COURT OF APPEAL OF SEYCHELLES

Reportable
[2023] SCCA 9 (26 April 2023)
SCA 3/2021
(Arising in MC 109/2019)

In the matter between
Rosita Parcou
Executrix of the late Kaven Julien Parcou **Appellant**
(rep. by Serge Rouillon)

and

Jill Laporte **Respondent**
(rep. by Mr Bernard Georges)

Neutral Citation: *Parcou v Laporte* (SCA 3/2021) [2023] SCCA 9) (Arising in MC 109/2019) (26 April 2023
Before: Twomey-Woods, Tibatemwa-Ekirikubinza, Andre, JJA
Summary: An order for a new trial ought not to be granted save in exceptional circumstances. For the application to succeed, the applicant must situate themselves within Section ***194*** of the ***Seychelles*** Code of Civil Procedure (***SCCP***)**.**

The Appellant has failed to prove that exceptional circumstances existed to justify the granting of a new trial.

The Appeal is dismissed with costs to the Respondent.

Heard: 17 April 2023
Delivered: 26 April 2023

ORDER

The Appeal against the judgment of the Supreme Court for declining to order a new trial is dismissed.

JUDGMENT

DR. LILLIAN TIBATEMWA-EKIRIKUBINZA, JA. (Dr. M. Twomey-Woods JA, S Andre JA concurring)

The Facts

1. This is an appeal from the decision of the Supreme Court (Carolus, J.) in which the Appellant petitioned the court to set aside the judgment of the Supreme Court in CS 128 of 2018. The Appellant had sought for grant of an order for a new trial on its merits. The petition was premised on several averments to wit: discovery of new evidence by the Petitioner (now appellant) which would have had a bearing on the judgment of the Court; in the interest of justice and that the judgment in CS 128 of 2018 was unsafe and unsatisfactory.

2. The background facts to this case are that the Appellant - Rosita Parcou, is the widow of the late Kaven Julien Parcou ("the Deceased") and executrix of the deceased's estate.

3. The Respondent brought an action vide CS 128 of 2018 simultaneously *en recherche de paternité* and *en desaveu de paternité* against the deceased's estate claiming that she was the biological daughter of Julien Kaven Parcou. The Respondent averred that she had known the Deceased from a very early age and visited him regularly at his business office. Two witnesses, who used to work for the Deceased corroborated the Respondent's evidence stating that the Deceased had introduced the Respondent to them as his daughter. The Respondent's mother also corroborated her evidence.

4. The Supreme Court (Twomey CJ) (as she then was), held in favour of the respondent and found that the deceased was her father and ordered Chief Officer of Civil Status to rectify her birth certificate to reflect the same.

5. Dissatisfied with Twomey CJ's decision, the Appellant petitioned the Supreme Court (vide: MC 109/2019) under Section 194 of the Seychelles Code of Civil Procedure (SCCP) for the said judgment to be set aside and for a new trial on the merits as already set out above.

6. Carolus J. declined to grant the order sought on the basis that the Appellant failed to satisfy the requirements for a new trial specified under Section 194(b) and (c) of the SCCP.

7. The Appellant was dissatisfied with Carolus J's decision and appealed to this Court on several grounds which I have reproduced verbatim below:

1. The learned judge erred in fact and law in failing to evaluate and consider the Petition and the facts presented by an uncontested Affidavit of facts by the Appellant where;

a. the important items of new evidence, were only discovered after the trial;
b. such facts and details were not revealed by the Plaint there was no chance for the Appellant to go fishing in the family history of the Respondent;
c. such facts were such that they could not with due diligence have been found out prior to the case by the Appellant, in the light of extremely weak pleadings and case by the Respondent with no scientific or factual basis;
d. she failed to appreciate the huge difference the new evidence could have had on the trial in the sense that;

i. showing the facts and evidence of the Respondent was not accurate;
ii. showing Respondent was dishonest and thus affecting her demeanour as a credible witness and her multiple perjury was inexcusable;
iii. the deceased witness Tirant subject of the perjury was mentioned several times as having brought things for the Respondent from alleged deceased father and was a key witness for such a case as he was still alive during trial.

