NEISIUS L. K v THE FINANCIAL CRIMES COMMISSION

2026 SCJ 42

JIC/931/2025

THE SUPREME COURT OF MAURITIUS

(Before the Judge in Chambers)

In the matter of:

Liinaa Kareena Neisius

Applicant

v

The Financial Crimes Commission

Respondent

JUDGMENT

On 09 April 2025, a search was effected at the applicant's premises by virtue of two search warrants following which documents and IT devices were secured. On the same day, a statement in defence was recorded from the applicant. On 28 April 2025, a second statement in defence was recorded from her, and on 29 April 2025 a provisional information was lodged against her before the District Court of Lower Plaines Wilhems for the offence of 'Conspiracy to commit money laundering'. She has denied the said charges. There was subsequently a motion to strike out the provisional charge which was set aside on 30 July 2025.

On 08 August 2025, learned counsel for the applicant wrote to the respondent requesting for the disclosure and/or communication of specific and identifiable documents, and a reminder sent on 15 August 2025. On 21 August 2025, the respondent informed learned counsel for the applicant that the request for disclosure could not be acceded to *'at this stage of the investigation'* in the light of the duty of confidentiality imposed by section 161 of the Financial Crimes Commission Act 2023 ('the Act').

It is against this background that the applicant initiated proceedings for the Master and Registrar to issue a summons calling upon the respondent to appear before the Judge in Chambers to show cause why:

> *"a. The Court should not review the five items of Targeted Disclosures in camera, and on due consideration of their contents and clear affidavit evidence pertaining to the genesis and provenance of the material; hear submissions in order to determine whether (inter alia):*
>
> *i. FCCA s. 161 applies as averred by the Respondent, and/or*
>
> *ii. If the Targeted Disclosure (in whole or part) materially undermines the FCC's case and/or assists my own; and/or*
>
> *iii. a "forthwith" Disclosure Order should not be made, and/or*
>
> *iv. whether Legal or Parliamentary Privilege may properly apply, or whether reasonable and proportionate mitigations should be preferred, to wit:*
> *1. redaction,*
> *2. gisting, or*
> *3. disapplication of any improperly asserted legal professional privilege.*

ALTERNATIVELY

> *b. the FCC should not communicate these Targeted Disclosures documents to me in good time prior to my next interview and as part of a fair inquiry process;*
>
> *c. an Order should not be made allowing me to obtain and/or inspect and/or examine the information and/or documents in possession of the FCC prior to my next interview, at a date and time, which the Honourable Judge decides; or*
>
> *d. any other Order that the Honourable Judge may deem fit and reasonable in the circumstances."*

The five documents in question are:

1. a copy of the minutes of STC Board meeting held on 28 or 29 June 2023;
2. Minutes of Cabinet meeting on 20 June 2023;
3. Minutes of Cabinet meeting on 13 July 2023;
4. STC internal computation demonstrating the fiscal benefits of the direct award; and
5. Any legal advice considered by the STC or the government in respect of the award of White Oils contract to Mercantile and Maritime Investment PTE Ltd.

On 27 August 2025, the Deputy Master and Registrar issued the said summons. On 10 September 2025, the respondent appeared and resisted the present application. On 30

September 2025, the respondent informed me that only one of the five documents was in its possession, namely the minutes of the STC board meeting on 28 June 2025.

The respondent has also raised objections in law to the effect that:

1. There is no element of urgency which is required for seeking the authority of Judge in Chambers;

2. The present application is misconceived in law since the applicant is seeking an order from the Judge in Chambers to direct the respondent's conduct of investigation.

The objections in law were argued together with the merits.

On the issue of urgency, it was argued on behalf of the applicant that the latter had to be provided with all the relevant information and documents so as to know what was being reproached of her. She had to be communicated with those documents in good time so as to afford her adequate time to prepare for her next interview and her defence. It was denied that the applicant had failed to act with celerity in making the present application.

