

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: XP 186/2015**

**[2016] SCSC 190**

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**In the matter of**

**EX PARTE: LYNDA LABROSSE  
ACTING AS EXECUTOR OF THE ESTATE OF THE LATE LEWIS LABROSSE**

Applicant

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Heard: 3<sup>rd</sup> March, 2016  
Counsel: Mr. F. Bonte for petitioner  
  
Delivered: 18<sup>th</sup> March, 2016

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**RULING**

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**Carolus Master**

- [1] This Ruling is made in respect of an Ex Parte Motion for an Order “that the renounced share of Marcella Bristol be now held by the Estate of Lewis Labrosse.” The Order is sought by way of Notice of Motion supported by Affidavit sworn by the Applicant, one Lynda Labrosse, Acting as Executor of the Estate of the late Lewis Labrosse.
- [2] The following averments are made by the Applicant in the Affidavit, the relevant parts of which are reproduced below:

“1. That I am the sister of the late Lewis Labrosse who died on the 9<sup>th</sup> June, 2006.

2. That on 25<sup>th</sup> April, 2006, the Deceased executed a last Will appointing myself as Executrix for the disposition of his movable and immovable properties and the respective beneficiaries.

3. That I was confirmed the testamentary appointment of myself as Executrix by the Supreme Court on 11<sup>th</sup> June, 2007.

4. That one of the dispositions of the said Will was that Marcella, Francine Bristol was to be given 20 shares in R & R (Pty) Ltd.

5. That Marcella Bristol has renounced her 20 shares in the said Will in favour of the Estate of the Testator Lewis Labrosse.

6. Therefore I pray this Honourable Court to uphold the said Renunciation and to order that the renounced share be now held by the estate of Lewis Labrosse.”

[3] A copy of a document purporting to be the Last Will and Testament of Lewis Joseph Labrosse executed on 25<sup>th</sup> April, 2006, in Chennai, India, was filed together with the Notice of Motion. In terms of the said Will, the Testator made certain bequests to one Marcella Bristol. The relevant part of the Will for the purposes of this case is reproduced below:

“COMPANY SHARES

a) Casino Des Iles – Half my shares I leave to Marcella and half to my son Andy. Lynda should retain her shares in the company ...

b) .....

c) R&R PTY LTD – Lynda to retain her shares and the remainder shares to be shared equally between Marcella, Susan and Andy.”

[4] A copy of a Court Order made in Civil Side No.146 of 2007 dated 11<sup>th</sup> June, 2007 was also filed together with the Notice of Motion. The Court Order confirmed Ms. Lynda

Jacqueline Labrosse as testamentary Executrix of the Will made on the 25<sup>th</sup> April, 2006, of Mr. Lewis Labrosse who died on 9<sup>th</sup> June, 2006.

[5] Also filed with the Notice of Motion is a document dated 14<sup>th</sup> July, 2015, purporting to be signed by Marcella Francine Bristol and Andy Labrosse before Notary France Bonte. The relevant part of the document provides as follows:

“I, Marcella Francine Bristol of Marie Jeanne Estate, Praslin, Seychelles, hereby renounce all my 20 shares in R & R (Pty) Ltd which were given to me by the late Lewis Labrosse in his last Will and Testament dated 25<sup>th</sup> April, 2006 in favour of the Estate of the Testator Lewis Labrosse.”

[6] I note that Mr. France Bonte is also Counsel representing the Applicant in the present case. In my view it is not proper for him to attest to the document in which Marcella Francine Bristol purportedly renounced her shares in R & R (Pty) Ltd and to represent the Applicant in this matter as this clearly presents a conflict of interest.

[7] The applicable law for the repudiation of a testamentary disposition is Article 1043 of the Civil Code of Seychelles Act which provides as follows:

“A testamentary disposition shall be null if the appointed heir or the legatee repudiates it or if he is subject to some incapacity with regard to receiving under it.”

This Article does not provide for the form in which such repudiation or renunciation must take.

[8] Linda Labrosse was summoned by the Order of this Court to testify on the matter. She testified on oath that she renounced the 20 shares bequeathed to her by Lewis Labrosse in his last Will and Testament dated 25<sup>th</sup> April, 2006, in favour of the Estate of the Testator. She identified the document referred to at paragraph 5 of this Ruling as having been signed by her. Upon the Court questioning her as to whether she had renounced the shares voluntarily and willingly she replied as follows: “If I did not sign the document, my Casino Des Iles share will not be transferred to me.” When asked by the Court if it was her wish to give up the said shares, she stated “I was forced to give it up.” Upon

being further examined by Counsel for the Applicant, she stated that Linda Labrosse, the sister of the late Lewis Labrosse and also the Executrix of the Estate of Lewis Labrosse would not have transferred the Casino Des Iles Shares to her if she did not transfer the R & R shares to the Estate. She clarified that the Casino Des Iles Shares were bequeathed to her under the terms of the Will.

[9] The Applicant also testified that after her brother died on 9<sup>th</sup> June, 2006, she worked with Marcella at the Casino Des Iles. She testified that Marcella had been bequeathed the shares by the Applicant's brother for R&R and Casino Des Iles. She stated that in 2011, Marcella approached the Applicant and her sister and said that she wanted to build her house on Praslin in Marie Jeanne Estate and she would rather have money instead of the shares. The Applicant gave her land belonging to the Estate and fifty thousand Euros which she used to build her house in return for which Marcella was supposed to transfer the shares onto the Estate. The transfer of the shares was only done in 2015. The Applicant further testified that she was not aware of the Casino Des Iles shares being re transferred to Marcella because her nephew also inherited shares in the Casino and he was the one now dealing with the issue of the Casino shares.

[10] I note that the Applicant has not produced any evidence in support of her testimony.

[11] In the circumstances, I am not convinced that Marcella Francine Bristol freely and voluntarily signed the document dated 14<sup>th</sup> July, 2015, in terms of which she renounced her 20 shares in R & R (Pty) Ltd bequeathed to her by the late Lewis Labrosse in his last Will and Testament dated 25<sup>th</sup> April, 2006 in favour of the Estate of the Testator Lewis Labrosse.

[12] I also wish to address the procedure by which these proceedings were commenced, namely by way of a notice of motion. In terms of section 121 of the Seychelles Code of Civil Procedure applications by way of motion are made for incidental demands in the course of a suit. It is clear from this provision that a "principal demand" must have first been made in order for a motion to be made. The motion is only filed to make an incidental demand in the main or principal case. In the present case no main application was filed and the principal demand was made by way of motion. In my view, this is

irregular and proceedings should have been commenced by way of an Application supported by Affidavit.

[13] For the above reasons I dismiss the Application.

Signed, dated and delivered at Ile du Port on 18<sup>th</sup> March, 2016

E. Carolus  
**Master of the Supreme Court**