2. The learned judge has shown bias in her summary of the case and thus erred in law and fact to properly evaluate and consider the Petition;

a. she refers to the perjury as "alleged perjury" when the record reveals multiple and unprompted perjury concerning a key witness;

b. she failed to address physiological and colour issues as being of any importance when these are the first criteria to be used by a trial court on paternity cases;

c. she did not address major interruptions in cross examinations of a witness on the issue of colour of the alleged father, by the trial judge;

d. by treating the issue of skin colour as something which had been dealt with at the trial and not to be considered when;

i. the Appellant by an uncontroverted Affidavit of facts said she only found out about the darker skin colour of Donald Laporte post trial;

ii. the issue of skin colour was not addressed and avoided by the trial court;

iii. he avoided the factual averment by an uncontroverted Affidavit of facts that the mother and siblings and the deceased alleged father are all lighter in complexion to the Respondent;

e. references to DNA testing were made not as a solid rational, objective observer and adjudicator but if it would have been more helpful to the Respondents case.

f. the learned judge and the trial judge failed to note that it was for the Respondent not the Appellant to show why the niece of the deceased was not suitable for a DNA testing.

g. she erred on the facts saying two employees of the deceased alleged father were called by the Respondent when only one disaffected employee was called the rest were friends or relatives of the Respondent.

h. she erred on the facts by failing to note that no independent witnesses were called to attest for the Respondent no other evidence of notoriety or any independent evidence.

3. The learned judge showed a clear bias and erred in fact and law when she found issues raised to;

i. impose an unfair unconstitutional and unrealistic burden on the Appellant to disprove a case which was the burden of the Respondent in the first place and where the Appellant has stated her story by an uncontroverted Affidavit of facts, and

ii. ignore completely a weak case of the Respondent which it was for her to prove- a double burden of *desaveau de paternite and recherche de paternity;*

iii. by using words such as "purportedly new evidence" shows the bias of the judge and the manner she has now decided on the factual evidence in the absence of an affidavit of the Respondent in rebuttal of an affidavit of facts;

iv. the learned judge has shown her further bias by extracting the portions of the judgment of the trial judge to make up the case for the Respondent instead of analyzing the discrepancies and lack of substantive evidential proof of her case.

4. The learned judge erred in fact and law in failing to consider the seriousness of the DNA issues raised in the Petition; the uncontroverted Affidavit and the changed laws which were now in place to prove conclusively the issue of paternity or non-paternity;

5. The learned judge erred in law and fact to accept that;

a. since the matter was on appeal and an appeal can be a retrial there was no need for a new trial and thus failed to make a reasonable judgment on the whole issue of whether it a new trial would meet the ends of justice; and

b. leaves the court of appeal with a clear handicap to make such an objective determination on non-paternity and paternity within the same case using scant perjured and dishonest evidence without scientific data.

6. The learned judge erred in law in using a low threshold for proving a paternity suit against established laws and jurisprudence and failed to make a proper judgment

on whether a new trial would meet the ends of justice especially as she was now aware of the changes in the law relating to DNA testing.

Reliefs sought:

a. The judgment of her Ladyship E Carolus J be set aside; and
b. either order;

    i. The Petitioner and the Respondent to arrange for DNA tests to be carried out and the findings to be used for a final definitive conclusion of this suit, where failure to abide by such order will lead to adverse inferences being drawn against the refusing party in further proceedings; or

    ii. a new trial on the merits be ordered on the basis of new evidence discovered post trial and with a directive that the parties make arrangements for DNA evidence to be used to prove non paternity and paternity using appropriate medical facilities accepted by the courts.

c. costs be given to the Appellant.

Submissions by Counsel.

