

IN THE SUPREME COURT OF MAURITIUS
(Application under the Supreme Court (Constitutional Relief) Rules 2000)

In the matter of:

1. **Mr. Fazlek HOSSENY**, residing at Riverside, Phoenix
2. **Mr. Arjoon BHIKOO**, residing at Morcellement Lonrho, Highlands, Phoenix
3. **Mr. Santaram HANENDAH**, residing at Morcellement Seeraram, Henrietta
PLAINTIFFS

-v-

1. **THE STATE OF MAURITIUS**, service to be effected upon the Hon. Attorney General, at Renganaden Seeneevassen Building, Pope Hennessy Street, Port Louis
2. **THE HONOURABLE PRIME MINISTER**, service to be effected at the Prime Minister's Office, Port Louis
3. **THE HONOURABLE MINISTER OF LOCAL GOVERNMENT AND DISASTER RISK MANAGEMENT**, service to be effected at Level 3, Emmanuel Anquetil Building, Corner Sir Seewoosagur Ramgoolam Street and Jules Koenig Streets, Port Louis
4. **THE HONOURABLE ATTORNEY GENERAL**, service to be effected at the Attorney General's Office, Renganaden Seeneevassen Building, Pope Hennessy Street, Port Louis

DEFENDANTS

In the presence of:

1. **THE MUNICIPAL TOWN COUNCIL OF VACOAS-PHOENIX**, of Town Hall, St Paul Avenue, Vacoas, represented by its Chief Executive of the same address
2. **Mrs. Rita BUCHOO**, Town Councillor of the Municipal Council of Vacoas-Phoenix
3. **Mr. Mohammad Ridwaan Goolam BEEHARRY**, Town Councillor of the Municipal Council of Vacoas-Phoenix

4. **Mr. Jurnil Kumarsingh BHUGBUT**, Town Councillor of the Municipal Council of Vacoas-Phoenix
5. **Mrs. Kathy Devi BUCKTOWAR**, Town Councillor of the Municipal Council of Vacoas-Phoenix
6. **Mr. Mohammad Ehsan DILOO**, Town Councillor of the Municipal Council of Vacoas-Phoenix
7. **Mr. Farhad DOWLUT**, Town Councillor of the Municipal Council of Vacoas-Phoenix
8. **Mr. Richard DRIVER**, Town Councillor of the Municipal Council of Vacoas-Phoenix
9. **Ms. Bibi Shammah FAKEERMAHAMOOD**, Town Councillor of the Municipal Council of Vacoas-Phoenix
10. **Mr. Rajen Pillay KANAKSABEE**, Town Councillor of the Municipal Council of Vacoas-Phoenix
11. **Mr. Dunpath KHOOSYE**, Town Councillor of the Municipal Council of Vacoas-Phoenix
12. **Mr. Vishal MOOCHEET**, Town Councillor of the Municipal Council of Vacoas-Phoenix
13. **Mr. Roy Mike Manfred MUNGUR**, Town Councillor and Mayor of the Municipal Council of Vacoas-Phoenix
14. **Mrs. Sakooby NARAYEN**, Town Councillor of the Municipal Council of Vacoas-Phoenix
15. **Mr. Ajay NUNKOO**, Town Councillor of the Municipal Council of Vacoas-Phoenix
16. **Mr. Ajay Sharma NUNKOO**, Town Councillor of the Municipal Council of Vacoas-Phoenix
17. **Mrs. Faeza Bibi SREENEEBUS**, Town Councillor of the Municipal Council of Vacoas-Phoenix



18. **Mr. Abdool Riaz RAMBOCUS**, Town Councillor of the Municipal Council of Vacoas-Phoenix
19. **Mr. Praveen Kumar RAMBURN**, Town Councillor of the Municipal Council of Vacoas-Phoenix
20. **Mrs. Devianee RAMCHURN**, Town Councillor and Deputy Mayor of the Municipal Council of Vacoas-Phoenix
21. **Mr. Navin RAMSOONDUR**, Town Councillor of the Municipal Council of Vacoas-Phoenix
22. **Mr. Somduth RUNGLALL**, Town Councillor of the Municipal Council of Vacoas-Phoenix
23. **Mrs. Madvi UNJORE-NATHOO**, Town Councillor of the Municipal Council of Vacoas-Phoenix
24. **Mr. Dinesh Kumar WOODUN**, Town Councillor of the Municipal Council of Vacoas-Phoenix

- service to be effected upon the Chief Executive of the Town Council of Vacoas-Phoenix at Town Hall, St Paul Avenue, Vacoas

