

SEEGOBIN L. C. C. v THE STATE OF MAURITIUS & ORS

2024 SCJ 296

Record No. 123648

THE SUPREME COURT OF MAURITIUS

Lindsey Claire Collen Seegobin

Plaintiff

v

- 1. The State of Mauritius**
- 2. The Honourable Prime Minister of Mauritius**
- 3. The Honourable Attorney General of Mauritius**

Defendants

Interlocutory judgment

The plaintiff is a South African by birth. On 13 December 1973 she was civilly married in London to Dr Deoprasad Seegobin who is a Mauritian citizen by birth. Dr Seegobin was, at that time, also a British citizen and, on 7 January 1974, the plaintiff was registered as a British Citizen. Since the end of 1974, the plaintiff and her husband have permanently settled in Mauritius. On 27 May 1986, the plaintiff applied for Mauritian citizenship and simultaneously renounced her British citizenship. On 15 September 1986, she was registered as a Mauritian citizen.

By way of a plaint with summons, the plaintiff is seeking constitutional redress from the Supreme Court on the ground that section 11(8) of the Mauritius Citizenship Act (“the MCA”), which was inserted in the said Act by section 39(4)(f) of the Immigration Act 2022, is inconsistent with (a) the provisions of the Mauritius Independence Order 1968 relating to existing laws, (b) “*the Constitution, inter alia, sections 1, 2, 3, 15(1), 16, 21 and 24 of the Constitution*”, (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) is contrary to the essence of justice itself. She avers that section 39(4)(f) is inconsistent with the Constitution and that by the enactment of section 11(8) of the MCA, the aforesaid “*fundamental human and constitutional rights are likely to be contravened in relation to her*” and adequate means of redress are not available to her under any other law.

She is therefore seeking a declaration that sections 39(4)(f) of the Immigration Act 2022 and section 11(8) of the MCA are inconsistent with the aforesaid provisions of the Constitution and are therefore void to the extent of the inconsistency.

The defendants Nos. 1 and 2 have raised a plea *in limine litis* to the plaint as follows-

“Defendants Nos. 1 and 2 move that the Plaint with Summons be dismissed with costs inasmuch as ex facie her Plaint and her Answer to Particulars, the Plaintiff has failed to show how section 39(4)(f) of the Immigration Act 2022 and section 11(8) of the Mauritius Citizenship Act are unconstitutional and how –

*(a) in relation to section 17 of the Constitution, sections 3 to 16 of the Constitution have been, are being or are likely to be contravened in relation to her; and
(b) in relation to section 83 of the Constitution, any provision of the Constitution other than Chapter II has been contravened.”*

Learned Counsel for the defendants argued in a gist that the plaintiff has failed to show how any provision of the Constitution other than Chapter II has been contravened so that section 83 of the Constitution cannot be invoked. The plaintiff has proceeded on the wrong premise that the Prime Minister has an absolute discretion to deprive a registered person of his Mauritius citizenship to invoke the breach of section 1 and that the decision of the Prime Minister is not subject to judicial review. A close reading of section 11 (8) shows that the Prime Minister does not enjoy an absolute discretion under that section as claimed by the plaintiff and the said decision is at any rate subject to judicial review. He further argued that the plaint fails to show how the provisions of the impugned Acts are in breach of the section 1 or inconsistent with the “essence of democracy” as protected in Mauritius and that the mere fact that a power is broad and discretionary is not anti-democratic per se.

Learned Counsel for the defendants also argued that the Mauritius Independence Order is not a provision with respect to which section 83 of the Constitution or even section 17 can be invoked. In addition, he submitted that the plaintiff’s case is predicated on her rights to the protection of the law allegedly conferred under sections 3, 15 and 16 of the Constitution as having already been breached but no facts have been advanced to show how the plaintiff’s rights under sections 3, 15 and 16 have been breached or are being breached under the said sections.

For his part, learned Counsel for the plaintiff argued that, at this stage of the proceedings, given that the defendants have raised a plea *in limine litis*, the averments in the plaint are deemed to have been admitted. He laid much emphasis on the case of **Attorney-General v Ryan [1980] 2 WLR 143** where, in an appeal to the Judicial Committee of the Privy Council (“the JCPC”), provisions similar to those with which we are concerned under the Constitution of the Bahamas were considered by the Court. He submitted that the JCPC has laid down guidelines which should be followed and which will shed considerable light on the manner in which the power to deprive a person of his citizenship should be exercised. It was his contention that the right to deprive a person of his citizenship cannot be exercised without an opportunity to be heard and in the absolute discretion of a public official without any reason being given therefor.

