



*Mr Allen Hoareau of Beau Vallon, Mahe, Seychelles.* The 1<sup>st</sup> Respondent is the Government of Seychelles and the 2<sup>nd</sup> Respondent is the Attorney General, the statutory respondent.

[2] The Petition is founded on the averments by the Petitioner that the late Dr. Hilda Stevenson Delhomme was the owner of two parcels of land registered as Title Nos V962 and V1099 of the extent of 346,686 sq. metres and 6,332 sq. metres respectively, situated at Beau Vallon, Mahe, Seychelles which on the 31<sup>st</sup> day of March 1984, were compulsorily acquired by the 1<sup>st</sup> Respondent. Negotiations were ongoing pursuant to the provisions of Schedule 7 of the Constitution but was not concluded by the time Dr. Hilda Stevenson-Delhomme passed away on the 4<sup>th</sup> of January 2002.

[3] By Order of the Supreme Court in case Civil Side 153/2002, Veronique Marie Hilda Maryan Green, born Delhomme was appointed Executrix of the succession of the late Dr Marie Hilda Stevenson-Delhomme.

[4] This Petition which has been signed by the Attorney-at-Law, Mr Philippe Boule, is accompanied by an Affidavit in Support sworn by Allen Hoareau, of Beau Vallon, Mahe, Seychelles and a Power of Attorney granted to Mr Allen Andre Joseph Hoareau C/o Augerine Guesthouse, Beau Vallon, Mahe, Seychelles by Veronique Marie Hilda Hugette M. Delhomme of 111 Ave de la Motte Piquet, Paris, France.

[5] The Respondents raised preliminary objections to the Petition out of which the following two grounds of objection are still in contention in respect of the motion for amendment, namely;

*“1.3 an agent is not entitled to depone on behalf of the executor of an estate;  
and*

*2. The Petitioner is the Estate of the late Dr Hilda Stevenson-Delhomme of which Mrs. Veronique Green has been appointed as the executrix by the*

*order of the Supreme Court. However, the Petition is by representative of Mrs. Green, namely Allen Hoareau, who had sworn to the affidavit as well. It is averred that the Estate is not properly represented in the Petition as a purported agent of the executrix has no capacity to act for and on behalf of the estate. Further the executor should be the one acting in person and not through an agent.”*

[6] By Notice of Motion dated 12<sup>th</sup> January, 2024 and filed on the 1<sup>st</sup> January, 2024, the Petitioner moved for leave to amend the Petition by substituting the executrix of the estate of the late Dr Hilda Stevenson-Delhomme, namely Mrs Veronique Green with Mr Allen Hoareau as executor of the said estate and consequently replacing the original Petition with the amended Petition. The Notice of Motion is accompanied by an affidavit of Allen Hoareau deponing as follows:

- “1) By order of the Curator dated 12<sup>th</sup> day of January 2024 I was appointed executor of the Estate of the late Dr. Hilda Stevenson-Delhomme jointly with Mrs. Veronique Green.*
- 2) I am aware of the Petition filed in the Constitutional Court namely the Estate of the late Dr. Hilda Stevenson-Delhomme vs. Seychelles Government and Attorney General CP No. 8 of 2023.*
- 3) It is necessary that I be substituted as the Executor representing the Estate of the late Dr. Hilda Stevenson-Delhomme in lieu of Mrs. Veronique Green who resides in France as I reside in Seychelles and better able to pursue the proceedings before the Constitutional Court.*
- 4) To the best of my information, knowledge and belief, it is fair, just and reasonable that a leave be granted by the Honourable Constitutional Court to amend the Petition as per amended Petition attached herewith and I pray accordingly.”*

[7] The Respondents objected to the motion to amend the Petition raising the following ground of objection:

*1.1 The Petitioner of the Petition dated 19/07/23 was named as Estate of the late Dr. Hilda Stevenson-Delhomme represented by Allen Hoareau where the said Allen Hoareau was purportedly a holder of a Power of Attorney of Veronique Green who was the only Executrix appointed for the said estate as at the date of the Petition.*

*1.2 The said Petition was accompanied by an affidavit of the said Mr. Allen Hoareau. Thus for all purposes the said Petition dated 19/07/23 was filed by the said Mr. Allen Hoareau who did not have the capacity to file such Petition on behalf of the estate of the late Dr. Hilda Stevenson-Delhomme.*

*1.3 The Respondents have filed preliminary objections in relation to the said Petition where one of the grounds of objections was that the said Mr. Allen Hoareau does not have the capacity to act for and on behalf of the said estate.*

*1.4 An application to amend the Petition dated 12/01/24 has now been filed to amend the caption of the said Petition by stating that the said estate is represented by Mr. Allen Hoareau as the executor of the said estate on the basis that the said Mr. Allen Hoareau was appointed as a joint executor on 12/01/24.*

