

**LEE WAI CHUNG L. L. C. & ANOR v THE INDEPENDENT COMMISSION
AGAINST CORRUPTION & ANOR**

2026 SCJ 302

Record No. 121339

THE SUPREME COURT OF MAURITIUS

In the matter of:

- 1. Lee Lip Cheong LEE WAI CHUNG**
- 2. Valerie Lee Kyook TENG HIN VOON**

Appellants

v

THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Respondent

In the presence of:

THE DIRECTOR OF PUBLIC PROSECUTIONS

Co-Respondent

JUDGMENT

This is an appeal against the judgment delivered on 04 February 2021 by the learned Judge sitting in Chambers in the application bearing Serial Number 252/2018 whereby she upheld the respondent's preliminary objection and set aside an interim order in the nature of an injunction granted on 01 March 2018 by the late Justice P. Fekna.

The said interim order restrained and prohibited the respondent from opening, accessing, or retrieving data from any of the items, namely six mobile phones and three pen drives, seized by the respondent on 31 October 2017 from the appellant No. 1's property situated at No. 9, De Courcy Street, Port Louis. The interim order was issued pending the determination of the issue of law concerning the legality of the seizure of the items mentioned above.

The four grounds of appeal read as follows:

“GROUNDS OF APPEAL

1. *The learned Judge was wrong to find that the preliminary objection of the respondent was well taken and it cannot be debarred from proceeding with the investigation process, as she failed to make the distinction between legally obtained evidence and illegally obtained evidence which was the crux of the complaint of the appellants.*
2. *The learned Judge ought to have found that the appellants should not have to wait for a possible trial and a determination on admissibility, inasmuch as the appellants were asking for the protection of the law against an investigative authority initiating an inquiry on the basis of illegally obtained material.*
3. *The learned Judge failed to appreciate that the only recourse of the applicants to protect their rights under article 9 of the Constitution is before the Judge in Chambers (article 806 Code de Procedure Civil and article 22 of the Civil Code) being the appropriate forum to decide the issues raised and it is in no way usurping the function of the Trial Court if ever there is a prosecution.*
4. *The learned Judge erred when she failed to make a finding as to the legality of the acts and doings of the respondent which were in issue before her and had she done so, she would have come to the conclusion that it was not open for the respondent, given the statutory framework enabling the respondent to inquire, to proceed with the inquiry into evidence unlawfully obtained.”*

Both the respondent and the co-respondent are resisting this appeal.

The facts of the case

The facts leading to the present appeal are as follows: On 31 October 2017, officers of the Independent Commission Against Corruption (ICAC) conducted a search on the premises of the appellant No. 1 at M43, La Tour Koenig, Pointe aux Sables and secured documents relating to alleged bookmaking activities. On the same day, a second search was carried out on the second premises of the appellant No. 1 at No. 9, De Courcy Street, Port Louis, in the presence of the appellant No. 2. During the second search, the respondent seized four mobile phones and three pen drives belonging to the appellant No. 1 as well as two mobile phones belonging to the appellant No. 2.

On 15 November 2017, the documents seized in the course of the search at La Tour Koenig, were returned to the appellant No. 1. However, the request by the appellants for the return of the seized items in the course of the second search was turned down by the respondent.

On 19 January 2018, the ICAC applied for an *ex-parte* application under section 14 of the Computer Misuse and Cybercrime Act 2003 to access, search and seize the data contained in the seized items and on 22 January 2018 an order was granted by the Judge in Chambers acceding to the request of the respondent.

Following the granting of the *ex-parte* application, the appellants lodged the present application and an interim order was declined on 27 February 2018. However, after hearing preliminary arguments, an interim order was granted by late Justice P. Fekna on 01 March 2018.

After considering the affidavit evidence on record, the learned Judge in chambers upheld the objection and held that that the Judge in Chambers was not the appropriate forum to decide the issues relating to criminal investigations and admissibility of evidence, and that the issues raised pertained to criminal investigations and the admissibility of evidence, which fall within the province of the trial court and that the illegality of the search at the place of the appellant No. 1 and the detention of items secured thereat are already the subject matter of a main case (vide SCR 117694–1/607/18). Consequently, the application was set aside and the interim order discharged.

We propose to deal with grounds 1, 2 and 4 together as the issues raised are interlinked.

