

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: XP 220/2016

[2017] SCSC 695

In the matter of

EX PARTE: MARGUERITE MARIE DUGASSE

Petitioner

Counsel: Mr. B. Georges for the Petitioner

Delivered: 6th June, 2017

ORDER

Carolus Master

- [1] In terms of this Application, the Applicant seeks to be appointed as Executrix of the estate of her mother, the late Silette Alexandra Labonte née Dugasse (hereinafter referred to as the Deceased) who died intestate on 26th November, 2014, at Anse Royale, Mahe, Seychelles. It is averred in both the Application and the Affidavit in support thereof that the Applicant is the sole surviving heir of the Deceased. The Application is supported by an Affidavit sworn by the Applicant and other relevant documents attached thereto.
- [2] It is averred in the Application and in the Affidavit in support thereof that the Petitioner requires to be appointed executrix of the estate of the deceased in order to pursue searches into a possible share in immovable property at Anse Boudin Praslin. There is no

documentary evidence on record in support of the averment that there is a possibility that the Deceased had a share in immovable property at Anse Boudin Praslin.

[3] Mr. Georges, Counsel for the Applicant, has submitted that there is no definite parcel of land in respect of which the Application is being made hence the use of Article 1026 of the Civil Code of Seychelles Act (hereinafter referred to as the Civil Code) which is permissive rather than compulsory. He stated that there are no documents to show the possible entitlement of the Deceased to the immovable property referred to above, but that it is known that there is a piece of land, that the Deceased needs to be represented in order for someone to be able to now go and look for that piece of land, and that the Applicant has no standing to do that unless she is first appointed as Executrix. He further stated that the land is an unregistered and unsurveyed plot and that he has details of the conventional boundaries but that even these are difficult to ascertain. He also stated that the Court can be provided with such details but that it is in order to engage a surveyor who will go on the scene and look at the title deeds that an Executor needs to be appointed.

[4] Mr. Georges further submitted that under Article 1026 of the Civil Code there is a compulsory provision in terms of which if there is land, then an Executor must be appointed but that a permissive reading of that Article allows the appointment of an Executor even where there is no land. He stated that that in fact this is done occasionally when there is money at the bank because the bank refuses to release the money if the sum is higher than a certain amount unless an Executor is appointed. He stated that it is under that provision that he seeks the appointment of the Applicant as Executrix.

[5] After being pressed further by the Court for evidence in support of the possible entitlement of the land by the Deceased he stated the following:

“We just know that she will have a share by virtue of two factors which I can indicate to the Court. First of all the original parcel of land is owned, and that is the one that is the old register parcel, by Alain Vingas who married Alexandrine Rezma back in 1870 and we have a very detailed family tree that shows that the Deceased and the Deceased’s heir, the Applicant here. We are able to show that she is related back to this person and that

this person is the owner of the original parcel of land but we are unable to be any more precise after that because we have to go through the whole business of ensuring who is dead, who is alive and what shares there are and whether the parcel of land in question is still the parcel of land that we think it is. All of those unfortunately will have to be done by somebody other than a lawyer.”

[6] At the request of the Court Mr. Georges agreed to have the Applicant swear an Affidavit giving information as to the original owner of the land and that person’s relationship to the Deceased although he submitted that strictly speaking this is not absolutely necessary in law. At a later date however, Ms. Gill representing Mr. Georges stated that they were unable to file such an Affidavit because they were not sure of the exact location of the land and how many parcels there are which is why he has stated in the Affidavit that the Petitioner requires to be appointed as Executrix to the estate of the Deceased in order to pursue searches.

[7] Article 1026 of the Civil Code provides as follows:

“Article 1026

If the succession consists of immovable property, or of both immovable and movable property, and if the testator has not appointed a testamentary executor or if an executor so appointed has died or if the deceased has left no will, the Court shall appoint such an executor, at the instance of any person or persons having a lawful interest. A legal person may be appointed to act as an executor. But a person who is subject to some legal incapacity may not be so appointed.”

[8] In terms of this Article therefore, in order for the Court to appoint a person as the Executor to the succession of a deceased person, it must be satisfied of the following:

- (i) That the succession consists of immovable property, or of both immovable and movable property;

- (ii) That the person in respect of whose succession an executor is sought to be appointed has not appointed a testamentary executor, that any testamentary executor appointed has died, or that the person died intestate;
- (iii) That the Application must be made at the instance of any person or persons having a lawful interest; and
- (iv) That the person to be appointed as Executor must not be subject to any legal incapacity.

[9] In the present case, I am satisfied that the Deceased died intestate, that the Petitioner as the daughter and sole surviving heir of the Deceased has a lawful interest in making the Application and that she is not subject to any legal incapacity to be so appointed. However, it has not been proved to the satisfaction of the Court that the succession of the Deceased consists of immovable property or of both immovable and movable property as is required under Article 1026. In my view it is not sufficient to simply aver that the Deceased may have a possible share in immovable property without bringing any evidence of the same. Having made this averment, it was incumbent on the Petitioner to bring evidence of the same which she has not done.

[10] Mr. Georges has submitted that under Article 1026 if the succession of a Deceased person consists of land then an Executor must be appointed but that a permissive reading of that Article allows the appointment of an Executor even where there is no land. He gave the example of the Court appointing an Executor where a succession consists of only money at the bank where the bank refuses to release the money if the sum is higher than a certain amount unless an Executor is appointed.

[11] I agree with Mr. Georges that in terms of Article 1026, where a succession consists of immovable property, an Executor must be appointed.

[12] With respect to his submission that a permissive reading of Article 1026 allows the appointment of an Executor even where there is no immovable property, I note that the Court has in many instances appointed Executors in respect of successions which consist only of movable property, usually money held in bank accounts, and motor vehicles.

However I am of the view that this is not because a permissive reading of Article 1026, allows the appointment of an Executor even where a succession consists of only movable property but rather because Article 774 of the Civil Code provides for it. Article 774 provides as follows:

“Article 774

1. Where a succession consists of movable property only, it may be accepted purely and simply or subject to the benefit of inventory. Where the succession includes both movable and immovable property it shall not be necessary to accept it, and an executor shall be appointed as provided by this Code. *However, if the succession consists of movable property only, the heirs and legatees may, by agreement, elect to appoint an executor, in which case the distribution shall proceed as if the succession included immovables as well as movables; However, the Court may also appoint an executor on the application of any interested party.*” Italics are mine.

[13] I am further of the view that, whether a succession consists of immovable property or only movable property, before the Court appoints an Executor to the succession, it must be satisfied of the existence of such immovable or movable property and that the Deceased was at the time of his death entitled to such property. In the present case, the Petitioner not having brought forward any evidence of the existence of the property to which the Deceased is averred to be possibly entitled to, or evidence showing the entitlement or possible entitlement of the Deceased to such property, the Court is unable to grant this Application.

[14] I therefore dismiss this Application.

Signed, dated and delivered at Ile du Port on this 6th June, 2017.



E. Carolus
Master of the Supreme Court