

- [4] He further avers that he has been treated as the Deceased's son in the community and has always been recognised by the family of the Deceased as such, including the Defendants.
- [5] The Defendants deny the averments of the Plaintiff and put him to strict proof of his averment that he is the Deceased's son. They aver that they have never been approached by the Plaintiff with his claim. They further aver that at one point the Plaintiff did rent a house from the Deceased but that he never lived with the Deceased.
- [6] They also deny that the Deceased paid for the Plaintiff's school fees or that they ever recognised the Plaintiff as the Deceased's child.
- [7] At the hearing on 23 March 2017, I intimated to the parties that although our statutory provisions do not provide for DNA testing which would be conclusive proof in this case, were I to receive the unanimous consent of the parties, a test could be carried out and the matter disposed of conclusively. The Defendants did not acquiesce to this request and the hearing proceeded.
- [8] The First Defendant was called on personal answers. She was married to William Low Wah. He was also known as Low Wah. He died in Seychelles on 19 July 2015. They had two children together, Kenneth and Billy Low Wah. When asked whether the Deceased had had other children with another woman, her response was: "I do not know." When asked whether she knew the Plaintiff or Andrew Esparon she also replied in the negative. She did recall the Deceased's funeral service at which a funeral booklet had been prepared by her grandchildren, specifically Winnie Low Wah. She said her eyes were closed during the service and she did not see the Plaintiff.
- [9] The booklet for the funeral service dated 27 July 2015 was produced by the First Plaintiff. At page 5 of the booklet is an entry which in relevant part states:

"For those who mourn: Most merciful God whose wisdom is beyond our understanding, deal graciously with his wife Marjorie, children Kenneth, Billy, Andrew & Francis..."

- [10] The First Defendant stated that even though this was stated in the booklet she did not know that the Plaintiff was the Deceased's son as she did not make the booklets. The Deceased never told her that he was the father of the Plaintiff.
- [11] The Plaintiff testified. He was born on 20 February 1960. His mother was Odile Payet and he grew up at Anse Gaulette, Baie Lazare. His mother told him that his father was the Deceased. Members of the public also told him that he was Low Wah's son and they called him Low Wah. His siblings called him Low Wah. Sometimes he lived with the Deceased and sometimes he would come to his mother's house to fetch him. The Deceased had lived close by, a mere two kilometres away at Quatre Bornes village next to the Police Station and near Baie Lazare.
- [12] The Deceased had treated him as his son. If he asked for something he would give it to him even if he had to hide it. He would hide what he did because he was afraid of his wife, the First Defendant.
- [13] The Plaintiff had worked as a health officer at the airport and in his time he was asked by the Deceased to help with the shop. He would help the driver with the merchandise for the shop. He went to Mont Fleuri School, Victoria School and eventually to Technical (Modern) School to study engineering. This was paid for by the Deceased whom he referred to as his father.
- [14] The Deceased had several shops- one in Baie Lazare, one in Anse Gaulette, one at Anse Boileau and one at Bel Ombre which he rented to an Indian.
- [15] One of his siblings was also the Deceased's son but he was not making a claim of paternity against the Deceased heirs as he was Muslim and such actions were not permitted by his religion.
- [16] On one occasion when he was about 18 years old, the Deceased had had to go away on business and got his Chinese cousin John Low Wah to come from China and help the Plaintiff run the business including the bakery. Sometimes he lived with the Deceased. There were two bedrooms and he shared one with Kenneth and Billy and in the morning his father would wake him up for him to go to work. His father had not acknowledged

him as his son although he wanted to as his mother refused. She was afraid the Deceased would send him to China.

- [17] He had attended to the Deceased before his death and had helped dress him at the funeral parlour. The Deceased's wife had been present. At the funeral his name was mentioned as one of the sons of the Deceased. He had been on good terms with the rest of the Deceased's family until he made a claim for inheritance.
- [18] In cross examination he denied that he only went to the shop with the rest of the school children in the area to obtain treats such as pork crackling, ice lollies and the like. He also denied that he was called Low Wah only because he frequented the Deceased's shop. Similarly, he denied that his name was only entered in the funeral booklet for the same reason. He also denied that he paid rent to the Deceased. He pretended that he was paying rent so as not to incur the wrath of the Deceased's wife.
- [19] The Plaintiff's brother, Andrew Esparon also testified. He corroborated the Plaintiff's evidence. He also visited the Deceased at the shop. His older brother was better known as Low Wah as he was the first born. His brother used to go to Victoria school in the Deceased's bus.
- [20] When the Deceased passed away the death announcement on the radio mentioned the Deceased's family including the Plaintiff and himself. His name as well as that of his brother is mentioned in the funeral booklet.
- [21] He remembered the Deceased coming to collect them at his mother's house. He would honk his horn and they would accompany him in the lorry to the shop and help him with his chores. In cross examination he denied that he only went to the shop as did other school children. He had not prosecuted a paternity suit because of his religious beliefs as a Muslim. However, this did not stop him supporting his brother's claim.
- [22] Mary Banane, a cousin of the Plaintiff also testified. She had lived at Baie Lazare all her life and was neighbours with the Plaintiff and his brother. She knew the Deceased and had learnt from an early age that he was the Plaintiff's and Andrew's father. They spent

time together and sometimes they stayed with the Deceased at his shop and at the house. They slept over at the house.

