IN THE SEYCHELLES COURT OF APPEAL

[Coram: A.Fernando (J.A) ,M. Twomey (J.A) ,B. Renaud (J.A)**]**

Civil Appeal SCA 25/2015

(Appeal from Supreme Court Decision MC 26/2013)

Daniella Suttie	1st Appellant
Patrick Mac Gregor	2nd Appellant
Versus	
Rebecca David	Respondent

Heard: 30 November 2017

Counsel: Mr. Divino Sabino for the Appellants

Mrs. Samantha Aglae for the Respondent

Delivered: 07 December 2017

JUDGMENT

M. Twomey (J.A)

[1] The Appellants are respectively the brother and cousin of one Ralph France Hoareau who died intestate on 25 March 2010 (hereinafter the Deceased). On 24 June 2011, Karunakaran J appointed the Respondent the executrix of the Deceased's succession.

[2] He did so upon her application (CS 82/2011) supported by her affidavit and evidence that the Deceased had not married and had no children or other heirs apart from herself.

[3] On the 14 May 2013, the Appellants filed an application for the removal of the Respondent as the executrix of the Deceased's succession and their appointment in her stead as executors of the Deceased's succession alleging that the Deceased had four siblings. They submitted that the Respondent had misled the court in her application and had no interest in being appointed executrix of the Deceased's succession. They supported their application

with birth certificates. It is clear from those certificates that the Deceased had three siblings: Astrid Moreno-Chamorro (neé Hoareau), Erica Mathiot (neé Hoareau), Ansel Hoareau and Daniella Suttie (née Hoareau), the First Appellant in this suit. It is also clear that the Respondent's birth certificate does not contain any entry for "Father's name." She is therefore in the terminology of the provisions of the Civil Code a "natural child".

[4] In his ruling on the application of the Appellants to be appointed executors of the succession of the Deceased, the trial judge, De Silva J, equating the suit to "circumstances where parties indulge upon purposeless litigation where such issues could have been resolved in previous litigation" found that there was an abuse of process and dismissed the application. It is this finding that has given rise to the present appeal.

[5] The Appellants have filed five grounds of appeal which have been infelicitously drafted but which we understand to mean the following:

1. The learned judge erred in stating that there was an abuse of process in the filing of the present petition, the subject of this appeal.

2. The learned judge erred in his consideration of the law relating to the appointment and removal of executors.

3. The learned judge erred in finding that the Respondent was correctly appointed as executrix by the Court of Appeal.

4. The learned judge was wrong to depend on the fact that he had sought and not received documents he had demanded from the parties

5. The learned judged erred in relying on a finding of putative fatherhood as proof of paternity for the purposes of inheritance.

Ground 1- abuse of process

[6] It is the submission of Counsel for the Appellant that the finding of the trial judge that there was an abuse of process by the Applicants in the filing of the present application. In his ruling the trial judge relied on the case of *Gomme v Maurel* (2012) SLR 342 for the

proposition that res judicata apart, endless repeated litigation should not be countenanced by the court especially when this is a clear abuse of the legal and judicial process. Further the trial judge put much reliance on the case of *Arnold v National Westminster Bank Plc.* [1991] 2 A.C. 93, specifically on the following statement by Auld L. J.

> *"Thus, abuse of process may arise where there has been no earlier decision capable of amounting to res judicata (either or both because the parties or the issues are different) for example, where liability between new parties and/or determination of new issues should have been resolved in the earlier proceedings. It may also arise where there is such an inconsistency between the two that it would unjust to permit the later one to continue."*

[7] Counsel for the Respondent has set much store on the fact that because there has been various cases brought before the court for the appointment of the executor of the succession of the same person this justified the trial judge's decision that there was an abuse of process in the case. We would have agreed with such a proposition were it not for the reasons which become clear from the examination of proceedings of why the cases were brought and set aside.

[8] It is one thing for parties to exploit the court process to challenge decisions in order to revisit the same issues but it is another when such proliferation of court actions are the result of the ineptitude of the court itself. Parties cannot be penalised for the court's own errors.

