3 of 1977

IN THE PRIVY COUNCIL No. 10 of 1975

ON APPEAL

FROM THE SUPREME COURT OF MAURITIUS

BETWEEN:

HENRI LINCOLN ANEER ABDULLAH
and KRISENANDA RAMSAMY Appellants

- and -

THE GOVENOR-GENERAL OF MAURITIUS, SIR RAMAN OSMAN THE PRIME MINISTER OF MAURITIUS, SIR SEEWOOSAGUR RAMGOOLAM THE SPEAKER OF THE LEGISLATIVE ASSEMBLY, SIR HARILLAL VAGHJEE

Respondents

CASE FOR THE RESPONDENTS

Record

1. This is an appeal from a judgment and order of the Supreme Court of Mauritius (Latour-Adrien, C.J., Garrioch, S.P.J. and Ramphul, J.) dated the 14th May, 1974, dismissing the petition of the Appellants. Final leave to appeal was granted, by the Supreme Court, on the 4th March, 1975. pp.31-49 p.52

2. By their petition, dated the 27th September, 1973, the Appellants alleged that vacancies existed for four seats in the Legislative Assembly, and had existed, respectively, since: the 20th July, 1972 (in the constituency of Curepipe Midlands); the 24th August 1972 (Triolet Pamplemousse); the 5th December 1972 (Riviere des Anguilles-Souillac); and the 1st January, 1973 (Belle Rose-Quatre Bornes). The first two Appellants claimed they were electors in Curepipe Midlands, and the third that he was an elector in Riviere des Anguilles-Souillac. The first Appeallant further claimed that he was entitled to stand as a candidate in any election in Mauritius. The Appellants alleged: that the Second Respondent intended to ask the pp.1-7

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Legislative Assembly to amend the Constitution of Mauritius; that, in bad faith and contrary to the provisions of the Constitution and the original provisions of the Representative of the People Ordinance 1958, he had delyed the holding of bye-elections; that delay had been obtained by mis-use of the Emergency Powers Ordinance 1968, (under which Regulations delaying the elections had been made); and that, unconstitutionally and in bad faith, the Second Respondent intended to ensure that the seats remained vacant until he had secured an amendment to the Constitution. The Appellants sought, inter alia, orders declaring certain Emergency Powers Regulations to be null and void; prohibiting the First Respondent from assenting to any Bill amending the Constitution; prohibiting the Second Respondent from introducing any amending Bill until the four vacancies were filled; and ordering the Third Respondent not to allow any debate or vote upon such a Bill.

pp.9/10

3. The Respondents, by their Answer (undated but filed the 22nd October, 1973), admitted the status of the Appellants: the fact that various Regulations were made under the Emergency Powers Ordinance; and the fact that bye-elections had thereby been postponed. They denied any bad faith, illegality or unconstitutionality, and asked for the Second and Third Respondents to be dismissed from the suit.

p.11

4. On the 5th November, 1973, the case came on for hearing. There was argument on points arising in limine (i.e. as to whether the action should be dismissed as against the Second and Third Respondents), and judgment was reserved.

pp.11-13

5. On the 9th November, 1973, being the day when a Bill was due to be Introduced into the Assembly, the Appellant applied ex parte for an interim injunction restraining the Respondents in terms of the orders sought on the petition. Rault, J. rejected the application. His Lordship said the Constitution clearly distinguished between the functions of the Judiciary and the Legislature. It was neither legal nor

reasonable for the Court to interfere with the internal business of Parliament. If the Court sought to prevent or delay the introduction of a Bill it would not be exercising a judicial power but usurping a legislative function.

6. On the 16th November, 1973, the Appellants filed an affidavit declaring that the Legislative Assembly had, since the filing of the petition, enacted a measure (the Constitution of Mauritius (Amendment) Act, 1973) which purported to abolish bye-elections. On the 3rd December, 1973, the Appellants obtained leave to amend their petition to seek an order that the new Act was null and void insofar as the bye-elections were concerned. On the 5th December, 1973, the Respondents filed an amended Answer in which they asked for certain paragraphs of the petition to be struck out by reason of the passage of the Constitution of Mauritius (Amendment) Act, 1973. Later (undated but filed on the 5th December, 1973), they further amended to ask for the petition to be dismissed by reason of the passage of the said Act.

pp.13/14

p.19

pp.19-21

p.21

7. The relevant statutory provisions, with their history, are set out as an Appendix to this Case.

8. On the 31st January, 1974, their Lordships delivered their interlocutory judgment. They said that, since the argument on the points arising in limine, the new Act had been passed. The Appellants had obtained leave to amend to challenge the validity of the Act. With the passage of the Act, any question that might arise with regard to the validity or effect of the Emergency Powers Regulations, or anything done under them, became subordinate to the main question whether or not the Act was valid. Their Lordships therefore did not propose to go into any other matter until they had heard the parties on the issue of the validity of the Act.

pp.22/23

p.23, l.22

9. On the 1st February, 1974, Ramphul, J. refused an application by the Appellants for leave to examine orally the First and Second Respondents.

p.24

10. On the 7th February, 1974, the Court

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heard evidence. The Appellants put in, through a court officer, the Supreme Court records in the
p.25 l.28 cases of Vallet v. Ramgoolam, No. 17064 of 1972,
p.26 l.3 and Mathooraming v. The Governor General, No. 17347 of 1973 (these are the exhibits A and B referred to at p.24, l.33). It would appear that the Appellants relied upon the evidence given in these two cases. The
p.26, l.3 court officers also put in (as exhibits C and D, see p.24, l.33) the two interlocutory judgments given in the present case on the 9th November, 1973, and the 1st February, 1974.

