

IN THE SUPREME COURT OF SEYCHELLES

FRANK ELIZABETH

PETITIONER

VERSUS

1. THE SPEAKER OF THE NATIONAL ASSEMBLY

(Dr. Patrick Herminie)

2. THE ATTORNEY GENERAL

(Mr Antony Tissa Fernando)

RESPONDENT

Constitutional Case No 9 of 2007

BEFORE: A.R. PERERA J(PRESIDING), D. KARUNAKARAN J, AND B. RENAUD J)

Mr. F. Elizabeth for the Petitioner

Mr. A.F.T. Fernando, Attorney General for the Respondents

RULING

Perera J

The Petitioner invoked the jurisdiction of this Court under Article 130 of the Constitution alleging a contravention of Article 81(6) thereof, and seeking inter alia, a declaration that he is and continues to be a proportionately elected member. It is averred that the contravention occurred on 20th October 2007. The petition was filed on 14th November 2007 and registered as case no 9 of 2007. After the 1st respondent filed preliminary objections and a defence on merits on 30th November 2007, the petitioner filed a fresh petition on the same day averring the same contravention of the Constitution and seeking the same relief. That petition has been registered as case no. 12 of 2007. _

When the present case was mentioned on 29th January 2008, the petitioner sought leave to withdraw the petition to enable him to proceed with the petition filed in case no. 12 of 2007. Objection was raised by the Hon. Attorney General on the ground that to permit a party to amend pleadings or initiate fresh proceedings to rectify objections raised by an opponent, is an abuse of the process of Court. Furthermore, it was submitted that the petitioner could not have filed case no. 12 of 2007. These are procedural irregularities which are not necessarily fatal in a petition

alleging a Constitutional contravention. Hence, although this Court views the procedure adopted by the petitioner with disfavour, as the petition in case no 12 of 2007 has been filed within the time prescribed in Rule 7(1) (a) of the Constitutional Court Rules, the application to withdraw the petition in the present case with the right to prosecute the petition in no 12 of 2007 is allowed.

We make no order as to costs.

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A.R. PERERA

JUDGE (PRESIDING)

Dated this 12th day of February 2008

D. KARUNAKARAN J

I concur

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D. KARUNAKARAN

JUDGE

Dated this 12th day of February 2008

B. RENAUD J

I concur

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B. RENAUD

JUDGE

Dated this 12th day of February 2008