

SEYCHELLES / JUDGMENT

Pierre v Benoit (CS 109 of 2023)

[2024] SCSC 54 (22 May 2024)

[2024] SCSC 54

COURT

Supreme Court

CASE / FILE NUMBER

CS 109 of 2023

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PILLAY J:

The Applicant seeks an order for the Director of Civil Status to remove the Applicant's name from the child's birth certificate.

The Applicant's evidence is that the Respondent is a friend. They were in a relationship from which a child was born on 31st October 2018. The child's birth was registered as evidenced by the certificate of birth. The Applicant however denies that the child is his as he was not there during the pregnancy. He had a DNA test done which shows that he is not the father of the child. He therefore seeks an order of the Court to exclude his signature on the child's birth certificate.

The Respondent has no objections to the grant of the order.

Section 100 of the Civil Status Act provides that:

A judge may, upon the written application of the Chief Officer of the Civil Status or any party, order the amendment without any fee, stamp or registration due of any act whenever such judge shall be satisfied that any error has been committed in any such act or in the registration thereof. Nothing herein contained shall prevent any interested person from asking by action before the Supreme Court for the rectification or cancellation of any act.

The first limb of section 100 provides for amendments to any act upon being satisfied that an error has been committed in such act. On the second limb it provides for any interested party to seek the rectification or cancellation of any act.

The application as far as I can see does not seek to amend, rectify or cancel any act. Nor does it seek a declaration that the Applicant is not the father. What counsel seeks is that the applicant's name be removed from the child's birth certificate on the basis that the result of a DNA test conducted shows that he is not the father of the child. Learned counsel however insists that his application is grounded in section 100 of the aforementioned Act.

The Court of Appeal in *Mervin Jezabel Barbe v Chief officer of Civil Status* (SCA 8 of 2015) [2017] SCCA 23 (10 August 2017) considered the case of *In Re An Infant and in Re Civil Status Act* [1984] SLR 132, 133 where it was held:-

“although section 100 of the Civil Status Act enabled the rectification of an error in the act of birth or in the registration of birth, it did not prevent any interested party from asking by action before the Supreme Court for the rectification or cancellation of the act of birth.”

The Court further noted the findings in *In Re An Infant and in Re Civil status Act* that :-

“a course was still open for the applicant to ask the Court to rectify the act if he can prove that his acknowledgement was false or for the husband of the child's mother to disavow paternity of the child.”

In *In Re An Infant and in Re Civil Status Act* [1984] SLR 132, 133 the child was acknowledged by the father while the mother was still lawfully married to a third party. An application was filed under section 100 of the Civil Status Act asking the Court to rectify the act of birth by deleting the Applicant's name from it and substituting the Respondent's husband's name.

The Court agreed with the Respondent that the officer of the Civil Status had acted correctly as there was no error as such on the act of birth. However, the Court drew the attention of the Respondent to the express provision of section 100 in the last sentence to the effect that ‘nothing herein contained shall prevent any interested person from asking by action before the Supreme Court for the rectification or cancellation of any act.’

The Court went on to find as follows:

The applicant has an interest in the term of Article 339 supra to bring the action before the court for rectification of the act of birth. According to Planiol's *Traite Elementaire de Droit Civil* No. 1490 the person acknowledging the paternity is a person authorised to contest the acknowledgement. Therefore, although section 100 of the Civil Status Act has no application to this case the applicant is entitled to come to court to ask that the act of birth be rectified. However, the French authorities would seem to allow the acknowledger to attack the acknowledgement when it is false.

In as much as the drafting of the Application may leave a lot to be desired, it is the view of this Court that the Applicant should not be penalised for those laxities. More so since the Respondent is not objecting to the Application and concedes that the Applicant is not the father of her child.

However, it is clear that the Application cannot succeed under the first limb of section 100 above as there is no error alleged in the act of birth. It falls within the second limb whereby any person with an interest can challenge the acknowledgment. The Applicant being the person who acknowledged the child as his has sufficient interest pursuant to section 100. In addition, there is DNA result that attests to the Applicant not being the father of the child. The DNA result showing that the child is not that of the Applicant to my mind meets the requirement in *Re An Infant* and in *Re Civil Status Act* [1984] SLR 132, 133 that the acknowledger may attack the acknowledgment when it is false.

In the circumstances the Application is granted on the basis of the second limb of section 100 of the Act.

Accordingly, I order the Chief Officer of the Civil Status to rectify the act of birth of Drey Nathan Mikael PIERRE and remove the Applicant's name from the child's birth certificate.

The Order is to be served on the Chief Officer of the Civil Status.

In view of the nature of the case no order is made for costs.

Signed, dated and delivered at Ile du Port on

Pillay J

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