CO-DEFENDANTS

PLAINT WITH SUMMONS

1. Plaintiff No.1 is a member of the political party known as the “Mouvement Militant Mauricien” (“the MMM”), which is registered with the Electoral Supervisory Commission with a “heart” as its emblem. Plaintiff No.1 stood as candidate in the Municipal Town Council elections for the town of Vacoas-Phoenix for the years 1996, 2001, 2005, 2012 and 2015. Plaintiff No.1 was elected in the Municipal Town Council elections for the town of Vacoas-Phoenix (i) as Councillor for the years 1996, 2001 and 2012, (ii) as Deputy Mayor for the years 1996-1997 and 2001-2002, and (iii) as Mayor for the years 2002-2003. At the general elections of 2019 Plaintiff No.1 stood as a candidate of the MMM in the Constituency No.15.
2. Plaintiff No.2 is a member of the MMM and stood as candidate in the Municipal Town Council elections for the town of Vacoas-Phoenix for the year 2015.



3. Plaintiff No.3 is a member of the MMM and in 2015 he stood as candidate of the MMM in the Municipal Town Council elections for the town of Vacoas-Phoenix.
4. Plaintiffs are registered as “local government electors” for the town of Vacoas-Phoenix in accordance with the Representation of the People Act 1958, and are therefore entitled to -
 - (i) vote at the Municipal Town Council elections for the election of Municipal Town Councillors to sit members of the Co-Defendant No.1, the Municipal Town Council of Vacoas-Phoenix; and
 - (ii) be nominated as candidates for election as Municipal Town Councillors and to stand as candidates for the MMM, which is constitutionally authorised to field candidates at such elections.
5. Defendant No.2 is the Prime Minister of Mauritius and the leader of the House.
6. Defendant No.2 may issue certificates of urgency for the urgent introduction and Bills in the National Assembly.
7. Defendant No.3 is the Minister responsible for local government and the mover of the impugned primary legislation, namely, the Local Government (Amendment) Bill 2023 (No. VIII of 2023), referred to herein.
8. Defendant No.4 is the principal legal adviser to the government.
9. In accordance with Section 11 of the Local Government Act 2011, the last election of Municipal Town Councillors to Co-Defendant No.1 was held in 2015, and was to be thereafter regularly held every 6 years, on such date as the President shall appoint.
10. In accordance with Section 11 of the Local Government Act 2011, as amended by the Local Government (Amendment) Act 2015 (Act No.3 of 2015), the election of Municipal Town Councillors to sit on Co-Defendant No.1 Municipal Town Council was last held in 2015, and should thereafter have been held every 6 years or in such other year, and at such date, as the President shall appoint on the advice of Defendant No.2.

11. The Municipal City Council and Municipal Town Council elections were last held in Mauritius in 2015 and Co-Defendants Nos.2 to 24 who are currently serving on Co-Defendant No.1 Municipal Town Council were -

- (i) either last democratically elected in 2015 to hold office for 6 years that is until on or about 12 June 2021; or
- (ii) appointed from the reserved list to hold office, upon vacancy arising, to serve until 13 June 2023.

12. By reason of the Covid-19 pandemic, by the Local Government (Amendment) Act 2021 (Act No.5 of 2021), the Local Government Act 2011 was amended by adding a new section 10A which enacted that -

“10A. Life of entire Municipal City Council and Municipal Town Councils, and Village Councils

- (1) *The entire Municipal City Council and Municipal Town Councils, and entire Village Councils, shall, unless sooner dissolved, continue for 6 years from the date on which the previous poll of the return of the entire Municipal City Council and Municipal Town Councils, and entire Village Councils was taken and shall then stand dissolved.*
- (2) *Where, pursuant to subsection 12A(1), the life of 6 years of the entire Municipal City Council and Municipal Town Councils, or entire Village Councils, is extended, the entire Municipal City Council and Municipal Town Councils, or the entire Village Councils shall, unless sooner dissolved, continue for the period of extension and shall then stand dissolved.*
- (3) *Notwithstanding this section, the President, acting in accordance with the advice of the Prime Minister, may, at any time, dissolve the entire Municipal City Council and Municipal Town Councils, and the entire Village Councils, for the holding of a general election of the entire Municipal City Council and Municipal Town Councils, and the entire Village Councils.”*

13. By the same Local Government (Amendment) Act 2021 (Act No.5 of 2021), the existing section 12A was repealed and replaced by a new section 12A which provides under subsection (1) that –

“12A. Extension of life of Municipal City Council and Municipal Town Councils, and Village Councils

(1) *At any time when –*

(a) *there is, or there is likely to be, an epidemic of a communicable disease in Mauritius; and*

(b) *a quarantine period is in force in Mauritius,*

the President, acting in accordance with the advice of the Prime Minister, shall, by Proclamation, extend, from time to time, the life of 6 years of the entire Municipal City Council and Municipal Town Councils, or entire Village Councils, by not more than one year at a time, provided that the life of the Councils shall not be extended for more than 2 years.”