In addition, learned Counsel for the plaintiff submitted that prior to the Immigration Act 2022, the power which was given to the Prime Minister was safeguarded by various provisions and that the protection which was hitherto afforded under the previous legal regime is now being taken away: under the old regime, there was the need to give a notice in writing to the person against whom the order was proposed to be made and the ground on which it was proposed to make the order had to be provided.

We have duly considered the submissions made by Counsel and the cases referred to by them. It is important to underscore that our role at this stage of the proceedings is simply to determine whether there is any merit in the plea *in limine litis ex facie* the plaint.

Discussions

The plaintiff has brought her action under both sections 17 and 83 of the Constitution. Section 17(1) and 83(1) are set out below –

“17. Enforcement of protective provisions

(1) Where any person alleges that any of sections 3 to 16 has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress.”

“83. Original jurisdiction of Supreme Court in constitutional questions

(1) Subject to sections 41 (5), 64 (5) and 101 (1), where any person alleges that any provision of this Constitution (other than Chapter II) has been contravened and that his interests are being or are likely to be affected by

such contravention, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for a declaration and for relief under this section.”

For the plaintiff to be able to proceed with her action under section 17, her action must be based on an alleged breach of any of sections 3 to 16 and she must also show how the said section has been, is being or is likely to be breached vis à vis her. In so far as a breach of any other provision of the Constitution is concerned, the plaintiff must show that her interests are being or are likely to be affected by such contravention.

The alleged breach of sections 3, 15 and 16 of the Constitution

Section 11 of the MCA provides as follows-

“11. Deprivation of citizenship

- (1) *A citizen of Mauritius who has acquired citizenship by registration or naturalisation under this Act shall cease to be a citizen of Mauritius if he is deprived of that citizenship by an Order of the Minister made under this section.*
- (2) *Subject to this section, the Minister may, by Order, deprive of his citizenship a citizen of Mauritius who has acquired citizenship by registration or naturalisation where he is satisfied that the registration or certificate of naturalisation in relation to that citizen, was obtained by means of fraud, false representation or the concealment of any material fact.*
- (3) (a) *Subject to paragraphs (b) and (c), the Minister may, by Order, deprive of his citizenship a citizen of Mauritius who has acquired citizenship by registration or naturalisation under this Act where he is satisfied that the citizen—*
 - (i) *has shown himself by act or speech to be disloyal or disaffected towards the State or is, or has been declared, a suspected international terrorist under the Prevention of Terrorism Act;*
 - (ii) *has, during any war in which Mauritius was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or*
 - (iii) *has within 7 years after his registration or naturalisation under this Act been sentenced in any country to imprisonment for a term of not less than 12 months.*

- (b) *The Minister shall not deprive any person of his citizenship where it appears to him that the person would become stateless.*
- (c) *In the case of a person who is declared a suspected international terrorist as specified in subparagraph (a) (i)—*
 - (i) *the Minister may, subject to paragraph (b), deprive him of his citizenship irrespective of the manner in which he acquired both the citizenship of Mauritius and that of another State;*
 - (ii) *subsections 5, 6 and 7 shall not apply.*
- (4) (a) *Subject to paragraph (b), the Minister may, by Order, deprive of his citizenship a citizen of Mauritius of full age and capacity, who has acquired citizenship by registration or naturalisation where he is satisfied that the person has been ordinarily resident in another country for a continuous period of 5 years and, during that period, has not—*
 - (i) *at any time been in the service of Government of Mauritius or of an international organisation of which Mauritius was a member;*
 - (ii) *registered in the prescribed manner at a consulate of Mauritius his intention to retain his citizenship of Mauritius; or*
 - (iii) *given notice in writing to the Minister of his intention to retain his citizenship of Mauritius.*
- (b) *The Minister shall not deprive any person of his citizenship of Mauritius where it appears to him that the person would become stateless.*
- (5) *Before making an Order under this section, the Minister shall give the person against whom the Order is proposed to be made notice in writing, informing him of the ground on which it is proposed to be made and, where the Order is proposed to be made on any of the grounds specified in subsection (2), of his right to an inquiry under this section.*
- (6) *A notice under subsection (5) may be given—*
 - (a) *where the address of the person is known, by causing the notice to be delivered to him personally or by sending it to him at that address by registered post; or*
 - (b) *where the address of the person is not known, by sending it to his last known address and in such other manner as the Minister thinks fit.*

(7) Where it is proposed to make an Order on any ground specified in subsection (2), the Minister shall, where the person against whom the order is proposed to be made so requests, refer the case for inquiry and report to a committee appointed by him for the purpose.