[23] Vincent Payet, a petrol station operator at Baie Lazare also testified. The Plaintiff was his step brother. He had sometimes lived with the Plaintiff when he lived in the Deceased's house at Quatre Bornes. He recognised that his brother looked different from him and was told that his brother was the son of the Deceased. The Deceased treated the Plaintiff as his son. He was very strict as to whom could come behind the counter in the shop. Only the Plaintiff was allowed. Once the First Defendant had asked him to call the Plaintiff to come and read an official letter for his father. Everyone in the community called the Plaintiff Low Wah and Mr Paul Leon, the well-known petrol operator in Victoria called him *Sinwa* (Chinese).

[24] The First Defendant gave sworn testimony. She stated that the Plaintiff would sometimes come to the shop as a school boy. They ran a bakery and he and other children would come and buy cakes and ice lollies. She denied that the Plaintiff had ever worked in the shop. She stated that her husband had never told her he had children when they got married. She denied that the Deceased had lived or stayed over at the house. He had only rented a house behind the bakery. The Plaintiff had never assisted in the business, tax work was done by Louis Chetty.

[25] She also denied that the Plaintiff had ever managed the business when the Deceased was away, rather she single-handedly ran the shops and the bakery and delivered the bread. Her husband had never paid the Plaintiff's school fees. She never heard the Plaintiff being called by the name of Low Wah. When questioned again on this issue she stated "I do not know these things, I am busy in the shops and I did not hear." She did not know whether the Deceased had children before she got married to him.

[26] The Second Defendant also testified. He also lived at Baie Lazare. He was away for a while in Hong Kong but returned to Seychelles in 1988 and had lived there since. He knew the Plaintiff from around the time he was 8 or 9 years old. He would come to the shop with his brother Andrew to buy goods. He was not told by his father that the Plaintiff was his brother. The Plaintiff never stayed with them as they only had a two

bed-roomed house. It was possible that the Plaintiff helped out at his father's shop, perhaps when he was away but when he lived in Seychelles he would only come around to buy goods.

[27] He explained that a lot of people's names were put in the funeral booklet. As regards his daughter calling the Plaintiff *tonton* (uncle) that was only a Chinese custom to show respect. In cross examination he accepted that the Plaintiff looked Chinese but stated that his father was not the only Chinese national in Seychelles. He hazarded a guess that his daughter had inserted the Plaintiff's name as his father's son in the funeral booklet because the Plaintiff used to hang around the shop.

[28] He agreed that everyone in the community said the Plaintiff was the Deceased's son but the Deceased himself had never said so.

[29] In final submissions, Mr. Camille stated that the evidence adduced by the Plaintiff did not suffice to meet the provisions of Article 321 of the Civil Code. He submitted that the evidence of the Plaintiff and his witnesses were all self-serving; in his view there had been no evidence from unrelated members of the community as to the parentage of the Plaintiff. He submitted that there was no evidence that the Deceased had paid for the Plaintiff's school fees. As for the entry in the booklet, that was only a sign of respect.

[30] In his closing submissions Mr. Ally stated that the evidence of the Plaintiff and his witnesses was clear in that he had been treated as the child of the Deceased and was known to be so in the community. That in his view met the provisions of Article 321.

[31] Articles 321 and 340 of the Civil Code provide in relevant part:

321 1. Possession of status may be established when there is a sufficient coincidence of facts indicating the relationship of descent and parenthood between a person and the family to which he claims to belong.

The principal facts are:

That that person has always borne the name of the father whose child he claims to be;
That the father has been treating him as his child and that, in his capacity as father, he has provided for his education, maintenance and start in life;

*That he has always been recognised as a child of that father in society;
That he has been recognised as such by the family.*

340 1. It shall not be allowed to prove paternal descent, except:

...

(b) When an illegitimate child is in possession of status with regard to his natural father or mother as provided in article 321.

...

(d) When there exist letters or other writings emanating from the alleged father containing an unequivocal admission of paternity.

...

(f) When the alleged father has provided for or contributed to the maintenance and education of the child in the capacity of father.

- [32] In the present case based on the above provisions, I find that the Plaintiff has rightly brought the suit.
- [33] I further find the Plaintiff's evidence and that of his brother Andrew compelling. Equally convincing is the funeral booklet which is corroboration of the Plaintiff's claim that the Deceased was his father. It is clear that he was acknowledged as such by the Deceased's family as this information is not self-serving but came from the Defendants themselves. By contrast, I found the First Defendant evasive and her testimony in personal answers at variance with that which she gave under oath. I therefore reject her evidence. I found the witness Kenneth Low Wah equally evasive and not a credible witness.
- [34] Above all the Defendants gave a very incredible answer as to how the Plaintiff's name came to be inserted in the Deceased's funeral booklet. Hanging around someone's shop does not merit him being inserted as one's son in a funeral booklet by any stretch of the imagination.
- [35] I also find from my observations of the parties in court that both the Plaintiff and his brother Andrew bear the same Asian physiognomic features as the deceased and the Second Defendant. I would have thought a DNA test would have provided conclusive proof that the Plaintiff is the son of William Low Wah. Alas, our laws remain dated and

despite the courts numerous calls and pleadings the legislature has still not kept abreast genetic science.

[36] In the circumstances, I am satisfied from the provisions of Article 321 and 340 of the Civil Code and on the evidence adduced that the Plaintiff is the biological son of the Deceased, William Low Wah, also known as Liu Yao Hua.

[37] I therefore Order that he be so declared and that the Chief Officer of Civil status rectify the Plaintiff's Act of Birth accordingly.

Signed, dated and delivered at Ile du Port on 29 May 2017.

M. TWOMEY
Chief Justice