*1.5 In view of the above circumstances, the Respondents object to the said application to amend the Petition for the following grounds inter alia;*

1.5.1 *Mr. Allen Hoareau was not an executor as at the date of the Petition which is 19/07/23 and did not have the capacity to file the said Petition. Therefore, the Petition was defective and the said defect cannot be cured by way of an amendment to substitute Mr. Allen Hoareau as the executor who has been appointed as an executor on 12/01/24, about six months after the said Petition was filed where he was not an executor as at the date of the Petition and did not have the capacity to file the said Petition as of 19/07/23; and*

1.5.2 *Without prejudice to the above objection, according to the Order dated 12/01/24 attached with the instant application Mr. Allen Hoareau is a joint executor of the said estate of the late Dr. Hilda Stevenson-Delhomme, and therefore the said Mr. Allen Hoareau does not have the capacity to file action purporting to be the sole executor of the said estate.*

1.6 *The Respondent would further wish to highlight that the caption of the application to amend the petition is not the caption of the Petition dated 19/07/23 filed before this court and this renders the instant application defective if not misleading.”*

[8] Learned counsel for the Petitioner and Respondents in addressing the Court narrowed the ground of contention substantially. Learned counsel for the Respondents submitted that by the very fact that the Petition was filed with an accompanied affidavit of Mr Hoareau as agent to Mrs. Green renders the Petition defective at the point of it being filed for two main reasons. The first reason is that the duties and the powers of an executor cannot be delegated as provided by Article 1025 sub Article 3 of the Civil Code of Seychelles which is also in line with the legal principle of *deligatus non-potest delegare*. Secondly an agent cannot give evidence for and on behalf of the principal and therefore it was submitted that the Petition in itself is void *ab initio* and the subsequent appointment of

Mr. Allen Hoareau as joint executor cannot cure this defect. Learned counsel submitted further that if anything the very recent appointment of executor is a clear indication that the Petition is bad in law and should be dismissed. To allow for the amendment would be to allow for a new case to be brought before the Court by way of this amendment.

[9] Learned counsel submitted further that the order of the Curator dated the 12<sup>th</sup> of January 2024 names Mr. Allen Hoareau as a joint executor of the estate therefore Mr Hoareau does not have the capacity to file the action purporting to be the sole executor to the estate.

[10] Learned counsel for the Petitioner submitted that at no time had Mr Allen Hoareau entered the action as representing the estate. The heading of the first Petition is estate of the late Doctor Hilda Stevenson Delhomme vested in the executor to the succession Ms Veronique Green represented by Mr. Allen Hoareau. It was the executor that he was the representative of and not the estate. Secondly, Mr Hoareau is not entering as a sole executor. He is entering as an executor appointed for that purpose and empowered under the Civil Code to act solely.

[11] Learned counsel submitted further that absentees can be represented but this is not an argument ready to be made at this stage where the motion is only for amendment. Learned counsel referred the Court to Part III of Schedule 7 paragraph 14(4) of the Constitution under which the claim is brought arguing that where the person eligible to make an application to receive compensation under this paragraph is dead, the application may be made by or the compensation may be paid to the legal representative of the person. This has entitled the heirs to come before the Court as they have done in many instances.

[12] Learned counsel further submitted that the petition is not brought by the executor. The petition is brought by the heirs. Regarding power of representation learned counsel referred the Court to Article 1028(1)(d) of the Civil Code which states that the executor shall represent the estate in all legal proceedings and act in any legal action the purpose

of which is to declare the will null and void. This amendment only seeks to replace one executor by another and referred the Court to Article 1033(1) of the Civil Code which states that if two or more executors have been appointed one may act in the absence or on the failure to act of the other. The other executor is in France and she has sought this application to give Mr. Hoareau specific powers to deal with that case.

- [13] The Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules (“the Rules”) provides only the following in respect of amendment of Petition in paragraph 5(3):

*“5(3)The Court shall not permit an amendment of a petition which seeks to include any new matter not pleaded in the petition.”*

This does not help with the amendment being sought for in this case.

- [14] Paragraph 2(2) of the Rules provides certain guidance with the following provision:

*2(2)Where any matter is not provided for in these Rules, the Seychelles Code of Civil Procedure shall apply to the practice and procedure of the Constitutional Court as they apply to civil proceedings before the Supreme Court.*

This leads us to consider Article 146 of the Seychelles Code of Civil Procedure which provides:

*“146. The court may, at any stage of the proceedings, allow either party to alter or amend his pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

*Provided that a plaint shall not be amended so as to convert a suit of one character into a suit of another and substantially different character.”*