(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."

Section 39(4)(f) of the Immigration Act 2022 amended section 11 of the MCA by adding subsection (8) to section 11.

The plaintiff is alleging that both sections 11(8) of the MCA and section 39(4)(f) of the Immigration Act 2022 are unconstitutional. In the plaint she has averred that section 11(8) of the MCA purports to grant to the Prime Minister an absolute discretion to deprive any registered citizen, including the plaintiff, of her citizenship. It places the decision-making process and the ultimate decision in the hands of the Prime Minister and opens the door to absolutism and arbitrariness which are inconsistent with the essence of a democratic State. The absolute discretion conferred on the Prime Minister is inconsistent with the rule of law and the protection of the law as entrenched by section 3 of the Constitution and 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. Section 11(8) abrogates her right to the protection of the law under section 3 of the Constitution in that it deprives her of her right to be heard and not rendered stateless. Section 11(8) infringes her right under section 15(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. Section 38 of the Immigration Act 2022 is inconsistent with section 15(3)(a) of the Constitution as it allows for the imposition of restrictions on plaintiff's movement or residence within Mauritius, is arbitrary and not reasonably justifiable in a democratic society and her right to reside in Mauritius as a spouse of a citizen of Mauritius has been nullified by the new legal regime ushered in by the Immigration Act 2022.

Following the enactment of section 11(8) of the MCA, she is now in a precarious situation where she may be summarily stripped of her Mauritian citizenship. Section 11(8) of the MCA is inconsistent with section 1 of the Constitution as there is no reasonable justification in a democratic society for such a law to be enacted. By the enactment of section 11(8) of the MCA, *“the plaintiff’s aforesaid fundamental human and constitutional rights are likely to be contravened in relation to her.”*

It can be gleaned from the above that although the plaint is not a model of drafting and suffers from a number of flaws to which we will allude later in this judgment, we are clearly not in a situation akin to that in **IUS AD VITAM Association v The State of Mauritius** [\[2017 SCJ 1\]](#). In that case, the plaintiff, which purported to represent and speak in the name of all men, women, children and even unborn children, sought to challenge section 235A of the Criminal Code as being in breach of the constitutional rights of the unborn child. In that case, the Supreme Court held that rights, if any, of an unborn child when confronted with section 235A would not involve any personal rights pertaining to the plaintiff as contemplated by section 17(1). However, in the present case, after reading the plaint as a whole, it can be gathered that the plaintiff is alleging that by the enactment of section 11(8) of the MCA, her own constitutional rights under sections 1, 3, 15 and 16 are likely to be breached.

In so far as sections 3 and 16 are concerned, the defendants have themselves stated in their written submissions that, although not articulated *ex facie* the pleadings on record, the plaintiff’s complaint appears to be that the section 11(8) of the MCA confers an absolute discretion on the Prime Minister to deprive any registered citizen of her citizenship. This discretion opens the door to absolutism and arbitrariness which is contrary to the essence of a democratic state and is inconsistent with the rule of law and the protection of the law entrenched by section 3 of the Constitution. It abrogates the right to protection of the law under section 3 in that it deprives the plaintiff of the right to be heard and not rendered stateless. It amounts to an unfair discrimination based on the plaintiff’s place of origin in breach of section 16 as the plaintiff can be summarily stripped of her citizenship. Section 11(8) of the MCA allegedly infringes the plaintiff’s constitutional right under section 15(1) of the Constitution.

In the light of the above and all the averments in the plaint, which are deemed at this stage to be admitted, and taking into consideration the defendants’ own written submissions, we do not agree that the plaintiff should be precluded from proceeding with her claim for constitutional redress on the grounds that sections 11 (8) of the MCA and 39(4)(f) of the Immigration Act 2022 are in breach of section 3, 15 and 16 of the Constitution.