14. Subject to both aforesaid express statutory caveats at subparagraphs (a) and (b) above being satisfied and, on the advice of Defendant No.2, the life of entire Co-Defendant No.1 was extended by the President by Proclamation No.4 of 2021 and Proclamation No.17 of 2022, but only for 1 year at a time, Provided that the total extended period did not exceed 2 years, following which Co-Defendant No.1 shall stand dissolved on or about 13 June 2023.
15. In accordance with Act No.5 of 2021, the life of the entire Co-Defendant No.1 and of the other Municipal Town Councils and of the Municipal City Council of Port Louis was twice extended but for only 1 year at a time (in 2021 and 2022 respectively), by 2 Proclamations issued under subsection 12A(1) of the Local Government Act 2011, but subject to both aforesaid express statutory caveats above which were then mandatorily required to be satisfied under both limbs of the aforesaid enabling primary legislation as a condition precedent to executive action.
16. In accordance with both aforesaid Proclamations of 2021 and 2022, the entire Co-Defendant No.1 Municipal Town Council of Vacoas-Phoenix stood dissolved at the expiry of the aforesaid total extended period of 2 years, that is on or about 13 June 2023 and the mandate of the Co-Defendants Nos.2 to 24 came to an end.

17. The Explanatory Memorandum to the Local Government (Amendment) Bill (No. VIII of 2023), scheduled for early introduction in the National Assembly by means of Defendant No.2's certificate of urgency, did not provide any reason for empowering the President (on defendant no. 2's advice) to *further* extend the life of the entire Municipal City Council and Municipal Town Councils or entire Village Councils for a *further* period of 2 years -

"Explanatory Memorandum

The object of this Bill is to amend the Local Government Act to empower the President, acting in accordance with the advice of the Prime Minister, to further extend the life of the entire Municipal City Council and Municipal Town Councils, or entire Village Councils for a period of 2 years."

18. On or about 26 May 2023, by the Local Government (Amendment) Act 2023 (Act No.7 of 2023) section 12A of the Local Government Act was further amended as follows -

“(a) *by inserting, after subsection (1), the following new subsection –*

(1A) *At any time during the extended period of the life of the entire Municipal City Council and Municipal Town Councils, or entire Village Councils under subsection (1), the President, acting in accordance with the advice of the Prime Minister, shall, notwithstanding subsection (1), further extend such life for a period of 2 years by Proclamation.*

(b) *in subsection (2), by deleting the words “subsection (1), the life of 6 years” and replacing them by the words “subsection (1) or (1A), the life”.*”

19. By the aforesaid 2 Proclamations of 2021 and 2022 and the third extension proclaimed by Proclamation No.14 of 2023 dated 26 May 2023, gazetted on the same date, the life of the entire Co-Defendant No.1 which was due to expire on or about 13 June 2021 under its elective mandate, has so far been undemocratically and repeatedly extended on no less than 3 different occasions, namely -

- (a) on 14 June 2021 for 1 year as from 15 June 2021 until 14 June 2022;
- (b) on 13 April 2022 for 1 more year as from 14 June 2022 until 13 June 2023; and now

(b) on 26 May 2023, by means of Proclamation No.14 of 2023, for a further period of 2 years as from 13 June 2023 until on or about 11 June 2025.

20. Plaintiffs further aver that by the enactment of Act No.7 of 2023 and by empowering the President to extend the life of the entire Co-Defendant No.1, on the advice of Defendant No.2, Plaintiffs' fundamental constitutional rights, as guaranteed and entrenched by sections 1, 2, 3, 12, 16(4)(aa), 28, 47(3), 57(2) and 111 of the Constitution, (read and construed together with the International Covenant on Civil and Political Rights (ICCPR), including its article 28]) have been contravened in relation to each Plaintiff, especially as -

