

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA), F. Robinson (J.A) , L. Tibatemwa-Ekirikubinza (J.A)]

Civil Appeal SCA 25/2017

(Appeal from Supreme Court Decision CS 206/2016)

Ex-Parte Juliana Rose

Appellant

Heard: 04 December 2019

Counsel: Mr. Frank Elizabeth for the Appellant

Delivered: 17 December 2019

JUDGMENT

F. MacGregor (PCA)

1. This is a case in which the Appellant is appealing against the judgment of the Master delivered in Civil Slide No. 206/2016 delivered on 16 June 2017. The Appellant is the niece of the late Francois Clement Ah-Kon who died testate on 2 October 2016. Before his death, the deceased made a will in which he appointed the Appellant as the beneficiary of all his properties and rights.
2. In the application below in the Supreme Court it was found that the interest pertained to a usufruct which was extinguished at the death of the deceased, hence after that there was no immovable property to qualify for an executorship under Article 1026 of the Civil Code, hence dismissed the application.
3. The Appellant appeals on one ground only, as follows:-

“The Master erred in fact and in law when she dismissed the Appellant’s application for appointment of Executrix of the estate of the late Francois Clement Ah-Kon on the basis that when the deceased passed away he had no immovable property.”

4. The issue then and now is: did the deceased have immovable property at his death?

As to the state of a usufruct, as the case here, the answer is trite in Article 617 of the Civil Code, where it states:

“The usufruct shall be terminated –

By death of the usufructuary;

In the said Deed of Sale it is also specific and distinct in declaring the duration and extent of the usufruct when it says *“Pour eux leur vie durant et jusqu’au jour de décès du dernier mourant d’entre eux.”*

5. The Appellant Counsel below argued that the deceased did convey also the land as such per the introductory wording in the Deed of Transfer worded as “déclare vendre céder et abandonner en s’obligeant aux garanties ordinaires et de droit, à Monsieur Francois Ahkon et madame Viridianne Joubert, son épouse majeure et à mademoiselle Mary June Ladouceur.”

However, this is clearly qualified and distinguished by words: “Acquéreurs savoir: Monsieur et madame Francois Ahkon, de l’usufruit et jouissance pour eux leur vie durant et jusqu’au jour du décès du dernier mourant d’entre eux et de la nue propriété au profit et sur la tête de mademoiselle Mary June Ladouceur.” And, they also declared, “et sans une plus ample désignation les acquéreurs déclarant bien connaitre leur acquisition et en être satisfaits.” They declared being clear and satisfied of what they are acquiring.

6. A certification by the Register of Deeds at “C”, of the records produced by the Appellant clearly show that the deceased only had a “L’Usufruit & jouissance port. Terr. 0.391

acre, Baie Ste Anne Praslin (PR482).”

7. That usufruct inter-alia, referred to in the Deed of Sale was terminated by virtue of Article 617 of the Civil Code, referred to earlier, and the limitation referred to earlier in the Deed of Sale itself.
8. In passing I would remark that I did note that Appellant Counsel at page 12 of the record stated, that he would call the Registrar to try and make sense with that document, i.e, the Deed of Sale, otherwise he would file a new case and ask the Court for a declaratory order that the deceased was the owner of that land at least a share of the land before he passed away, this is his two options if the Registrar cannot shed light on the document.
9. On the same page of the record, he did state: *“There are three buyers and I do not understand why the notary who drafted this transfer subsequent to the land being sold to the three persons then make provisions for usufructory interest for Mr and Mrs Francois Ah-Kon, it does not make sense to me, it is very ambiguous.”* He himself concedes that, and is free to ask for such declaratory order for that purpose.
10. In principle the Will, also subject of the executor proceeding is not without rights to movable properties of the deceased should they exist at the time of death and later.
11. In the case of *Gonsalves Larue & Ors v SIMBC [2018] SCSC 1016*, the Chief Justice made the following statement;-

“To have an executor necessarily appointed where the succession only consists of movables would equate a Seychellois executor with an English common law executor which was certainly not the intention of the legislator in 1976.”
12. Otherwise in all circumstances of the case the one ground of appeal raised has no merit and accordingly the appeal is dismissed.

F. MacGregor (PCA)

I concur:.

F. Robinson (J.A)

I concur:.

L. Tibatemwa-Ekirikubinza (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 17 December 2019