The alleged breach of the provisions of the Mauritius Independence Order 1968, the very structure of the Constitution itself, the separation of powers, the rule of law, the protection of the law, the basic principles of natural justice and the essence of justice itself

The alleged breach of the provisions of the Mauritius Independence Order 1968

Section 2 of the Constitution provides –

“2. Constitution is supreme law

*This Constitution is the supreme law of Mauritius and if **any other law is inconsistent with this Constitution**, that other law shall, to the extent of the inconsistency, be void.”* [emphasis added]

It is also relevant to again set out section 83(1) -

*“(1) Subject to sections 41(5), 64(5) and 101(1), where any person alleges that **any provision of this Constitution (other than Chapter II) has been contravened** and that his interests are being or are likely to be affected by such contravention, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for a declaration and for relief under this section.”*

Section 2 lays down two important principles: that the Constitution is the supreme law of Mauritius and that for a law to be declared void it has to be inconsistent with the Constitution. In so far as an alleged breach of **a provision of the Constitution** other than Chapter II is concerned, a person who alleges any such breach has a right of action under section 83(1).

In the present case, the plaintiff is relying on section 83(1) to challenge section 11(8) of the MCA on the ground that it is inconsistent with –

1. the provisions of Mauritius Independence Order 1968 relating to existing laws;
2. sections 1, 2, 21 and 24 of the Constitution;
3. the very structure of the Constitution itself;
4. the separation of powers;
5. the rule of law;
6. the protection of the law;

7. the basic principles of natural justice; and
8. the essence of justice itself.

It is clear from section 2 that it ascribes a superior normative value to the Constitution by expressly providing that the Constitution is the supreme law of Mauritius and that any other law which is inconsistent therewith shall be void to the extent of the inconsistency.

In the present case, by pleading that section 11(8) of the MCA is inconsistent with the provisions of the Mauritius Independence Order 1968, the plaintiff is attributing a superior normative value to the said Order. Under the framework of our Constitution, it is the Constitution itself which is supreme and an action for seeking the nullity of provisions of a law can only be brought where the provisions are inconsistent with the Constitution itself as opposed to any other law. Since the Mauritius Independence Order 1968 is not part of the Constitution, the plaintiff cannot invoke section 83 to seek to impugn section 11(8).

The alleged breach of “the very structure of the Constitution itself”, the separation of powers, the rule of law, the protection of the law, the basic principles of natural justice and the essence of justice.

At the outset, we note that in mounting her challenge of sections 11(8) of the MCA and section 39(4)(f) of the Immigration Act 2022 by relying on an alleged breach of the structure of the Constitution itself, the separation of powers, the rule of law, the protection of the law, the basic principles of natural justice and the essence of justice, the plaintiff is not alleging that **any provision of the Constitution** itself has been contravened and that her interests are being or are likely to be affected by such contravention.

We fail to see how, given the specific wording of section 83(1), the plaintiff can simply rely on the structure of the Constitution as a ground for challenging section 11(8) as being unconstitutional. Further, it is unclear from the plaint what is meant by “the principles of natural justice” and “the essence of justice” on which the plaintiff purports to rely. At any rate, the said principles are not in themselves and on their own justiciable principles on which a person may rely to bring an action to seek constitutional redress under section 83.

In so far as the separation of powers and the rule of law are concerned, we note that in **Noordally v Attorney-General & Director of Public Prosecutions** [\[1986 MR 204\]](#), the Supreme Court recognised that “*the whole of our Constitution clearly rests on two fundamental tenets, the rule of law and the juxtaposition (or separation as it is more often called) of powers*”.

However, the separation of powers is not a free-standing legally enforceable principle that exists independently of and above the Constitution. It is a principle that has informed the drafting of the Constitution and operates through the terms of the Constitution. In other words, it is a principle which is relevant to the interpretation of the Constitution but provides no basis independent of the Constitution for invalidating legislation. Further, it is not possible to erect the separation of powers and the rule of law into justiciable unwritten principles which can be separated and untethered from the specific provisions of the Constitution to seek to declare that section 11(8) of the MCA is unconstitutional (See **Chandler v The State (No 2) (Trinidad and Tobago) [2023] AC 285**). It cannot, however, be denied that the rule of law and the doctrine of separation of powers are deeply entrenched in section 1 of the Constitution. We shall refer to this below when we consider the plaintiff's claim for an alleged breach of section 1 of the Constitution.

Similarly, the protection of the law is not a free-standing legally enforceable principle that exists independently of section 3 of the Constitution which provides for the right to the protection of the law. In the circumstances, while the plaintiff can undoubtedly seek to rely on section 3 to claim that her right to the protection of the law is likely to be breached by section 11(8), she cannot invoke the protection of the law independently to do so.

