

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: XP 105/2012**

**[2016] SCSC774**

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**In the matter of**

**EXPARTE EDA MAUREL**

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Heard: 16 December, 2015  
Counsel: Mr Bernard Georges for petitioner  
Mrs Lansinglu Longmei for Attorney General  
Delivered: 21 September 2016

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**JUDGMENT**

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**Dodin J**

[1] The Petitioner, Eda Maurel, a Mauritian national is the wife of Felix Maurel who holds both Seychellois and Mauritian nationality. He had been married to the Petitioner for 33 years and had 4 children and 3 grandchildren. He was 55 years old and was to turn 56 on the 8<sup>th</sup> of April 2010. Felix Maurel was a businessman engaged in the insurance business in both Mauritius and Seychelles. Just prior to coming to Seychelles, Mr Maurel had completed a major business transaction in Mauritius, namely selling his successful insurance business which at the time was employing 250 persons to the Mauritius Union Assurance.

[2] According to the Petitioner, it was her brother, Maurice Bonieux's idea to come to Farquhar in Seychelles for 10 days with a group of at least 10 persons since October,

2009 but due the Mr Maurel's business affairs, they agreed on making that trip at the beginning of April, 2010. That trip started on the 1<sup>st</sup> April, 2010 and was to be for 10 days. The party who arrived on Farquhar on the 10<sup>th</sup> consisted of Mr Felix Maurel, Mrs Eda Maurel, Mr Christopher Boland the brother-in-law of Mrs Eda Maurel, Mr Maurice Bonieux, the brother and neighbour of Mrs Eda Maurel, Mrs Odile Bonieux, Claire, daughter of Mr and Mrs Bonieux, Sybille, the wife of Christopher Boland and sister of Mrs Maurel, Caroline, the daughter of Mr and Mrs Maurel and a couple of French friends.

- [3] On the 7<sup>th</sup> April, 5 of them went to South Island with the intention of picking up Flotsam on the other side of the island. The 5 consisted of Mr and Mrs Maurel, Caroline, Mr and Mrs Boland and they were taken there by a boat skipper Jossy Aglae. Arriving on South Island the party started walking along the beach to the other side of the island whilst Mr Aglae remained at the landing site. Somewhere along the way Mr Maurel felt unable to continue and decided to return towards the landing site whilst the rest of the party continued to the other side. Mr Maurel disappeared and to date has not been seen.
- [4] Extensive searches were carried out over several days to no avail. An inquest into the disappearance of Mr Maurel was carried out by learned Magistrate Labonte who also conducted a locus in quo on Farquhar South Island. The learned Magistrate entered an open verdict declaring Mr Maurel absent. This Court reviewed all the evidence set out before the Magistrate and interviewed some witnesses further, namely Christopher Boland, Maurice Bonieux and Jossy Aglae and also conducted a further locus in quo on South Island.
- [5] Learned counsel for the Petitioner submitted that under Section 4 of the Presumption of Deaths Act the Court must consider whether the facts can lead the Court to make a declaration of death in respect of Mr. Felix Maurel who disappeared on the Island of Farquhar or if these facts are not sufficient, to make a declaration that he disappeared, noting that a declaration of absence rather than death might lead the Court to request that further enquiries are conducted with a view to bring the matter to a close.

- [6] Learned counsel further submitted that closure can only come after exhaustion of all avenues that are possible. Learned counsel recognised that after a long and careful enquiry, the learned Magistrate appointed to conduct an enquiry in this matter concluded that death could not be presumed but that absence was clear so declaration of absence was made as opposed to a declaration of death. Learned counsel therefore submitted that in light of all that had been done, it would not be particularly objectionable for the Court to stick to the same declaration of absence but if the Court is otherwise satisfied, make a declaration of death.
- [7] Learned counsel submitted that should the Court stay with the declaration of absence as opposed to a declaration of death it should seek or request the authorities in particular the Police Authorities to conduct further enquiries so that the matter may come back to the Court for a further declaration at the end of those enquiries.
- [8] Learned counsel noted that the police did carry out an investigation at the time but the Police lost its file which is why the application for an enquiry was made by the Petitioner as opposed to the Police. It is admitted fact that the Police were unable to retrace the file which they had compiled. Secondly the mystery of the disappearance of Mr Maurel still remains. It is very possible that he went into the lagoon and drown and his body was taken away by predators. It is equally conceivable that he walked into the island and somehow died and his body had not been found on the island. It is perhaps less probable that some foul play of some sort might have been responsible for his disappearance.
- [9] Learned counsel submitted that since none of these 3 factors can be crossed out doubts still remain hence the easy solution for this Court would be to simply make a declaration of absence, close the file and leave it there but since that would not serve the purpose for which the Petitioner has come to Court, the only possible way of achieving closure for the family and for the Petitioner would be to request the assistance of the Police to carry out such further investigation as they might feel necessary and then to report back to the Court so that the Court can, armed with this fresh and independent look, come to a proper conclusion in this matter.

