

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: CS 21/2014**

**[2015] SCSC 482**

---

Diana Jean

Plaintiff

versus

Debora Banane

Defendant

---

Heard: 7<sup>th</sup> October 2015

Counsel: France Bonté for plaintiff

Serge Rouillon for defendant

Delivered: 26<sup>th</sup> October 2015

---

**JUDGMENT**

---

**M. TWOMEY, CJ**

**[1]** On the 21<sup>st</sup> March 2014 the Plaintiff filed a Plaint in which she stated that she was the daughter of one Ivor Pool who owned land, namely, Parcel V2747 at Bel Air, Mahé. She stated that the said Ivor Pool had transferred the land to the Defendant, his niece, Debora Banane on 7<sup>th</sup> November 2013 for SR100, 000. She prayed for rescission of the transfer agreement on grounds of lesion beyond moiety.

- [2] Mr. Ivor Pool passed away on 12<sup>th</sup> October 2014. On 11<sup>th</sup> September 2015, the Plaintiff filed an amended Plaint identical to the original Plaint save for the fact that she now stated that she was the executrix of the estate of Ivor Pool (the deceased).
- [3] The Defendant filed both a Defence on the merits and a *plea in limine litis* in which she claimed that the Plaintiff has no *locus standi* to bring the case. The Defendant stated that, since the Plaintiff was not the daughter or heir of the deceased she had improperly applied to be executrix of the estate of the deceased.
- [4] The issue of lesion does not now arise as the whole suit only turns on the *locus standi* of the Plaintiff to bring the case and also on the authenticity of several notarial documents and other documents made in reliance of the documents.
- [5] It is to these issues that I now must turn. The written submissions of the Defendant have been filed and are taken into account in the consideration of this plea. Mr. Bonté for the Plaintiff made no oral submission but promised to make written submissions. These have not been forthcoming and the Court makes its decision in their absence.
- [6] There are without doubt disquieting aspects to this case arising from the actions of both parties and several notaries. I note first of all that the deceased granted a General Power of Attorney to the Plaintiff on 17<sup>th</sup> January 2014 on which document the deceased has affixed his right thumb print. That document was executed by Notary France Bonté who also now appears for the Plaintiff. The same document was only registered some six months later, 13<sup>th</sup> June 2014. I note that prior to that, the deceased had attended a different notary and had transferred his bare interest to Debora Banane, reserving the usufructuary interest to himself. On those two documents before Notary Gerard Maurel, he has signed.
- [7] I note with even more disquiet that a medical report prepared in answer to a request for further particulars by the Defendant reveals that the deceased had had memory problems, confusion, personality changes and loss of social skills, difficulty in planning, organizing

and following instructions and reportedly “seeing a woman who comes to him in the night.” He had been intellectually and mentally disabled since childhood as a result of a head injury.

[8] At this stage of the proceedings the maker of the medical report has not been subject to judicial examination and the court can only take the report at face value. However, neither party has challenged the report. Indeed, each rely on it to show the misdeeds of the other and to argue that the acts of the other clearly show either an abuse of the deceased or at least evidence of an unfair influence on him to sign documents or effect transfers of property.

[9] I have recounted these facts to give a context to the *plea in limine litis* and it is to it now that I must turn. The only issue before the court is whether the Plaintiff has *locus standi* to bring the matter. It must be noted that the Plaintiff brought this case as executrix of the estate of the deceased, the said appointment having been based on the fact that she was the lawful heir of the deceased by virtue of a birth certificate dated 18<sup>th</sup> February 2015 containing a marginal entry of an acknowledgement by the deceased that she was his daughter, namely:

“The herein mentioned child has been acknowledged as the daughter of Ivor Nicholas Pool in virtue (sic) of a deed drawn up before me Frank Elizabeth, Notary Public registered in Reg. B35 No 301 dated 22/06/2012.”

[10] Mr. Rouillon, Counsel for the Defendant has submitted and exhibited a birth certificate that shows that at the initiation of proceedings a year previous, on 24<sup>th</sup> February 2014, the Plaintiff’s birth certificate showed no entry of the Acknowledgement.

[11] I note that the marginal entry was made by the Officer of the Civil Status on 18<sup>th</sup> February 2015 well after the putative father of the Plaintiff had passed away. The amendment to the birth certificate was based on another notarial document drawn up before yet another Notary signed by a man who for all intents and purposes is mentally and intellectually disabled. As further submitted by Mr. Rouillon, the registration of that

document runs afoul both the provisions of section 93 (2) the Civil Status Act and the section 64(b) of the Mortgage and Registration Act since the provisions allow 8 days and 10 days respectively for registration of notarial documents. Section 31 of the Notaries Act also compels notaries to register documents drawn up before them. Had these provisions been followed and registration of the notarial document made, public notice would have ensued at a much earlier stage permitting the possible challenge of the document.

[12] The Acknowledgement of Paternity and its irregular registration however cuts no ice with a court of law. The Acknowledgment as rightly pointed out by Mr. Rouillon is not an authentic document in accordance with article 334 of the Civil Code which provides:

“The recognition of an illegitimate child shall be made by an authentic document, if it has not been made in the act of birth...”

Further, Article 1317 provides that:

“An authentic document is a document received by a public official entitled to be drawn up the same in the place in which the document is drafted and in accordance with the prescribed forms...”

[13] As the Acknowledgment was not in the prescribed form and cannot therefore be an authentic document, it is by virtue of article 1328 only a private document having no effect as far as third parties are concerned. Insofar as the present action is concerned, the Acknowledgment of Birth despite its later registration and the marginal entry in the certificate of Birth are null and void.

[14] In any case an Acknowledgment of Paternity cannot be made by the father posthumously, with the deceased speaking from the grave. Since the putative father has died, the plaintiff is bound by Articles 321 and 340 of the Civil Code of Seychelles to prove her status by way of an *action en recherche de paternité naturelle* and not by a notarial document. That is the only avenue open to her at this stage.

[15] That being the case, the executor appointment made on reliance of the irregular birth certificate is also null and void. This may well be a pyrrhic victory for the Defendant as the transfer of Parcel V2747 to her on 7th November 2013 may also be set aside on the

application of an interested party since the capacity of the deceased to make it is highly suspect.

**[16]** In the circumstances I make the following orders:

1. The executor appointment made on reliance of the irregular birth certificate is set aside.
2. The irregular birth certificate made on 18<sup>th</sup> February 2015 is to be amended to remove the marginal entry and the acknowledgement of birth which has been irregularly made and to reflect the fact that no name for a father should be entered on the certificate of birth of Diana Helene Jean until further order of court. This order is to be served on the Chief Officer of Civil Status.
3. The Plaintiff is dismissed with costs.

Signed, dated and delivered at Ile du Port on 26<sup>th</sup> day of October 2015.

**M. TWOMEY**  
Chief Justice