- [15] This provision has been extensively considered by the Court in many cases and can be summarized thus: It is not in dispute that parties may amend pleadings with leave of the Court at any stage of the proceedings as long as the amendment is not prohibited by law and the amendment is necessary for the purpose of determining the real issues between the parties. See the cases of *Okello Wilbert v Obel Ronald MA No: 97/2020* arising in *CS No. 157/2017*; *University of Seychelles American Institute of Medicine vs The Attorney General MA19/2022* arising from *(CS131/2019; Petit Car Hire v Mandelson [1977] SLR 68* and *Eastern European Engineering Ltd v Vijay Construction (Pty) Ltd SCA 10/2014 [2016] SCCA 4.*”
- [16] The contention here however surpasses the above provisions and goes to the very foundation of the Petition. The objection is that if the initial petition was defective and hence void by reason of the lack of lawful authority of Allen Hoareau to bring the petition on behalf of Mrs Green, who should have been representing the Petitioner, the defective and void petition cannot be cured or rescued by amendment.
- [17] The argument of the Respondents is founded on Article 1025 of the Civil Code which provides:

“Article 1025

(1)A testator may appoint not more than three testamentary executors.

(2)An executor must comply with the provisions of the Curatelle Act.

(3)The powers and duties of the executor are not transmissible.”[Emphasis ours].

The Respondents’ main contention is that the executrix, Mrs Green, could not lawfully be represented by Mr Hoareau since the executrix cannot delegate or transmit the powers and duties to an agent or representative and not even by power of attorney. Since the initial Petition was brought by Mr Hoareau as representative of Mrs Green, the petition was defective in that Mr Hoareau did not have capacity to bring the petition nor to swear the supporting affidavit at the time.



[18] Learned counsel for the Petitioner argued that the original Petition was brought by the then executor and the Petitioner was and is still Estate of the late Hilda Stevenson-Delhomme vested in the execution to the succession Mrs Veronique Green. The amendment only seeks to replace one executor by another and permitting the executor to act as per Articles 1028(1)(d) and 1033 of the Civil Code which state:

*1028(1)“The executor must—*

*(d) represent the estate in all legal proceedings, and act in any legal action the purpose of which is to declare the will null.”*

*1033 “ (1)If two or more executors have been appointed, one may act in the absence or on the failure to act of the other.*

*(2)The executors are jointly and severally liable for the execution of the will unless there is agreement to the contrary.”*

[19] This where we find the argument of learned counsel for the Petitioner difficult to sustain. At the time of filing the Petition on the 19<sup>th</sup> July, 2023, there was only one appointed executor namely, Veronique Marie Hilda Maryan Green, born Delhomme appointed On 8<sup>th</sup> July, 2002 in CS No: 153/2002. Mr Allen Hoareau came into the Petition as representing Mrs Veronique Green on the 19<sup>th</sup> July, 2023. Mr Allen Hoareau even swore to an Affidavit In Support Of The Petition which started with the words: *“I represent the executor of the estate of the late Dr Hilda Stevenson Delhomme...”*. This is contrary to Article 1028(1)(d) which requires that the executor must represent the estate in all legal proceedings. Further this is also contrary to Article 1025(3) which clearly provides that the powers and duties of the executor shall not be transmissible.

[20] Whilst we may be amenable to the proposition that the Estate of the late Hilda Stevenson-Delhomme vested in the execution to the succession Mrs Veronique Green or only Estate of the late Hilda Stevenson-Delhomme was the Petitioner in the original Petition, we cannot agree that Mr Allen Hoareau had the capacity to represent either in the original Petition.

[21] We therefore find that since Mr Allen Hoareau had no capacity to represent the estate of the late Mrs Delhomme nor the executrix Mrs Green, the Petition could not have proceeded on that ground. Mr Hoareau rightly sought appointment as executor and was appointed on 12 January, 2024. Mr Hoareau cannot now amend his lack of capacity. He could however Petition the Court in his new capacity as executor of the estate of Dr Hilda Stevenson-Delhomme.

[22] We further note that the question of whether Mr Hoareau could Petition as sole or joint executor to be irrelevant at this stage.

[23] Consequently, we rule that Mr Allen Hoareau could not have acted on behalf or as representative of Mrs Veronique Marie Hilda Maryan Green or the Estate of the late Dr Hilda Stevenson-Delhomme on the 10<sup>th</sup> July, 2023 due to lack of legal capacity. Mr Hoareau can only start acting for and representing the Estate of the late Dr Hilda Stevenson-Delhomme after his appointment as executor on the 12<sup>th</sup> January, 2024. His new appointment cannot be used retroactively to amend the Petition of the 10<sup>th</sup> July, 2023.

[24] The objection is sustained on that ground only and the Motion for amendment is dismissed.

[25] We make no order for cost.

Signed, dated and delivered at Ile du Port on 21 day of May 2024.

**C G DODIN**  
**Judge (Presiding)**

**VIDOT**  
**Judge**

**PILLAY**  
**Judge**