[9] The trial judge referred to previous litigation on this issue and states that he was able to look at those court proceedings. We have therefore in the interest of justice to also look at these proceedings. An examination of the court proceedings reveal that a plethora of cases has ensued in all the three courts of Seychelles concerning the parties and the Deceased's succession. It is important to set them out in detail chronologically:

1. The first matter brought before the courts of Seychelles was an application in the Magistrates Court (CS 68/1982) for the declaration that Ralph Hoareau (now the Deceased) was the putative father of the Respondent (Rebecca David) and for her

maintenance under the provisions of the Children Act 1982. In his judgement Ag. Magistrate Alleear (as he then was) concluded that based on the medical evidence it could not be ruled out that the Deceased was the father of Rebeca David. He declared the Deceased the putative father of the Respondent and made an order for her maintenance.

2. The second matter was *Hoareau v Hoareau* CS 216/2008, filed by the Deceased in the Supreme Court applying for an annulment of the registration of the transfer of his bare ownership to one Emma Hoareau on the grounds of *lesion*. He was successful and the defendant, Emma Hoareau appealed the decision.
3. The third matter filed before the court was the *ex parte* application, Ex Parte 82/2011, (erroneously referred to as CS 82 /2011 both by Judge Karunakaran and Judge de Silva) for the appointment of the Respondent (Rebecca David) as executrix of the Deceased's succession.
4. The fourth matter was the appeal (SCA 13 of 2011) of the second matter supra. Between the filing of the appeal and its hearing, the Respondent of this present appeal (Rebecca David) had been appointed executrix of the Deceased's succession (see 3 above). She was therefore substituted by the Court of Appeal for the Deceased to enable the case to be concluded given the inordinate delay both by the trial judge of the Supreme Court to deliver judgement in the suit and the failure of the Appellant (Emma Hoareau) to seek the substitution herself.
5. The fifth matter, CS 183/2011, filed before the court was a petition by Astrid Moreno-Chamorro against the Respondent seeking to challenge the appointment of the Respondent as executrix of the Deceased's succession. This suit was adjourned sine die by Karunkaran J and the previous appointment of executor in favour of the Respondent was stayed until the sixth matter below was decided.
6. The sixth matter before the court was a petition by the present Respondent, Rebecca David in CS132/2012 (erroneously referred to as CS 10/2012 by both Karunakaran and de Silva JJ) for a declaration of paternity. In the course of the proceedings it was submitted that the application was prescribed by virtue of the provisions of Article 340 of the Civil Code. Subsequently the Respondent moved to have the matter referred to the Constitutional Court alleging that Article 340(3)

prescribing her paternity claim was in breach of Article 27(1) of the Constitution. The trial judge directed instead that the Respondent file a petition to the Constitutional Court challenging the unconstitutional legislation. On that basis the suit was adjourned sine die. A year and a half later with no constitutional challenge brought, the trial court dismissed the case.

7. The seventh matter before the court was an application, CS 68/2012, by the present Appellants, namely Daniella Suttie and Patrick MacGregor seeking their appointment as executor of the Deceased's succession. It was suggested by the court that they should include in that suit an additional prayer for the removal of the existing executrix. They opted instead to redraft and refile the suit.
8. The eighth matter before the court was the application by the present appellants in the Supreme Court, MC26/2013, redrafted from suit CS68/2012 to include a prayer both for the removal of the executrix and the appointment of new executors. It is the decision of the learned judge dismissing the application in this matter which is now being appealed.

[10] From the above proceedings it is clear that it was the order of the court granting an application for an executor appointment grounded on an affidavit which contained factual omissions which was the generator of all the subsequent applications. Counsel for the Applicant (now Respondent) also seriously misled the court in stating that the applicant was the daughter and only heir of the Deceased. This is obvious from the ensuing court order:

> *"[O]n the strength of the affidavit filed in support of the application and other documentary evidence adduced by the applicant in this matter, I am satisfied that the Petitioner namely, Ms Rebecca Mercia David of Roche Bois, Mont Buxton, Mahe,* ***is the daughter*** *of one Ralph France Hoareau hereinafter called the 'deceased' who died intestate in Seychelles on the 25th of March 2010. I am equally satisfied that it is just and necessary that the petitioner should be appointed as the executrix to the succession of the deceased" (emphasis mine)*