Ground 1

Appellant's submissions

8. Under this ground, the appellant's counsel faulted the learned trial Judge for declining to grant an order for a new trial when factors favouring its grant were in existence. Such factors included discovery of new evidence post trial in respect of:

(i) disparity in skin colour complexion between the Respondent and the alleged deceased as her father.

(ii) The fact that the Respondent committed perjury during the trial and was therefore not a credible witness.

(iii) Similar to the above, that Mr. Tirant, a key witness in the trial also committed perjury.

9. That the above evidence could not with due diligence have been found out prior to the trial in light of the weak pleadings and case by the Respondent who had no scientific proof or factual basis to state that the deceased was her father. Furthermore, that the new evidence had the potential to influence the findings and conclusions of the Trial Judge.

Respondent's reply

10. Counsel submitted that the Trial Judge set out the law as to requirements for a new trial in great detail. She examined the law as to the two possible pathways available to the Appellant, namely:

    (i) new evidence not available at the trial, and

    (ii) necessity for the ends of justice.

11. The Judge concluded that the Appellant had not discharged the burden on her for not having known about the witness Tirant or obtained his evidence at trial. It is inconceivable that that witness, who had been a long-serving employee of the deceased, would be unknown to the Appellant or that the Appellant would not have - in preparing for the trial-sought to seek out any person who would be in a position to testify to the fact that the Respondent was not known to the deceased. In any event, the Appellant was not able to show with any certainty that, had the witness been found, his evidence would have resulted in a different conclusion by the trial court. Simply pointing to a possible other witness without being able to show how the possible testimony of that witness would change the outcome of the case is not sufficient.

12. In regard to the 'ends of justice' requirement, it is difficult to see that this provision is being raised otherwise than to give the Appellant another bite of the cherry. The authorities cited

by the trial court are unanimous to the effect that the provision is only to be used when it is clear that some defect in procedure has allowed an injustice to be visited on one or other of the parties, and not as an opportunity to have another go at a case where the first result was not to the party's liking. The Appellant has raised no irregularity, otherwise than the possible skin colour of the Appellant and deceased. As pointed out by the trial court, colour is an arbitrary and non-scientific manner of ascribing paternity, even where it has been conclusively proven - which was not the case here - that there was in fact a difference in skin colour.

Ground 2

Appellant's submissions

13. The Appellant presented two arguments under this ground. The first argument was that the Trial Judge was biased in evaluating the evidence presented before her which led to erroneous findings and conclusions. The Appellant highlighted the following aspects to prove her contention that the Trial Judge was biased:

    a. She referred to the perjury as an "alleged perjury" when the record reveals multiple and unprompted perjury concerning a key witness;

    b. She failed to address physiological and colour issues as being of any importance when these are the first criteria to be used by a trial court on paternity cases;

    c. She did not address major interruptions in cross examinations of a witness on the issue of colour of the alleged father, by the trial judge.

    d. She erred on the facts saying two employees of the deceased alleged father were called by the Respondent when only one disaffected employee was called the rest were friends or relatives of the Respondent. No other evidence of notoriety or any independent evidence was adduced.

e. By treating the issue of skin colour as something which had been dealt with at the trial and not to be considered when the Appellant by an uncontroverted Affidavit of facts said she only found out about the darker skin colour of Donald Laporte post trial; The issue of skin colour was not addressed and avoided by the trial court. She avoided the factual averment by an uncontroverted Affidavit of facts that the mother and siblings and the deceased alleged father are all lighter in complexion to the Respondent.

14. The second argument was in respect of DNA testing. The Appellant argued that the learned Judge as well as the Trial Judge failed to note that it was for the Respondent not the Appellant to show why the niece of the deceased was not suitable for a DNA testing.

