

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 115/2014

[2015] SCSC 130

MERVIN JEZABEL BARBE
Electing Domicile in the
Chambers of Bernard Georges
Trinity House
Victoria

Plaintiff

versus

CHIEF OFFICER OF CIVIL STATUS
Independence House
Victoria
Mahe

Defendant

Heard: 11th March 2015.
Counsel: Mr Bernard Georges for the Plaintiff
Mr Thachette, State Counsel for the Defendant
Delivered: 21st May 2015.

JUDGMENT

McKee J

[1] The Plaintiff is a Seychellois national now residing in Italy and gainfully employed. The Plaintiff was born in Seychelles on 25th March 1972 and his birth was entered at Folio 376 in the Register of Births wherein the sex of the Plaintiff was registered in column 4 as “male” and his name was registered as Mervin Jackson Barbe. In November 2003 the

Plaintiff underwent a transgender re-assignment surgical operation in Italy [hereinafter referred to as “his change of gender”] in consequence of which the gender of the Plaintiff changed from male to female. The Plaintiff thereafter underwent a change of name in Italy from Mervin Jackson Barbe to Mervin Jezebel Barbe.

[2] The Plaintiff now seeks to have the entry in the Register of Birth of Seychelles in respect of his birth rectified to reflect his change of gender. An earlier application directly to the Chief Officer of Civil Status was refused and hence this action was raised in the Supreme Court.

[3] The Plaintiff bases his application on the second sentence of section 100 of the Civil Status Act [Cap 34] of the Laws of Seychelles, which reads as follows “Nothing herein contained shall prevent any interested person from asking by action before the Supreme Court for the rectification or cancellation of any act”. I find that the Plaintiff named as “Mervin Jezebel Barbe”, in all the circumstances, is an “interested person” in terms of the Act and entitled under this part of section 100 of the Act to bring this action by way of Plaintiff. As a result of his change of name and change of gender, he could not be considered a “party” to the birth certificate as required by the first sentence of Section 100 of the Act.

[4] The Plaintiff further relies on the word “rectification” to found his action. The Plaintiff seeks an order from the Court that the existing registration details of birth at Folio 376 be rectified, that is, corrected, at column 4, to show that the gender of the child “Mervin Jackson Barbe” is “female” and not “male” as presently recorded.

[5] The first problem with this approach is immediately apparent. The registration of birth would then carry a male name “Mervin Jackson Barbe” but show his sex or gender to be female. A second problem which arises is that while there are specific provisions, namely sections 94 to 97 of the Act, regarding change of name, the Act makes no specific provision for a person to apply to have an existing entry in respect of the sex or gender of a child to be later amended.

[6] In my opinion the correctness or otherwise of the information as at the time the birth is registered is the deciding factor in the present matter. If there was an error in the

information given at the time of registration a person may apply for a rectification of the details already given. In this case, at the date of registration, the sex of the Plaintiff was correctly recorded as “male”. There was no error at the time of registration. In this application before the court the position is different. In the present matter the Plaintiff now seeks to introduce new information after a number of years when his personal circumstances have changed.

[7] Counsel for The Republic advised the Court that South Africa and the United Kingdom have recently enacted legislation which would allow an application similar to that of the Plaintiff to be considered. Mr Georges advises that similar measures have been brought into force in France administratively rather than by statute. My investigations show that within the United Kingdom procedures are now in place where, subject to strict rules, a person can make application for a Gender Recognition Certificate. However, until the granting of this certificate, a person would retain his birth gender.

[8] I take into account all the above factors. I find that the Chief Officer of Civil Status in Seychelles is guided by the provisions of the Civil Status Act, as is this Court There is no provision within this Act which would allow the Chief Officer of Civil Status or this Court to grant the application sought by the Plaintiff. The Application for rectification of the existing birth certificate in name of Mervin Jackson Barbe is refused. Accordingly the Plaintiff’s Action fails. I DISMISS the Action raised by the Plaintiff. There will be no order for costs.

Signed, dated and delivered at Ile du Port on 21st May 2015.

C McKee
Judge of the Supreme Court