[11] The Court did indeed realise its mistake in the subsequent case, namely MC 26/2013. In the proceedings of 9th November 2012 at 9 am the following exchange took place:

> *"Mr. Rouillon: After your Lordships judgment the person who proclaims to be the daughter of the deceased, was appointed as executor, so now at the moment she is the executor of the succession. She has made an application for paternity before the Supreme Court and this is still for determination by the Court.*
>
> *Court: But how the court appointed her as executor before she could establish her status as legal heir. Which court?*
>
> *Court: Until the court finally gives his finding on the issue, she cannot handle this succession. She should not act even as executrix*
>
> *Court again: I do not know how the court was misleading without any evidence that she was the sole legal heir to the succession."*

[12] Similarly in the proceedings of 25th March 2013 at 1:45 pm at page 2, the following exchange takes place:

> *"Court: Of course, she has the right only to claim maintenance. So that is the end of the matter. She claims that she is the sole legal heir to the succession and then she got appointed?*
>
> *Mr. Sabino: yes*
>
> *Court: That is wrong, what do we do now? We have to remove her. Who are the legal heirs now?"*

[13] The court despite having inherent powers cannot act unreasonably and substitute an executor for another unless it is applied for, nor can it expunge its own mistakes after delivering orders, unless those mistakes are simply procedural slips or typographical errors. It may have been for these reasons that the court then guided the parties as to how they should proceed. These directions were sometimes followed and sometimes not as some

events superseded others as is clear from the details of the cases I have set out in paragraph 9 supra.

[14] In the circumstances, we do not find that this is an occasion when the principles of abuse of process can be applied. This ground of appeal therefore succeeds. However it remains to be decided whether flowing from this finding this court can now proceed to substitute the Appellants as executors of the succession of the Deceased in the place of the Respondent.

Grounds 2, 3 and 4- the appointment of and replacement of an executor of a succession.

[15] The Appellants have submitted that an executor appointment is a continuing matter since such appointment is reviewable by the courts until and unless the successions is disposed of. In this respect Article 1026 -1027 of the Civil Code provides in relevant part:

> *"1026… 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 if the deceased has left no will, the Court shall appoint such an executor, at the instance of any person or persons having a lawful interest.*
>
> *1027 … [2] The duties of the executor shall be to make an inventory of the succession to pay the debts hereof, and to distribute the remainder in accordance with the rules of intestacy, or the terms of the will as the case may be."(Emphasis ours)*

[16] 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 fulfils her duties and obligations under the Civil Code. It was her duty to continue an action before the Court of Appeal commenced by the Deceased. It is for this reason why it is understandable that the Court of Appeal in case SCA 13 of 2011) made the following pronouncement:

"Taking into consideration the delay by the Supreme Court by 1.3 years to deliver this judgment since conclusion of the proceedings, the failure by the appellant to have the executrix to the estate of Ralph France Roch Hoareau substituted up to the date of hearing of this appeal, and placing reliance on the case of France Bonte v Seychelles Petroleum Company Limited SCA No 9/2008, we decided to have the executrix Rebecca David substituted as the respondent to this appeal, and proceed with the appeal in the interests of justice."

[17] Not only was it proper that the appointed executor continue with court actions commenced by the Deceased to enable her to return to the hotchpot all property for distribution among the heirs but it was also her duty to wind up the succession and to distribute it to the lawful heirs, which in this case are the siblings of the Deceased only. Should she fail to carry out these duties the Appellants or any person with an interest in the succession may then ask for her to account for her refusal to do so or to have her removed by the Court.

[18] Counsel for the Appellant has relied on the case of *Essack v Fernandez* [2006] SCCA18 which though instructive on the matter of persons having a lawful interest in the succession, it is not authority for who can be appointed as an executor. It is also not instructive on the issue of the circumstances in which why a person should not be appointed as an executor.