Learned Senior Counsel for the appellants submitted on grounds 1, 2 and 4 that the learned Judge erred in upholding the respondent's preliminary objection and failed to make a finding on whether the respondent's officers acted lawfully during the initial search on 31 October 2017. He submitted that the central issue was not merely the admissibility of the evidence at a future trial but also whether the respondent could lawfully continue an investigation based on searches and seizures allegedly conducted in breach of section 52 of the Prevention of Corruption Act 2002, sections 3, 8, and 9 of the Constitution and article 22 of the Code Civil Mauricien. In support of his submissions that the search amounts to a manifest illegality, learned Senior Counsel referred to the case of **Wong Chai Wah v The Queen** [1960 MR 160], **State v Pandiyan** [1993 MR 169] and **Kuruma v R** [1955] A. C. 197 to illustrate the Court's discretion to exclude illegally obtained evidence.

He further submitted that it was part of the learned Judge in Chambers' jurisdiction to analyse the evidence and affidavits on record to determine whether the respondent had searched the premises of the appellant No. 1 without a search warrant and highlighted that in fact the warrant was only applied for on 19 January 2018 and granted on 22 January 2018. He further submitted that although the respondent referred to a "search order", yet it failed to produce same and stated that it had been "misplaced", thereby raising a serious issue regarding the legality of the search and seizure effected.

Learned Senior Counsel submitted that the balance of convenience is in favour of the appellants inasmuch as an injunction would not stifle a lawful inquiry but rather prevent one smeared with illegality. He submitted that the learned Judge's reliance on **Ramdawon Pretidev (Dr) v Bhuheekhan Nizam and Ors** [\[2012 SCJ 457\]](#) was misplaced since that case involves a "bogus" complaint rather than a clear breach of mandatory statutory law.

Learned Counsel for the respondent submitted on his part that the learned Judge was right in upholding the preliminary objection regarding what should be the appropriate forum to adjudicate on the issues raised as this would have resulted in usurping the functions of the criminal trial Court.

Learned Counsel for the respondent also submitted that the issue of access to data in respect of the seized items had already been determined by a valid Order dated 23 January 2018 and hence, rendered the matter *res judicata* inasmuch as the appellants had failed to challenge that Order before the same Judge who granted it, as established in the case of **Attorney General (The Honourable) v European Investment Ltd & Anor** [\[2009 SCJ 98\]](#).

Learned Counsel for the respondent further submitted that any grievance regarding the subsequent use of data obtained from the seized items would pertain strictly to the admissibility of evidence, which is a matter reserved for the trial court.

On the merits of the injunction, the respondent submitted that the appellants failed to demonstrate a clear legal right requiring urgent protection under the *référé* procedure. Learned Counsel for the respondent referred to the case of **Fun World Co. Ltd v The Municipal Council of Quatre Bornes** [\[2009 UKPC 10\]](#) and submitted that while the Judge in Chambers has a wide discretion, he is nonetheless limited by the law and the specific applications brought before him. Learned Counsel for the respondent further submitted that the legality of the search and the detention of items have already been raised in a separate main case. Learned Counsel concluded that the learned Judge was right to find that the appellants' rights

would be sufficiently protected through the trial process where the trial court will evaluate the distinction between legally and illegally obtained evidence.

Ground 1, 2 and 4

Upon the preliminary objection being raised and argued, although the learned Judge was alive to the distinction between legally or illegally obtained evidence, yet she did not embark on such an exercise inasmuch as she found that such a distinction should be raised before the appropriate forum, which according to her, is not before her sitting in chambers. She further found that trial Courts routinely determine such issues which eventually lead to a stay of proceedings.

We find that the learned Judge was right in not addressing her mind to the distinction alluded above inasmuch as it is only in the course of the trial process, at the time when the respondent will seek to adduce the items seized and data obtained therein, that the point as to the admissibility of those items will arise and hence the arguments as to whether such items have been legally obtained or not will take place. We further find that the learned Judge sitting in chambers was right to find that she was not being called upon to try the criminal case on its merits nor is she empowered to do so. Consequently, we find that the admissibility of the seized items should be considered as non-issues before her the more so that she was aware that the appellants had already lodged a main case bearing SCR 117694 – 1/607/18 before the Supreme Court.

