IN THE SUPREME COURT OF SEYCHELLES

SIDNA PHILOMENA LOUISE

PETITIONER

VERSUS

GAETAN MICHEL VIDOT

RESPONDENT

Civil Side No 316 of 2003

Mr. B. Georges for the Petitioner

Mr. J. Renaud for the Respondent

Mr. F. Elizabeth for the Intervenor

JUDGMENT

Perera J

This is an application for removal of an executor appointed by this Court in case no 122 of 2002 on 16th May 2002. In that case, the respondent, Gaetan Michel Vidot, applied to be appointed as executor of the estate of his late mother, Lorta Therese Gemma Gayon. In the petition, the respondent in disclosing the heirs, left out the present petitioner who also claims to be a child of the said deceased person. It is also averred that the respondent misled the Curator of Vacant Estates regarding the whereabouts of his brothers Marc Vidot and Jean Vidot. The petitioner therefore seeks an order setting aside the said appointment, and ordering the respondent to give an account of the Management of the estate.

The respondent, in his answer avers that his appointment as executor was regular, and that the provisions of the Curatelle Act were duly followed in respect of his two brothers.

In the meantime, one Georgie Gomme was given leave to intervene in the case. In his statement of demand, he avers that he lived in concubinage with the deceased Lorta Gayon for 37 years and that during concubinage he purchased a property Parcel No. V. 6431 and registered it in

the joint names of himself and the deceased. He further avers that he also purchased another property, registered in Vol. A 37 No. 2997 Repertory Vol 39 No. 294, in the names of three children of the deceased, namely Gaetan Vidot, Jean Vidot and Marc Vidot. He admits that the Petitioner is a daughter of the said deceased although she did not live with her. The purpose of the intervention is to preserve his interest in the property Parcel V. 6431, and for a declaration that he is the sole owner thereof as he alone provided the purchase price, although the registration was done in the joint names. The Intervenor further avers that the Respondent need not be removed from executorship as the grounds urged are not justifiable nor recognised in law.

The petitioner has filed an answer to the Intervenor's statement of demand denying the several averments and averring that her action is solely for removal of an executor and not for attribution of title to any land.

I have perused the Court record in case no. C.S. 122 of 2002 wherein the respondent was appointed as executor to the estate of the late Lorta Gemma Therese Gayon. In that application, the present petitioner, who the respondent now concedes is his sister , had not been disclosed as one of the heirs. As for the other two heirs disclosed, namely Marc Vidot and Jean Vidot, Learned Counsel appearing for the Applicant Gaetan Vidot submitted to Court, that they had left Seychelles some 40 years ago and that their whereabouts were unknown. It was further submitted that "*the Applicant will not be able to dispose of anything, the idea is to regulate, just to have somebody there who can say I am the executor, if you want to talk to me about my mother's estate, I am available*". The Court then decided that the Curator of Vacant Estates should be noticed as rights of "*absentees*" were involved. Subsequently, the Curator appeared in Court and stated that he had no objections to the appointment of Gaetan Vidot as executor *"for half of the land in question."*

At the hearing of the present matter, the respondent admitted that Marc and Jean Vidot lived in England and that he had visited them in the last few years. Hence, the Respondent had misled the Court to obtain his appointment as executor without their consent. He further stated that the petitioner, his only sister, wrote to him stating that she did not know the deceased and that she did not live with her. However no proof of such letter was produced. He maintained that despite the transfer deed of Parcel V. 6431 being in the joint names of his mother and Georgie Gomme, the property belonged to the latter and hence no accounting was necessary. As regards movable property of the said deceased, the respondent stated that there was money in the bank and that he gave an account of such money to his two brothers, but not to his sister, the petitioner. He produced a "*nomination form"* issued by the Seychelles Savings Bank (D1) whereby the said deceased on 12th March 2002, while being warded at the Victoria Hospital, nominated the respondent to receive the amount in deposit in Account No. 3135428018/5135428002 in the event of her death. Admittedly she died on 18th April 2002.

Georgie Gomme, the Intervenor, stated that the purchase price of Parcel V. 6431 was Rs150,000, and produced proof of payment of Rs.40,000 from a loan obtained from the Central Bank where he was employed *(D2),* and Rs.30,000 from the account of Anse Kerlan Farm Ltd, payable direct to the vendor Mr Antoine Collie *(D3).* He also produced statement of a loan Account at Seychelles Housing Development Corporation *(D4)* showing a joint loan Rs.90,000 payable in monthly instalments of Rs.240. Payments are recorded from 30th November 1999 to 4th June 2003. By a letter dated 26th May 2003, addressed to the intervenor, the SHDC acknowledged payment of the loan in full. It is on the basis of these payments that he claims full ownership of Parcel V. 6431. The respondent supports this claim of ownership and maintaining that there is no property for distribution among the heirs. Unless and until the claim of the intervenor is judically determined on the application of any of the heirs, the presumption of co-ownership contained in Article 815 of the Civil Code would operate.

Article 1027 provides that –

> *"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".*

According to the evidence in the case, the money in the account of the deceased could have been withdrawn by the respondent as nominee, only after her death. It was not a gift to him. Hence that sum of money constituted the movable property of the deceased, and after payment of debts, if any, ought to have been distributed among the heirs. The petitioner stated that she did not receive any such money. As regards the immovable property (*Parcel V. 6431),* for purposes of the estate of the said deceased, the presumption of co-ownership still prevails.

This Court has wide powers to remove an executor who fails to fulfil his duties entrusted to him, and does not act in the interest of all the heirs. It is clear that the respondent had sought to disinherit his own sister, the petitioner, for no valid legal reason. The petitioner seeks the removal of the respondent from executorship and for an order on him to give an account of his management of the estate. Article 1028 provides that "*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 1 Book III relating to the functions and administration of fiduciaries in so far as they may be applicable".* Article 827, which contains one of those Rules, provides *inter alia* that –

> "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 an damage or loss sustained by the property……."*

Accordingly, the Court hereby revokes the order dated 1st August 2002 whereby the respondent Gaetan Michel Vidot was appointed as executor by this Court in case no. C.S. 122 of 2002. Consequently, the succession

reverts back to intestacy, and this Court would appoint another executor under Article 1026 on the application of a person having a lawful interest, save the present respondent. The respondent shall, within one month from the date hereof furnish to this Court an account of his management of the estate of the said deceased.

The petitioner will be entitled to costs of the application payable by the respondent and the intervenor, on a pro – rata basis.

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A.R. PERERA

JUDGE

Dated this 24th day of May 2006