

SEYCHELLES / JUDGMENT

MF v LM (MC 83 of 2024) [2024]

SCSC 219 (26 March 2024)

[2024] SCSC 219

COURT

Supreme Court

CASE / FILE NUMBER

MC 83 of 2024

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SLIPRiV11<: COLDU' OF SEYCHELLES Not Reportable 1 Redact Reportablel r2025] MC 83/2024

Petitioner In the matter of': (rep, by Joshua Revkra) And by Respondent In the presence of the ATTORNEY (;r':NLI~AL in its capacity (absent/unre />esc n/e(/) as Min ist crc Puhliqlle Neutral Citation: Before: Summary: Heard: Delivered: (:!J('~)/2(J:24) [2025[(26 March 2025), . I Carolus Appointment 19 lcbbruary 26 March 2()25 01 guardian 202,") Sectioll 394 Civil Code ofSeycheJJes Act. ORDER A, The petition is dismissed, B, ror the avoidance ofdouht, the l'ctitioncr ,IS the survi , ing parent olher minor SOil is the gl~ll'(li:lll o lthc said in terms o lArticlr :)<)1 ofthe Civil Codc olSeychelles Act, 2020, IULLING CAROLUSJ [1] - (hereinafter referred to as the Petitioner) has applied to this Court lor an Order appointing her as the guardian of her minor son (here inaner rc ICITl'cito ,IS till' tV! iIHl r (' h iIll), The Pet ition is su pported by an Affidavit sworn by the Petitioner. Oihc I support illg documents were also filed in the registry of the Supreme born on 23J'd July 2016 Court. [2] The facts of this ease <ISaverred in the l'ctition and Affidavit in support thereof are that the mother and father or the [VIiuor Child (Ire the Petitioner and respectively, This is borne out by the Certificate of Birth of the Minor Child exhibited. The parents of the Minor Child were not married, The said (hereinafter referred to as the Deceased) passed away on 2JJ'd November ~(J 18 tiS SI'lOlVII by his Death Certificate which is exhibited, The Petitioner avers that the M inor Chi ld has been in her custody, care and control and that that she has been solely providing lor him since the death of the Deceased, She avers that she is able to continue to take care olall his needs, [3] She <Ivers that it is necessary <Inti in till' hcst interests ofthe Minor Child that she is formally appointed as his legal guardian so as (0 enable her to legally act on his behalf, and to allow for unencumbered travel and prevent other legal impediments, [4] The Petitioner avers that she is able and willing to be appointed as, and to carry out the duties of. the lcg,II guardian of' till: MinOl' Child and is not subject to any legal incapacity which prevents IIC! lron h'l'illg so appointed. [5] In terms or the Pciition she Pl,I:'>Stile Court guardian 01' the Minor Child: <1nd f'OI' such further Orders for an Order appointing her as the sole legal as this Court deems fit in the circumstances o lthis case. [6] The Auorney Genera! in his capacity tis Minisiere Publique was notified of the Petition but did not put ill un appearance at the hearing of the petition .. [7] At the hcaruu; the l'ctitioucr tesli lied 111~11 she works as a at the and that with her salary and the Minor Child's semi orphan benefit she IIHlll<lges to pro , ide Ill!

him, The Petitioner and the Minor Child live in a bedsit room in the Petitioner's mother's house both of which are located on her mother's land, her brother also lives with her mother, and they both help her with the Minor Child when there is a need. The Minor Child's paternal grandmother also assists. [8] The Petitioner further testified that the deceased was an officer and is entitled to compensation for his years of service. As such, upon his death, the Minor Child as his legal heir became entitled to such compensation. The Petitioner was advised by the court that a guardian must be appointed to accept the compensation on behalf of the Minor Child. [9] The legal provision of the Code of Seychelles applicable to guardianship of minor children is Article 391 of the Civil Code, which provides that "if a minor is under the guardianship of the father or mother, and if therefore the father or mother dies, it follows that the surviving parent remains as the sole guardian, unless of course the deceased parent was for some reason the sole guardian which is not the case here. In the present case, the father of the child has died and the mother who is the surviving parent has sole guardianship of the child. [10] Since the amendments brought by the Civil Code of Seychelles Act, 2020, guardianship of natural children is different from that of legitimate children. Previously, under the Civil Code of Seychelles Act, 1970, Article 394 alinea 1 provided that: "If children have a father or mother, and if the father or mother dies, the surviving parent shall become guardian of the child in the same manner as legitimate children have both recognised the child, and if the father or mother dies, the surviving parent shall become guardian. [11] Previously therefore, where the father or mother of a natural minor child had recognised that child, and if they died, there was a need and it was the practice, for the surviving parent to be declared as the guardian of the child upon application made to the court, for the surviving parent to be able to represent the child in legal or other matters and to administer the child's property. With the change of the law, there is no longer a need to do so, unless as stated, the deceased parent had sole guardianship, which is not the case here. Hence there is no need for the mother of the Minor Child to be appointed as his guardian for her to be able to accept the compensation payment on his behalf. As the Minor Child's guardian she has a duty to protect the interests of the ward (Article 416) and administer his property, [12] In the circumstances and for the reasons given above, I dismiss the petition, [13] For the avoidance of doubt, it seems repeating, still living that, the Petitioner parent or her minor is the guardian son of the said terms of Article 391 of the Civil Code of Seychelles Act, 2020, Signed, dated and delivered at the court on 11 March 2025, Carolus J

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