa, on the basis of her citizenship of Mauritius, one in 1994 and the other in 2005. Her novels have been published by prestigious publishers in the UK, including Heinemann, Granta and Bloomsbury, as well as in editions in Mauritius, the United States of America and South Africa, and have been published in translation into German, Turkish, Danish, French and Dutch. Her Kreol language novel "*Misyon Garson*" has been widely read in Mauritius. Plaintiff has had some 50 short stories, half in English and half in *Kreol*, published in the annual anthology of Mauritian literature, *Collection Maurice*. Plaintiff's short stories have been published abroad, and in translation into Swedish, Spanish and Galician. The BBC commissioned her to write a short story for the Manchester Poetry Festival in 2000. Plaintiff was approached, as a Mauritian citizen, by the Indian High Commission because Plaintiff had been selected to be one of the 50 writers from Asia and Africa that the Indian Council of Cultural Relations sought as participant in a conclave held in New Delhi and Neemrana in 2006 to mark



50 years since the Bandung Conference on Decolonization. Plaintiff presented a paper on decolonization.

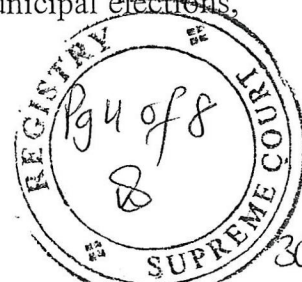
11. As well as her contribution as a citizen of Mauritius in a professional capacity, Plaintiff was active as a citizen of this country in various other ways, especially on the issues of decolonization and democratization which are key to the rights of the individual and of the citizen.
12. In 1976, together with others, the plaintiff set up a registered association under the name "*Association of Teachers and Students Co-operating for Secondary Education*" and known commonly as "*Lekol Koperativ*" that united children in a lessons co-operative. The children's parents came from all the different areas of Port Louis, a city which had been torn apart by the '*bagarres raciales*' of the previous decade, and they would attend monthly parents' meetings, thus contributing to re-uniting the citizens of the capital city.
13. This association of students and teachers would then, in turn, with the plaintiff's contribution, give birth to the *Ledikasyon pu Travayer*, ('LPT'), a registered association, which brings together learners and teachers of adult literacy and promotes the Mauritian mother tongues, as part of its aim for complete decolonization in education. Plaintiff has been a volunteer literacy teacher in towns and villages all over Mauritius, and trained volunteer teachers in these skills. Plaintiff took responsibility for overall editing of the first ever full-length *Kreol*-English Dictionary published in 1983 by the LPT and researched by a collective of some 50 people from different walks of life, including former Chief Justice Rajsoomer Lallah. Its preface was written by the Bishop of Mauritius, the late Trevor Huddleston, founder of the world Anti-Apartheid movement, whom LPT members taught Mauritian *Kreol*. While Plaintiff was an elected member of the Executive Committee of this Association and also its secretary, because Mauritius is a member State of UNESCO, the LPT qualified for the prestigious UNESCO World Prize for Literacy in 2004, which it was awarded. In 2013, when Plaintiff was again Secretary, the LPT was awarded a second award, one usually won by exceptional academics, the UNESCO Linguapax Prize for Mother Tongue Promotion. In 2009, LPT held an International Tribunal on the Harm Done to Children by the Suppression of the Mother Tongue in Schools. The *Kreol* language is now recognized and taught in schools. Plaintiff, as a leading member of LPT, continues to promote and develop the understanding that a people's mother tongue is more than a means of communication, it is the individual's means of understanding the world outside and the feelings and thoughts within the individual.
14. In 1977, the plaintiff was amongst the women who founded the "*Muvman Liberasyon Fam*", ('MLF'), which brought together women and girls for emancipation and liberation from patriarchy and until today the plaintiff continues this work that draws women into a citizenship role. MLF is both a group and network, and in the early



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days it was a mass movement that held big outdoor public women's meetings. It was instrumental in setting up the '*Fron Komin Organizasyon Fam*', which put a case before the UN Human Rights Committee under the International Covenant on Political and Civil Rights against the Immigration Act of 1977 and won the case. Plaintiff was its secretary at the time. The plaintiff was in a delegation to meet the then Opposition Leader, Anerood Jugnauth, who pledged support on the issue. In 2012, to give an example of the work of the plaintiff in the MLF, of which Plaintiff is the president this year, they sent a delegation including the plaintiff to depone before the Law Reform Commission in July 2019, critiquing the LRC's proposed new law, and published a 160-page book arguing the issue of the policy behind any new '*sexual assault laws*'.