[10] Learned counsel for the Attorney General submitted that firstly, Mr Maurel

disappearance on an island and no body was recovered. Secondly, Mr. Maurel is described as a fit and healthy man. The tide was low on that particular day, the sea was calm, there was no current and one has to walk quite far into the sea for him to have disappeared in the lagoon. Thirdly on the issue of foul play there was some element of suspicion on Jossy who was the skipper on that day but there was no motif or evidence to support that mere suspicion and the evidence show that Jossy cooperated fully in the investigation including during the locus in quo conducted by this Court.

[11] Learned counsel submitted that the learned Magistrate also ruled out all these 3

possibilities and rendered an open verdict namely that Mr. Felix Maurel is still absent. Learned counsel submitted that it would be unsafe to conclude that Mr. Felix Maurel has actually died but the Court may maintain the open verdict and after 7 years of absence the person can be declared dead as per Section 15 of the Presumption of Death Acts.

[12] The relevant sections of the Presumption of Deaths Act guiding these proceedings are Sections:

“2. The Attorney General, the relatives of a person who has disappeared, or anyone interested in the property of the person who has disappeared, may, whenever he or any of them have reason to believe that such person is dead, but such death cannot be proved or registered because the dead body has not been found or else because it is not possible to give formal proof of such death, lodge a petition at the Registry of the Supreme Court requesting a Judge to order an enquiry in order to ascertain whether such person is dead.”

3. If the person has disappeared while residing in Seychelles a Judge shall, on receiving such petition, order a Magistrate (whose selection shall be approved by the Minister), to hold a public enquiry into the circumstances under which the person alleged to be dead disappeared, and the Judge shall direct such magistrate to summon as a witness any person whose evidence he may think necessary. The evidence of the witness shall be taken on oath and taken down in writing. When each witness has given his evidence it shall be read over to him and he shall be asked if the same is correct. After the deposition has been corrected (if this shall be necessary) or after the witness has admitted that the same is correct, the witness shall sign or put his mark to the same. The magistrate shall countersign the deposition. When the enquiry has been completed,

*the magistrate shall state in writing the conclusion he has come to upon such evidence and forward the depositions so signed with such conclusion to the Registrar of the Supreme Court.*

4. *The person or persons who have lodged the petition, or other person interested in the deceased's property, may thereupon petition a Judge to declare the person the subject of the enquiry dead. If the applicant is not the Attorney General, then the Attorney General shall be served with a copy of the petition and made a party to such application and be furnished with a copy of the evidence proposed to be put before the Judge on the application.*

5. *A Judge may, after hearing the application in open court, declare the person who has disappeared to be dead, or if he is not satisfied that such person is dead, declare him to be absent. The Judge may, if he thinks it desirable at any time, from time to time adjourn the application for advertisements to be issued and further enquiry to be made. The Judge shall have power to rehear all or any of the witnesses heard by the magistrate and to receive any further evidence he may think desirable.*

[13] Learned counsel for the Attorney General has also touched on section 15 of the Act;

*"15. If a person has not been heard of for seven years and a Judge after an enquiry has been held be of opinion that the circumstances point to his death, he may declare the said person dead."*

[14] A person may be legally declared dead despite the absence of direct proof of the person's death, such as the finding of remains attributable to that person. Such a declaration is typically made when a person has been missing for an extended period of time and in the absence of any evidence that the person is still alive or after a much shorter period if the circumstances surrounding a person's disappearance overwhelmingly support the belief that the person has died.

[15] If there is not sufficient evidence that death has taken place, it may take longer to have a declaration of that nature, as simple absence does not necessarily prove death. In the jurisdiction of Seychelles the Presumption of Deaths Act provides for a period of 7 years absence. See section 15 above.

[16] The requirements for declaring an individual legally dead may vary depending on numerous details including the following:

1. The jurisdiction the individual lived in before death
2. The jurisdiction where they presumed to have died.
- 3 How the individual is thought to have died
4. The balance of probabilities that make it more likely than not that the individual is dead.


[17] After the lengthy period of 7 years, the person can still be presumed dead in the following circumstances namely

1. There has been no evidence that the person is still alive.
2. The people most likely to have heard from that person have had no contact.
3. Inquiries made of that person have had no success.

[18] Having given careful consideration to the evidence gathered so far and the enquiries made by the learned Magistrate and this Court, the issue of whether Mr Felix Maurel is dead has not been satisfactorily established as the evidence does not disclose that Mr Maurel was at any time in any imminent peril or immediate danger to warrant a determination that he must have died.

[19] Pursuant to Section 5 of the Presumption of Deaths Act, I therefore declare Mr Felix Maurel absent. In view of the fact that the Seychelles Police has to date not produced any report or detail of its investigation to the Court, I further order that the Seychelles Police acting if necessary in conjunction with the Mauritian Police conduct further investigations into the said disappearance and submit its findings to this Court for a further review of the matter.

Signed, dated and delivered at Ile du Port on 21 September 2016

  
G Dodin  
Judge of the Supreme Court

