

SEYCHELLES / JUDGMENT

Ex parte Vidot (XP 19 of 2024) [2024] SCSC 127 (29 July 2024)

[2024] SCSC 127

COURT

Supreme Court

CASE / FILE NUMBER

XP 19 of 2024

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SUPREME COURT OF SEYCHELLES

Reportable

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[2024]

Ex Parte 19/2024

EX-PARTE: CLAVETTE GINETTE VIDOT

(rep. by Karine Dick)

Neutral Citation:

Before:

Summary:

Heard:

Delivered:

Ex Parte Clavette Ginette Vidot (Ex-Parte 19/2024) [2024]

.....

Pillay J

Declaration of qualifying relationship

July 2024).

(

29th July 2024

ORDER

I hereby declare that the Petitioner was in a qualifying relationship with the deceased the

..

[1]

late Antoine Daniel Adonis also known as Daniel Adonis and as such she is a surviving

partner to a qualifying relationship within the meaning of Article 731 and 745 of the Civil

Code of Seychelles, 2020.

[2]

Copy of this judgment

is to be served on the Curator.

JUDGMENT

PILLAY J: [1] The Petitioner seeks an order of the Court declaring her to be in a qualifying relationship with the late Antoine Daniel Adonis also known as Daniel Adonis. [2] Her Petition is supported by an affidavit in which she avers that she is in a common law relationship with the late Antoine Daniel Adonis also known as Daniel Adonis "the deceased" who died in Seychelles on 5th March 2023. She further avers that the deceased and herself co-habited for 39 years at Anse De Genets, Pointe Larue, Mahe, Seychelles. She further avers that during those years that she and the deceased spent together they did not conceive any children but he took care of the Petitioner's only son Patrick Michel Vidot .who was 12 years old at the time that they met. The Petitioner avers that the deceased has a legitimate daughter Jane Audray Daniella Adonis who left Seychelles in 2003 to go and study in France but the Petitioner is unaware of her address. She further avers that the deceased owned a vehicle with plate number S1061 0 and had an account with Seychelles Credit Union. The Petitioner avers that she wishes to be appointed as Executor of her late partner's estate and as such had been advised that she needed to be declared to be in a qualifying relationship with the deceased. [3] The Petitioner opted to testify and confirmed the averments in her affidavit. She corrected however that subsequent to her filing the affidavit the deceased's daughter reached out to her and was present with her in Court on the day she gave her testimony. j \ Indeed, the step- daughter was present in COUli and supported the evidence of the Petitioner as did the Petitioner's son. [4] The issue for this Court is to consider whether the Petitioner meets the criteria in law to be granted an order declaring her to be in a qualifying relationship with the deceased . • • J [5] At first glance there is an issue with such application as the relationship is not in subsistence anymore with the passing of the deceased. To my mind what is sought is for the Petitioner to be declared as the surviving partner of a qualifying relationship. [6] In any event, what is a qualifying relationship? [7] Article 260 of the Civil Code, 2020 as amended by Act 25 of 2021 provides as follows: (1) In this code, a qualifying relationship means either a marriage, or a domestic relationship between two persons of full age and capacity characterised by stability and continuity, and to which there is no legal impediment. (2) Factors which give rise to a presumption of stability and continuity include that there is a child born of the relationship or the parties have acquired property in their joint names. What rights do survivors to a qualifying relationship have upon death of their partner? Article 731 of the Civil Code, 2020 as amended by Act 25 of 2021, provides that: The succession devolves upon the descendants of the deceased, collateral accordance-with the rules of this Code. relatives and the surviving partner the ascendants, to a qualifying relationship the in Article 745 of the Civil Code of Seychelles, 2020 as amended by Act 25 of 2021, provides as follows: (a) Where the deceased or (1) collaterals within the third degree inclusive or descendants of nephews or nieces, a surviving partner to a qualifying relationship takes the movable property of the deceased and one half of the remainder of the succession leaves any descendants, ascendants . ~ \ l] With the above in mind and the evidence on file it is clear that the Petitioner was in a qualifying relationship with the deceased. As such she is entitled to inherit as per Article 745 of the Civil Code above. 2] Now the reason she seeks a declaration that she is the surviving partner to a qualifying relationship is