11. Mr. Jean Marc David, Chairman of the Electoral Supervisory Commission was called by the Appellants. He said a first draft of the Constitution of Mauritius (Amendment)
p.26, l.31 Bill was received by him, with an explanatory letter, from the secretary to the Cabinet, on the 6th November, 1973. He convened a meeting of the Commission for the 7th November. Before the meeting was held the Attorney-General advised him of certain contemplated changes to the Bill. Later a copy of the new draft was
p.27, l.10 received, and the Commission met again on the 8th and 9th February. Letters were sent to the secretary of the Cabinet, copies to the First Respondent, on the 8th and 9th February. The two letters written by
pp.49/51 the witness were exhibited as E and F. In cross-examination the witness said that amendments recommended by the Commission were accepted and
p.30, l.19 incorporated in the Bill. The Commission were concerned with the mechanics of what was proposed, not with matters of a political nature.

pp.31-44 12. Latour-Adrien C.J., and Garrioch S.P.J., delivered a joint judgment. Their Lordships said the Appellants had contended that the Constitution of Mauritius (Amendment) Act, 1973 was void as being in conflict with other provisions
p.31, l.25 of the Constitution and in violation of the tenants of true democracy. Alternatively, if the whole Act was not void, Section 5 of it was. The Appellants had brought in two previous
p.32, l.1 constitutional cases, partly, so it would appear, to demonstrate systematic bad faith by the Government in depriving citizens of their right to have bye-elections held, and partly to

draw attention to the menace to democracy inherent in the suppression of bye-elections. Their Lordships felt the Appellants' argument proceeded from wrong premises. In the previous cases the Courts had been asked to pronounce upon the validity of an Act which conferred upon the Executive a discretionary power to determine the dates of bye-elections, and upon subordinate legislation providing for the postponement of those bye-elections. The Court had held that the exercise of the discretionary power, and the subordinate legislation were subject to the test of good faith and reasonableness because the Constitution, as it then stood, required that the time-table for bye-elections should be worked out with good faith and reasonableness. The previous actions had failed because the evidence did not establish bad faith and undemocratic tendencies. These cases were of no assistance to the Appellants because what now fell to be considered was the validity of an Act amending the Constitution itself.

p.32, l.40
p.33, l.10
p.32, l.28
p.33, l.17

13. As to the validity of an Act amending the Constitution, the Court was concerned with two questions only, one of fact and one of law. The first was as to whether there had been compliance with the procedure which the Constitution required should be followed for amending the Constitution. The second was whether the Constitution permitted itself to be amended as the new Act purported to do. As to the first question, the new Act was one which, by the provisions of Section 47 of the Constitution, required the approval of three-fourths of the members of the Assembly. It was not contended that the Act did not have this approval, or that Section 47 had not been compled with. But it was contended that there was a further procedural requirement - the submission of the Bill to the Electoral Supervisory Commission and the Electoral Commissioner, under Section 41 (3) of the Constitution - and that this had not been sufficiently complied with. Their Lordships did not find it necessary to decide whether there was such a procedural requirement in the case of a Bill amending the Constitution because, having heard the Chairman of the Commission, they were satisfied that, assuming submission was necessary, there had been sufficient compliance.

p.34, l.3
p.35, l.22
p.38, l.19

14. Next, the Appellants had argued that the Act

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was invalid in that, insofar as it amended
p.36, l.30 the electoral system, it offended the overriding notions of democracy said to be enshrined in the Constitution. For such an argument to succeed it would be necessary to attribute some supra-constitutional principle to Section 1 of the Constitution. So to do would, for a start, bring about a
p.38, l.34 conflict with Section 2, which makes the Constitution itself the supreme law. The makers of the Constitution had intended to bestow a form of democracy akin to the
p.39, l.9 British model, but a distinction fell to
p.38, l.4 be drawn between ordinary and general legislative powers and constituent powers. The former powers were conferred by Section 45 of the Constitution, which provided that, subject to the provisions of the Constitution, Parliament might make laws for peace, order and good government. The latter powers stemmed from Section 47: if the requirements of that Section were complied with there was no restriction upon the power of Parliament to alter the Constitution itself. If Parliament altered the Constitution
p.40, l.5 so as to destroy the conception of democracy contained in Section 1, and did so by observing the requirements of Section 47, then the issue must be fought at the bar of public opinion: the Courts would be putting themselves above the law, and assuming powers they did not possess if they sought to determine such an issue.

15. A further submission was that the new
p.41, l.21 Act clashed with some constitutional provisions (unspecified) which the Act did not expressly amend. This submission could not succeed, for the amending provisions, if clear and explicit, must be taken as amending any inconsistent existing provision - always provided that the procedure followed was appropriate for the purpose of amending the inconsistent provision. Their Lordships therefore concluded that the Constitutional amendments effected by Sections 2, 3 and 4 of
p.41, l.42 the new Act were validly made.

16. It had also been submitted as a
p.41, l.45 secondary proposition that Section 5 of the new Act should be struck down as offending the prohibition against discriminatory laws (Section

16 of the Constitution). As to this the Constitution contemplated two methods for bringing an issue on the Constitution before the Courts. If a breach of the fundamental rights provisions contained in Chapter II was alleged, the procedure (by Section 17 (2) of the Constitution) was to be by way of plant with summons. If the complaint was as to some matter other than a breach of fundamental rights, then the procedure under Section 83 (1) of the Constitution was to be by way of petition. In both procedures, the complainant must set out what provision of the Constitution he alleged to have been contravened, and how it was a contravention in relation to him. The Appellants had chosen to move by way of petition; moreover they had not alleged breach of Section 16 or Section 41 (3). Thus, they were indicating that breach of Section 16 was not being relied upon. This omission by the Appellants was not a matter of mere form. It had resulted in matters touching Section 16 being put before the Court in a one-sided way, so that they had not been fully canvassed. Thus, although the Court had been able to rule upon the allegation of breach of Section 41 (3), it found itself unable to pronounce on the Section 16 issue. The Respondents had advanced two arguments in response to the Appellants' points on Section 5 of the new Act. The first was that there was no sufficient evidence to establish contravention of Section 16. Their Lordships had covered this point. The second argument was that, in any event, there was in force a proclamation under Section 18 of the Constitution which made it lawful to derogate from Section 16. This would raise a series of questions. The first was that it would be for the Appellants to show that Section 16 had been breached in relation to them. The second involved deciding whether, in enacting Section 5 (2), Parliament was exercising its constituent powers. The third would arise only if the Court concluded that Section 5 (2) was not enacted by use of the constituent powers. It was as to whether or not the Emergency Powers proclamation satisfied the requirements of the proviso to Section 18 (1) of the Constitution and, if so, whether Section 5 (2) came within the exception in Section 18 (1). For these reasons their Lordships felt they could not and should not deal with the Appellants' secondary proposition, which they overruled.

p.42, l.8

p.42, l

p.44, l.8

17. Ramphul, J., agreed with Latour Adrien, C.J., pp.45-49

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and Garrioch, S.P.J. On the argument that the new Act conflicted with Section 1 of the Constitution, his Lordship pointed out that Section 1 declared Mauritius to be a soverign state. The Courts were not concerned with where political sovereignty resided, but with
p.47, l.10 legal sovereignty. This, by the Constitution was vested in Parliament. Under Section 47 Parliament could revoke, modify or suspend the Constitution. As to the form of democracy envisaged by the Constitution, it was not open to the Courts to look beyond the Constitution itself. That form could be altered, but only by the procedure set out in the Constitution. Accordingly, the
p.47, l.28 conventions of the British constitution were of no relevance. His Lordship referred to Adegbenro v. Akintole and Another (1963) 3 W.L.R. 63.

