

IN THE SUPREME COURT OF MAURITIUS

[Application for Constitutional Relief pursuant to section 83 of the Constitution]

In the matter of: -

The Director of Public Prosecutions,
of 13th Floor, Garden Tower, La Poudrière Street, Port Louis

Plaintiff

v/s

The State of Mauritius,
represented by the Attorney General
of Renganaden Seeneevassen Building, Port Louis

Defendant

In Presence of: -

The Attorney General
of Renganaden Seeneevassen Building, Port Louis

Co-Defendant

PLAINT WITH SUMMONS

1. The Plaintiff is the Director of Public Prosecutions (the "DPP") of the Republic of Mauritius and is appointed under section 72 of the Constitution.
2. The Defendant is, through Parliament, and pursuant to section 45 of the Constitution, empowered to make laws for the peace, order and good government of Mauritius.
3. The Co-Defendant is the principal legal adviser of the Government of Mauritius.

The DPP is the Apex Prosecuting Authority

4. Prior to 1957, there was in Mauritius an Office of Procureur and Advocate General, which cumulated the functions of principal legal adviser to the Government and those of prosecuting criminal offences. The post of Procureur and Advocate General was restyled "Attorney General" in 1957.
5. The conferment of separate powers for the purposes of criminal prosecution was first envisaged in the Text of Agreed Final Communiqué following the Mauritius Constitutional Review Conference of 1961:

“Provision would be made for the post of Attorney General to be filled by an official or by an unofficial Minister. In the former case, the holder would cease to be a Member of the [Council of Ministers] but would continue to be available to attend meetings as an Adviser. In the latter case it would be necessary to create a new official post of Director of Public Prosecutions who would be solely responsible in his discretion for the initiation, conduct and discontinuance of prosecutions and would in this respect be independent of the Attorney General.”

6. With the advent of the Constitution of Mauritius in 1964 (The Mauritius (Constitution) Order of 1964), the post of the Plaintiff was created alongside that of the Attorney General. The latter was responsible for acting as legal adviser to Government whilst the former was entrusted with the responsibility for criminal prosecution.

7. The importance of the Plaintiff's independence was emphasised by Professor de Smith in his November 1964 Constitutional Commissioner Report:

“I consider that the Director of Public Prosecutions should be given the judicial security of tenure which he enjoys under a number of other constitutions.”

8. The office of the Plaintiff was thus established by the Constitution of Mauritius in 1964 as the apex prosecuting authority.

9. At the September 1965 Mauritius Constitutional Conference, held at Lancaster House, London, it was agreed, inter alia, that:

“The Constitution will establish the office of Director of Public Prosecutions who will have independent powers in relation to criminal prosecutions corresponding to those vested in the Director by the existing Constitution. A person will not be qualified to be or act as a Director unless he is qualified for appointment as a Supreme Court Judge. The Director will be appointed by the Judicial and Legal Services Commission. His security of tenure will be similar to that of a judge.”

10. The above arrangement was implemented in the Constitution of 1968, which came into effect after the Independence of Mauritius. This Constitution is still in effect in present day Mauritius.

11. Section 72(1) of the Constitution provides as follows:

“There shall be a Director of Public Prosecutions whose office shall be a public office and who shall be appointed by the Judicial and Legal Services Commission.”

12. Section 72(2) of the Constitution sets out the quasi-judicial character of the Plaintiff. It provides that:
“No person shall be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a Judge of the Supreme Court.”

13. The powers of the Plaintiff in relation to the conduct of criminal proceedings are set out in section 72(3) of the Constitution. Under that provision, the Plaintiff has the power, in any case in which he considers it desirable to do so to:
 - a) *institute and undertake criminal proceedings before any court of law...;*
 - b) *take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and*
 - c) *discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.”*
14. Importantly section 72(6) of the Constitution provides: *“In the exercise of the powers conferred upon him by this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.”*
15. In 1998, in the report of the “Presidential Commission set up to examine and report upon the structure and operation of the Judicial System and Legal Professions of Mauritius” (commonly known as “The Mackay Report” and was constituted of Lord Mackay of Clashfern, Sir Hamid Moollan QC, Mr Andre Robert SA, Professor Michel Borysewicz and Mr Sunil Banymandhub), it was noted at paragraph 5.23:

