

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2020] SCCA ... 18 December 2020
SCA 18/2018
(Appeal from CS 60/2016)

In the matter between

EDMA MARVELLE RITE MUSSARD
(rep. by Mr Guy Ferley)

Appellant

and

BILLY MUSSARD

Respondents

MARISA BERTHE MUSSARD

BIENA MARIE MUSSARD

MAY ELINE MUSSARD

EDME MARVELLE MUSSARD

JUDITH CLIVY PAOLA nee MUSSARD
(all rep. by Miss Kelly Louise)

Neutral Citation: Mussard v Mussard (SCA 18/2018) [2020] SCSC 18 December 2020

Before: Twomey, Robinson, Tibatemwa-Ekirikubinza JJA

Summary: Dispositions by will: Executors – No will – Articles 1026, 1027, 1028, 827... of the Civil Code of Seychelles – The Supreme Court is empowered to revoke the order of the Supreme Court appointing an executor as such: the executrix monopolising the succession and using it as her own and for her benefit – The revocation order upheld on appeal – Appeal dismissed. No order as to costs.

Heard: 4 December 2020

Delivered: 18 December 2020

ORDER

The Appeal is dismissed. No order as to costs

JUDGMENT

ROBINSON JA (TWOMEY, TIBATEMWA-EKIRIKUBINZA JJA concurring)

1. This is an appeal against a decision of a learned Judge of the Supreme Court who revoked the appointment of the Appellant (the Defendant then) as the executrix of the estate of the late Edmond Bazil Mussard and the late Winnie Marie Mussard who died on the 2 February 2002 and the 17 March 2002, respectively (hereinafter referred to as the "*two Deceased*"), as she had failed to wind up the succession after thirteen years.
2. The learned Judge made orders *inter alia* revoking the Supreme Court order dated the 17 July 2003 in CS 143/2003, appointing the Appellant as the executrix of the estate of the two Deceased and ordering the Appellant to render an account of her management of the estate of the two Deceased within three months of the date of her judgment.
3. In their plea, the Respondents advanced the following reasons which have caused them to initiate the proceedings —
 - (i) that the Appellant has mismanaged the estate in her capacity as executrix and personally obtained benefits from such mismanagement. The plaint alleged that the Appellant subdivided parcel LD10 without the permission of the Respondents and permitted her daughter to build a house on parcel LD10 without consulting the other heirs;
 - (ii) that the Appellant has failed to account to the heirs for the management of parcel LD10 despite numerous requests.
4. The Appellant in her plea denied all the allegations of the Respondents. She claimed that she acted lawfully and within the ambit of her powers as the executrix of the estate of the two Deceased.

5. The learned Judge reviewed the evidence and was satisfied that the Appellant "*[17] [b]y her failure to wind up the succession after 13 years simply on the basis that she'll do it when she is ready, which to [the learned Judge's] mind amounts to a refusal to distribute the remainder of the succession, the Defendant has left herself open to a valid request for removal as executor*".

6. The soundness of the learned Judge's decision is being challenged on two grounds of appeal after the Appellant by Counsel had dropped the third ground of appeal at the hearing of the appeal —
 - "i) The learned trial Judge erred in entering judgment for the Respondents and against the Appellant on the basis that the Appellant had failed to perform her duties as executrix within the provisions of the law.*

 - ii) The learned trial Judge erred in law and in fact in ordering the revocation of the Appellant as executrix and further ordering the Appellant to render an account of her management of the estate of the two deceased within three months of the judgment.*

7. Effectively, the Appellant's two complaints are that the learned Judge was wrong to revoke the Supreme Court order appointing her as the executrix and further, in ordering her to render an account of her management of the estate of the two Deceased within three months of the date of judgment.

8. In support of his contentions, Counsel for the Appellant contended in his skeleton heads of argument that the evidence on record did not support the decision of the learned Judge. Counsel added that the Appellant and her daughter had paid off the outstanding portion of the land loan after the two Deceased had passed away, that the Appellant informed the Respondents of the sub-division of parcel LD10, which sub-division the Respondents consented to, and that the Appellant has kept a portion of the land to the extent of 1478 square metres for the Respondents.

9. Counsel for the Respondents, on the other hand, contended in her skeleton heads of argument that the decision of the learned Judge was supported by the evidence. She maintained that the Appellant has persistently failed to make an inventory of the succession to pay the debts thereof, and to distribute the remainder of the succession, hence her appointment as the executrix has been correctly revoked.
10. The record revealed that the Appellant and the Respondents are seven of the nine children of the two Deceased. Their mother, the late Winnie Marie Mussard, died intestate leaving parcel LD10 situated at La Digue. The Appellant was appointed, by the Supreme Court, as the executrix of the estate of the late Winnie Marie Mussard (exhibit P10) on the 17 July 2003. All nine heirs consented to her appointment. I note that there is no evidence on record to show that the Appellant was appointed, by the Supreme Court, as the executrix of the estate of the two Deceased.
11. Articles 1027, 1028 and 827 of the Civil Code of Seychelles apply to this case —

"Article 1027

The duties of an executor shall be to make an inventory of the succession to pay the debts thereof, and to distribute the remainder in accordance with the rules of intestacy, or the terms of the will, as the case may be.