18. It is respectfully submitted that, insofar as concerns the interlocutory judgment of the Supreme Court, it lay within the discretion of that Court to decide, as they did decide, to hear argument and rule upon the validity of the Constitution of Mauritius (Amendment) Act, No. 40 of 1973, before dealing with the issues raised in the original petition upon the Emergency Regulations. Given the nature and content of the 1973 Act, and the reliefs sought in the petition, no ground exists for challenging the exercise of that discretion. Further, it is submitted, the original issues had become hypothetical. If this submission is incorrect, and if there was a wrongful exercise of discretion, then, it is respectfully submitted, the issues raised as to the Emergency Regulations ought to be remitted to the Supreme Court, there to be ruled upon.

19. As to the final judgment, the Appellants raised three objections to the 1973 Act as a whole each of which alleged fraud of the Constitution. The first was that there had been no sufficient reference to the Electoral Commission, in breach of Section 41 (3), in a situation in which proper reference was required. The Supreme Court ruled that, assuming without deciding that reference to the Commission was a constitutional requirement, the facts disclosed sufficient compliance. It is respectfully submitted that the Supreme Court were right in

so ruling. If, contrary to the Respondents' submission, the evidence did not establish sufficient compliance, then, it is submitted, the Act is not of such nature as required it to be submitted to the Commission. Alternatively, it is submitted, the issue should be referred to the Supreme Court for a ruling as to whether an Act dealing with the electoral system itself, as the Act does, is subject to Section 41 (3).

20. The third objection was that the 1973 Act conflicted with certain, unspecified, sections of the Constitution which the Act did not expressly amend. It is respectfully submitted that the Supreme Court were correct in holding that, where an Act is clear and specific (as, by inference, they held this Act to be), then it must be taken as impliedly amending any inconsistent provision. The Act, it was conceded, was passed with the majority required by section 47 (2) of the Constitution. Such majority would suffice to amend any provision of the Constitution.

21. The second objection was that the 1973 Act was in conflict with Section 1 of the Constitution. It is submitted, respectfully, that the Supreme Court were wholly correct in their ruling on this point. The Supreme Court did not rule, as a fact, that the 1973 Act gave Mauritius an undemocratic constitution and that, as a matter of law, it thereby conflicted with Section 1. They ruled, correctly, it is submitted, that the democratic features of Mauritius were those contained within the four corners of the Constitution, and that the power to amend extended (provided due procedure was followed) to every provision of the Constitution without exception: thus, if an Act, duly passed, should expressly or by necessary implication amend Section 1, then Section 1 would duly stand amended. By way of example, neither Section 1 nor Section 2 is entrenched under Section 47 (2). If Parliament, as the sovereign body of the State enacted, in accordance with Section 47 (3), a provision declaring expressly or by necessary implication that Mauritius should cease to be a sovereign state, then Section 1 would stand amended, whether or not it was expressly referred to. If, contrary to the Respondents' submission, the Supreme Court were wrong in their ruling, and if Section 1 (and, by necessary implication, Section 2) are in some way supra-constitutional, then, it is submitted, the issue as to whether the 1973 Act does or does not conflict with Section 1 should

be referred to the Supreme Court for ruling thereon. Finally, the Respondents would point out, the Appellants did not refer to Section 1 in their petition, and they were thereby in breach of the Constitutional Rights (Application for Redress or Relief) Rules, 1967, Rule 5 (2) (a).

22. As to the subsidiary argument that Section 5 of the 1973 Act was invalid, it is submitted that the Supreme Court were right, for the reasons given, in overruling the proposition.

23. The Respondents respectfully submit that the judgments of the Supreme Court should be upheld, and this appeal dismissed, with costs, for the following, among other

R E A S O N S.

(1) BECAUSE the interlocutory making of the Supreme Court cannot be challenged

(2) BECAUSE assuming reference to the Electoral Supervising Commission to be necessary, there had been sufficient reference.

(3) BECAUSE any part of the Constitution may be amended by following the appropriate procedure, and such amendment may be express or by necessary implication.

(4) BECAUSE the judgment of the Supreme Court were correct, and ought to be affirmed.

GERALD DAVIES

A P P E N D I X

The Representation of the People Ordinance, No. 14 of 1958

Section 3.....

(2) The Electoral Commissioner shall have all the powers of the registration officer and the returning officer in any electoral area.

.....

(6) (a) It should be the general duty of the Electoral Commissioner to ensure that the register of electors is prepared and the elections are conducted in any electoral area in accordance with the provisions of the Ordinance and for that purpose he may -

.....

Section 40. "If the seat of a member of the Legislative Assembly becomes vacant otherwise than by reason of a dissolution of Parliament in pursuance of the provisions of Section 57 of the Constitution, the Speaker of the Legislative Assembly..... shall, as soon as is practicable after the occurrence of the vacancy and in any event within fifteen days thereof, so inform, in the case of a vacancy relating to the seat of a member representing a constituency, the Governor-General, or, in the case of a vacancy relating to the seat of a member to whom a seat was allocated in pursuance of the provisions of paragraph 5 of Schedule 1 of the Constitution, the Electoral Supervisory Commission."

Section 41. (until the 3rd November, 1972)

(1) The Governor-General, acting in accordance with the advice of the Prime Minister, shall -

(a) at any time within eighty-five days of occurrence of a vacancy

relating to the seat in the Legislative Assembly of a member who represents a constituency or within fifty-five days of a dissolution of Parliament in pursuance of the provisions of Section 57 of the Constitution, require the Electoral Supervisory Commission to issue a writ or writs of election for the purpose of filling the vacancy or electing a new Parliament, as the case may be; and,

(b) by order appoint the day of election and the day on which, if it becomes necessary to adjourn the election for the taking of a poll, the poll is to be taken.

(2) "The day of election appointed under subsection 1 (b) of this section shall not be less than five days nor more than twenty days after the day on which the writ is issued and the day on which a poll is to be taken shall not be less than fifteen days nor more than sixty days after the day on which the nomination of candidates for the election is received."

(3) .....

The Representation of the People (Amendment) Act, 1970. No. 24.

Section 2. "Section 41 of the Ordinance shall have effect as if, in subsection (2) the words "nor more than twenty days" were deleted.