“The powers of [the Office of the Director of Public Prosecutions] are extremely important to the proper functioning of the Republic and we recommend that the importance of it should be clearly recognised by the public and that the office holder should enjoy the confidence of the public. We have heard it said that the legal system in Mauritius is apt to catch flies and miss the hornet.”
16. In its Issue Paper dated March 2009 (The Office of the Director of Public Prosecutions and the Constitutional Requirements for its Operational Autonomy), the Law Reform Commission highlighted the concerns for a truly independent criminal justice system by reference to the underlying rationale for the Plaintiff’s independent constitutional status expressed by Professor de Smith as stemming from the need:

“...to safeguard the stream of criminal justice from being polluted by the inflow of noxious political contamination...to segregate the process of prosecution entirely from general political considerations.”
17. The Law Reform Commission further stressed that the establishment of a separate office of the Plaintiff was based, inter alia, on the need:

“to establish politically neutral zones so that sensitive areas of public activity – the delimitation of electoral constituencies, the conduct of elections, the administration of justice, the process of prosecution, the civil service and the police, the audit of public accounts – would be insulated from direct political influence.”

18. The Plaintiff thus avers that a fundamental fabric to our democratic state under section 1 of the Constitution is that the administration of criminal justice, including the power and process of prosecution, be isolated from the sphere of political influence.

The Financial Crimes Commission as the New Apex Prosecuting Agency

19. On 19 December 2023, Parliament passed the Financial Crimes Commission Act 2023 (Act No. 20 of 2023) (the “Act”) that establishes, subject to section 169(1) i.e. proclamation, the Financial Crimes Commission (the “Commission”).
20. On 21 December 2023, the Act was assented to and gazetted in the Government Gazette of Mauritius No. 111 of 21 December 2023. Up to now the Act has not been proclaimed and, so far, no date or dates have been set for the Act to come into force, in accordance with the express provisions of subsections 169(1) and (2) of the Act.
21. The Explanatory Memorandum to the Financial Crimes Commission Bill, expresses the clear intention that the Commission be *“the apex agency in Mauritius to detect, investigate and prosecute financial crimes and any other ancillary offence connected thereto”*.
22. Section 4(3) of the Act provides that:

“Subject to this Act, the Commission shall, in the discharge of its functions and exercise of its powers, not be under the direction or control of any person or authority”.
23. The Plaintiff avers that the Act, as a whole, but also specifically by the operation of section 4(3) thereof, seeks to, and does, displace the Plaintiff as the apex prosecuting authority for offences in favour of the Commission in respect of specified offences, and by so doing, contravenes sections 1 and 72 of the Constitution, and the establishment thereunder of the Plaintiff as a fundamental component of the Mauritian democratic state.
24. The Act also establishes the post of the Director-General of the Commission as being responsible for the execution of the policy and functions of the Commission. Section 11(3) of the Act provides:

“(3) Subject to this Act, the Director-General shall, in the discharge of his functions and exercise of his powers, not be subject to the direction or control of any person or authority”.