15. The Appellant was of the view that even if DNA test was not compulsory at the time of the trial, the parties had come to an agreement to have a DNA test. That by a letter from the Respondent's Attorney dated 4th of March 2019 addressed to the Registrar at page 233 of the brief indicated as follows:

"On the last occasion this matter was before the court, the Honourable Chief Justice directed that service be made on Mr. Donald Laporte, who is the registered father on Ms. Laporte's birth certificate, and to have DNA samples taken from our client and the niece of the late Julien Parcou. We have been instructed by our client that Mr. Donald Laporte has passed away. We have been further instructed by our client that she has serious doubt as to the paternity of the niece who is to provide the DNA sample on the 8th of April, 2019. As such, our client has been advised that she will not be providing a DNA sample on the above-mentioned day. The case will proceed without DNA evidence."

16. That although the issue of DNA evidence was considered and addressed by Carolus J in her judgment at page 313 paragraph 24, she did not bother to ascertain the biologically related issue but rather left to the Respondent to choose whether or not to carry out the DNA test.

17. Counsel submitted that since the law has now changed, it would be an opportunity for the parties to bring a closure to this pending issue of paternity.

Ground 3

Appellant's submissions

18. Similar to ground 2, under this ground the Appellant argued that the learned trial judge showed a clear bias and erred in fact and law when she found issues raised to;

    i. impose an unfair unconstitutional and realistic burden on the Appellant to disprove a case which was the burden of the Respondent in the first place and where the Appellant has stated her story by an uncontroverted Affidavit of facts, and

    ii. ignore completely the weak case of the Respondent which was her duty to discharge i.e. the burden to prove both *desaveau de paternite* and *recherché de paternite.*

    iv. by using words such as "purportedly new evidence" shows the bias of the judge and the manner she decided on the factual evidence in the absence of an Affidavit of the Respondent in rebuttal;

    iv. The learned Judge also showed bias by extracting the portions of the judgment of the Trial Judge to make up the case for the Respondent instead of analyzing the discrepancies and lack of substantive evidential proof of her case.

Ground 4

19. The learned judge erred in fact and law in failing to consider the seriousness of the DNA issues raised in the Petition, the uncontroverted Affidavit and the enactment of new legislation which were now in place to prove conclusively the issue of paternity or non-paternity.

Respondent's reply

20. In respect of the grounds on bias, the Respondent submitted that a careful reading of the grounds and submissions reveals a series of disjointed complaints all lumped together to give the appearance of bias. That however, the fact is that the Respondent proved her case by presenting the testimony of her mother which corroborated her assertion that the

deceased Parcou was her father. Furthermore, that the said evidence was corroborated by the testimony of an employee of the deceased and an employee of the building where the deceased's business premises were located.

21. In respect of the issue on DNA evidence, the Respondent submitted that at the material time, there was no obligation on proving paternity through DNA evidence. Proof by conventional means was adequate and accepted by the original trial court and the Court of Appeal.

Ground 5

Appellant's submissions

22. The learned judge erred in law and fact to accept that;
    a. Since the matter was on appeal and an appeal can be a retrial there was no need for a new trial and thus failed to make a reasonable judgment on the whole issue of whether if a new trial would meet the ends of justice; and

    b. Leaves the Court of Appeal with a clear handicap to make such an objective determination on non-paternity and paternity within the same case using scant perjured and dishonest evidence without scientific data.

Ground 6

23. The learned judge erred in law in using a low threshold for proving a paternity suit against established laws and jurisprudence and failed to make a proper judgment on whether a new trial would meet the ends of justice in light of the changes in the law relating to DNA testing.

Respondent's reply

24. The Respondent submitted that although proof of paternity using conventional means was viewed by the Appellant as a low threshold, the law at the time the case commenced in

Trial Court allowed such a threshold and the Appellant cannot fault the Judge for using such an approach. According to the Respondent, the reason for such an approach is to encourage people not to shy away from paternity suits.

25. In conclusion, the Respondent submitted that the Trial Judge meticulously considered every point raised by the Appellant and weighed it against the legal provisions that prescribe for a new trial to be granted. The Judge found the evidence lacking and declined to grant the prayer sought by the Appellant. The Respondent therefore prayed that this Court upholds the judgment of the lower court and dismisses the appeal.