Section 3 "This Act shall be deemed to have had effect on the first day of October, 1972."

The Emergency Powers Ordinance, No. 5 of 1968

Section 2 "In this Ordinance, unless the context otherwise requires - 'Law' means any rule of law, whether statutory or otherwise, except the Constitution and this Ordinance."

.....

Section 3. (1) During a period of public

emergency, the Governor-General may make such regulations as appear to him to be necessary or expedient for the purpose of maintaining peace, order and good government in Mauritius or any part thereof

(2) Without prejudice to the generality of the powers conferred by subsection (1) the regulations may, so far as appears to the Governor General to be necessary or expedient for any of the purposes mentioned in that subsection -

.....

(d) provide for amending any law, for suspending the operation of any law, and for applying any law with or without modification.

.....

4. Regulations made under section 3 may provide for empowering such authorities or persons as may be specified in the regulations to make orders and rules for any of the purposes for which the regulations are authorised by this Ordinance to be made, and may contain such incidental and supplemental provisions as appear to the Governor-General to be necessary or expedient for the purpose of the regulations.

5. Every regulation made under section 3 and every order or rule made in pursuance of such a regulation shall have effect notwithstanding anything inconsistent therewith contained in any law which is inconsistent with any such regulation, order or rule shall, whether that provision has or has not been amended, modified or suspended in the operation under this Ordinance, to the extent of such inconsistency having no effect so long as such regulations, order or rule remains in force."

<u>The Mauritius Independence Order, 1968</u>

Section 2 (1) In this Order -

"the appointed day" means the 12th March, 1968;

"the existing Assembly" means the Legislative Assembly established by the existing Orders;

.....

Section 8 (1) The persons who immediately before the appointed day were members of the existing Assembly shall as from the appointed day be members of the Assembly established by the Constitution as if elected as such in pursuance of section 31 (2) of the Constitution and shall hold their seats in that Assembly in accordance with the provisions of the Constitution:

Provided that persons who immediately before the appointed day represented constituencies in the existing Assembly shall so hold their seats as if respectively elected to represent the corresponding constituencies under the Constitution.

(2) Any person who is a member of the Assembly established by the Constitution by virtue of the provisions of subsection (1) and who, since he was last elected as a member of the existing Assembly before the appointed day, has taken the oath of allegiance in pursuance of section 49 of the Constitution established by the existing Orders shall be deemed to have complied with the requirements of Section 55 of the Constitution (which relates to the oath of allegiance).

(3) The persons who immediately before the the appointed day were unreturned candidates at the general election of members of the existing Assembly shall, until the dissolution of the Assembly next following the appointed day, be regarded as unreturned candidates for the purposes of paragraph 5 (7) of the First Schedule to the Constitution; and for those purposes anything done in accordance with the provisions of the First Schedule to the Constitution estgblished by the existing Orders shall be deemed to have been done in accordance with the corresponding provisions of the First Schedule to the Constitution.

(4) For the purpose of Section 57 (2) of the Constitution, the Assembly shall be deemed to have had its first sitting after a general election on the 22nd August 1967 (being the date on which the existing Assembly first sat after a general election).

The Constitution of Mauritius

Chapter I - The State and the Constitution

Section 1. Mauritius shall be a sovereign democratic State.

Section 2. This Constitution is the supreme law of Mauritius and if any other law is inconsistent with this Consitution, that other law shall, to the extent of the inconsistency, be void.

Chapter II - Fundemental Rights

.....

Section 16 (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

.....

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

.....

Section 17 (1) If any person alleges that any of

the foregoing provisions of this Chapter 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.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1), and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been avilable to the person concerned under any other law.

(3) The Supreme Court shall have such powers in addition to those conferred by this section as may be prescribed for the purppse of enabling that Court more effectively to exercise the jurisdiction conferred upon it by this section;

(4) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred upon it by or under this section (including rules with respect to the time within which application to that Court may be made).

Section 18 (1) Nothing contained in or done under authority of a law shall be held to be inconsistent with or in

contravention of section 5 or section 16 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Mauritius during that period;

Provided that no law, to the extent that it authorises the taking during a period of public emergency other than a period during which Mauritius is at war of measures that would be inconsistent with or in contravention of Section 5 or section 16 of this Constitution if taken otherwise than during a period of public emergency, shall have effect unless there is in force a Proclamation of the Governor-General declaring that, because of the situation existing at the time, the measures authorised by the law are required in the interests of peace, order and good government.

(2) A Proclamation made by the Governor-General for the purposes of this section -

(a) shall, when the Assembly is sitting or when arrangements have already been made for it to meet within seven days of the date of the Proclamation, lapse unless within seven days the Assembly by resolution approves the Proclamation;

(b) shall, when the Assembly is not sitting and no arrangements have been made of it to meet within seven days, lapse unless within twenty-one days it meets and approves the Proclamation by resolution;

(c) shall, if approved by resolution, remain in force for such period, not exceeding six months,

as the Assembly may specify in the resolution;

(d) may be extended in operation for further periods not exceeding six months at a time by resolution of the Assembly;

(e) may be revoked at any time by the Governor-General, or by resolution of the Assembly:

Provided that no resolution for the purposes of paragraphs (a), (b), (c), or (d) of this subsection shall be passed unless it is supported by the votes of at least two-thirds of all the members of the Assembly.

.....

Section 19 .....

(7) In this Chapter "period of public emergency" means any period during which -

(a) Mauritius is engaged in any war; or

(b) there is in force a Proclamation by the Governor-General declaring that a state of public emergency exists; or

(c) there is in force a resolution of the Assembly supported by the votes of a majority of all the members of the Assembly declaring that democratic institutions in Mauritius are threatened by subversion.

(Note: the public emergency is in force by virtue of a Proclamation, under (b)

(8) A Proclamation made by the Governor-General for the purposes of subsection (7)-

(a) shall, when the Assembly is sitting or when arrangements have already been made for it to meet within seven days of the date of the Proclamation, lapse unless within seven days the Assembly by resolution approves the Proclamation;

(b) shall, when the Assembly is not sitting and no arrangements have been made for it to meet within seven days, lapse unless within twenty-one days it meets and approves the Proclamation by resolution;

(c) may be revoked at any time by the Governor-General, or by resolution of the Assembly:

Provided that no resolution for the purposes of paragraph (a) and (b) of this subsection shall be passed unless it is supported by the votes of a majority of all members of the Assembly.