as a result of a purported request of the Curator when she sought to be appointed as executrix to the estate of the deceased. [3] On the evidence deceased only had moneys in a bank account and a vehicle. [4] Article 721 of the Civil Code of Seychelles, 2020 provides as follows: (1) Where a succession includes immovable property, the succession vests in an executor. (2) Where a succession includes no immovable property, as of right in the persons entitled under article 731, subject discharge all debts of the succession. the succession vests to the duty to (3) Where the Republic takes the succession under this article, the Republic shall be seised of the property by order of the court. [15] Article 774 of the Civil Code of Seychelles, 2020 as amended by Act 25 of 2021, provides as follows: Where a succession consists of movable property only- (a) it may be accepted purely and simply or subject to the benefit of inventory,' or (b) the heirs and legatees may, by notarial agreement appoint an executor, which case the distribution will proceed as if in the succession included immovables as well as movables. Such agreement shall be registered at the Mortgage and Registration Office and as soon as possible thereafter a notice of the appointment shall be published in the Gazette. j ~..)" (c) the Curator may appoint an executor on the application of any interested party. [16] Article 516 of the Civil Code provides that: (1) Property is either immovable or movable. (2) Property which is not immovable is movable. [17] Article 517 of the Civil Code provides that: (1) Property immovable by nature is- (a) land and buildings; (b) things fixed to land: (c) growing crops and plants,' (d) fruit and flowers attached to plants growing in the land,' (e) things fixed to a building or which form part of a building. (2) Property immovable by destination is- (a) livestock on land by virtue of a contract for the cultivation of the land; (b) animals and things provided by the owner of the land or building for the use or exploitation of such property,' (c) . things on land or in a building necessary for the use or exploitation of that land or building or industry or manufacturing on that land. (3) Property immovable by reason of the subject-matter to which it relates is- (a) usufructs of immovable property,' (b) easements,' (c) actions to recover immovable property. (4) Items are fixed if they cannot be removed without breakage or deterioration or breaking or damaging the land or part of the building to which they are fixed. [18] Article 518 of the Civil Code provides that; (1) Natural produce is that which is produced naturally of the soil and includes the young of animals. (2) Agricultural produce is the product of land obtained by cultivation. [19] Clearly on the basis of the above articles, moneys in a bank account and a vehicle are movable property. Hence, the deceased only having movable property, in my view the position in the case of In tile matter of tile Estates of the late Louis Joseph Maxime Larue and Emmeline Beronis Larue Nee Pool (MC6812018) {2018} sese 8325 (24 November in 2018) is no necessity for appointment applicable. There of executors remains circumstances where the deceased leaves behind no immovable property. [20] Section 23 of the Curatelle Act, 2021 provides in part that: (1) (2) The appointment of testamentary executors shall be confirmed by the Curator. If the succession consists of immovable property, or of both immovable and movable property, and if the testator has not appointed a testamentary executor or if an executor so appointed has died or !f the deceased has left IJ,O will, the Curator shall appoint an executor, at the instance of any person having a lawful interest. (underlining my own) [21] In the case of Ex parte Cesar & Ors (XP 204 of 2019) [2022]JSCSC 367 (24 March 2022) His Lordship Adeline J considered the meaning of lawful interest as follows: In the case of Essack vs. Fernandez (16 of 2005) [2000] SCCA 18 (28 November