25. Section 6(2)(b) of the Act provides that the Commission shall “*cooperate, collaborate and establish links with local, regional and international institutions, agencies, organisations or bodies with a view to fostering local, regional and international cooperation in the fight against financial crimes.*” The Act is silent as to the extent to which the Commission ought to cooperate, collaborate or liaise with the Plaintiff in the exercise of its statutory prosecutorial duties.
26. Section 7(3) of the Act provides for the appointment of the Commissioners “by the President, acting in accordance with the advice of the Prime Minister, tendered after the Prime Minister has consulted the Leader of Opposition”, and that it is for the Prime Minister to determine the terms and conditions of their appointment.
27. Section 7(5) of the Act further provides that the “the President shall, on the advice of the Prime Minister, at any time terminate the appointment of a Commissioner”, (a) who is found guilty of any misconduct, default or breach of trust in the discharge of his functions; (b) who has committed an offence of such nature as renders it desirable that his appointment should be terminated; or (c) who is physically or mentally incapable of discharging his functions as a Commissioner.
28. Section 10(1) of the Act similarly provides that the Director-General of the Commission is to be appointed by the President acting in accordance with the advice of the Prime Minister, tendered after the Prime Minister has consulted the Leader of the Opposition. The terms and conditions of the Director-General shall also be determined by the Prime Minister.
29. The Plaintiff thus avers that in the light of the powers and role of the Prime Minister in the appointment of the Director-General and the Commissioners, regarding the terms and conditions on which they are appointed, the Commission, the power and process of prosecution, in particular the power to prosecute or not, are rendered liable to political influence or considerations, in contravention of section 1 of the Constitution. This is the more so since, pursuant to section 113(4) of the Constitution, those appointed under the Act may “be required to vacate their office at any time after a general election held after the appointment.”
30. On Saturday 16 March 2024, at a press conference, the Leader of the Opposition has confirmed that by letter dated 5 March 2024 he has been consulted by the Prime Minister under sections 7 and 10 of the Act as to the proposed appointment of Mr Navin Beekarry as Director General of the Commission and Messrs Narainkrishna Peerun, Abdool Carrim Namdarkhan, Jugdish Dev Phokeer, and one Mrs Marie Claudine Josiane Lilette Paya as its four Commissioners.

Preliminary Investigation by the Commission

31. The Preliminary Investigation to be conducted by the Commission is governed by section 57 of the Act:

“(1) Where, under sections 54, 55 and 56, or on its own initiative, or upon a referral of an information by the Director of any Division, the Commission becomes aware that an offence under this Act or the Declaration of Assets Act has been, is being or is likely to be committed, it shall decide whether to refer the matter for a preliminary investigation.

(2) The Director of the Investigation Division or of the Asset Recovery and Management Division shall, within 30 working days of a referral under subsection (1) or within such other period as the Commission may direct, report to the Commission on the matter.

(3) The Commission shall, on receipt of a report under subsection (2), make a determination as whether to -

- (a) proceed with a further investigation; or*
- (b) discontinue the investigation.”*

Further Investigation by the Commission

32. The Commission’s statutory powers in relation to a “*Further Investigation*” are governed by section 58 of the Act, the operative subsections being:

(1) Where the Commission makes a determination to proceed with a further investigation pursuant to section 57(3)(a), the investigation shall be carried out by the Director of the Investigation Division or of the Asset Recovery and Management Division, as the case may be, under the responsibility of the Director- General.

[...]

(7) After conclusion of an investigation, the Director-General shall submit a report to the Commission.

(8) On receipt of a report under subsection (7), the Commission may decide -

- (a) whether to institute criminal proceedings for an offence under this Act or the Declaration of Assets Act in accordance with section 142;*
- (b) whether to discontinue the investigation; or*
- (c) on any other course of action as it may deem fit and proper taking into consideration all circumstances of the case.*

33. Section 142(1) of the Act provides as follows:

“(1) (a) Following the conclusion of an investigation and the receipt of a report under section 58, the Commission may institute such criminal proceedings as it may consider appropriate for any offence under this Act or the Declaration of Assets Act.

(b) The institution of criminal proceedings by the Commission under paragraph (a) shall be without prejudice to the powers of the Director of Public Prosecutions vested in him to the exclusion of any other person or authority under section 72(3)(b) and (c) of the Constitution to take over, continue or discontinue such criminal proceedings.

(c) The Director of Public Prosecutions may discontinue before any Court the criminal proceedings instituted by the Commission under paragraph (a) giving such reasons as he may deem fit for such discontinuance before the Court. [...]