15. Plaintiff was involved in organizing social movements like the "*Solidarite Morisyin Anti-Apartheid*", which held neighbourhood meetings as well as nation-wide demonstrations, and which over years, constituted Mauritius' contribution to the world-wide anti-apartheid movement that finally brought an end in 1994 to this abhorrent system in South Africa, the plaintiff's birthplace.
16. Plaintiff has, since 1977 been involved in the struggle for the decolonization and demilitarization of the Chagos, including Diego Garcia, working together with Chagossians as well as having, as a member of the political party LALIT, put constant pressure on the State to take the issue to the international arena. Plaintiff helped organize petitions, open letters, night vigils, demonstrations, forums, public meetings, two International Conferences in 2006 and 2010 and published a 240-page book. Finally, the Mauritian State did act, and won first the United Nations Convention on the Law of the Sea case and then the International Court of Justice case at The Hague. Plaintiff has spoken in public meetings on this issue all over Mauritius and in India, Ecuador, South Africa, Denmark, Australia, Austria, Germany and the UK. Plaintiff thus contributed to the re-unification of Mauritius, which the UN General Assembly in 2019 finally resolved upon, following the ICJ Opinion it had requested and received.
17. Plaintiff was also involved in organizing women labourers during the long struggle for the recognition of the cane labourers' and sugar mill workers' unions from 1976 to 1980 and held meetings all over the country including in villages around the sugar mills at Médine, Savannah, FUEL and Rose Belle. This consolidated the trade union movement of Mauritius.
18. Plaintiff has long been a grass-roots activist together with homeless people, first in the *Muvman Lakaz* and then in the joint *LALIT* and *Neighbourhood Asbestos Housing Committees*, which won a victory in the most recent government budget which has finally set aside a budget for the replacement of this toxic housing.
19. Plaintiff is also known for her writing and actions in the political sphere. Plaintiff has stood as candidate in 6 general elections, 2 by-elections and 2 Municipal elections,



and contributed to the political thinking of the LALIT program. Over the years, many aspects of LALIT's program have become mainstream: issues as varied as, the repeal of the Public Order Act, important amendments to labour laws, the end of apartheid, the struggle for Chagos and Diego Garcia, the decriminalization of abortion for women, the recognition of the 'Kreol' language, the re-introduction of the village elections that had been abolished, the re-introduction of universal pensions that had become targeted, the maintenance of the public health malaria prevention services and the importance of food security. Plaintiff has been on the editorial board of the 'LALIT de KLAS' magazine that Plaintiff was one of the founders of in November 1976 and which comes out bi-monthly until today. It is perhaps the only political magazine in Mauritius to span over that length of time. Importantly, it is entirely in the national language, 'Kreol'. Plaintiff also regularly submits articles to the opinion pages of the press and is invited for interviews on political subjects by newspapers, by Radio and at public forums.

20. Subject to Section 2 of the Constitution, the Parliament of Mauritius is empowered to make laws for the peace, order, and good government of Mauritius.
21. The second defendant is the Prime Minister of Mauritius who is responsible, *inter alia*, for Home Affairs, and the third defendant is the principal legal adviser to the Government of Mauritius.
22. On 12 July 2022, The Immigration Bill (No. XII of 2022) ("the Bill") was tabled for first reading in the National Assembly. The purpose of the Bill was "*To consolidate and strengthen the law with regard to the admission, and stay, of non-citizens in Mauritius*". The Bill was accompanied by a certificate of urgency issued by the Defendant no 2.
23. On 19 July 2022, the Bill came for second reading before the National Assembly.
24. During the debates the second defendant introduced the Bill and *inter alia* referred to what he had previously stated during the Parliamentary Debates of 2019 - p.110 Hansard No.21 of 2022 refers. On 26 July 2022 debates continued and the Bill was adopted on the same day.
25. On 27 July 2022 the Bill was assented to by His Excellency the President of the Republic, it was gazetted on the same day as the Immigration Act 2022 (Act No. 14 of 2022), which is in force since 27 July 2022.
26. Section 39(4)(f) of the Immigration Act provides as follows,

"39. Consequential Amendments

(4) *The Mauritius Citizenship Act is amended –*

(....)

(f) *in Section 11, by adding the following new subsection –*



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(8) *Notwithstanding subsections (5), (6) and (7), the Minister may, in his absolute discretion and without giving any reason, deprive any person of his citizenship of Mauritius, if he has reliable information and is satisfied that it is in the interest of defence, public safety or public order.*”

27. The Explanatory Memorandum to The Immigration Bill reads thus ‘*The main object of this Bill is to consolidate and strengthen the law with regard to the admission, and stay, of non-citizens in Mauritius*’.
28. By the Immigration Act, 2022, the legislature has *inter alia* sought to address the issue of fake marriages between Mauritian citizens and non-citizens.

Inconsistency with ‘existing laws’ under the Mauritius Independence Order 1968 and with sections 1, 2, 3, 15(1), 16, 21 and 24 of the Constitution

29. Plaintiff avers that s11(8) of the Mauritius Citizenship Act is inconsistent with,
 - (a) the provisions of the Mauritius Independence Order 1968 relating to ‘*existing laws*’,
 - (b) the Constitution *inter alia* with ss1, 2, 3, 15(1), 16, 21, and 24,
 - (c) the very structure of the Constitution itself,
 - (d) the separation of powers,
 - (e) the rule of law,
 - (f) the protection of the law,
 - (g) the basic principles of natural justice, and
 - (h) ‘*contrary to the essence of justice itself*’.
30. Plaintiff avers that section 11(8) of the Mauritius Citizenship Act 2022 purports to grant to the second respondent, as Prime Minister, an absolute discretion to deprive any registered citizen, including the Plaintiff, of her citizenship.
31. Section 11(8) of the Citizenship Act places the decision-making process and the ultimate decision in the hands of second defendant and opens the door to absolutism and arbitrariness which are inconsistent with the essence of a democratic State.
32. The absolute discretion enacted by s11(8) of the Mauritius Citizenship Act is inconsistent with the rule of law and the protection of the law as entrenched by s3 of the Constitution in that it opens the door to arbitrariness and injustice. Further, or alternatively, the enactment and what is sought to be done thereunder are not reasonably justifiable in a democratic society.