On the merits of the application, it was contended that disclosure should be ordered to enable the applicant to understand the case against her thereby allowing her to participate meaningfully in the interview process and prepare her defence. It was also submitted that failure to disclose would constitute a breach of the respondent's duty to conduct its investigation in a fair manner. The applicant's case rested primarily on section 10(2)(c) of the Constitution contending that disclosure is an integral component of the right to a fair trial. Learned counsel for the applicant relied on **Maigrot v The District Magistrate of Riviere du Rempart & Ors** [2005 SCJ 106] in which it was observed that *'there are possible instances where the obligation to disclose may arise at an earlier stage which may be prior to committal proceedings…'*. He further relied on **Maigrot v The District Magistrate of Riviere du Rempart & Ors** [2004 SCJ 299], **Maigrot [2005] (supra), Edwards v United Kingdom (1992) 15 EHRR 417**, **Jespers v Belgium (1981) 27 DR 61, Krcmar v The Czech Republic ECHR 31 March 2000, Kuoplia v Finland ECHR 27 April 2000**, **The State v Ruhumatally** [2015 SCJ 361], **The State v Maigrot** [2024 SCJ 215] , **R v DPP, ex parte Lee [1999] 2 AER 938** and **R (on the application of Nunn) v Chief Constable of Suffolk Constabulary and Anor [2014] UKSC 37** to submit that the respondent's standpoint that protection under section 10(2)(c) of the Constitution arose only when an accused party faced a formal charge before a

Court of law was misconceived. The gist of his submission was that disclosure could arise prior to committal proceedings.

It was also submitted that the applicant was entitled to a fair and impartial enquiry into allegation raised by her in the light of such authorities as **Mamode v The Queen** [1991 SCJ 126] and **Amasimbi v The State** [1992 SCJ 178]. It was finally submitted that protection under section 10 of the Constitution must apply from the outset of the investigation as affirmed by **Mauritius Commercial Bank Ltd v Independent Commission Against Corruption and Anor** [2020 SCJ 338] and **Manraj and Ors v ICAC** [2003 SCJ 75].

On the other hand, the respondent relied on the case of **Rault v Rambert and Ors** [2009 SCJ 271] and **De Robillard and Ors v Domaine de la Grave Ltee and Ors** [2019 SCJ 135] to submit that there has been delay in the institution of the present application. It has been submitted that the applicant was aware of the existence of the documents since April 2025 but chose to make the application for disclosure only after four months. For the respondent, such lack of celerity was fatal to the application. As regards the second objection in law, it was argued with reliance on **Bhadain v ICAC** [2024 SCJ 256] that the separation of powers ought to be respected and the judiciary should refrain from interfering with the manner in which an investigation is conducted.

On the merits of the present application, the respondent argued that there was no statutory provision catering for the disclosure of evidence at the stage of investigation. Moreover, public interest favoured that no step should be taken which could prejudice the ongoing investigation. It was the submission of the respondent that all relevant evidence, including any documents would be shown to the applicant during her interview and, in any event, the applicant would be communicated with a full copy of a brief of both used and unused materials prior to her trial, should there be any decision to prosecute her. Relying on **Nunn (supra)**, the respondent submitted that the principle of fairness, which was central to duty of disclosure at all stages of the criminal process, did not require the same level of disclosure at every stage. It was also argued that any issue involving applicant's constitutional rights to a fair trial may be dealt with before the competent court in the event she faced any criminal proceedings.

I have duly considered all the affidavits together with the documents which have been annexed as well as both the oral and written submissions of both parties and the authorities in support thereof. At the outset, I note that disclosure is now being insisted only in respect of the minutes of the STC Board meeting held in June 2023. As for the other four documents, the applicant seeks an order so that the respondent obtains those documents. I can only observe that the

applicant has shifted its prayers from what was initially formulated in the *'Proecipe'*. I say so since, upon a careful reading of the '*Proecipe'*, it is found that there are two limbs, namely, to review the documents and secondly, to decide on the issue of disclosure as well as any duty of statutory confidentiality under the Act, privilege and whether those documents undermine the respondent's case. It has been candidly conceded by both parties that no submissions were made as to whether I have any power to review those documents, a question which, in light of the *'Proecipe'* should have been addressed first and foremost before any determination on the issue of disclosure.

Be that as it may, it is clear from **note 182** in **Dalloz, Codes Annotés, Nouveau Code de Procédure Civile –Art. 806**, referred to in **Malgache v The Mauritius Revenue Authority [2013 SCJ 126]** that, *'le juge des référés est incompétent pour statuer sur une demande qui ne présente aucun caractère d'urgence. .....*'. It therefore becomes imperative to deal with the issue of urgency since it is central to the jurisdiction of the *"juge des référés"*.

