

# IN THE SEYCHELLES COURT OF APPEAL

**[Coram:** A. Fernando (J.A) , M. Twomey (J.A) , G. Dodin (J.A)]

## **Civil Appeal SCA 45/2019**

**(Appeal from Supreme Court Decision CS 96/2017)**

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Marie Therese Brutus née Roucou	1st Appellant
John Brutus	2nd Appellant
Vincent Brutus	3rd Appellant
Jess Brutus	4th Appellant
Samantha William née Brutus	5th Appellant
Dorothy Fréminot née Brutus	6th Appellant

Versus

Samuel Brutus	Respondent
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Heard: 12 August 2019

Counsel: Karine Dick for the Appellants

Somasundaram Rajasundaram for the Respondent

Delivered: 23 August 2019

## **JUDGMENT**

M. Twomey (J.A)

### **The case stated**

[1] In a case stated by the learned judge L. Pillay pursuant to section 13 of the Courts Act, the following question was put to the Court of Appeal -

“By virtue of section 7 of the Evidence Act, is any witness in a case competent to produce a public document?”

- [2] Briefly, the matters that gave rise to this question arise in a case in the Supreme Court in which the Appellants claim that a transfer of property by a *de cuius* was a disguised donation. During the hearing of the matter, the First Appellant stated that she did not know how to read. She was not asked therefore to produce certificates of marriage, birth or death of the relevant parties to the case.
- [3] Subsequently, the Third and Fourth Appellant in turn attempted to produce the First Appellant's marriage certificate but this was objected to by the Respondent on the grounds that he would not have the opportunity to question the First Appellant on the document. The learned trial judge ruled in favour of the objection stating that the best person to produce the certificate was the First Appellant and that illiteracy was not an incapacity to have precluded her from producing the certificates.
- [4] No written ruling for his decision is apparent from the proceedings but having read the transcript, we understand the Respondent's objection to the production of the certificates by persons other than the First Appellant to be upheld on the grounds that the best person to produce the marriage and birth certificates of the First Appellant would have been the First Appellant herself.
- [5] We note that in their submissions before us both Counsel for the parties have reiterated that the authenticity of the certificates were not in issue.

## **Discussion**

- [6] Marriages, births and deaths recorded in public registers are a matter of public record, accessible to anyone from the Department of Civil Status on the payment of a fee. There is no individual proprietorship to official records – the certificates are official proof of the status of the person.
- [7] Section 7 of the Evidence Act provides that true copies or extracts of these registers shall be admissible in evidence at any trial to the same extent, and in the same manner as the original would and certificates that such copies or extracts are true and purporting to be signed by officials shall in the absence of proof to the contrary be held to have been so signed.

[8] Article 1317 of the Civil Code provides that an authentic document is one received by a public official entitled to draw it up in the prescribed form. Article 1319 provides that such documents raise a rebuttable presumption of proof of their contents. As I have stated we have been assured that the contents of the documents are not being contested.

[9] Section 8 of the Evidence Act allows for the production of public documents by persons other than one having official custody of original documents or records. It follows that a person, having obtained a marriage certificate or a birth certificate from the official custodians (being the Civil Status) of the original records (an official marriage certificate drawn from the original marriage register), may produce this document in court.

[10] When the authenticity of an official document is not challenged, there is no best person to produce such a document, save of course for the fact that an illiterate person who cannot say on oath what the document he/she is producing is would not be best placed to produce it.

[11] In the circumstances we answer the question posed namely -

*By virtue of section 7 of the Evidence Act, is any witness in a case competent to produce a public document?"*

as follows –

Yes.

M. Twomey (J.A)

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

**I concur:.** ..... G. Dodin (J.A.)

Signed, dated and delivered at Palais de Justice, Ile du Port on 23 August 2019