[19] The fact remains that at the time that the Court of Appeal decision was made allowing the Respondent as executor of the succession to continue in the defence of the appeal before, it was not aware that the appointment had been made on insufficient information.

[20] This is a case in which a distinction has to be made between a void appointment and a voidable appointment. The fact that any person may be appointed as executor of a succession makes the appointment effective despite the fact that it may have been made on inaccurate information. The court's order was not perverse based as it were on the information available to it. It was therefore not void from the outset and continues to be effective. Any actions of the executor in relation to the succession as for example in the representation of the Deceased's succession in the case of *Hoareau v Hoareau* (supra) is perfectly within the law.

[21] These grounds of appeal therefore partly succeed only insofar that it is correct that an appointment and replacement of an executor is reviewable by the court. Until and unless the Respondent acts in breach of her duties and obligations as an executor there is no valid reason why her appointment has to be revoked. In *Essack* (supra) similar circumstances arose where a grandmother living abroad submitted that the succession of her son to which the respondent (her grandson) had been appointed executor did not include the property he was claiming. The Supreme Court had on the grandmother's application for the revocation of the appointment of the executor and her appointment in his stead decided that she should be appointed as co-executor alongside the previously appointed executor. On appeal the Court of Appeal maintained the court's decision to appoint the grandmother as co-executrix of the succession in which she had an interest.

Putative fatherhood and declarations of paternity

[22] The final ground of appeal is purely academic at this stage but we have decided to delve into it if only to point out that the trial judge de Silva did not make an improper finding on this issue. Counsel for the Appellant submits that the finding by the Magistrate in CS 68/1982 pursuant to section 12 of the Children Act that the Deceased was the putative father of the respondent cannot confirm the respondent as the daughter and of the Deceased and as heir to his succession.

[23] With respect to Counsel, the learned trial judge did not make such a finding. He only confirmed that the finding or putative fatherhood was strong evidence to prove paternal descent. He does not state that paternal descent has been proved by the Respondent. The paternal descent of the Respondent was not and has not up to his moment in time. It now cannot be proven given the prescriptive period for such actions as provided in Article 340 (3) (b) of the Civil Code. However, as we have stated above this does not preclude the Respondent from continuing as executrix. This ground of appeal therefore fails.

[24] Having regard to all the circumstances in this case, and in view of the fact that the executor appointment was strictly within the confines of the provisions of the law we are not of the view that there is a necessity to remove the Respondent as executrix of the succession at this point in time. Her appointment is maintained and on this point the appeal is ultimately

dismissed. We do however find it necessary to remind the executrix that it her duty to distribute the succession in accordance with the rules of intestacy.

[25] We so order.

M. Twomey (J.A)

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

IN THE SEYCHELLES COURT OF APPEAL

[Coram: A. Fernando (J.A) ,M. Twomey (J.A) , B. Renaud (J.A)**]**

Civil Appeal SCA25/2015

(Appeal from Supreme Court DecisionCS MC26/2013)

Daniella Suttie — 1st Appellant
Patrick MacGregor — 2nd Appellant

Versus

Rebecca David — Respondent

Heard: 30 November 2017

Counsel: Mr. D. Sabino for the Appellants

Ms. S. Aglae for the Respondent

Delivered: 07 December 2017

JUDGMENT

A. Fernando (J.A)

1. This is an appeal by the Appellants against the judgment of the Supreme Court in **Civil Side No. MC 26, 2013**, dismissing their Application dated 31st May 2013, under article 1026 of the Civil Code, seeking orders of the Court to remove the Respondent herein as the Executrix of the estate of the deceased Ralf France Hoareau (hereinafter referred to as Ralf Hoareau) who died intestate on the 25th March 2010; and to appoint them as Co-Executors of the succession of the estate of the said deceased Ralf Hoareau. The estate of the deceased Ralf Hoareau consisted of land parcel Title No. J 680.

2. The reason urged for the removal of the Respondent as the Executrix of the deceased Ralf Hoareau as stated in the Application is that the official birth certificate of the deceased fails to show that the Respondent is the daughter of the deceased Ralf Hoareau. There is no averment however that the Respondent is not the daughter of the deceased Ralf Hoareau.

