

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA) , A.Fernando (J.A) , B. Renaud (J.A)]

Civil Appeal SCA 19/2015 (Appeal from Supreme Court Decision CS 21/2014)

Diana Jean

Appellant

Versus

Debora Banane

Respondent

Heard: 29 November 2017

Counsel: Mr. Bernard Georges assisted by Ms. Kelly Louise for the Appellant

Mr. Serge Rouillon for the Respondent

Delivered: 07 December 2017

JUDGMENT

F. MacGregor (PCA)

1. The plaintiff is contesting a sale of land between her alleged father and the defendant, his niece, on grounds of lesion.
2. The defendant on questioning the locus standi of the plaintiff as to the relationship and authority of the plaintiff towards the father caused the plaintiff to produce an acknowledgement of birth document and a birth certificate thereby claiming as an heir to

the succession of her father, that she had an interest in the case, hence qualifying for locus standi.

3. The defendant then in the statement of defence raised a plea in limine on the issue of locus standi, to which both the plaintiff and the defendant and the Court agreed was the main issue to be thrashed out in this case.
4. This focused the Court on the pleadings and arguments on the acknowledgement of birth document to be scrutinized and challenged. Both Counsel were to make submissions on this. Whilst the defence Counsel did, the plaintiff's Counsel did not, tantamount to him abandoning the case. On this being put to the Appellant's Counsel at the appeal she said he was not aggressive.
5. The scrutiny found the document to be in violation of the law in the Notaries Act where it was not in compliance.
6. These laws are found in sub section 15, 16 and 21(2) of the Notaries Act which reads:

Section 15:

Subject to this Act –

(b) the Schedule shall have effect with regard to the manner of drawing up deeds and the content of deeds drawn up by a notary.

Section 16:

(1) A deed drawn up by a notary containing –

(d) an acknowledgement of a natural child;

shall be drawn up in the presence of a second notary or two witnesses but shall, subject to this section, otherwise comply with the Schedule.

The said Schedule refers to the manner of drawing up and content of deeds in paragraph 1(1);

Subject to this Act and any other written law, every deed drawn up by a notary shall contain –

- (a) the full name and address of the place of business of the notary drawing up the deed;*
- (b) the full names, national identity number or, where a party is not a Seychellois or resident in Seychelles, the nationality and the number, place and year of issue of the passport or other document of identity, and the address of the place of residence of every party and witness to the deed.*

Section 21(2) reads:

A deed to which section 16(1) applies and which fails to comply with section 16(1) and (2) is void.

- 7. A perusal of the said acknowledgement of birth document clearly shows:
 - address of place of business of the notary missing;
 - the National Identity Numbers of the Declarant and witnesses of the deed are missing;
 - the address and place of residence of the witnesses are missing.

By virtue of those omissions that document became void as per section 21(2) of the Notaries Act earlier referred to.

- 8. Consequent to that as the birth certificate relied on the acknowledgement document now declared void, the birth certificate with the particular entry of the acknowledgement of the father could not be valid.
- 9. The plaintiff appeals against that Judgment on the following grounds:

Appellant's grounds of appeal are as follows:-

“Grounds of Appeal:

- a. The orders made by the Learned Chief Justice are both ultra petita.
 - b. The Learned Chief Justice erred in her finding that the acknowledgement of the Appellant by her father was irregular and therefore null and void. The acknowledgment had been made before a notary and was, in consequence, valid as an acknowledgment of the Appellant, notwithstanding that it had been registered late.
 - c. The Learned Chief Justice erred in assuming that the acknowledgement of the Appellant by her father had been done posthumously.
 - d. The Learned Chief Justice erred in rejecting the status of the Appellant as recorded in her birth certificate as she benefited from a presumption that she had the status unless an action had been lodged to counter that status and an order made in that action.”
10. On the ground of ultra petita. What is ultra petita? It is an expression in Latin meaning “beyond that was sought”. What was sought here? Clearly the examination of the issue of locus standi raised through the statement of defence to which the plaintiff relied on the acknowledgement of birth to qualify for locus standi. This caused that document to be scrutinized and examined, which is exactly what the learned Judge did and found it irregular and therefore invalid. The issue of locus standi inextricably linked and depended on the acknowledgement which was clearly an issue on the case.

Accordingly this ground on ultra petita fails and consequently ground 2 fails.

11. As to ground 4, in reference to the birth certificate, which relied on that acknowledgment of birth; with the latter being declared invalid, the entry on the birth certificate which refers to the acknowledgment of birth also becomes invalid.

Therefore this ground also fails.

12. In view of our finding on grounds 1, 2 and 4 having no merits, we see no reason to consider ground 3.
13. There are other observations pertinent in this case which deal with the absence of the mother in the acknowledgement of birth. This is governed by Article 336 of the Civil Code which reads:-

“The recognition by the father without any reference to and an admission by the mother shall only have effect with regard to the father.”

The question here in those circumstances, could this document be used against anyone except the father? The wording of that article speaks for itself.

14. There is also the startling omission by all parties to this case in that at the material sale of land to the defendant, the seller, the father of the plaintiff was obviously alive. If he was alive, and that is blatant on the sale document, there could have been no question of succession or inheritance for anyone to qualify as an heir for which the plaintiff based herself on for locus standi.
15. Also in terms of the Constitution and Civil Code the father who was at the material time still alive also had all the rights to dispose of his property freely as he wanted, viz:

Article 26 of the Constitution:

“Every person has a right to property and for the purpose of this article this right includes the right to acquire, own, peacefully enjoy and dispose of property either individually or in association with others.”

Article 537 of the Civil Code:

“Persons shall enjoy the free right to dispose of the property which belongs to them, subject to the restrictions laid down by law.”

Article 544 of the Civil Code:

“Ownership is the widest right to enjoy and dispose freely of things to the exclusion of others, provided that no use is made of them which is contrary to any laws or regulations.”

With that said I conclude the appeal is dismissed with costs.

F. MacGregor (PCA)

I concur:. A.Fernando (J.A)

I concur:. B. Renaud (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 07 December 2017