

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: MC 79/2016**

**[2017] SCSC 247**

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**1. MARIE-ANGE FERLEY**

Petitioner

versus

**1. THE CURATOR OF VACANT ESTATES**

1<sup>st</sup> Respondent

**2. ESTATE OF PHILIPPE ANDREA MEDERIC**

Represented by Lise Mederic

In her capacity as Executor

2<sup>nd</sup> Respondent

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Heard: 16<sup>th</sup> March, 2017

Counsel: Mr. Guy Ferley for petitioner

Mrs. C. Cesar for 1<sup>st</sup> Respondent

Ms. A. Benoiton for 2<sup>nd</sup> Respondent

Delivered: 16<sup>th</sup> March, 2017

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**ORDER**

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**Carolus Master**

[1] This Order is made in respect of a Petition for division in kind dated 21<sup>st</sup> July, 2016, which was filed before the Supreme Court on 1<sup>st</sup> August, 2016, supported by an Affidavit sworn by the Petitioner. An amended Petition dated 22<sup>nd</sup> November, 2016, was

subsequently filed wherein the Curator of Vacant Estates was substituted for Heirs Dogene Coeur de Lion, the 1st Respondent.

[2] It is averred in the amended Petition that the Petitioner, the 1<sup>st</sup> Defendant (substituting for the vacant estate of the late Dogene Coeur de Lion who died leaving no issue) and the 2<sup>nd</sup> Respondent are co-owners in indivision of the land comprised in Title S2059, of an extent of 3686 square metres, situated at Anse Aux Pins, Mahe; that the Petitioner has 2/5<sup>th</sup>, the 1<sup>st</sup> Respondent has 1/5<sup>th</sup> and the 2<sup>nd</sup> Respondent has 2/5<sup>th</sup> shares in parcel S2059; that the Petitioner no longer wishes to remain in a state of indivision with the Respondents; that the land comprised in parcel S2059 can be conveniently sub-divided to distract the Petitioner's entitlement therein; and that it is urgent and necessary that the land comprised in parcel S2059 be partitioned in accordance with the Petitioner's entitlement. In terms of this Petition therefore, the Petitioner is seeking for the appointment of an appraiser to submit a report on the proposed partition and for an Order of this Court for the land comprised in Title S2059 to be divided in kind in order that the Petitioner may obtain her share therein.

[3] A certificate of official search dated 10<sup>th</sup> March, 2017, in respect of S2059 confirms the ownership of the said land title as follows:

Heirs Dogene Coeur de Lion (1/5)

Philippe Andrea Mederic (2/5)

Marie-Ange Ferley (2/5).

[4] A representative of the Attorney General who represented the 1<sup>st</sup> Defendant indicated that she had no objection to the appointment of an appraiser.

[5] Counsel for the 2<sup>nd</sup> Respondent filed a response to the Petition in terms of which it was averred that a surveyor should be requested to make proposals as to how the parcel S2059 can be divided. The 2<sup>nd</sup> Respondent therefore prayed for the appointment of a surveyor to make proposals as to how the parcel S2059 can be divided , and in the alternative, in the

event land parcel S2059 cannot be conveniently or profitably subdivided in kind among the parties to (a) dismiss the Petition; and (b) order that the land be sold by licitation.

[6] Applications for division in kind are governed by the provisions of the Immovable Property (Judicial Sales) Act (Cap 94). The present Petition is made pursuant to section 107(2) of that Act.

[7] Section 112 of the same Act provides as follows:

“The Judge may also, before deciding upon the demand, order an appraisalment (expertise) by an appraiser to be named by him.

In such case the appraiser shall, within a delay to be fixed by the Judge, make and file in the registry his report which shall in a summary manner give a description of the property, the estimated value thereof, and the basis upon which such valuation is made. The report shall further state whether or not the property can conveniently be divided in kind, and if so divisible shall set forth the proposed lots in conformity with this Act and the provisions of the Civil Code of Seychelles.

In no case of appraisalment under the provisions of this Chapter shall it be necessary to administer an oath to the appraiser.

The parties to the division in kind shall be summoned, by a notice served upon them in person or at the domicile elected by them in accordance with section 110, four days at least before the day fixed for the appraisalment, to attend at the time and place where the said appraisalment is to be made.”

[8] In accordance with the above provision:

(a) I hereby order an appraisalment to be made by Mr. Antoine Ah-Kong of Ah-Kong Land Surveys, Providence Industrial Estate, Mahe, in respect of Parcel S2059 situated at Anse Aux Pins, Mahe.

(b) I further Order the Appraiser to file a Report complying with the above provision and in particular proposing partition of the property between the parties to this Petition according to their entitlement.

Signed, dated and delivered at Ile du Port on 16<sup>th</sup> March, 2017.

E. Carolus  
**Master of Supreme Court**