3. The learned Trial Judge had dismissed the application on the grounds: “Therefore, it is clear from the above that the plea of abus de droit can be raised independent of the

concept of res judicata in circumstances where parties indulge upon purposeless litigation where such issues could have been resolved in previous litigation. The petitioners had two opportunities in the minimum to resolve the matter and the issue has come before this court in more than two instances. Therefore based on the above I uphold the plea of abuse of process raised by the respondent and dismiss the petitioners' application."

4. The Supreme Court had by its earlier Ex Parte Order dated 24th June 2011, in **Civil Side No. 82 of 2011**, appointed the Respondent herein as Executrix of the estate late Ralf Hoareau. In its Order the learned Judge had stated thus:

   "This is an application for the appointment of executor filed under Article 1026 of the Civil Code of Seychelles.

   On the strength of the affidavit filed in support of the application and other documentary evidence adduced by the applicant in this matter, I am satisfied that the petitioner namely, Ms. Rebeca Mercia David of Roche Bois, Mont Buxton Mahe [*Respondent herein*] is the daughter of one Ralph France Houareau hereinafter called the "deceased" who died intestate in Seychelles on 25th of March 2010. I am equally satisfied that it is just and necessary that the petitioner be appointed as the executrix to the estate of the deceased.

   Accordingly, I hereby appoint the petitioner, Ms. Rebecca Mersia David of Roche Bois, Mont Buxton Mahe as executrix to the estate of the late Ralph France Houareau who died on the 25th of March 2010."

5. In Supreme Court **case no. CS 183 of 2011**, Astrid Moreno – Charmorrow, nee Hoareau, the sister of late Ralf Houareau and one of the persons mentioned in the Application for the Appointment of Executor filed by the Appellants before the Supreme Court in this case as an heir of the late Ralf Houareau; had challenged the appointment of the Respondent as the Executrix of the estate of the late Ralf Houareau in **Supreme Court case no. 82 of 2011,** mentioned in paragraph 4 above; but later withdrawn it. The heirs set out in **CS 183 of 2011** are the same as in this case. The body of the application is the same in the two cases. Mr. Divino Sabino who is Counsel in this case, was also the Counsel in that case. It is he who made the application for the Appointment of Executor in case no CS 183 of 2011 and it is he who had made the application to formally withdraw the said case.

6. Again, case no **CS 68 of 2012** filed by the very Appellants of this case; before the Supreme Court, challenging the appointment of the Respondent as the Executrix of the estate of the late Ralf Houareau in **Supreme Court case no. 82 of 2011**; had also been withdrawn. Once again the Counsel had been Mr. Divino Sabino.

7. The carriage of a case is that of the responsibility of counsel representing the respective parties. They cannot blame court, for any advice given or suggestions made by court to

withdraw or re-file cases, except where wrongly 'ordered' by court. It is the duty of counsel to give the correct advice to his client and should not be heard to say that the client did not listen to his advice, as stated by the Appellants' counsel in this case.

8. Therefore for all intents and purposes the Order dated 24th June 2011, made in **Civil Side No. 82 of 2011**appointing the Respondent herein as Executrix to the estate of Ralf Houareau, is valid, stands up to date; and has not been vacated nor has there been any appeal against such order. Even if the appointment of Executrix in Civil Side No. 82 of 2011 is made on inaccurate information as sought to be argued by the Appellants; the fact that the appointment has been made, makes it effective. The court's order was based on the information that was available before it, and there is no argument that it was perverse.

9. The late Ralf Houareau, had prior to his death filed **Supreme Court case no. CS 216/2008**, applying for an annulment of the registration of the transfer by him of the bare ownership of land parcel Title No. J 680 in favour of Emma Hoareau (a daughter of one of the heirs of late Ralf Houareau, mentioned in the Application for the Appointment of Executor filed by the Appellants before the Supreme Court in this case), on the ground of lesion. The late Ralf Houareau was successfuland was declared owner of parcel J 680. The defendant in that case Emma Hoareau appealed the decision.

