

**THE REPUBLIC OF SEYCHELLES**

**IN THE SUPREME COURT OF SEYCHELLES HOLDEN AT  
VICTORIA**

Civil Suit No. 40 of 2010

1.Ricarno Norris Louis Marie }  
2.Adbel Guland Louise Marie }===== Plaintiffs  
3.Jiolama Manuella Marie }

Versus

1.The Commissioner of Prisons }  
Of Mont Posse Prison }===== Defendants  
2.The Government of Seychelles}

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*Joel Camille for the Plaintiffs*

*Alexandra Madeleine, State Counsel for the defendants*

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**RULING**

**Egonda-Ntende CJ**

1. The defendant's counsel, Ms Alexandra Madeleine, has raised a plea in *limine* to this action on 2 grounds. Firstly that it is time barred by section 3 of the Public Officers (Protection) Act, Chapter 192 of the laws of Seychelles. Secondly that Marguerite Therese Louise Marie, the grandmother of the plaintiffs, has no locus standii to bring this action on behalf of the plaintiffs who are minors. This ruling is in respect of that plea in *limine*.
2. I will take the last point first. The plaint describes the all the plaintiffs as 'All being minors herein represented by their paternal grandmother Marguerite Therese Louis Marie of Le Nicole, Mahe, Seychelles.' It is

clear therefore that all the plaintiffs in this matter are minors. It is not averred that the grandmother is their guardian. Nor is any information provided as to the whereabouts of their natural mother, the parental guardian that was next line to the father by virtue of section 389 of the Civil Code of Seychelles, hereinafter referred to as CCS.

3. Ms Alexandra Madeleine, learned state counsel, submitted that on the authority of Crea v Agathine (No1) 1977 SLR 75 no action can be brought by a minor. The relevant statement of law in that decision is at page 76 where O'Brien-Quin CJ stated,

‘With regard to Mr. Valabhji’s other point I am in agreement with him that a minor cannot sue or be sued personally as is implicit in the Civil Code.

The position is the same in English law and a section 13 of Cap.88 states that subject to the provisions of the rules made under that Act the forms to be used and the practice and procedure to be followed should be as nearly as practicable as in the ordinary civil cases before the Court and as no rules have made and as the Seychelles Code of Civil Procedure (Cap.50) is silent on the matter of the procedure to be adopted I must rely section 15 of the Courts Act (Cap.43) and follow the practice in the High Court of Justice in England which is set out in Order 80 rule 2 paragraph 8 of the White Book namely that in all proceedings an infant can defend, counter claim, intervene or appear only if he does so by his guardian *ad litem* and that that is the overriding rule relating to an infant as a defendant or respondent to any proceedings.’

4. It is important to note that Sauzier J, as he then was, subsequently held in Marie v Juliene [1978] SLR 135 that Crea v Agathine was wrongly decided with regard whether an action can lie against a minor for being a putative father under English Law. He stated at page 137,

‘Before leaving this subject, I would like to remark that the case of Crea v Augustine (No.1) [1977] SLR 75 should not be followed as it has been wrongly decided. In England when the putative father is a minor, the summons is taken out against him. Vide the case of Gaines v W. (an infant) [1968] All E.R 189. That procedure is

undoubtedly the right procedure if one takes into account the wording of section 3(1) of the Act which stipulates that the summons must be served on the man alleged by the complainant to be the father of the child. That provision makes it clear that no one but the putative father must be served with the summons.’

5. The point of disagreement between Marie v Juliene and Crea v Agathine is not the point in issue in this case. On the point in issue in this case both decisions are in agreement. Sauzier, J stated the rule at page 136 thus,

‘It is a rule that a minor being incapable of entering into a contract due to lack of legal capacity is also incapable of suing and being sued in person. He must be represented by his guardian.’

6. From the foregoing it is clear that a minor lacks the capacity to commence an action such as the current one. The grandmother in this case is not a guardian in law of the minor plaintiffs. She has not sought the permission of the court to be so appointed or as a guardian *ad litem* to bring this action on behalf of the plaintiffs. I find that the objection is well taken. This action in its present form and substance, given the manner of its commencement, is incompetent for lack of capacity. I uphold the plea in *limine* and strike out the action.

7. Given my holding on the aforementioned plea in *limine* I do not find it necessary to consider the other objection that this suit is barred by section 3 of the Public Officers Protection Act in so far as it may apply to this suit.

Signed, dated and delivered at Victoria this 28<sup>th</sup> day of February 2011

FMS Egonda-Ntende  
**Chief Justice**