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33. Section 11(8) of the Mauritius Citizenship Act abrogates the Plaintiff's constitutional right to the protection of the law under s3 of the Constitution in that it deprives the Plaintiff of her right to be heard and not to be rendered stateless.
34. Section 11(8) infringes on Plaintiff's fundamental right as a citizen under s15(1) of the Constitution "*to reside in any part of Mauritius, the right to enter Mauritius, the right to leave Mauritius and immunity from expulsion from Mauritius.*"
35. The aforesaid provisions of the Immigration Act 2022 are inconsistent with s15(3)(a) of the Constitution, which allows for the imposition of restrictions on Plaintiff's movement or residence within Mauritius, are arbitrary and are not reasonably justifiable in a democratic society, the more so as the Plaintiff's hitherto constitutional right to reside in Mauritius as the spouse of a citizen of Mauritius has been nullified by the new legal regime ushered in by the Immigration Act 2022.
36. Plaintiff avers that s11(8) of the Mauritius Citizenship Act is inconsistent with the continuing enjoyment of her constitutional rights in as much as the Plaintiff is now in a precarious situation where she may be summarily stripped of her Mauritian citizenship and, further, s11(8) amounts to an unfair discrimination based on plaintiff's place of origin, contrary to s16 of the Constitution.
37. Plaintiff avers that s39(4)(f) of the Immigration 2022 Act and s11(8) of the Mauritius Citizenship Act are inconsistent with the Constitution.
38. Plaintiff further avers that s11(8) of the Mauritius Citizenship Act is inconsistent with Section 1 of the Constitution especially as there is no reasonable justification in a democratic society that such a law be enacted on the ground that '*as a caring Government, it is our duty to safeguard the interests and well-being of our citizens and protect them from being exploited or becoming the prey or victims of ill-intentioned non-citizens*', as contended by the second respondent.
39. In the premises, the Plaintiff further avers that s11(8) of the Mauritius Citizenship Act fails to pass the test of constitutionality.
40. Under the guise of '*public order*' or '*for the purpose of protecting Mauritians*' the parliamentary majority of the day has set the scene for a gross abuse of the fundamental human rights of the individual by empowering the second respondent, as the head of the executive, to unreasonably, unduly, and arbitrarily abrogate the acquired constitutional rights of foreign spouses married to citizens of Mauritius in breach of the basic rules of natural justice and without being required to provide any reason for such executive order.
41. Plaintiff avers that by the enactment of s11(8) of the Act the plaintiff's aforesaid fundamental human and constitutional rights are likely to be contravened in relation



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to her, and, further, adequate means of redress for the contravention alleged are not available to the plaintiff under any other law.

42. In the premises, the Plaintiff therefore humbly prays from this Honourable Court for,

- (i) a declaration, pursuant to Sections 17 and 83 of the Constitution, that s39(4)(f) of the Immigration Act 14 of 2022 and s11(8) of the Mauritius Citizenship Act are inconsistent with the aforesaid provisions of the Constitution and are therefore void to the extent of such inconsistency, and
- (ii) such further or other relief as the justice of the case may require.

You, the said Defendants are hereby called upon and summoned to be and appear before the Supreme Court of Mauritius (before the Honourable Master and Registrar, sitting at Court No.24, 2nd Floor, New Supreme Court Building, Edith Cavell St., Port Louis) on 27th October 2022 at 9.30 a.m. to show cause why judgment should not be delivered against you in the above matter.

WARNING you that should you fail to appear before the Supreme Court of Mauritius or to be represented on the aforesaid date and hour, the Court may deliver judgment against you in favour of the Plaintiff in terms of the Complaint with Summons.

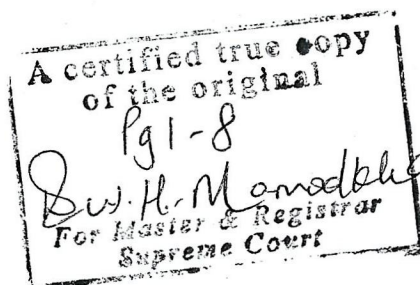
Under all legal reservations

Dated at Port Louis, this 30th day of September 2022

Ayesha Jeewa (Mrs.)

Of No. 207, Chancery House, Lislet Geoffroy Street, Port Louis.

Attorney for the Plaintiff Instructing Messrs A. Domingue SC together with J.C. Bibi both of Counsel for the Plaintiff



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