(9) A resolution passed by the Assembly for the purpose of subsection (7) (c) of this section -

(a) shall remain in force for such period, not exceeding twelve months, as the Assembly may specify in the resolution;

(b) may be extended in operation for further periods not exceeding twelve months at a time by a further resolution supported by the votes of a majority of all the members of the Assembly;

(c) may be revoked at any time by resolution of the Assembly.

Chapter V - Parliament

Section 35 (1) The seat in the Assembly of a member become vacant -

(a) upon a dissolution of Parliament;

(b) if he ceases to be a Commonwealth citizen;

(c) if he becomes a party to any contract with the Government for or on account of the public service, or if any firm in which he is a partner or any company of which he is a director or manager becomes a party to any such contract, or if he becomes a partner in a firm or a director or manager of a company which is a party to any such contract;

Provided that, if in the circumstances it appears to him to be just to do so, the Speaker (or, if the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) may exempt any member from vacating his seat under the provisions of this paragraph if such member, before becoming a party to such contract as aforesaid, or before or as soon as practicable after becoming otherwise interested in such contract (whether as a partner in a firm or as a director or manager of a company), discloses to the Speaker or, as the case may be, the Deputy Speaker the nature of such contract and his interest or the interest of any such firm or company therein;

(d) if he ceases to be resident in Mauritius;

(e) if, without leave of the Speaker (or, if the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) previously obtained, he is absent from the sittings of the Assembly for a continuous period of three months during any session thereof for any reason other than his being in lawful custody in Mauritius;

(f) if any of the circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election thereto by virtue of paragraph (a), (b), (d), (e), (g) or (h) of section 34:

(g) in the circumstances mentioned in section 36.

(2) A member of the Assembly may resign his seat therein by writing under his hand addressed to the Speaker and the seat shall become vacant when the writing is received by the Speaker or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, by the Deputy Speaker or such other person as may be specified in the rules and orders of the Assembly.

(3) If the seat in the Assembly of a member becomes vacant otherwise than by reason of a dissolution of Parliament, the vacancy shall, unless Parliament is sooner dissolved, be filled in accordance with the First Schedule to this Constitution.

(Note: Subsection (1) (g) and subsection (3) derive from the Constitution of Mauritius (Amendment) Act, No. 40 of 1973, section 2)

Section 38 .....

(2) There shall be an Electoral Supervisory Commission which shall consist of a chairman appointed by the Governor-General in accordance with the advice of the Judicial and Legal Service Commission and not less than two nor more than four other members appointed by the Governor-General, acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

Section 40 (1) There shall be an Electoral Commissioner, whose office shall be a public office and who shall be appointed by the Judicial and Legal Service Commission.

(2) No person shall be qualified to hold or act in the office of Electoral Commissioner unless he is qualified to practice as a barrister in Mauritius.

(3) Without prejudice to the provisions of section 41, in the exercise of his functions under this Constitution the Electoral Commissioner shall not be subject to the direction or control of any other person or authority.

Section 41 (1) The Electoral Supervisory Commission shall have general Responsibility for, and shall supervise, the registration of electors for the election of members of the Assembly and the conduct of elections of such members and the Commission shall have such powers and other functions relating to such registration and such elections as may be prescribed.

(2) The Electoral Commissioner shall have such powers and other functions relating to such registration and elections as may be prescribed; and he shall keep the Electoral Supervisory Commission fully informed concerning the exercise of his functions and shall have the right to attend meetings of the Commission and to refer to the Commission for their advice or decision any question relating to his functions.

(3) Every proposed Bill and every proposed regulation or other instrument having the force of law relating to the registration of electors for the election of members of the Assembly or to the election of such members shall be referred to the Electoral Supervisory Commission and to the Electoral Commissioner at such time as shall give them sufficient opportunity to make comments thereon before the Bill is introduced in the Assembly or, as the case may be, the regulation or other instrument is made.

(4) The Electoral Supervisory Commission may make such reports

to the Governor-General concerning the matters under their supervision, or any draft Bill or instrument that is referred to them, as they may think fit and if the Commission so request in any such report other than a report on a draft bill or instrument that report shall be laid before the Assembly.

(5) The question whether the Electoral Commissioner has acted in accordance with the advice of or a decision of the Electoral Supervisory Commission shall not be enquired into in any Court of law.

Section 45 (1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Mauritius.

(2) Without prejudice to the generality of subsection (1) of this section, Parliament may by law determine the privileges, immunities and powers of the Assembly and the members thereof.

Section 47 (1) Subject to the provisions of this Section, Parliament may alter this Constitution.

(2) A bill for an Act of Parliament to alter any of the following provisions of this Constitution, that is to say:-

(a) this section;

(b) sections 28 to 31, 37 to 46, 56 to 58, 64, 65, 71, 72 and 108;

(c) Chapters II, VII, VIII and IX;

(d) the First Schedule; and

(e) Chapter XI, to the extent that it relates to any of the provisions specified in the preceding paragraphs,

shall not be passed by the Assembly unless

it is supported at the final voting in the Assembly by the votes of not less than three quarters of all the members of the Assembly.

(3) A bill for an Act of Parliament to alter any provision of this Constitution (but which does not alter any of the provisions of this Constitution as specified in subsection (2) of this section shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than two-thirds of all the members of the Assembly

(4) In this section references to altering this Constitution or any part of this Constitution include references -

(a) to revoking it, with or without re-enactment thereof or the making of different provision in lieu thereof;

(b) to modifying it, whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise;

(c) to suspending its operation for any period, or terminating any such suspension.

Section 51 The Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the Assembly first meets after any election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the Assembly shall not invalidate those proceedings.

Section 57 (1) The Governor-General, acting in accordance with the advice of the Prime Minister, may at any time prorogue or dissolve Parliament:

Provided that -

(a) if the Assembly passes a

resolution that it has no confidence in the Government and the Prime Minister does not within three days either resign from his office or advise the Governor-General to dissolve Parliament within seven days or at such later time as the Governor-General, acting in his own deliberate judgment, may consider reasonable, the Governor-General, acting in his own deliberate judgment, may dissolve Parliament;

(b) if the office of Prime Minister is vacant and the Governor-General considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the Assembly, the Governor-General, acting in his own deliberate judgment, may dissolve Parliament.

(2) Subject to subsection (3), Parliament, unless sooner dissolved, shall continue for five years from the date of the first sitting of the Assembly after any election and shall then stand dissolved.

(3) The Parliament constituted on the coming into force of this Constitution shall (unless sooner dissolved under the provisions of subsection (1) of this section) not stand dissolved on the day on which it would have stood dissolved in pursuance of the provisions of subsection (2), and those provisions shall apply in relation to that Parliament as if it were constituted on the 31st July, 1971.