Power to Institute Criminal Proceedings

34. The Plaintiff recognises that the power to institute criminal proceedings is not exclusive to the DPP.
35. However, pursuant to where the Commission has instituted criminal proceedings under sections 58(8) and 142(1)(a) of the Act, nothing should prevent the Plaintiff at any time to take over, continue or discontinue such criminal proceedings, and this by virtue of sections 72(3)(b) & (c) of the Constitution and sections 142(1)(b) & (c) of the Act – powers that are exclusive to the Plaintiff.
36. In order to be give effect to sections 72(3)(b) & (c) of the Constitution and sections 142(1)(b) & (c) of the Act, the Plaintiff avers that he must have access to the complete file, if he so requires, but that there is nothing in the Act to require or compel the Commission to communicate the complete file to him (the DPP), thus rendering the exercise of the DPP’s constitutional powers under section 72(3)(b) & (c) otiose.
37. This is in stark contrast to the position under The Prevention of Corruption Act 2002 (“POCA”), whose section 47(6) provided that:

After receipt of the opinion of the Commission, the Director-General shall submit a report to the Director of Public Prosecutions which shall include –

- (a) all the material, information, statements and other documents obtained in the course of the investigation;*
 - (b) a description of the articles of evidence which have remained in the custody of the Commission;*
 - (c) the recommendations of the Commission.*
38. The Independent Commission Against Corruption (“ICAC”) was thus, contrary to the Commission, under an express legal obligation, under section 46(7) of POCA, to submit a comprehensive report

to the Plaintiff, with whom rested the final decision following the outcome of the investigation and the institution of criminal proceedings.

39. Thus, under POCA, the exercise of the Plaintiff's constitutional power to institute criminal proceedings was not in any way affected. On the contrary, it was expressly recognised and preserved.
40. The Act does not have any equivalent provision to the then section 47(6) of POCA, nor can an equivalent thereto be implied anywhere in the Act. The prosecution of offences under the Act are too serious to be entrusted to the Commission – led by political nominees – without consulting the DPP. This is in contravention of section 72(3)(a) and section 1 of the Constitution.

Power to Discontinue an Investigation

41. Section 57(3)(b) and section 58(8)(b) provide that the Commission may discontinue an investigation.
42. Given that the avowed aim of the Act is for the Commission be the apex agency to detect, investigate and prosecute financial crimes (and connected offences), the Act clearly intends that the Commission's decision to discontinue an investigation be final.
43. The Plaintiff thus avers that the Commission's power to discontinue an investigation amounts to a 'No Further Action' – a final decision not to institute criminal proceedings.

Consequences of Discontinuing an Investigation under sections 57(3)(b) & 58(8)(b) of the Act

44. The Plaintiff avers that whenever the Commission decides to discontinue an investigation either under section 57(3)(b) or under section 58(8)(b) of the Act, this will give rise to the following scenarios:
 - (a) the Plaintiff never becomes aware of the Commission's decision to discontinue, being given that the Commission is under no legal obligation to make a report and submit the file to the Plaintiff; or
 - (b) the Plaintiff becomes aware, after the event, that the Commission has decided to discontinue an investigation.
45. The Plaintiff avers that the following consequences will result from the above scenarios:
 - (a) The Plaintiff never becomes aware
The Plaintiff would, unbeknownst to him, be deprived of the possibility of exercising his power to institute criminal proceedings under section 72(3)(a) of the Constitution.

(b) The Plaintiff becomes aware after the event

The Plaintiff would only be able to exercise his power to initiate criminal proceedings against the alleged offender, subject to:

- (i) the Commission remitting a report and the file to the Plaintiff bearing in mind that there is in the Act no legal obligation for the Commission to do so; and
 - (ii) the Plaintiff becoming aware, within a reasonable time, of the alleged offence and the Commission's decision to discontinue the investigation, taking into account the public interest as well as the fundamental rights of the alleged offender or other persons.
46. The Plaintiff's constitutional power under section 72(3)(a) of the Constitution should trump the Commission's ordinary power under section 142(1)(a) of the Act, as the Plaintiff has an overall supervisory power - *a fortiori* since his office is the apex prosecuting authority and is institutionally insulated from political responsibility and control, thus ensuring his autonomy and independence.
47. Whenever the Commission decides to discontinue an investigation, this amounts to a decision not to institute criminal proceedings. The Plaintiff should then be permitted to step in to institute criminal proceedings if he is so minded - because, everything being equal, the Plaintiff's power under section 72(3)(a) of the Constitution trumps that of the Commission under section 142(1)(a) of the Act.
48. Sections 57(3)(b) and 58(8)(b) of the Act thus contravene section 72(3)(a) and 72(3)(c) of the Constitution, because the Commission's decision to discontinue an investigation in relation to an alleged offender will, in light of the fact that the Commission is no longer under a legal obligation to report its decision to the Plaintiff, result in the Plaintiff being deprived of the opportunity to exercise his power under section 72(3)(a) of the Constitution to institute criminal proceedings against an offender and his power to discontinue proceedings under section 72(3)(c) has been usurped.