Court's consideration

26. Although the Respondent did not raise any objection regarding the way the grounds of appeal were presented, I am duty bound to state that the grounds were poorly drafted and contravened several provisions of the Rules of this Court.[1]

27. The grounds of appeal were verbose and narrative in nature. The Notice of Appeal contained arguments which were then repeated in the written submissions/skeleton heads of argument. The grounds contained narrative instead of just specifying the points

[1] Practice Direction No.1 of 2017 provides as follows:

> (5) The identified grounds shall be in plain English and be clear, simple, concise and readily intelligible to the respondent as well as to the Court so as to enable them to properly respond to the challenge of a court decision already handed down.
>
> (6) The grounds of appeal shall not be unduly lengthy, verbose, prolix or argumentative.

It must also be noted that the heads of argument filed by the Appellant were also problematic and contravened Rule 24 (2) (b) and (c)[1] as reproduced below:

> 24 (2) (b): The heads of argument shall be clear, succinct and shall not contain unnecessary elaboration.

considered to have been wrongly decided. They contained averments that seek to illustrate or contextualize the point or when it contains evaluative averments suggesting a desired conclusion, or includes inferences and characterization of facts.

28. I will nevertheless consider the merits of the Appeal.

29. Although the Appellant raised 6 grounds of appeal, the central question to be determined in the appeal is whether the Appellant satisfied the requisite conditions to be granted an order for a new trial enunciated in Section 194 of the ***Seychelles*** Code of Civil Procedure (SCCP).

30. I will then handle the issue regarding the applicability of Article 375 of the Civil Code of Seychelles Act 2020 which empowers courts to order for Deoxyribonucleic acid (abbreviated DNA) tests while handling paternity disputes.

31. A new trial is one way through which a judgment delivered by a court can be set aside. As such, the order for a new trial ought not to be granted save in exceptional circumstances[2]. The granting of an order for a new trial should be an exception rather than the norm. The reason for this is to safeguard the sanctity of a judgment and the principle of bringing litigation to an end.

Section 194 of the SCCP provides for the exceptional circumstances as follows:

> **A new trial may be granted on the application of either party to the suit—**
>
> **(a)where fraud or violence has been employed or documents subsequently discovered to be forged have been made use of by the opposite party;**
>
> **(b)when new and important matter or evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the hearing of the suit,**

[2] Morel v Hoareau (1972) SLR 127; Naiken v Pillay (1968) SLR 101.

has since been discovered or become available;

(c)when it appears to the court to be necessary for the ends of justice.

The Appellant sought the order for a new trial on the basis that she had discovered new evidence which she could not access at the time of the trial. Two "pieces of evidence" were alluded to:

i) Discovery of the difference in skin colour complexion between the Respondent and Mr. Kevin Parcou who she alleged to be her father on the one hand and the similarity between the Respondent and Mr. Laporte on the other.

ii) The fact that, contrary to what was stated by the Respondent during the Trial, a potential witness in the trial (Mr. Tirant), was not dead but alive at the material time.

Skin color and other physiological features

32. I will start with the issue of skin color and other physiological features.
In her application before Carolus J. the Appellant stated that whereas the deceased Parcou was of a light complexion, the Respondent was of a dark complexion. In the same breath the Appellant also referred to the skin complexion of the deceased Donald Laporte and averred that just as it was for the Respondent, Mr. Laporte was dark in colour. She averred further that how Donald Laporte looked and the similarity of the Respondent (physiological features and color) to Donald Laporte had been brought to her attention by a 3rd party, after the trial. It is this that the Appellant had presented before Carolus J as new evidence. It was the submission of the Appellant that during the original trial, there was a complete failure to look carefully at the parties to see the complete lack of any colour, physiological or physical resemblance between the purported father and mother and purported child.