At this stage, we find it apt to refer to the case of **Independent Commission against Corruption v Ramdoyal K & Anor** [\[2011 SCJ 44\]](#) wherein the Appellate Court summed up the position on the appropriate forum to decide on the legality of seized materials by investigative authorities whenever such matters are raised before the Judge in Chambers:

“... Court is only concerned with the propriety of the summons and not with questions relating to the admissibility of any item of evidence which the witness may be called upon to give. Such questions can only be properly decided by the trial Court within the context of the case before it.”

It is clear to us, upon applying the above principles, that, although the Learned Judge was ultimately right to reject the application inasmuch as no sufficient cause had been shown why the two “summons to witness” should be set aside, she however erred in examining questions which pertained to the admissibility of evidence, notably the disclosure of evidence having regard to the obligation of confidentiality arising under section 81(2) of the Act. Upon adopting that erroneous approach, she unduly made pronouncements on issues which should have been left to be decided by the trial Court, including the interpretation and application of section 81(2) of the Act.” [Emphasis ours]

We also find it appropriate to refer to an extract from the case of **Ramdawon Pretidev (Dr)** (supra) wherein the learned Judge sitting in Chambers whilst referring to the dicta in **Dookhony V. G. v The Commissioner of Police** [\[2002 SCJ 182\]](#), **Gaffoor A. C. A. v The Commissioner on Drugs and Money Laundering Assets and Anor** [\[2002 SCJ 283\]](#) and **Gaffoor Abdool Cader Abdoul v The Commissioner on Drugs and Money Laundering Assets and Anor** [\[2005 SCJ 140\]](#), had this to say in respect of the principle which is equally applicable to all institutions, namely, that they:

“... have, by law, a function to fulfil, and which should not be unduly hampered in the fulfilment of such a function. The applicant cannot expect, by the simple device of lodging a civil case in Court, to obtain an interlocutory order from the Judge in Chambers preventing the Medical Council from exercising a function devolving upon it by law pending the determination of the civil case.”

We therefore conclude that the learned Judge could not have found that the respondent should be debarred from fulfilling its duties and obligations under the law. We further find that whether the respondent has acted rightly or wrongly, is a matter to be determined in the course of the trial, at the stage of the production of the seized items.

Grounds 1, 2 and 4 therefore fail.

Ground 3

The appellants here reproach the learned Judge of having failed to conclude that in applying to the Judge in Chambers they were in effect seeking to protect their rights under “*article 9 of the Constitution*”.

Learned Senior Counsel submitted that the appellants should not be forced to wait for a potential trial which will determine the admissibility of the search and items secured on 31 October 2017 without a search warrant in order to seek the immediate protection of the law against an investigation initiated on illegal grounds.

He further submitted that the learned Judge failed to appreciate the broad powers she has as a Judge sitting in Chambers to grant an urgent relief under section 76(1) of the Constitution, sections 15 and 16 of the Courts Act and also article 806 of the Code de Procédure Civil which is a freestanding instance designed for urgency and the protection of clear legal rights. According to him, had the learned Judge exercised such powers, she would not have usurped the trial court's functions.

Whilst we agree that a litigant can seek protection of his rights before the Judge in Chambers, yet we find that since the issues raised before the learned Judge were so

intrinsically linked to the admissibility of the seized items, she had no choice than to conclude the way she did.

We therefore find that the learned Judge was right to conclude that she was not the appropriate forum to decide on the issues raised before her.

Ground 3 also fails.

Given our findings under all the four grounds, we therefore conclude that the findings of the learned Judge on the issues raised before her were correct and need not be disturbed by us.

All the grounds of appeal having failed, we consequently dismiss and set aside the present appeal with costs.

G. Jugessur-Manna
Judge

M. Naïdoo
Judge

14 July 2026

Judgment delivered by Hon. M. Naïdoo, Judge

For Appellant	:	Mr. N. Appa Jala, Senior Attorney Mr. G. Glover, Senior Counsel Mr. A. K. Ujoodha, of Counsel
For Respondent	:	Ms. B. M. Chattoo, Attorney-at-Law Ms. P. Bissoonauthsing, of Counsel
For Co-Respondent	:	Ms. K. Parson, Senior State Attorney Ms. A. D. Ramdin, Deputy Director of Public Prosecutions