Compounding of Offences

49. Section 150 of the Act enables the Commission to compound offences, as follows:

- (1) The Commission may compound any offence committed by any person under this Act or under the Declaration of Assets Act where that person agrees, in writing, to pay such amount, not exceeding the maximum penalty specified for the offence, as may be acceptable by the Commission.
- (2) Every agreement to compound shall be final and conclusive and, on payment of the agreed amount, no further proceedings in regard to the offence compounded shall be initiated in respect of the offence so compounded against the person.

(3) Where the Commission does not compound an offence or a person does not agree to compound an offence, the Commission may prosecute that person for the offence committed.

(4) *Any amount paid for compounding an offence shall accrue to the Consolidated Fund.”*

50. The Plaintiff avers that the Commission’s power to compound offences under the Act does not require the DPP’s prior authorisation, which is an express and mandatory requirement under at least 12 enactments, namely:

- 1) section 162(2) of the Customs Act 1988;
- 2) section 149(1)(a) of the Income Tax Act 1996;
- 3) section 61(1)(a) of the Value Added Tax Act 1998;
- 4) section 342A(1) of the Companies Act 2001;
- 5) section 19P(1) of the Financial Intelligence and Anti-Money Laundering Act 2002;
- 6) section 69(1) of the Bank of Mauritius Act 2004;
- 7) section 51A(1) of the Financial Services Act 2007;
- 8) section 149A(1)(a) of the Gambling Regulatory Authority Act 2007;
- 9) section 26A(1) of the Construction Industry Development Board Act 2008;
- 10) section 50A(1)(a) of the Foundations Act 2012;
- 11) section 30(1) of the National Payment Systems Act 2019; and
- 12) section 51(1) of the Virtual Asset and Initial Token Offering Services Act 2021.

51. By way of illustration, section 162 of the Customs Act 1988 is, for ease of reference, reproduced below:

(1) Where the question of compounding an offence committed by a person under the customs laws arises, the Director-General shall set up a committee consisting of himself as Chairperson and 3 other officers of the management team of the Authority to examine the question.

- (2) Where the committee under subsection (1) recommends compounding, the Director-General may, with the consent of the Director of Public Prosecutions, compound any offence committed by a person under the customs laws, where such person agrees in writing to pay such amount acceptable to the Director-General representing -
- (a) any duty, excise duty and taxes unpaid; and
 - (b) an amount not exceeding the maximum pecuniary penalty imposable under the customs laws for such offence.
- (3) Every agreement under subsection (2) shall be made in writing by the Director-General and the person, and witnessed by an officer.
- (4) Every agreement under this section shall be final and conclusive and a copy thereof shall be delivered to the person.
- (5) Where the Director-General compounds an offence in accordance with this section –
- (a) the amount for which the offence is compounded shall be deemed to be duty, excise duty and taxes assessed or claimed under the customs laws and shall be recoverable as duty, excise duty and taxes; and
 - (b) no further proceedings shall be initiated in respect of the offence so compounded against the person.
- (6) Where the Director of Public Prosecutions does not give his consent to compound the offence or a person does not agree to compound the offence, the Director-General may, with the consent of the Director of Public Prosecutions -
- (a) proceed in accordance with section 24A; or
 - (b) refer the case to the Police for legal proceedings.”

[Section 24A deals with “Non-payment or underpayment of duty, excise duty and taxes”]

52. Of note, section 150 of the Act excludes the Plaintiff from the compounding process altogether but empowers the Commission headed by political nominees to act solely as far as compounding is concerned. This is unlike the other enactments that mandatorily involve the Plaintiff in the process.