He shall be bound by any debts of the succession only to the extent of its assets shown in the inventory.

The manner of payment of debts and other rights and duties of the executor, insofar as they are not regulated by this Code, whether directly or by analogy to the rights and duties of successors to movable property, shall be settled by the Court.

Article 1028

The executor, in his capacity as fiduciary of the succession, shall also be bound by all the rules laid down in this Code under Chapter VI of Title I of Book III

relating to the functions and administration of fiduciaries, insofar as they may be applicable."

12. Article 827 of the Civil Code of Seychelles provides —

"Article 827

A fiduciary shall be under a duty to render full and regular account of his management until such time as his functions are terminated. He shall be liable for any damage or loss sustained by the property...".

13. The Civil Code of Seychelles does not stipulate a period within which an executor has to perform his functions and discharge his duties as an executor after his appointment by the Supreme Court. It seems to me that the appointment of an executor for an undetermined duration can pose certain risks. There is a likelihood that an executor may abuse his position and prolong the winding up of the estate for an indefinite period. This risk is further aggravated, as noted by the learned Judge in this case, when an executor is uninformed as to his duties and functions.

14. I do not accept the contentions of the Appellant by Counsel contained in her skeleton heads of argument. Indeed, the record revealed that the Appellant was monopolising parcel LD10 and using it as her own and for her benefit. For instance, the Appellant and her daughter paid off the outstanding portion of the land loan and the Appellant sub-divided parcel LD10 in November 2014, after she was appointed as the executrix of the succession. The evidence revealed that the Appellant built a house on the property for herself and even permitted her daughter and one of her sisters to each build a house on the property. In this respect, I find it appropriate to record the interaction below —

*"RUTH MUSSARD – Sworn
Examination in chief*

[...]

Q. The plaintiffs, your siblings, have brought a case against you asking that you are removed as executor to the estate of your late mother, do you agree with that?

A. No.

Q. They state that you have mismanaged the estate, what do you have to say about this, regarding the mismanagement of the estate?

A. Everything is still there in the house, every furniture is still in the house and I did not benefit anything from the estate of my mother and father.

Q. It is in evidence that you subdivided the land.

A. Yes because the house was not in a good condition and old.

Q. You have reconstructed the said house?

A. No, it is falling apart.

Q. But you built a house on the land?

A. Yes the Government did something quick for us to build a house.

Q. When you say "we" who do you mean?

A. Rita and myself, Ruth because all the rest have their own house and we have always lived with mother and father.

Q. You built one house for you to stay with Rita?

A. No, it is separated.

Q. Explain to the court how this house was built?

A. The government came to visit the place, they said that the house is leaking and old and they gave me a house because I have children.

Q. It is also the case against you that you permitted your daughter to build a house on the said property. Please explain to the court how this happened and why it happened.

A. My daughter Jemina Ernesta asked me for a portion, I have the beacons and I have given her part that is mine.

Q. Did you give her a portion of land or you allowed her to build a house on the land?

A. I gave her permission for her to build her house." Verbatim

15. Further, under cross-examination, the Appellant made it clear that she would distribute the remainder of the succession, which she had kept for her siblings "when [she] is ready". The learned Judge also rightly underlined the significance of the Appellant's failure, after thirteen years, to make an inventory of the succession to pay the debts thereof and to comply with Article 827 of the Civil Code of Seychelles as also justifying her decision to

revoke the order of the Supreme Court appointing the Appellant as the executrix of the succession.

16. I am unable, in the circumstances, to find fault with the decision of the learned Judge revoking the Supreme Court order of 17 July 2003, in CS 143/2003, appointing the Appellant as the executrix of the estate of the late Winnie Mussard. Hence, I dismiss the appeal in its entirety. The orders of the learned Judge stand, save for the following modifications —

- (i) For the first order of the learned Judge that: "*(i) The order dated 8th September 2003 in SC 143/2003, whereby the Defendant was appointed as executrix is hereby revoked*", I substitute for that order: "*(i) The order dated 17th July 2003 in SC 143/2003, whereby the Defendant was appointed as executrix of the succession of the late Winnie Mussard is hereby revoked*".
- (ii) For the second order of the learned Judge that: "*(ii) The Defendant shall render an account of her management of the estate of the two deceased within 3 months of today's date*", I substitute for that order: "*(ii) The Defendant shall render an account of her management of the estate of the late Winnie Mussard within 3 months of the date of this judgment*".

I make no order as to costs.

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

Robinson JA

I concur

Twomey JA



I concur

Tibatemwa-Ekirikubinza JA