- (a) section 1 of the Constitution is not a mere preamble. It is not simply a guide to interpretation. It is to be distinguished from many other constitutional provisions. It is of the first importance that the provision that Mauritius "*shall be (...) a democratic State*" is an operative and binding provision. It's very subject matter and place at the very beginning of the Constitution underlies its importance. And section 2 of the Constitution provides that any law inconsistent with the constitution is *pro tanto* void, to the extent of such inconsistency;
- (b) **section 47(3) of the Constitution** was amended (by Act No.48 of 1991) to make provision for a **deep entrenchment of sections 1 and 57(2) of the Constitution**;
- (c) by the aforesaid impugned amendments of 2023, the legislature has purported to empower Defendant No.2 to disenfranchise Plaintiffs and deprive them of their deeply constitutionally entrenched fundamental democratic right to elect their democratically elected representatives, within their ward, on Co-Defendant No.1, and to stand as candidate on Co-Defendant No.1, for the duration of Co-Defendant No.1's elective mandate;
- (d) the impugned primary legislation is a subversion of the very nature and fabric of democracy under the Constitution and further or alternatively it is not reasonably justifiable in a democratic society, in that it purports, on the advice of Defendant no 2, to empower the President to mandatorily extend the life of the Co-Defendant No.1 beyond its elective mandate, in spite of the fact that the election of the Rodrigues Regional Assembly (established by the Constitution) was duly held on 27 February 2022,
- (e) only Plaintiffs and other registered electors may confer an elective mandate upon the members of the Co-Defendant No.1. The President, acting on the advice of Defendant No.2, is neither expressly nor impliedly empowered by the Constitution to extend the life of the entire Co-Defendant No.1 or of the other local authorities, as defined by section 111 of the Constitution;


- (f) it is inconsistent with an elective democracy under the Constitution and further or alternatively it is not reasonably justifiable in a democratic society such as Mauritius that without an elective mandate from the electorate that formerly elected members of Co-Defendant No.1 should, on the mere advice of Defendant No.2, be maintained and extended in office by the President as members of a “**local authority**” (within the meaning of section 111 of the Constitution) for a further period of 2 years as it is, firstly, in contravention of the democratic nature of the State (the more so as by Section 28 of the Constitution the President is in duty bound to “**uphold and defend the Constitution and ensure that (i) the institutions of democracy and the rule of law are protected, (ii) the fundamental rights of all are respected**”, and, secondly, without any objective reason being enacted in the aforesaid impugned primary legislation, as enacted by Act No. 7 of 2023.
21. Plaintiffs aver that by enacting the aforesaid impugned primary legislation enacted by Act No.7 of 2023, the legislature has thereby wrongly purported to empower Defendant No.2 to further extend, (for the third time), the life of Co-Defendant No.1 for 2 more years, well beyond the date of its second extended dissolution on 13 June 2023.
22. Plaintiffs further aver that -
- (a) no other adequate means of redress against the alleged contraventions are available to them under any other law, and
- (b) the aforesaid primary legislation of 2023 (as enacted by Act No. 7 of 2023) is inconsistent with Sections 1, 2, 3, 12, 16(4)(aa), 28, 47(3), 57(2) and 111 of the Constitution which have been contravened in relation to them.
23. Plaintiffs therefore humbly pray from this Honourable Court for each of the following constitutional reliefs in accordance with sections 17 and 83 of the Constitution of Mauritius, by a judgment -
- (i) declaring and decreeing that section 12A(1A) of the Local Government Act (as amended by Act No.7 of 2023) is inconsistent with sections 1, 2, 3, 12, 16(4)(aa), 28, 47(3), 57(2) and 111 of the Constitution,
- (ii) declaring and decreeing that section 12A(1A) of the Local Government Act (as amended by Act No.7 of 2023) is, to the extent of such inconsistency, void,

- (iii) declaring and decreeing that the entire Co-Defendant No.1 Municipal Town Council stood dissolved with effect as from 13 June 2023 and its life has not been validly extended,
- (iv) declaring and decreeing that Co-Defendants Nos. 2 to 24 must retribute the whole of their prescribed remuneration as Mayor, Deputy Mayor and as Municipal Town Councillors, with effect as from 14 June 2023 onwards,
- (v) directing Defendant No.2 to advise the President to set a date by Proclamation for the holding of the election of Co-Defendant No.1 Municipal Town Council, of all the other Municipal Town Councils and of the Municipal City Council of Port Louis; and
- (vi) such further or other relief as the justice of the case may require.

NOW TAKE NOTICE, You the abovenamed Defendants and Co-Defendants, that You are hereby requested, called upon, and summoned to be and appear before the Supreme Court of Mauritius, New Supreme Court Building, Cnr Edith Cavell and Desroches Streets, Port Louis, on the 20th June 2023 at 9.30 o'clock in the forenoon to answer the abovenamed Plaintiffs in the above matter.

WARNING YOU, the abovenamed Defendants and Co-Defendants that the above matter will be proceeded with whether you be present or not.

Under all legal reservations
Dated at Port-Louis, this 20th day of June, 2023



Ruwaydah JAUNBACUS

Of Uteem Chambers, 4th Floor, Les Jamalacs Building, Vieux Conseil Street, Port Louis
PLAINTIFFS' ATTORNEY, instructing Messrs. M G Antoine DOMINGUE, Senior Counsel, Vedasingum V BALOOMOODY and Muhammad R C UTEEM, of Counsel

To/

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