

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MA 204/2015**

**(arising in CS30/2015)**

**[2015] SCSC**

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**EX-PARTE-MR YVES MOREL ACTING AS EXECUTOR FOR THE LATE  
MAX JOSEPH MAUREL AND ANGELIKA MILHEIM BOTH OF MARE  
ANGLAISE, MAHE**  
Applicants/Plaintiffs

**AND IN THE MATTER OF:  
MR YVES MAUREL AND ANOTHER**  
Plaintiffs  
**AND**  
**MRS MARY GEERS  
OF BEL OMBRE, MAHE**  
Respondent/Defendant

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Heard: 25<sup>th</sup> day of November 2015

Counsel: Mr. S. Rouillon for petitioner

Mr. A. Derjacques for respondent

Delivered: 12<sup>th</sup> day of February, 2016

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**ORDER ON MOTION**

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**Govinden-J**

[1] This is an Application started by way of Notice of Motion of the 29<sup>th</sup> day of July 2015 arising out of Civil Side 30 of 2015 (hereinafter referred to

as the “main case”) and wherein the Applicants are moving this Court for an Order for the amendment of their original Complaint and for the joinder of a co-defendant under the provisions of Sections 109, 121, 122, 123, 146 and 304 of the Seychelles Code of Civil Procedure (cap 213) (hereinafter referred to as the “Code”).

- [2] The Application is duly supported by the Affidavit of Mr. Yves Maurel acting as Executor for the late Max Marie Joseph Maurel (latter hereinafter referred to as the “deceased”) and Ms. Angelika Mulheim both of Mare Anglaise (Plaintiffs) in the main case.
- [3] The Application is being resisted on behalf of the Respondent.
- [4] The Applicants claim that the main case is based on an alleged fraudulent transaction namely the sale of L’islette Island (hereinafter referred to as “L’islette”), perpetrated by the Respondent against the deceased on the 4<sup>th</sup> day of March 1999.
- [5] That the factual basis for the main case were supplied to the Applicants by their supposed witness one Ms. Nadia Frederick of Port Glaud, Mahe as per a Notarial Affidavit signed before a Notary Public Mr. Rene Durup as attached to their Motion for an Interim injunction (which Motion was put on hold upon undertaking of the Respondent before the Court) and upon which averments made in the Complaint and Motion and Affidavit were being adopted for the purpose of this Application.
- [6] Further, that, since the filing of the pleadings to date the said Nadia Frederic has signed another Affidavit before the Registrar completely contradicting and reversing her story in her earlier Affidavit and denying the contents of the Notarial Affidavit and of the facts that she had been to the said Notary’s Office.

- [7] That the story of the said Nadia Frederic had already been made public as recounted in the Plaint in support of the main case and before another Notary Public one Caroline Hoareau some years back, the Seychelles Weekly Newspaper as well as making verbal confirmation to several lawyers and other persons in Seychelles.
- [8] That in the light of the above, it is just and necessary that the said Nadia Frederic be joined as a Defendant for deciding all issues between the parties to this suit and made to explain her actions and be subject to the proper sanctions for her part in this affair.
- [9] That the Applicants have a substantial prospect of success in the main case due to the very credible accounts given by the said Nadia Frederic over the years including as illustrated at paragraph 8 thereof and that it is thus just and necessary for the said Nadia Frederic to explain to the Court about each and every transaction she has been a party to or that she witnessed in respect of the main case.
- [10] That on the above basis, it is only just and proper and in the interest of justice for the Plaint to be amended to more clearly and concisely set out the parties' claims against each other and for Ms Nadia Fredric, to be joined in these proceedings as a Defendant for the sake interalia, deciding all issues between the existing parties in the main case.
- [11] A draft copy of the Amended Plaint has been attached for Court's sight and consideration and of which contents has been carefully noted more particularly the proposed amendments as to the citation of the Defendants and joinder of the said Nadia Frederic as a "2<sup>nd</sup> Defendant" as well as the proposed amendments to paragraph 6 of the Plaint in the main case.
- [12] The Respondent as indicated earlier, objects to the Motion, on the basis that all persons may be joined as Defendants by way of motion

and that for contract, the added party, must be liable on the one contract and that where there are numerous persons, the persons must have the same interest in the one cause or matter and that the persons joined must be persons against whom the same right to any relief is sought. Reference has been made to sections 107, 121 110 and 114 of the Code in support.

[13] The Respondent further argued that the said Nadia Frederic, becomes allegedly liable for a “faute” by signing a further Affidavit before the Registrar completely contradicting and reversing her story in her earlier Affidavit and denying the contents of the Notarial Affidavit and the fact that she had ever been to the said Notary’s Office. That the latter Affidavit was signed on the 15<sup>th</sup> day of May 2015 before the Registrar. That therefore the “faute” was committed on the latter date whereas the action against the Respondent is in respect with facts which arose in the year 1997 upon purchase of L’islette. That the latter is a different cause of action, on different facts between the different parties, 18 years ago.

[14] It was further argued in contest that the said Nadia Frederic, has filed a civil claim as against the Applicants on the facts of the Affidavit of the 11<sup>th</sup> day of February and 15<sup>th</sup> day of May 2015. That Applicants can hence file a defence and counterclaim in that action against the said Nadia Frederic hence rendering the Motion for Joinder and amendments unnecessary in the main case, for the issues to be tried.

[15] Section 109 of the Code provides that:-

*“All persons may be joined as Defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. And the Judgment may be given against such one or more*

*of the Defendants as may be found to be liable, according to their respective liabilities, without any amendment”.*

[16] Section 112 of the Code further provides that:-

*“No cause or matter shall be defeated by reason of the misjoinder or non-joinder of the parties and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the names of any persons improperly joined, whether as Plaintiffs or Defendants, be struck out, and that the names of any parties, whether Plaintiffs or Defendants, who ought to have been joined, **or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added”.***

[Emphasis is mine].

[17] Section 145 of the Code further provides that:-

*“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.*

***Provided that a Plaint shall not be amended so as to convert a suit of one character into a suit of another and substantially different character.”***

[Emphasis is mine].

[18] It follows, thus that the guiding principle with regards to amendments and joinder of party as a co-defendant is whether such amendment and or joinder is necessary in order to enable the trial Court effectually and completely to adjudicate upon all the questions in the cause or matter now before the Court. In that respect I refer to the matter of **Comptroller of Taxes as Union Vale car Hire (Pty) Ltd and or (1980) SCAR.**

[16] Now, in the present case the claim of the Plaintiffs as per the original Plaintiff in the main case stands or falls by its averments and sole reliance on the evidence of a supposed witness namely Nadia Frederic subject matter of the current Application. It is evident thus that now in view of the change of stance of the said witness, the plaintiffs' claim stands affected hence I am satisfied that is necessary for the purpose of determining the real question in controversy and adjudicating on all the issues raised in the Plaintiff between the parties that the joinder of the said Nadia Frederic as proposed by Learned Counsel Mr. S. Rouillon, be added to the suit. The addition of the said proposed co-defendant it is to be noted further, will in no way change the character of the present suit to a different character.

[17] I therefore allow the Motion of Learned Counsel Mr. Rouillon of the above-mentioned date and order that the Plaintiff be amended to add the said Nadia Frederic as defendant to the suit.

Signed, dated and delivered at Ile du Port on

S. Govinden  
**Judge of the Supreme Court**