.....

(Note: the underlined words in subsection 2 and the whole of subsection 3 were added by the Constitution of Mauritius (Amendment) Act, 1969. Section 2)

Chapter VII - The Judicature

Section 76 (1) There shall be a Supreme Court for Mauritius which shall have unlimited jurisidiction to hear and determine any civil or criminal proceedings under any law other than a disciplinary law and such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) Subject to the provisions of section 77, the judges of the Supreme Court shall be the Chief Justice, the Senior Puisne Judge and such number of Puisne Judges as may be prescribed by Parliament:

Provided that the office of a judge shall not be abolished while any person is holding that office unless he consents to its abolition.

Section 80 (1) There shall be a Court of Civil Appeal and a Court of Criminal Appeal for Mauritius, each of which shall be a division of the Supreme Court.

(2) The Court of Civil Appeal shall have such jurisdiction and powers to hear and determine appeals in civil matters and the Court of Criminal Appeal shall have such jurisdiction and powers to hear and determine appeals in criminal matters as may be conferred upon them respectfully by this Constitution or any other law.

(3) The Judges of the Court of Civil Appeal and the Court of Criminal Appeal shall be the judges for the time being of the Supreme Court.

Section 81 (1) An appeal shall lie from decisions of the Court of Appeal or the Supreme Court to Her Majesty in Council as of right in the following cases -

(a) final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;

(b) where the matter in dispute on

the appeal to Her Majesty in Council is of the value of Rupees 10,000 or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of Rupees 10,000 or upwards, final decisions in any civil proceedings;

(c) final decisions in proceedings under section 17 of this Constitution; and

(d) in such other cases as may be prescribed by Parliament;

Provided that no such appeal shall lie from decisions of the Supreme Court in any case in which an appeal lies as of right from the Supreme Court to the Court of Appeal.

.....

Section 83 (1) Subject to the provisions of section 41 (5), 64 (3) and 101 (1) of this Constitution, if 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.

(2) The Supreme Court shall have jurisdiction, in any application made by any person in pursuance of subsection (1) or in any other proceedings lawfully brought before the Court, to determine whether any provision of this Constitution (other than Chapter II) has been contravened and to make a declaration accordingly:

Provided that the Supreme Court shall not make a declaration in pursuance of the jurisdiction conferred by this subsection unless it is satisfied that the interests of

the person by whom the application under subsection (1) is made or, in the case of other proceedings before the Court, a party to those proceedings, are being or are likely to be effected.

(3) Where the Supreme Court makes a declaration in pursuance of subsection (2) that any provision of the Constitution has been contravened and the person by whom the application under subsection (1) of this section was made or, in the case of other proceedings before the Court, the party in those proceedings in respect of whom the declaration is made, seeks relief, the Supreme Court may grant to that person such remedy, being a remedy available against any person in any proceedings in the Supreme Court under any law for the time being in force in Mauritius, as the Court considers appropriate.

(4) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by this section (including rules with respect to the time within which applications shall be made under subsection (1) of this section).

(5) Nothing in this section shall confer jurisdiction on the Supreme Court to hear or determine any such question as is referred to in section 37 of this Constitution or paragraph 2 (5), 3 (2) or 4 (4) of the First Schedule thereto otherwise than upon an application made in accordance with the provisions of that section or that paragraph, as the case may be.

"The First Schedule to the Constitution - Election of Members"

1. (1) Subject to paragraph 6 of this schedule, there shall be sixty-two seats in the Assembly for members representing constituencies and accordingly each constituency shall return three members to the Assembly in such manner as may be

prescribed, except Rodrigues, which shall so return two members.

(2) Every member returned by a constituency shall be directly elected in accordance with the provisions of this Constitution at an election held in such manner as may be prescribed.

(3) Every vote cast by an elector at an election shall be given by means of a ballott which, except in so far as may be otherwise prescribed in relation to the casting of votes by electors who are incapacitated by blindness or other physical cause or unable to read or understand any symbols on the ballot paper, shall be taken so as not to disclose how any vote is cast; and no vote cast by any elector at an election shall be counted unless he cast valid votes for three candidates in the constituency in which he is registered or, in the case of an elector registered in Rodrigues, for two candidates in that constituency.

2. (1) Every political party in Mauritius, being a lawful association, may, within fourteen days before the day appointed for the nomination of candidates at an election of members of the Assembly, be registered as a party for the purposes of that election and paragraphs 5 (7) and 6 of this schedule by the Electoral Supervisory Commission upon making application in such manner as may be prescribed:

Provided that any two or more political parties may be registered as a party alliance for those purposes, in which case they shall be regarded as a single party for those purposes; and the provisions of this schedule shall be construed accordingly.

(2) Every candidate in an election may at his nomination declare in such manner as may be prescribed that he belongs to a party that is registered as such for the purpose of that election and, if he does so, he shall be regarded as a member of that party for the purposes of that election and paragraphs 5 (7) and 6, while if he does not do so, he shall not be regarded as a member of any party for those purposes; and where any candidate is regarded as a member of a party for those

purposes, the name of that party shall be stated on any ballot paper prepared for those purposes upon which his name appears.

(3) Where any party is registered under this paragraph, the Electoral Supervisory Commission shall from time to time be furnished in such manner as may be prescribed with the names of at least two persons, any one of whom is authorised to discharge the functions of leader of that party for the purposes of the proviso to paragraph 5 (7) of this schedule.

(4) There shall be such provision as may be prescribed requiring persons who make applications or declarations for the purposes of this paragraph to furnish evidence with respect to the matters stated in such applications or declarations and to their authority to make such applications or declarations.

(5) There shall be such provision as may be prescribed for the determination, by a single judge of the Supreme Court before the day appointed for the nomination of candidates at an election, of any question incidental to any such application or declaration made in relation to that election; and the determination of the judge therein shall not be subject to appeal.

3. (1) Every candidate at an election of members of the Assembly shall declare in such manner as may be prescribed which community he belongs to and that community shall be stated in a published notice of his nomination.

(2) Within seven days of the nomination of any candidate at an election an application may be made by an elector in such manner as may be prescribed to the Supreme Court to reserve any question as to the correctness of the declaration relating to his community made by that candidate in connection with his nomination in which case the application shall (unless withdrawn) be heard and determined by a single judge of the Supreme Court, in such manner as may be prescribed, within fourteen days of the nomination; and the determination of the judge therein shall not be subject to appeal.