33. Regarding the skin colour of Laporte, Carolus J stated *inter alia* that:

> This piece of evidence could have been discovered prior to the trial if the Appellant had exercised due diligence especially given that

> the Respondent's action was also one *en contestation de paternite* and the Appellant was aware that the Respondent had been declared as the child of Donald Laporte. Resemblance to the said Donald Laporte is one of the most obvious defences which should have come to mind in the circumstances. It is my view therefore that the evidence regarding the skin colour of the Respondent does not justify a new trial being granted.

34. The finding by Carolus J. is in line with Section ***194*** (b) of the ***Seychelles*** Code of Civil Procedure. There under, the evidence sought to be adduced before court must not only be new, but it must further be proved that the said evidence could not have, even with the exercise of due diligence, been available to the applicant before the trial.

35. I find no reason to depart from the reasoning and finding of Carolus J on this matter.

Discovery of New Evidence.

36. In addition to the need to prove that the evidence in issue could not have been available to the appellant even with the exercise of due diligence, we must also answer the question: would that new evidence have necessarily or probably affected the outcome of the first trial if it had been adduced?

37. It is on record that in CS 128 of 2018, using the argument of skin color differences the Appellant attempted to discredit the claim by the Respondent that she was a daughter of Kevin Parcou. The Appellant specifically submitted that the Court should note that the Plaintiff looks nothing like the Deceased. Regarding this submission, the original court made a finding that the Appellant had not adduced evidence to support her statement.

38. In considering the matter, Carolus J. points to the fact that since during the original trial, the issue of the Respondent's color had been *unsuccessfully* pursued, such evidence cannot be material for purposes of determining the application for a new trial. Carolus goes on to state further that:

> … if apart from skin colour, the resemblance between the Respondent and Laporte were so strong as to give credence to the Respondent being biologically related to him as averred by the Petitioner, this could be considered material evidence (but) whereas great emphasis is laid on the issue of skin colour and details are given in the pleadings, only passing reference is made to the similarity in physiological features.

39. The Appellant attaches photographs of the deceased Parcou (I presume as evidence that he was white) but adduces no credible evidence to show that Laporte and the Respondent share features. The only attempt at adducing evidence is the averment by the Appellant that the information had been brought to her attention by a 3rd party. We are not told who the 3rd party is, the 3rd party is not made to swear an affidavit. The so-called information has no evidential value since it is hearsay.

40. I am in agreement with the Judge that even if the said 'evidence' had been produced at trial, it would have had no effect on the outcome of the case. It was not of such character that if produced during the suit the resulting decision might have been different.

41. The second aspect of new evidence is linked to the testimony of the Respondent that Mr. Tirant was dead at the time of the original trial when in fact he was alive at the material time. It was the submission of the Appellant (before Caralos J.) that the Respondent committed perjury. And that this was evidence that she was dishonest and thus not a credible witness. That it was only after the original trial that the Appellant found out that Mr. Tirant had been alive at the relevant time – during the trial. The Appellant produced a Death Certificate as evidence of when Mr. Tirant died and indeed proved that at the time of the Trial, he was alive.

42. In resolving the value of this evidence for purposes of an application for a new trial, I will again be guided by **Section 194 (b) of the SCCP**[3].

> **(b)when new and important matter or evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the hearing of the suit, has since been discovered or become available**

43. The evidence is new. The question however is – is it important for purposes of such an application? With the exercise of due diligence, could the Appellant have come to know of the existence of Mr. Tirant?

44. The Respondent had testified at the original trial that Mr. Tirant was one of the persons with whom the deceased Parcou used to leave money for her and that Parcou had introduced her to Mr. Tirant as his daughter. The Respondent's mother had also testified that Mr. Tirant used to bring basic needs for the baby (the respondent) from Mr. Parcou.

45. It was the argument of the Appellant that Mr. Tirant was a potential witness in the matter because having been a long time employee of Mr. Parcou he would be in position to testify as to the truth of the Respondent's allegation that she was the daughter of Mr. Parcou.