Article 806 of the Code de Procédure Civile provides –

> *«Dans tous les cas d'urgence, ou lorsqu'il s'agira de statuer provisoirement sur les difficultés relatives à l'exécution d'un titre exécutoire ou d'un jugement, il sera procédé ainsi qu'il va être réglé ci-après»*

As held in **Ramlagun v Gangaram [1978 MR 206]**, the said article has two limbs, namely cases relating to matters of urgency requiring speedy adjudication and secondly, issues arising in the execution of a judgment or a contract. It goes without saying that we are concerned with the first limb of article 806 in the present application.

The question as to whether there is urgency or otherwise has to be decided by the Judge in Chambers as explained in **note 193** from **Dalloz (supra)**:

> *"Jugé à cet égard: … qu'il appartient au juge du référé de décider souverainement dans quels cas l'urgence existe, si elle est assez sérieuse pour que le demandeur ne puisse recourir à une simple abbréviation de délai, et si la nécessité d'une prompte justice est commandée par un dommage imminent qui peut devenir irréparable."*

In addition to being '*un dommage imminent qui peut devenir irréparable'*, urgency under the first limb of article 806 bear the following essential characteristics, highlighted in **Dalloz (supra)** and referred in **Malgache (supra)**:

> *Note 183 "...L'expression 'urgence' est difficile à définir en termes précis; mais on l'interprète unanimement en ce sens qu'il y a urgence chaque fois qu'un retard entraînerait en fait un préjudice irréparable....."*
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> *Note 186. Jugé en ce sens: "...Que la procédure tout exceptionnelle du référé n'est ouverte que pour les cas d'urgence et non pour les cas qui requièrent seulement célérité – Chambéry, 9 mars 1910, D.P. 1913 2.24"*
>
> *Note 187 "...Qu'ainsi, pour qu'il y ait lieu à référé, il faut que l'urgence soit absolue, c'est - à - dire qu'il y ait un péril réel à attendre l'audience ordinaire du tribunal même à bref délai."*

It is also apt to refer to the following note from **Encyclopédie Dalloz, Répertoire de Procédure Civile et Commerciale, Vo. Référé Civil**, which further explains the notion of urgency under article 806:

> *"15. Certain arrêts de cour d'appel ont tenté de définir le mot "urgence". Garsonnet et Cezar-Bru proposent la définition suivante: L'urgence c'est la nécessité qui ne souffre aucun retard, "le péril tellement immédiat qu'aucune assignation, même à bref délai, ne pourrait le conjurer..." M. Wattine dit que l'urgence ne se définit pas, elle se constate et elle s'affirme. La Cour de cassation se borne à décider qu'il y a lieu à référé dans tous les cas d'urgence; que par cette disposition générale, le législateur a abandonné à l'appréciation discrétionnaire du juge des référés les cas divers qui peuvent déterminer sa competence."*

It is clear from the above that the applicant cannot invoke the jurisdiction of the Judge in Chambers under the first limb of article 806 of the *Code de Procédure Civile*. She has failed to establish any 'urgence' as contemplated under article 806, explained in **Dalloz** and constantly applied in a number of cases, *vide* **Ramlagun (supra), Malgache (supra)**, amongst others.

True it is that the duty of disclosure is an integral component of the right to a fair trial as submitted by learned counsel for the applicant. However, this duty which is derived from section 10(2)(c) of the Constitution under the right to be given adequate time and facilities for the preparation of one's defence, arises only when a person is charged with a criminal offence, consistent with section 10(1) of the Constitution, *vide* **P.K Jugnauth v The Secretary to the Cabinet and Head of the Civil Service Affairs & Ors [2013 SCJ 132]**. The applicant's contention that she cannot prepare herself for any subsequent interview to be conducted by the respondent in the course of an ongoing investigation and prepare her defence accordingly, cannot be equated by any stretch of legal imagination with an inability on her part to present her case before a trial court, should she ever be prosecuted for a criminal offence.