(3) For the purposes of this schedule, each candidate at an election shall be regarded as belonging to the community to which he declared he

belonged at his nomination as such or, if the Supreme Court has held in proceedings questioning the correctness of his declaration that he belongs to another community, to that other community; but the community to which any candidate belongs for those purposes shall not be stated upon any ballot paper prepared for those purposes.

(4) For the purposes of this schedule, the population of Mauritius shall be regarded as including a Hindu community, a Muslim community and a Sino-Mauritian community; and every person who does not appear, from his way of life, to belong to one or other of those three communities shall be regarded as belonging to the General Population, which shall itself be regarded as a fourth community.

4. (1) If it is so prescribed, every candidate for election as a member of the Assembly shall in connection with his nomination make a declaration in such manner as may be prescribed concerning his qualifications for election as such.

(2) There shall be such provision as may be prescribed for the determination by a returning officer of questions concerning the validity of any nomination of a candidate for election as a member of the Assembly.

(3) If a returning officer decides that a nomination is valid, his decision shall not be questioned in any proceedings other than proceedings under section 37 of this Constitution.

(4) If a returning officer decides that a nomination is invalid, his decision may be questioned upon an application to a single judge of the Supreme Court made within such time and in such manner as may be prescribed, and the determination of the judge therein shall not be subject to appeal.

5. (1) In order to ensure a fair and adequate representation of each community, there shall be eight seats in the Assembly, additional to the sixty-two seats for members representing constituencies, which shall so far as is possible be allocated to persons (if any) belonging to parties who have stood as candidates

for election but have not been returned as members to represent constituencies.

(2) As soon as is practicable after all the returns have been made of persons elected at an election as members to represent constituencies, the eight additional seats shall be allocated in accordance with the following provisions of this paragraph by the Electoral Supervisory Commission which shall so far as is possible make a separate determination in respect of each seat to ascertain the appropriate unreturned candidate (if any) to fill that seat.

(3) The first four of the eight seats shall so far as is possible each be allocated to the most successful unreturned candidate if any who is a member of a party and who belongs to the appropriate community, regardless of which party he belongs to.

(4) When the first four seats (or as many as possible of those seats) have been allocated, the number of such seats that have been allocated to persons who belong to parties other than the most successful party shall be ascertained and so far as is possible that number of seats out of the second four seats shall one by one be allocated to the most successful unreturned candidates (if any belonging both to the most successful party and to the appropriate community.

(5) In the event that any of the eight seats remains unfilled then the following procedures shall so far as is possible be followed until all (or as many as possible) of the eight seats are filled, that is to say, one seat shall be allocated to the most successful unreturned candidate if any belonging both to the most successful of the parties that have not received any of the eight seats and to the appropriate community, the next seat (if any) shall be allocated to the most successful unreturned candidate (if any) belonging both to the second most successful of those parties and to the appropriate community, and so on as respects any remaining seats any remaining parties that have not received any of the eight seats.

(6) In the event that any of the eight seats still remains unfilled, then the following procedure shall so far as is possible be followed

(and, if necessary, repeated) until all (or as many as possible) of the eight seats are filled, that is to say, one seat shall be allocated to the most successful unreturned candidate (if any) belonging both to the second most successful party and to the appropriate community, the next seat (if any) shall be allocated to the most successful unreturned candidate (if any) belonging both to the third most successful party (if any) and to the appropriate community, and so on as respects any remaining seats and parties.

(7) If at any time before the next dissolution of Parliament one of the eight seats falls vacant, the seat shall as soon as is reasonably practicable after the occurrence of the vacancy be allocated by the Electoral Supervisory Commission to the most successful unreturned candidate (if any) available who belongs to the appropriate community and to the party to whom the person to whom the seat was allocated at the last election belonged:

Provided that, if no candidate of the appropriate community who belongs to that party is available, the seat shall be allocated to the most successful unreturned candidate available who belongs to the appropriate community and who belongs to such other party as is designated by the leader of the party with no available candidate.

(8) The appropriate community means, in relation to the allocation of any of the eight seats, the community that has an unreturned candidate available (being a person of the appropriate party, if the seat is one of the second four seats) and that would have the highest number of persons (as determined by reference to the results of the latest published official census of the whole population of Mauritius) in relation to the number of seats in the Assembly held immediately before the allocation of the seat by persons belonging to that community (whether as members elected to represent constituences or otherwise), if the seat were also held by a person belonging to that community;

Provided that, if, in relation to the

allocation of any seat, two or more communities have the same number of persons as aforesaid preference shall be given to the community with an unreturned candidate who was more successful then the unreturned candidates of the other community or communities (that candidate and those other candidates being persons of the appropriate party, if the seat is one of the second four seats).

(9) The degree of success of a party shall, for the purposes of allocating any of the eight seats at an election of members of the Assembly, be assessed by reference to the number of candidates belonging to that party returned as members to represent constituencies at that election as compared with the respective numbers of candidates of other parties so returned, no account being taken of a party that had no candidates so returned or of any change in the membership of the Assembly occurring because the seat of a member so returned becomes vacant for any cause; and the degree of success of an unreturned candidate of a particular community (or of a particular party and community) at an election shall be assessed by comparing the percentage of all the valid votes cast in the constituency in which he stood for election secured by him at that election with the percentages of all the valid votes cast in the respective constituences inwhich they stood for election so secured by other unreturned candidates of that particular community (or, as the case may be, of that particular party and that particular community), no account being taken of the percentage of votes secured by any unreturned candidate who has already been allocated one of the eight seats at that election or by any unreturned candidate who is not a member of a party:

Provided that if, in relation to the allocation of any seat, any two or more parties have the same number of candidates returned as members elected to represent constituencies, preference shall be given to the party with an appropriate unreturned candidate who was more successful than the appropriate unreturned candidate or candidates of the other party or parties.

(10) Any number required for the purpose of sub-paragraph (8) of this paragraph or any percentage required for the purposes of sub-paragraph

(9) of this paragraph shall be calculated to not more than three places of decimals if it cannot be expressed as a whole number.

6. (1) Subject to sub-paragraph (2), where the seat in the Assembly of a member returned by a constituency becomes vacant the seat shall, as soon as possible after the occurrence of the vacancy, be allocated by the Electoral Supervisory Commission to -

(a) the most successful unreturned candidate who belongs to the community and to the party to which the member belonged at the time of the election; or

(b) where the vacancy relates to the seat of a member who is not regarded as a member of any party, to the most successful unreturned candidate (if any) who is not regarded as a member of any party but who belongs to the community to which the member belonged.