For the reasons given above, we do not agree that the plaintiff can rely on the above grounds **independently of any section of the Constitution** to impugn sections 11(8) of the MCA and section 39(4)(f) of the Immigration Act 2022.

The alleged breach of sections 1, 2, 21 and 24 of the Constitution

The plaintiff's claim that section 11(8) of the MCA is in breach of sections 2, 21 and 24 can be easily disposed of. We have carefully considered the plaint. It is clear that the plaintiff has utterly failed to show how the above sections have been breached: apart from the paragraph where it is merely averred that section 11(8) of the MCA breaches the above sections of the Constitution, the plaint contains no averment whatsoever where the said sections are referred to. In any event, when one reads the plaint one is left to wonder how the said sections are breached by section 11(8) of the MCA.

In so far as the alleged breach of section 1 is concerned, we find it relevant to refer to **State v Khoyratty Abdool Rachid [2004 PRV 59]**. Section 1 provides that Mauritius shall be a sovereign democratic State. In **Khoyratty**, the JCPC upheld the judgment of the Supreme Court that section 1 of the Constitution was breached by legislation which deprived persons who had been arrested or detained on suspicion of having committed certain offences under

the Dangerous Drugs Act 2000 of access to the court to determine whether they should be remanded in custody or granted bail pending trial.

The matter arose in the following way. The JCPC noted that section 47(3) of the Mauritian Constitution was amended by the Constitution of Mauritius (Amendment No. 3) Act 1991 (the '1991 Act') to make it 'practically impossible' to amend section 1 of the Constitution by requiring that (i) a proposed Bill to amend it be approved in a referendum by not less than three quarters of the electorate, and (ii) the Bill at final voting in the Assembly be supported by all the members of the Assembly. Section 5(3) of the Constitution required that an accused person be brought before the Court so that the Court could decide upon bail if he was not to be released. In 1994 Parliament passed the Constitution of Mauritius (Amendment) Act 1994 ("the 1994 Act"). Section 2 purported to amend section 5 of the Constitution by inserting a new subsection (3A) The effect of the amendment was to provide that certain people charged with particular drugs offences prescribed by an Act of Parliament, which has been passed by a three-quarters majority, shall not be admitted to bail until the final determination of the proceedings against them.

But the enactment of the 1994 Act did not comply with the deep entrenchment of section 1 which Parliament had introduced in the 1991 Act. The JCPC agreed with the Supreme Court of Mauritius that the 1994 Act was in breach of section 1 of the Mauritian Constitution and was invalid as it had not complied with the constitutional procedures introduced by the 1991 Act.

Lord Steyn, delivering the judgment of the Board, explained the significance of the section 1 in these terms -

"The idea of a democracy involves a number of different concepts. The first is that the people must decide who should govern them. Secondly, there is the principle that fundamental rights should be protected by an impartial and independent judiciary. Thirdly, in order to achieve a reconciliation between the inevitable tensions between these ideas, a separation of powers between the legislature, the executive and the judiciary is necessary."

Lord Steyn reasoned as follows: (i) decisions on bail are intrinsically within the domain of the judiciary; (ii) section 1 was not a preamble but a legally enforceable provision; (iii) section 1 (and section 57(2) which provided for quinquennial Parliaments) had been deeply entrenched by the 1991 Act; and (iv) as a result, both the purported constitutional amendment

by the 1994 Act and section 32 of the Dangerous Drugs Act 2000 which prescribed the offences for which bail was removed, were void because the Constitution had not been amended in accordance with the procedures introduced by the 1991 Act.