10. Ralf Houareau died before appeal **SCA 13 of 2011** came to be heard. In **SCA 13 of 2011** this Court in its judgment dated 31st August 2011, stated as follows: "Taking into consideration…;the failure of the Appellant [*Emma Rachel Juliette Houareau*] to have the Executrix to the estate of Ralph France Roch Hoareau substituted up to the date of hearing of this appeal, and placing reliance on the case of France Bonte VS Seychelles Petrolium Company Limited SCA No. 9/2008; we decided to have the Executrix Rebecca David substituted as the Respondent to this appeal, and proceed with the appeal in the interests of justice." The need for substitution by this Court arose because Attorney-At-Law Mr. DivinoSabino, who was Counsel for the Appellant in that case had failed to make a substitution in place of Ralf Houareau (Respondent to that appeal), who had passed away prior to filing of that appeal.

11. In the said case **SCA 13/2011** (appeal from SC case no. 216 of 2008), Counsel for the present Appellants, Attorney-At Law, Mr. Divino Sabino, had not objected to the substitution of the Respondent herein, as the Respondent in that case, nor was there any challenge to the Respondent being the daughter of Ralf Houareau. Thus the determination made by the Court of Appeal substituting the Respondent as the Executrix to the estate of Ralph Hoareau, cannot now be contested or reopened again.

12. The Respondent herein, Rebecca David; pursued the appeal filed by Emma Hoareau in SCA 13/2011 as Appellant,(a daughter of one of the heirs oflate Ralf Houareau) against

the judgment of the Supreme Court in favour of Ralph Hoareau; as Respondent therein. In the said appeal this Court by its unanimous decision said: **"**In view of the substitution of Rebeca David as Executrix to the estate of the late Ralf Houareau we make the following orders:

> (i)We declare that the purported deed of transfer – dated 6th December 2005 registered with the Land Registry on the 15th March 2006 – transferring the bare ownership in respect of Title J 680 in favour of the Appellant [Defendant before the Trial Court - *Emma Rachel Juliette Hoareau*], is a nullity and therefore, we hereby rescind the said transfer accordingly.
>
> (ii)We order the Respondent to pay the sum of Rs 25,000/- to the Appellant with interest on the said sum at 4% per annum as from 15th March 2006 until the sum is fully paid.
>
> (iii)We direct the Registrar of lands to rectify the Land Register in respect of Title J680 by removing the Appellant namely, Emma Rachel Juliette Houareau as the proprietor of the bare ownership thereof and registering the Respondent as the only proprietor of all interests in the said Title upon proof of payment of the said sum as ordered in paragraph (ii) above, to the satisfaction of the Land Registrar.**"**

13. The estate of the deceased consisted of land parcel Title No. J 680 as stated at paragraph 1 above. Had the Respondent herein decided not to pursue the appeal there would be no estate left for the appointment of Co-Executors. The ownership of land parcel Title J 680 would then possibly be with the daughter of one of the heirs mentioned in **Civil Side No. MC 26, 2013.** Supreme Court **case no. CS 183 of 2011** and **CS 68 of 2012** came to be filed only after Emma Hoareau lost the **Supreme Court case no. CS 216/2008** filed by the late Ralf Hoareau against her. It is only then, that the fact of the official birth certificate of the deceased failing to show that the Respondent is the daughter of the deceased Ralf Hoareau, became an issue, to his siblings. I note that it is difficult to change human nature. I hope that there is no ulterior motive behind this multiplicity of applications.

14. The Appellant has placed reliance on the case of **M. Essack VS M.G. Fernandez (2006) SCCA 18**, in support of his claim for the removal of the Respondent as the Executrix of the estate of Ralph Houareau and the appointment of the Appellants as Co-Executors. To start with in the case of Essack VS Fernandez this Court did not remove the existing executor, namely M. Essack, the son of the deceased Collin Essack; but appointed instead a co-executor, namely M.G. Fernandez, the mother of the deceased Collin Essack; and that, only because part of the property which M. Essack claimed belonged to the estate of the deceased Collin Essack, in fact belonged to M.G. Fernandez. M, Essack had claimed

that land titles S 3844 and 3845 were part of the estate of deceased Collin Essack. It was however clear from the evidence that S 3844, on which stands a dwelling house on which the late Collin had permission to build and occupy with his concubine prior to his death belonged to M.G. Fernandez. The Court accepted the position that S 3844 was not yet part of the estate of the late Collin Essack, since M.G. Fernandez was still living, and until a competent court decides with finality that that property or certain rights over S 3844 also forms part of the estate of the Collin Essack. In the present case the estate of the deceased Ralf Hoareau consisted only of land parcel Title No. J 680 and in the case of Essack VS Fernandez there had been no multiplicity of actions in relation to the executor as in this case.