(2) Where the seat cannot be allocated under sub-paragraph (1) it shall be allocated to the most successful unreturned candidate (if any) who belongs to the community to which the member belonged, irrespective of the party to which he belongs.

(3) For the purposes of this paragraph the degree of success of an unreturned candidate of a particular community shall be determined in accordance with paragraph 5 (9) of this schedule.

(Note: Paragraph 6 was added by the Constitution of Mauritius (Amendment) Act, No. 40 of 1973. Section 3)

<u>The Constitution of Mauritius (Amendment) Act No. 40 of 1973</u>

Section 5 (1) Subject to subsection (2), if the seat in the Assembly of a member who represents a constituency has become vacant before the commencement of this Act, the vacancy shall be filled in accordance with paragraph 6 of schedule 1 to the Constitution.

(2) The seat which has become vacant following the resignation of the third member for Pamplemousses-Triolet shall be filled by that member upon his giving notice within one month of the

commencement of this Act to the Speaker of his intention to fill the vacancy failing which the seat shall be allocated to the most successful unreturned candidate belonging to the community and to the registered party to which the member returned, in relation to that seat at the last general election, belonged.

(3) Any writ for an election to fill any vacancy in the Assembly issued before the commencement of this Act shall cease to have effect.

(4) The persons who immediately before the commencement of this Act were deemed to be unreturned candidates at the general election of members of the existing Assembly shall, until the dissolution of the existing Assembly, be regarded as unreturned candidates for the purposes of schedule 1 to the Constitution.

G.N. 106 of 1967

1. These Rules may be cited as the Constitutional Rights (Application for Redress or Relief) Rules, 1967.

PART I

FUNDAMENTAL RIGHTS AND FREEDOMS

2. (1) Every application for redress under subsection (1) of section 17 of the Constitution shall be made to the Supreme Court by way of plaint with summons.

(2) The Rules of the Supreme Court, 1903, as subsequently amended, as applicable to plaints with summons before the Supreme Court shall apply mutatis mutandis to any plaint entered under the preceding paragraph.

3. There shall be set out in the plaint -

(a) the provision or provisions of Chapter II of the Constitution which the applicant alleges to have been or to be likely to be contravened in relation to him;

(b) the circumstances and details of the contravention alleged; and

(c) a statement that to the best of the applicant's knowledge and belief there are no adequate means of redress available to him under any other law.

4. A copy of the plaint shall be served on the defendant and on the Director of Public Prosecutions eight clear days before the sitting of the Court at which the summons shall be made returnable.

PART II

CONTRAVENTION OF OTHER PROVISIONS OF THE CONSTITUTION

5. (1) Every application for a declaration that any provision of the Constitution (other than Chapter II) has been contravened and that the applicant's interests are being or are likely to be effected by such contravention, shall be made by way of petition.

(2) The petition, which shall be duly signed by the applicant, shall be presented to a Judge at Chambers and shall contain the following particulars, namely

(a) the provision or provisions of the Constitution (other than Chapter II) which are alleged to have been contravened;

(b) the nature of the applicant's interests which are being or are likley to be affected by the contravention; and

(c) the precise nature of the relief sought by applicant.

(3) The Judge at Chambers shall thereupon fix a date on which the petition shall be mentioned before the Supreme Court to be fixed for trial.

6. A copy of the petition shall be served on the defendant and on the Director of Public Prosecutions eight clear days before the date fixed under paragraph (3) of the last preceding rule.

7. The procedure governing actions entered by plaint with summons as provided in the Rules of the Supreme Court, 1903, shall, as far as practicable apply mutatis mutandis to the hearing of a petition presented

under Rule 5 of these Rules.

PART III

LIMITATION OF ACTIONS

8. Except with the leave of the Supreme Court, on good cause shown to its satisfaction, no proceedings shall be instituted under these Rules, unless such proceedings are commenced within six months next after the act, whether of commission or omission, complained of.

The Regulations made under the Emergency Powers Ordinance, referred to in the Appellants' Petition, will be separately reproduced.

These are:

The Emergency Powers (Legislative Assembly Elections) Regulations 1972. G.N. 119 of 1972.

The Emergency Powers (Dates of Elections) Regulations 1973. G.N. 54 of 1973.

The Emergency Powers (Dates of Elections) Regulations No.2, 1973. G.N. 102 of 1973

So also will be separately reproduced Sections 1,2,3 and 4 of Act No. 40 of 1973, and the Schedule to that Act, (which Schedule amended the First Schedule to the Constitution).

PROCLAMATIONS

To proclaim a state of Public Emergency in Mauritius

P.15/17 (16th December, 1971)

Whereas I am satisifed that a state of public emergency exists in Mauritius.

Now, therefore, by virtue of the powers vested in me as aforesaid, I do hereby proclaim that a state of public emergency exists in Mauritius.

P.17/71 (20th December, 1971)

Whereas it is enacted by subsection (1) of Section 18 of the Constitution of Mauritius that the Governor-General may, by Proclamation, declare that,

because of the situation existing at the time, measures authorised by laws inconsistent with Section 5 or 16 of the Constitution are required in the interests of peace, order and good government;

And where I am satisfied that such measures are required;

Now therefore, by virtue of the powers vested in me as aforesaid, I do hereby proclaim that measures inconsistent with sections 5 and 16 are required in the interests of peace, order and good government.

(Proclamation 15/71 was approved by the Legislative Assembly on the 21st December, 1971 and remained in force

Proclamation 17/71 was approved by the Legislative Assembly on the 21st December, 1971 and was renewed periodically until the 16th November 1972. As a result of non-renewal it lapsed on the 15th May, 1973. A new Proclamation in like terms was made on the 23rd June, 1973, and was approved on the 26th June 1973. It lapsed after six weeks).

IN THE PRIVY COUNCIL No. 10 of 1975

ON APPEAL

FROM THE SUPREME COURT OF MAURITIUS

BETWEEN:

HENRI LINCOLN ANEER ABDULLAH and KRISENANDA RAMSAMY

Appellants

- and -

THE GOVERNOR-GENERAL OF MAURITIUS, SIR RAMAN OSMAN THE PRIME MINISTER OF MAURITIUS, SIR SEEWOOSAGUR RAMGOOLAM THE SPEAKER OF THE LEGISLATIVE ASSEMBLY, SIR HARILLAL VAGHJEE

Respondents

CASE FOR THE RESPONDENTS

MESSRS. CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London WC2A 3UL.