The Legal Implications of Compounding an Offence under Section 150 of the Act

53. The Plaintiff avers that the Commission’s decision to compound an offence under section 150 of the Act is a drastic one, because once an Agreement to Compound has been reached between the Commission and an alleged offender, the criminal process comes to an abrupt end, such that there can be no prosecution against that person and, hence, no further recourse by the DPP. This is so because the Agreement to Compound:

- (a) shall be final and conclusive and, on payment of the agreed amount, no further proceedings in regard to the offence compounded shall be initiated in respect of the offence so compounded against the person, as per section 150(2) of the Act;
 - (b) shall completely oust the Plaintiff from his essential prosecuting function and in particular from his exclusive power to discontinue proceedings pursuant to section 72(3)(c) of the Constitution; and
 - (c) shall act as a plea in bar in favour of the alleged offender and bar the institution of any criminal proceedings against him, thereby estopping the Plaintiff from instituting criminal proceedings against the alleged offender under section 72(3)(a) of the Constitution.
54. The institution of a process under the control of a politically appointed Commission and its Director-General which is capable of ousting the Plaintiff's right to prosecute or discontinue cases of corruption (including by politicians) where "he considers it desirable to do so" is undemocratic and inconsistent with the scheme of the Constitution as a whole.
55. The Plaintiff being a quasi-judicial figure, the transfer of his functions to wholly extra-constitutional members of the executive (the Commissioners are not even public officers) is inconsistent with the principle of the separation of powers, and, for this reason, undemocratic.
56. This also raises an issue which concerns access to the Courts. The effect of a decision to prosecute a person is that the matter is brought before the Courts for judicial determination. The effect of a decision to compound an offence is that the person is not brought before the Courts and a process controlled entirely by the executive branch is substituted. This is inconsistent with the principle of the separation of powers and undemocratic.

The Impugned Sections affect the Plaintiff's Interests under section 72(3)(a), (b) and (c) of the Constitution

57. The Plaintiff avers that the combined effect of the Impugned Subsections is to affect his interests under section 72(3)(a), 72(3)(b) and 72(3)(c) of the Constitution, in a general manner, through a distortion of the criminal process under the Constitution, as follows:
- (a) section 72(3) of the Constitution has to be read as an integrated whole, in such a manner that no one particular provision nullifies the other, but each sustaining the other;
 - (b) the criminal process, at the apex of which rests the Plaintiff, consists of three interlinked stages which cannot be dissociated one from another, as indeed expressed under section 72(3) of the Constitution: (a) institution of criminal proceedings (b) taking over and continuing criminal proceedings; and (c) discontinuing criminal proceedings;

- (c) the criminal process cannot be lightly interfered with, in the sense that the Plaintiff cannot, on the one hand, be vested with the power to take over and continue criminal proceedings under subsection (b) or to discontinue proceedings under subsection (c), whilst, on the other hand, being curtailed in the exercise of his power to institute criminal proceedings under subsection (a);
- (d) the consequence, therefore, of the Plaintiff being kept in the dark as regards the discontinuing of investigations and the compounding of offences by the Commission, and thus being prevented to exercise his power under section 72(3)(a) to institute or not to institute criminal proceedings or discontinue such proceedings under section 72(3)(c), suffice to strike down the Impugned sections;
- (e) it offends the spirit and intendment of our Constitution, including section 1 of the Constitution, to conceive that the Plaintiff could thus, through the operation of a mere Act of Parliament (passed by simple majority), be kept in the dark and be deprived of his constitutional power to act, through colourable devices, at the very inception of the criminal process under subsection(a);
- (f) that the Plaintiff may intervene at a later stage, either to take over and continue proceedings under subsection (b) or to discontinue them under subsection (c), as highlighted under section 142(1)(b) of the Act, is neither here nor there, because the most vital part of the process, i.e., its inception under subsection (a), will be vitiated because the Commission has no legal obligation to refer the matter to the Plaintiff or inform him whenever it discontinues an investigation or it compounds an offence under the Act;
- (g) the founding fathers of our Constitution did not intend for the Plaintiff to be deprived of his overall constitutional control of the criminal process *ab initio*, under subsections (a) to (c), by allowing the legislator to blindly entrust the Commission with a parallel power under an ordinary enactment, whose effect is to supersede the Plaintiff's inalienable constitutional power; and
- (h) in any event, everything being equal, the Plaintiff's overall constitutional power to institute criminal proceedings under section 72(3)(a) of the Constitution should trump the Commission's ordinary power to institute criminal proceedings pursuant to section 142(1)(a) of the Act - and not the other way round.