- 2006) the Court of Appeal gave a meaning to the concept of "lawful interest" in Article 1026. The Court said the following; ~ ~ j ~ "It transpires that a person with a lawful interest "within the meaning of Article 1026 is not somebody who had an actual or potential hereditary right in the estate to be administered. It is someone who in good faith has a legitimate concern that in the administration of that particular estate, the provisions of the law will be complied with. An actual or potential heir maybe one of such person but not necessarily so. That is, indeed, reflected in all decisions given by (the Supreme Court on this matter". .. " [18] Therefore, the meaning attributed to the concept "lawful interest" clearly indicates, that an applicant may not necessarily be a heir with a vested interest in the estate of the deceased, (as the 1st Petitioner to this petition is) although, he or she can be one (as the 2nd Petitioner to this petition is), and once the Applicant has shown that he or she has a "lawful interest", and that he is "not subject to any legal incapacity", the Court is bound to appoint the executor to ensure that the estate of the deceased is wound up and distributed according to the rules of succession. [22] In fact Ex parte Cesar & Ors (xp 204 of 2019) [2022J SCSC 367 (24 March 2022) followed the reasoning of Ex-Parte Bail/on (SCA 120/2019) [2021JSCCA 33 (13 August
- 2021) wherein the Court of Appeal relied on the definition of "lawful interest" found in the case of Essack. [23] Per Her Ladyship Twomey JA in Ex-Parte Bail/on Hence once the Court is satisfied that the two conditions are met, that is, that the applicant has a lawful interest as defined above and is not subject to a legal incapacity, the Court is bound to appoint the executor to ensure that the estate of the deceased is wound up and distributed according to the rules of succession. [24] Per Twomey JA in Suttie & Anor v Rebecca David (SCA 25 of 2015) [2017J SCCA 37(6 December 2017) [I6] It is important to note from the start that any person can be appointed as executor of a succession. That person need not even have a lawful interest in the succession. Hence, whether the Respondent is the daughter of the Deceased or not is immaterial as concerns her appointment as executor of his succession. What is important is that she fulfills her duties and obligations under the Civil Code. " [25] Per Her Ladyship Andre J in the case of Maria v Mathiot (CS 29 of 2020) [2023J SCSC 58 (30 January 2023) ~,) [I6] Referring to the aforementioned Article 1026 which makes it clear that any party with a "lawful interest" in a deceased's estate may apply for appointment as executor. The next enquiry relates to what constitutes "lawful interest"? In an Australian case of *Violi v Berrivale Orchards Limited* [2000J FCA 797, (2000) 99 FCR 580, Branson J said: "It seems to me that "lawful interests" are to be distinguished from "legal interests". I do not consider that s 5(3)(b)(i) calls for a legal interest in the sense of a legal right, title, duty or liability. Rather I consider that "lawful interests" within the meaning of the paragraph are interests which are not unlawful. The expressions "legitimate interests" or "interests conforming to law", in my view, convey similar meanings to the intended meaning of "lawful interests" in the paragraph. " [Emphasis added] [I7] This Court should ascribe a similar meaning to "lawful interest" in Article 1026 as described in the above case. Regardless of the fact that the plaintiff never married the deceased, and thus lacking "legal rights" [Article 32 of the Constitution of Seychelles does not elevate concubinage to

the legal status of marriage} thereto, would have "legitimate interests" as one who shared Deceased's life for more than 12 years in a romantic partnership, with the concomitant commingling of their finances and personal lives. It is noted that the matter was decided on the basis of the law as it stood prior to the amendments to the Civil Code in 2020. At the time concubines had no protections in law whereas now they have largely similar protections as afforded to spouses. In the circumstances the "legitimate interests" as enunciated above would be of application. [26] It is further noted that the Curator has no more powers than the Supreme Court had under the old Civil Code. The journey to executorship remains the same, the only change is the vehicle by which one gets to the destination, so to speak. [27] It is noted that section 23 (2) of the Curatelle Act 2020 is an exact copy of the old Article 1026 of the Civil Code of Seychelles prior to the 2020 amendment. [28] In the same way that the Curator would necessarily need to consider the application of any person claiming to have a lawful interest, he needs to consider the application of the "surviving partner who claims to have been in a qualifying relationship with the deceased, in the same manner. [29] It is my firm belief that there is no requirement for any surviving partner of a qualified relationship to seek a declaration from the Court or for the Court to make such a declaration. In order for such person to qualify to make an application for appointment of executor before the Curator. So I find. If indeed the Curator is refusing to allow parties to file a Petition to be appointed as executor on the basis that they have no legal interest unless they have a declaration from the Court that they were in a qualifying relationship, that practice needs to cease immediately. [30] After all, the principle behind the creation of the office of the Curator was to fast track such applications and reduce the pressure on the Supreme Court. If this carries on there will be a flood of applications before the Supreme Court, totally defeating the reason behind the creation of the office of the Curator, additionally creating even more frustration to parties who have to go through the added expense and time of seeking an order from the Supreme Court before proceeding to file their application before the Curator. [31] In any event, noting the age of the Petitioner and the time, effort and costs she has incurred and invested into this process already I will consider her application in this instance. [32] Noting the evidence on record I have no reason to doubt that she was indeed in a qualifying relationship with the deceased. I hereby declare that the Petitioner was in a qualifying relationship with the deceased the late Antoine Daniel Adonis also known as Daniel Adonis and as such she is a surviving partner to a qualifying relationship within the meaning of Article 731 and 745 of the Civil Code above. [33] Copy of this judgment is to be served on the Curator. Signed, dated and delivered at Ile du Port on 11th June 2024. J. J. J. 9

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