IN THE SEYCHELLES COURT OF APEAL

Reportable
[2020] SCCA 18 December 2020
SCA 42/2017
(Appeal from CS 13/2013)

In the matter between

1. LUCILLE LABALEINE

2. SUSAN LABALEINE **Appellants**
(rep. by Serge Rouillon)

and

PATRICK BELLE **Respondent**
(rep. by Frank Elizabeth)

Neutral Citation:	*Labaleine & anor v Belle* (SCA 42/2017) [2020] SCCA 18 December 2020
Before:	Fernando PCA, Twomey, Tibatemwa-Ekirikubinza JJA
Summary:	aveu de paternité- Articles 321and 340 of the Civil Code- preliminary objection- delay in filing skeleton heads of arguments
Heard:	7 December 2020
Delivered:	18 December 2020

ORDER

On appeal from Supreme Court (Robinson J)

The appeal is dismissed with costs

JUDGMENT

TWOMEY JA (FERNANDO PCA AND TIBATEMWA-EKIRIKUBINZA JA concurring)

[1] The Respondent in the present appeal brought a plaint in the court *a quo* in which he prayed the court to declare him as the natural son of Phillippe Labaleine who had passed

away (the Deceased) on 15 September 2012. The Appellants, two of the Deceased's siblings, opposed the application on the grounds that the Deceased had never acknowledged the Respondent as his son and put him to strict proof of his averments.

[2] At the trial, the Respondent produced his baptismal certificate in which the Deceased's name is entered as his father. He testified that he called the Deceased "papa" and that as a child received money from the Deceased every month for school. He worked with the Deceased as a painter for many years until he got another job. Subsequently, he would regularly visit the Deceased with whom he was close. When the Deceased was ill three years before the case, he visited him in hospital every day.

[3] He had also visited the Deceased's three sisters in the past although the First Appellant had not lived in Seychelles much. The obituary they issued on the radio when the Deceased died had referred to the Respondent as the Deceased's only son. Recently, the Appellants had refused to acknowledge him although his father's other sibling still acknowledged him. His mother's and aunt's evidence largely corroborated his testimony.

[4] The Appellants stated that the Deceased had never told them that the Respondent was his son. They had not taken care of the obituary or the funeral and they had never seen the Respondent until after the Deceased's death.

[5] The learned trial judge in her decision stated that she found the Respondent's evidence and that of his mother and aunt convincing. In this regard she found that there was sufficient evidence of facts indicating the relationship of descent and parenthood between the Respondent and the Deceased. She was also satisfied with respect to the evidence of the Deceased treating the Respondent as his child. Finally, she was also satisfied that the Deceased's family had acknowledged him as the Deceased's son. Ultimately she found that pursuant to Articles 340 and 321 of the Civil Code the elements of *nomen, tractatus* and *fama* existed (although it was not essential that all three coincided) in the evidence adduced to establish the Respondent's status as the Deceased's son.

[6] In passing, the learned trial judge also referred to the fact that she had ordered DNA tests to be carried out which would have provided conclusive proof that the Respondents was the Deceased's son, but that the same had not taken place.

[7] The Appellants have appealed the learned trial judge's decision on eight stated grounds but which can be summarized as follows:

(1) The learned trial judge erred in law in relying on the Respondent's evidence on a low threshold of proof as is demonstrated in the decision
(2) The learned trial judge erred in withdrawing the order for a DNA test in the matter.

[8] An objection to the appeal was taken by Mr. Elizabeth for Respondents relying on the case of *Commissioner of Police & anor v Sullivan & ors* (Civil Appeal SCA 26/2015) [2018] SCCA 2 (11 May 2018) on the ground that the Appellants had not complied with the Practice Directions of this court in filing skeleton heads of argument without an application for an extension of time for the same and good reason being shown fir the delay.

[9] In response, Mr. Rouillon for the Respondents has stated that he was not been served with the cause list and only came to know of it by chance and at roll call. Mr. Rouillon's presence at roll call puts the lie to his assertions on this matter. He was at roll call yet claims he was not informed of the cases for the appeal session. Moreover, the cause list is published on the judiciary's web site and the court house and is deemed notice to all concerned.

[10] In addition, this matter has been dogged with other irregularities. It had been set down for hearing in August but the hearing adjourned on 23 June 2020 on the basis of Mr. Rouillon's application on the ground that the matter had been referred to the Constitutional Court. In July 2020, the Constitutional Court challenge ws dismissed as Mr. Rouillon submitted to the Court that the Appellants were "old ladies…[who] hadn't managed to get back to [him]." I cannot but help to wonder where the "old ladies "have managed to get back to him on the present appeal and whether he has instructions to proceed.

[11] In any case there is in my opinion an unacceptable lack of diligence in this case not helped by the lame excuse provided to the court of why the skeleton heads of appeal were filed out of time. No good cause has been provided to this court for the Appellants' laches.

[12] It is true that there are other cases in this court's session that have had the skeleton heads of argument filed late but the present appeal is the only one in which the Respondent has filed a formal objection to its consideration by the court.

[13] On the basis of Practice Direction 2/2019 read with Practice Direction 1 and 3/2014 and the Court of Appeal Rules together with the authority of *Commissioner of Police v Sullivan & ors* (supra), I do not find that the delay in filing the documents in the present appeal is excusable.

[14] In any case I do not see how this appeal could have succeeded. In effect Mr. Rouillon in his submissions has attacked the legislation with regard to paternity suits as being outdated and lacking. While we agree with him and note that the amendments have been passed by the Legislature but await publication and an effective date for commencement, the new provisions would not have retroactive effect on the present case. The learned trial judge in applying Articles 321 and 340 of the Civil Code to the evidence adduced cannot be faulted.

[15] The appeal is therefore dismissed with costs.

Signed, dated and delivered at Ile du Port on 18 December 2020.

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Twomey JA

I concur

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Fernando, President

I concur

Tibatemwa-Ekirikubinza JA