58. In the premises, the Plaintiff avers that his interests are likely to be affected by the aforesaid alleged contraventions of section 1 and subsections 72(3)(a) to (c) of the Constitution.

Prayers

59. The Plaintiff therefore humbly prays from this Honourable Court for a declaration, pursuant to sections 83(1) and 83(2) of the Constitution, that:
- A. The Financial Crimes Commission Act 2023 contravenes sections 1 and 72 of the Constitution, and is accordingly void; and/or
 - B. The Financial Crimes Commission Act 2023, having been passed by a simple majority, contravenes section 47(3) of the Constitution, and is accordingly void.

Or, alternatively,

- C. sections 57(3)(b) and/or 58(8)(b) of the Financial Crimes Commission Act 2023 contravene section 72(3)(a) of the Constitution, and is void to that extent;
- D. section 142(1)(a) of the Financial Crimes Commission Act 2023 contravenes section 72(3)(a) of the Constitution, and is void to that extent;
- E. sections 57(3)(b) and/or 58(8) of the Financial Crime Commission Act 2023 contravene sections 72(3)(b) & (c) of the Constitution, and is void to that extent;
- F. section 142(1)(a) of the Financial Crime Commission Act 2023 contravenes sections 72(3)(b) & (c) of the Constitution, and is void to that extent;
- G. section 150 of the Act contravenes sections 72(3)(a) to (c) of the Constitution, and is void to that extent;
- H. sections 57(3)(b), 58(8), 142(1)(a) and/or 150 of the Financial Crime Commission Act 2023 contravene section 1 of the Constitution, and are void to that extent; and/or
- I. such declaration or relief as the Honourable Court may deem fit in the circumstances,

WITH COSTS

You the said Defendant and Co-Defendant are hereby called upon and summoned to be and appear before the Supreme Court of Mauritius on 2024 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 Plaint with Summons.

TAKE NOTICE that the abovenamed Plaintiff shall at the day of the hearing of the above matter adduce evidence amongst others the hereunder specified documents and the same may be inspected by you, your Attorney or agent at the office of the undersigned Senior Attorney on any working days during office hours and that you will be required to admit that the said documents which are specified to be original were written, signed and executed as it is purported to have been, saving all just exception as to the admissibility of such documents as is evidenced in the cause.

LIST OF DOCUMENTS

1. The Text of Agreed Final Communiqué following the Mauritius Constitutional Review Conference of 1961
2. The Mauritius (Constitution) Order of 1964
3. Mauritius Constitutional Conference, held at Lancaster House, London in September 1965
4. Constitutional Commissioner Report of Professor de Smith in his November 1964
5. Report upon the structure and Operation of the Judicial System and Legal professions of Mauritius” (commonly known as “The Mackay Report”)
6. The Updated Mackay Report 2006
7. The Law Reform Commission Issue Paper, dated March 2009 (The Office of the Director of Public Prosecutions and the Constitutional Requirements for its Operational Autonomy)
8. The Financial Crime Commission Act 2023

Under all legal reservations.

Dated at Port Louis, this 20th day of March 2024

(V.K.DWARKA, S.A.)

Of 3rd Floor, Hennessy Tower, 23, Pope Hennessy Street, Port Louis.

ATTORNEY FOR THE PLAINTIFF

Instructing Sanjay Bhuckory S.C together with Narghis Bundhun S.C & Vimalen Reddi, Amira Peeroo & Sanjana Bhuckory, of Counsel

To/-

1. The State of Mauritius, represented by the Attorney General, of Renganaden Seeneevassen Building, Port Louis
2. The Attorney General, of Renganaden Seeneevassen Building, Port Louis