

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: XP 43/2016

[2017] SCSC 624

EX PARTE

**Eddie Chang – Yun of Anse Louis, Mahe, Seychelles
Acting as executor of the estate of the deceased Antoine Chung -Yun on behalf of the
following heirs:**

- 1. Jeanne Marie Ojeda nee Chang Yunn**
- 2. Isabelle Jeanne d’ArcArnephy, nee Chang Yunn**
- 3. Heirs Marguerite Hoareau nee Chang Yunn namely Brigitte Francis nee Hoareau**
- 4. Heirs Yvon Chang Yunn namely Mary Yvonne Purham nee Chang Yunn
Eddie Chang Yunn, Lorna Ansorge nee Chang Yunn and**
- 5. Heirs Benoit Lepere formerly Chang Yunn namely Rodney Lepere and Eileen
Lepere**

Heard: 14 July 2017
Counsel: Ms Pool for petitioner
Mr Camille for respondent
Delivered: 14 July 2017

RULING

Nunkoo J

[1] The executor, Mr Eddie Chang Yunn along with five other persons heirs of the deceased Antoine Chang Yunn, the Petitioners, have by petition dated 18th of March 2016 made a

demand in licitation in respect of a plot of land title S966, which belonged to the deceased.

- [2] The memorandum of charges was filed on 23rd May 2016.
- [3] One of the heirs, namely Ethel Buttler Moos has filed objections to the demand of licitation of the land comprised in title C 5966.
- [4] The objections are headed Objections of first respondent to the licitation of land comprised in Title c 5966 made in terms of Section 103 of the Immovable Property Act (Judicial Sales) Act.

- [5] Section 103 of the Immovable Property (Judicial Sales) Act is as follows:

Within thirty days, after the expiry of the period for notice prescribed in section 102, any defendant in the licitation, or any inscribed or judgment creditor may, if he think fit, object to the licitation, or to any of the clauses or conditions of the memorandum of charges, or to any nullities in the proceedings, such objections shall be made, heard and determined in like manner and subject to the same rules as are hereinbefore prescribed in sections 85 and 86, the provisions of which said sections are hereby extended and applied to the proceedings.

- [6] The Respondent avers at para 3 of the said affidavit that he has filed a plaint against the petitioner “*seeking for relief pertaining to his executorship of the estate of the late Yvon Chang Yunn.*”
- [7] The Petitioners have in their affidavit pleaded that the ground that there is a case pending before the Court has nothing to do with the licitation proceedings and that the majority of the heirs wish to sell their property and that they cannot be forced to remain in a state of in division.
- [8] I have very carefully gone through the objections and the reply filed by the petitioners.

- [9]** The objections therefore are based on a plaint that has been entered in April 2015 by respondent claiming damages from the Executor for certain alleged breaches by the Executor which are particularised in the plaint.
- [10]** I fail to understand how Section 103 can be invoked to prevent the licitation from being proceeded with. The objections of the Respondent are not supported by section 103 of the Immovable Property (Judicial Sales) Act as from the very plaint it is obvious that the Respondent has a personal action against the executor and he has a claim in damages. This is a separate issue and must not be mixed with the property rights of the heirs and the petitioners' rights more specifically to proceed with the licitation.
- [11]** I therefore set aside the objections and order that the licitation be proceeded with.

Signed, dated and delivered at Ile du Port on 14 July 2017

S.Nunkoo
Judge of the Supreme Court