It is also relevant to refer to paragraph 30 of the judgment by Lord Rodger -

“30. I have come to the view that section 2 of the 1994 Act did indeed purport to make a fundamental, albeit limited, change to this component of the democratic state envisaged by section 1 of the Constitution. The crucial problem lies in the absolute nature of section 5(3A). Where applicable, it would completely remove any power of the judges to consider the question of bail, however compelling the circumstances of any particular case might be. By contrast, a provision, for example, that persons of the type envisaged in the subsection should not be admitted to bail unless in exceptional circumstances would not create the same problems because the judges would still have a significant, even if more restricted, role in deciding questions of bail and of the freedom of the individual. Unfortunately, however... precisely because it is absolute in form and effect, subsection 5(3A) is liable to operate arbitrarily and so, it may well be, to create potential difficulties in relation to section 3(a) of the Constitution. Moreover, there is a risk that, by choosing to charge an offence which falls within section 32 of the Dangerous Drugs Act, the relevant agent of the executive, rather than a judge, would really be deciding that a suspect should be deprived of his liberty pending the final determination of the proceedings. In these respects, the executive would be trespassing upon the province of the judiciary: Ahnee v DPP [1999] 2 AC 294 at page 303. In my view a state whose constitution permitted accused persons to be locked up until the termination of the proceedings against them without any right to apply to the court for bail would be, in this essential respect, different from the kind of democratic state which section 1 declares that Mauritius is to be. To that extent, section 2 of the 1994 Act purported to water down the guarantee in section 1.”

In the present case, learned Counsel for the defendants argued that the averments in the plaint are of the widest generality and that the plaintiff's case is based on the wrong premise that section 11(8) of the MCA confers an absolute discretion to the Prime Minister and that his decision is not reviewable. Learned Counsel for the defendants submitted that his decision would be reviewable by the Court, and section 11(8) of the MCA may on the face of it seem aberrant and repugnant to the Constitution as it provides that the Minister may, in his absolute discretion and without giving any reason, deprive any person of his citizenship. However, he argued that relying only on the words would be adopting a tunnel view and

forgetting about what is called the “Judge Over Your Shoulder (“JOYS”) which is a layperson’s guide to Administrative law, designed for the Civil service in the UK and is an important resource for civil servants advising Ministers and supporting government decision making.

He argued that where there is a statute which provides that a decision may be taken in absolute discretion and that no reasons are to be given therefor, the case of **Green v Prime Minister and Minister of Home Affairs [1993 MR 209]** is authority for the proposition that such a discretion is reviewable and the “Judge over your shoulder” retains his jurisdiction. He further argued that although in law there is no duty to give reasons, since the decision is reviewable, it is eminently subject to principles of judicial review and one of the principles is the duty to give sufficient reasons to justify the decision. He referred to the following passage at paragraph 50 of the case of **R (on the application of Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs [2002] EWCA Civ 1409** to illustrate that there is a duty of candour on the part of the Executive to enlighten the Court once the case comes to Court on the process and the manner in which the decision is taken –

“50. Mr Parker submits, correctly, that there is no duty of general disclosure in judicial review proceedings. However there is - of course - a very high duty on public authority respondents, not least central government, to assist the court with full and accurate explanations of all the facts relevant to the issue the court must decide. The real question here is whether in the evidence put forward on his behalf the Secretary of State has given a true and comprehensive account of the way the relevant decisions in the case were arrived at. If the court has not been given a true and comprehensive account, but has had to tease the truth out of late discovery, it may be appropriate to draw inferences against the Secretary of State upon points which remain obscure: see Padfield [1968] AC 997, per Lord Upjohn at 1061G - 1062A.”

We have explained earlier that, *ex facie* the pleadings, the plaintiff’s case is that section 11(8) of the MCA is in breach of section 1 of the Constitution. We have not been persuaded that we can simply rely on the submissions of Counsel for the defendants at this stage and conclude that the plaintiff has failed to lay down the legal basis to enable her to proceed with her action for breach of section 1 of the Constitution. This is a matter which can only be determined after hearing evidence and full submissions both on the facts and in law.

For all the reasons given above, we uphold the plea *in limine litis* only in part and we allow the plaintiff to proceed with the pleadings in so far as it concerns alleged breaches of her constitutional rights under sections 1, 3, 15 and 16.

The case will be mentioned before us on 18 July 2024 at 10.00 a.m for the parties to take a stand in the light of our interlocutory judgment.

D. Chan Kan Cheong
Judge

K. D. Gunesh-Balaghee
Judge

27 June 2024

Judgment delivered by Hon K. D. Gunesh-Balaghee, Judge.

**For Plaintiff : Me A. Jeewa, Attorney at Law
Me A. Domingue, Senior Counsel and
Me Jean Claude Bibi, of Counsel**

**For Defendants Nos 1 & 2 : Me V. Nirsimloo, Chief State Attorney
Me Y. C. Jean Louis, Ag. Assistant Solicitor General
and Me K. Domah, Senior State Counsel**

**For Defendant No. 3 : Principal State Attorney
Me N. Dauharry-Jeewa, Senior State Counsel**