

5 ST JAMES COURT

Case summary of Honourable Dr Arvin Boolell, GOSK v The Speaker of the National Assembly, Honourable Sooroojdev Phokeer, GCSK, GOSK & Anor [2023 SCJ 480]¹

Facts: The Plaintiff is seeking Constitutional Redress following his suspension during the Nation Assembly sitting of 11th April 2023 and for the next two National Assembly sittings. Defendants Nos.1 and 3 moved that the paragraphs 4, 5, 9, 11 to 16, 17, 19, 20, 22 and 23C of the Plaint with Summons be struck out, pursuant to Rules 15 and 16 of the Supreme Court Rules 2000 and Rule 2 of the Supreme Court (Constitutional Relief) Rules 2000.

Issue: Whether the impugned paragraphs are vexatious, duplicitous, argumentative, uncertain, defective, imperfect, have been made with unnecessary prolixity and have been framed to embarrass or mislead and whether paragraphs 19, 20 and 23C do not comply with the provisions of Rule 2 of the Supreme Court (Constitutional Relief) Rules 2000.

Held: The Court ordered that paragraphs 4, 9, 11 to 16, 17, 20, 22 and 23(C) be struck out for the following reasons:

- (1) **Paragraph 4** – does not comprise of any material facts to be proved to enable the Plaintiff to succeed and for the Court to determine whether his constitutional rights have been contravened;
- (2) **Paragraph 9** – the averments contained in that paragraph are not factual but argumentative in nature. The Plaintiff is in fact giving his opinion and an interpretation of the law in the form of a submission;
- (3) **Paragraphs 11 to 16** – do not comprise of any material facts but merely quote and interpret the law. The Court stated that the Defendants Nos. 1 and 3 cannot reasonably be expected to give their interpretation of the law in their plea;
- (4) **Paragraph 17** – the averments are not factual but invite unnecessary argument;
- (5) **Paragraph 20** – no material facts have been averred in support the contention that section 1 and 31 of the Constitution have been contravened. The Court stated that this paragraph is in the form of a submission, is unnecessary and argumentative;

¹ This case summary is not intended to provide legal advice or opinions of any kind and may not be used for professional or commercial purposes. All information, content, materials available herein are for general informational purposes only. The full judgment is available on the website of the Supreme Court of Mauritius.

- (6) **Paragraph 22** – this paragraph is in the form of a submission and is unnecessary at pleadings stage;
- (7) **Paragraph 23(C)** – the prayer is not compliant with Rule 2(1) of the Supreme Court (Constitutional Relief) Rules 2000 inasmuch as it does not state with precision, the nature of the relief sought.

The Court declined to strike out paragraphs 5 and 19 of the Plaintiff's Summons.

This summary is provided to assist in understanding the Court's decision and should not be cited as an authority. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document.