15. I am of the view that there must be finality to litigation. In Supreme Court case **Civil Side No. 82 of 2011**, decided on 24th June 2011 and Court of Appeal case **SCA 13 of 2011**, decided on the 31st of August 2012, the question of Executorship of the estate of late Ralf Houareau had been recognized. To seek to reopen the matter again in June 2013 through a new application, without having sought to challenge the earlier decisions of the said cases, is in my view an abuse of process.

16. In the circumstances narrated above I have no hesitation in agreeing with the learned Trial Judge that this is none other than a clear abuse of process. In the case of **Georgie Gomme VS Gerrad Maurel and A. Harrison SCA 06 of 2010**, this Court said: **"***The rule of abuse of process encompasses more situations than the three requirements of res judicata. Courts cannot stay unconcerned where their own processes are abused by parties and litigants. There is a time when they have to decide that enough is enough where the lawyers have not advised their clients. Abuse of process will also apply where it is manifest on the facts before the court that advisers are indulging in various strategies to perpetuate litigation either at the expense of their clients who may be hardly aware or at the instance of their clients who have some ulterior motive such as harassing parties against whom they have brought actions or others who may not be parties. Courts have a duty to intervene to put a stop to such abuses of legal and judicial process***"**.

17. In **Bradford & Bingley Building Society VS Seddon Hancock &Ors 1999 1 WLR 1482**, it was held that even parties who were not originally in the case may be caught by the doctrine of abuse of process if they seek a re-litigation of a case which has already been decided upon. Auld LJ in that case stated **"***In my view, it is now well established that the Hederson rule, as a species of the modern doctrine of abuse of process, is capable of application where the parties to the proceedings in which the issue is raised are different from those in earlier proceedings… "*

18. I therefore dismiss this appeal with costs to the Respondent.

A.Fernando (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on07 December 2017

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IN THE SEYCHELLES COURT OF APPEAL

[Coram: A.Fernando (J.A) , M. Twomey (J.A) , B. Renaud (J.A)**]**

Civil Appeal SCA 25/2015

(Appeal from Supreme Court Decision CS MC 26/2013)

Daniella Suttie	1st Appellant
Patrick MacGregor	2nd Appellant
Versus	
Rebecca David	Respondent

Heard: 30 November 2017

Counsel: Mr. Divino Sabino for the Appellants

Mrs. Samantha Aglae for the Respondent

Delivered: 07 December 2017

JUDGMENT

B. Renaud (J.A)

1. I have had the benefit of reading the considered judgments of my learned colleagues A. Fernando JA and M. Twomey JA. The background facts of this case have been amply set out in their respective judgment. I have also considered the reasoning in both judgments.

2. In light of the background facts it is my considered view that there must be a finality to this case for the following reason. In the Supreme Court case CS 82 of 2011, dated 24th June, 2011, and the decision of this Court in case SCA 13 of 2011, dated 31st August, 2012, the issue of executorship to the estate and succession of the late Ralf Hoareau had

been heard and determined by this Court. This Court being a court of final appeal ought not to re-open that issue.

3. For the reason stated above, I am decidedly of the opinion that there is no reason to replace the Respondent, who is the Executrix to the estate and succession of the late Ralf Hoareau.

4. Hence the question, whether or not the Appellants should replace the Respondent as Executrix or be joined as joint Executors to the estate and succession of the late Ralf Hoareau, does not arise for my determination.

5. I therefore dismiss this appeal with costs to the Respondent.

B. Renaud (J.A)

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