46. In my view, I do not see the relevance of the piece of new evidence in the matter before us. It would be speculation for the Court to assume in whose favour Mr. Tirant would have testified. Would he have corroborated the testimony of the Appellant and her mother or not? In any event, no particular number of witnesses is required by the law, for proof of a fact. The Respondent had called other witnesses who testified in her favour. The testimony of such witnesses, together with other evidence had led the original judge to make a finding that the Respondent had, on the required standard of proof, established that she was a daughter of Mr. Parcou. I therefore find that the fact that Mr. Tirant was alive at the time of trial cannot be considered an important matter or evidence. The lack of this element places the "new" evidence outside the purview of **Section 194 (b) of the SCCP** above.

[3] Supra.

47. It was the argument of the Appellant that the Respondent had had committed perjury. In her judgment Carolus J. dealt with this issue and came to the conclusion that merely giving false statement does not translate into the offence of perjury – it must be proved that the maker of the statement knowingly did so. Be that as it may, I note that the Appellant faults Carolus J. for failing to "appreciate" that by making false statements, the Respondent was a dishonest and NOT credible witness. It is trite that issues of credibility of a witness are left to the court who had the opportunity to see them give evidence. It is trite that a court of appeal does not lightly interfere with the credibility findings of a trial court. I believe this would apply to a court handling an application for a new trial.

DNA Evidence

48. The Appellant argued that Carolus J. erred in fact and law in failing to consider the seriousness of DNA issues raised in the Petition. That in not ordering for DNA tests, she applied a low threshold for proving a paternity suit when there is legislation in place empowering courts to make appropriate orders. In this, Counsel was referring to Article 375 of the Civil Code of Seychelles Act 2020.[4] That such order would meet the ends of justice. The essence of the argument of Counsel for the Appellant would perhaps fit under Section 194 (c) of the SCCP which provides that a new trial may be ordered when it appears to the court to be necessary for the ends of justice.

[4] 375.(1) A person may prove all the facts tending to show that he or she is not the parent of the child.

(2) (a) The court may give a direction for the use of blood or other bodily samples or other tests to ascertain whether such tests show that a party to the proceedings is or is not thereby excluded from being the parent of the child and for the taking, for the purpose of those tests, of blood or other bodily samples from the child, the other parent and any person alleged to be the parent of the applicant.

(2) (b) The court may at any time revoke a direction given under this paragraph.

(3) Where a court gives a direction under paragraph (2) and any person fails to take any steps required for the purpose of giving effect to the direction, the court may draw such inferences, if any, from that fact as appear proper in the circumstances.

49. It is trite that legislation does not have retrospective effect. If the legislature intends that a statute is to have retrospective effect, this must be clearly stated and justified.

50. At the time of hearing the original suit, the law did not allow the Court to order for mandatory tests. Proof of paternity through DNA tests could only be effected if there was agreement between the parties involved in the dispute. And perhaps more important is the need to consider the reliability of DNA results in the particular circumstances of the case before court. The Appellant averred that Mr. Parcou had a niece and that tests be carried out with samples from the said niece on the one hand and the Respondent on the other. The Respondent had earlier rejected the proposal on the basis that there was doubt as to whether the said girl was in fact biologically related to Mr. Parcou. There was doubt as to whether she was daughter to Parcou's brother. As noted by Carolus J. the Respondent's refusal to be subjected to the tests was not completely unfounded. In such circumstances, I am not persuaded that ordering a new trial and ordering for DNA tests would serve the ends of justice.

Conclusion and Orders.

51. I find that the Appellant has failed to prove that exceptional circumstances exist to justify the granting of a new trial in this case.

52. The Appeal is dismissed with costs to the Respondent.

Tibatemwa.

Dr. L. Tibatemwa-Ekirikubinza, JA

I concur

Dr. M. Twomey-Woods, JA

I concur

S. Andre, JA

Signed, dated and delivered at Ile du Port on 26 April 2023