I find it most appropriate to refer to the following extract from **Jugnauth (supra)** which clarifies that there cannot be any urgency in the present application since the applicant will have ample means of redress in case she is charged with a criminal offence before a Court of law:

> *"In the present case it cannot be said that the plaintiff has no adequate means of redress under any other law. In the eventuality that a criminal charge is lodged against the plaintiff, he will enjoy all the safeguards under Section 10 in the course of the trial process. He can raise any alleged breach of the Constitution, including breach of Section 10, before the trial court. He will have a means of redress during the normal trial process. He will have full opportunity for instance in the course of a trial, if any to raise any of the issues that he is presently invoking namely that he has not been afforded adequate time and facilities for the preparation of his defence or that he has been in any manner deprived of a fair trial according to law in conformity with the provisions of the Constitution.*
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> *The safeguard of a fair trial in fact includes and encompasses the methods of investigation by the prosecuting authorities. It will be open to the plaintiff to aver, if such is his contention, that the investigation has not been fairly conducted and, if need be, to move for a stay of the proceedings against him, on that account. The following extract from the case of The State v Velvindron [2003 SCJ 319]is explicit on this issue –*
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> *"Although in practice the most common ground on which abuse of process is invoked is that based on delay, the alleged abuse may arise in various different forms. It may involve complaints about the methods used to investigate an*

offence (R. v. Hector & François [1984 1 AER 785]). It is significant to note, however, that it was stressed in that case that the trial process itself is equipped to deal with the bulk of complaints on which applications for stay of proceedings are founded....”

It therefore goes without saying that in the absence of a trial, the issue of an unfair enquiry does not arise. It is only when an accused party faces his trial that he may allege that the trial would be unfair since the enquiry was tainted with unfairness and may move for a stay of proceedings on ground of abuse of process. The question, therefore, whether an accused has been deprived of a fair hearing can only be determined in the light of the entirety of the proceedings, *vide* **Magee v the United Kingdom**, **Application no. 28135/95 para 41.**

Learned counsel for the applicant has referred to numerous local, English as well as Strasbourg jurisprudence. However, all of them are consistent with the settled principle that an accused party facing a criminal trial has the right to full disclosure in advance by the prosecution of all material evidence, whether for or against him. In England, the issue of disclosure is now governed by the Criminal Procedure and Investigations Act 1996, referred to by Learned counsel for applicant. However, the said Act clearly does not specifically address the period between arrest and committal, *vide* **Lee (supra).** Whilst it is true that **Lee (supra)** recommended some disclosure prior to committal proceedings, these principles originating from statutory provisions in force in England cannot be blindly imported. Second, save and except for some limited offences, we do not have the equivalent of a committal proceedings in Mauritius. A Preliminary Inquiry under section 44 of the District and Intermediate Courts (Criminal Jurisdiction) Act may come as close to a committal proceedings but this criminal process is limited to specific offences as murder and manslaughter, amongst others and money laundering offences do not require Preliminary Inquiry. In any event, disclosure prior to committal proceedings has been held to be restricted to very exceptional cases such as where the information disclosed could assist the accused in his bail application, to stay the committal proceedings for abuse of process or to submit that the accused ought to be committed for a lesser offence or not to be committed at all, *vide* **Lee (supra).**

In Mauritius, the issue before the Court in **Maigrot [2004] (supra)** was whether the plaintiff, who had entered an action seeking constitutional redress, was entitled to communication of the evidence which the prosecution intended to produce before the Preliminary Inquiry had started. Whilst it is correct to say that Caunhye J (as he then was) had observed in **Maigrot [2004]**, **[2005] (supra)** that there may be exceptional cases when disclosure prior to a Preliminary Inquiry might be consistent to the right to a fair trial, it is nevertheless observed

that disclosure prior to the Preliminary Inquiry was not ordered in the said case of **Maigrot [supra]**. Rather, a 'practical arrangement' was found to produce all documents at the outset of the Preliminary Inquiry and then to call witnesses subsequently, *vide* **Maigrot [2005] (supra).**

For the above reasons, the applicant therefore has not been able to show that the present application has all the characteristics of an *'urgence'*, and that she runs the risk of suffering irreparable prejudice as envisaged under article 806 which would warrant the intervention of the *Juge des référés.*

The application is therefore set aside, with costs.

I certify as to counsel.

M. I. A. Neerooa
Judge

This 23rd January 2026

For Applicant : Ms F. Mohidinkhan, Attorney-at-Law
Mr Y. Nazroo, of Counsel

For Respondent : Mrs D. Nawjee Jeeha, Attorney-at-Law
Mr M. F. K. Arzamkhan, of Counsel, together with,
Mr L. Nulliah, of Counsel