

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS13/2013

[2017] SCSC

PATRICK EVANS BELLE

Plaintiff

versus

SUSAN LABALEINE

First Defendant

AGNES PORT-LOUIS

Second Defendant

LUCILLE LABALEINE

Third Defendant

Heard:

Counsel: K. Domingue for the plaintiff

S. Rouillon for the defendant

Delivered: 10 October 2017

JUDGMENT

F. ROBINSON, J

[1] THE INTRODUCTION

[2] This is a suit founded on article 340 *alinéa* 1 (b) of the Civil Code of Seychelles Act, which is an action "*de la recherche de la paternité naturelle*". The Civil Code of Seychelles Act is hereinafter referred to as the ("Civil Code").

[3] Plaintiff in a plaint dated 26 February, 2013, is praying for a judgment declaring that he is the natural son of the late Philippe Labaleine (hereinafter referred to as the "*deceased*"), who passed away on 15 September, 2012.

[4] Plaintiff bases his suit on the following grounds —

(a) Plaintiff has always been recognised as the child of the deceased in society; and

(b) Plaintiff has always been recognised as such by the family of the deceased.

These grounds, if established by Plaintiff, constitute the "*possession d'état*" mentioned in article 321 of the Civil Code.

[5] First, Second and Third Defendants deny the claim of Plaintiff and pray for a judgment dismissing Plaintiff's action.

[6] The suit against Second Defendant proceeded *ex parte* upon the order of the court.

[7] **THE EVIDENCE FOR PLAINTIFF**

[8] The suit started before D'Silva J. Upon his unavailability to continue with the hearing, Plaintiff and First and Third Defendants, through counsel, agreed to the court hearing the suit and for the evidence of Plaintiff and Jena Belle to be adopted by the court.

[9] In addition to the evidence of Plaintiff and Jena Belle, the court heard evidence from Jislene Belle and France Leon Hortere.

[10] ***The evidence of Plaintiff.*** Plaintiff was born on 14 July 1975. Jena Belle, his mother has acknowledged him. Plaintiff's birth certificate is before the court as exhibit P2. Plaintiff lives at Takamaka. He was baptized at the Takamaka church, Sainte Marie Madeleine. Plaintiff's certificate of baptism is before the court as exhibit P3(a). Plaintiff produces a handwritten document, dated 9 January, 2013, attesting that the deceased is his father

(exhibit P3(b)). Except for the baptism ceremony of Plaintiff, on 24 August, 1975, the position of First and Third Defendants, through counsel, is that not much can be inferred from exhibits P3(a) and P3(b). The court agrees.

[11] Plaintiff's father's name is Philippe Labaleine, the deceased. The deceased passed away on 15 September, 2012. The death certificate of the deceased is before the court as exhibit, P1.

[12] Plaintiff's evidence that Jena Belle and the deceased lived together when he was still a small child is contradicted by Jena Belle, who states that neither she nor Plaintiff lived with the deceased. Plaintiff states that his mother and the deceased were on good speaking terms.

[13] Plaintiff explains that the deceased supported him when he was growing up and was always there for him. Plaintiff called the deceased "*papa*". Every month the deceased gave him money for school. The deceased worked as a painter. During the holidays over many years, he worked with the deceased. Plaintiff stopped working with the deceased when he got another job. Although Plaintiff and the deceased no longer worked together, the deceased typically greeted him and spoke to him whenever the two of them met. The deceased invited Plaintiff to his place. If there were any jobs to be done, the deceased would call Plaintiff to come over and help. Plaintiff and the deceased were close.

[14] When Plaintiff was ill, three years ago, the deceased visited him at the hospital every day.

[15] Plaintiff was unequivocal in that it was the intention of the deceased to acknowledge him. However, the deceased fell ill and passed away. The obituary (radio notice) referred to Plaintiff as the only son of the deceased.

[16] Plaintiff knows the family of the deceased. He knows that he has some cousins, two uncles, who have passed away, and that there are three aunts, the Defendants. Plaintiff was "*normal with them*"; he used to visit them. First Defendant did not "*live much in the Seychelles*", but he was "*ok with her*". When the deceased passed away, the Defendants acknowledged him as the son of the deceased. After some time, First and Third

Defendants have forgotten about him and said that they don't know him. It is only Second Defendant who still acknowledges him.

[17] Plaintiff is not aware that the deceased has any other surviving children.

[18] Plaintiff asks the court to make the orders prayed for because he believes that the deceased is his father and, consequently, he should be entitled to a share of the succession of the deceased.

[19] In cross-examination, First and Third Defendants sought to elicit evidence of Plaintiff's resemblance to his purported father, the deceased. Plaintiff states that the deceased was a short man like him; and that people at "*Takamaka*" always referred to Plaintiff as "*Pti Philippe*". Plaintiff does not have any photographs of the deceased other than the photograph of the deceased found on the cover of the funeral booklet. He explains that photographs of himself (Plaintiff) and the deceased are kept at the house of the deceased. Plaintiff does not have anything in writing from the deceased attesting that he is the son of the deceased. Plaintiff reiterates that the illness of the deceased prevented him from putting anything in writing. Plaintiff visited him at the hospital.

[20] The deceased was a steel fixer and then he was a contract painter.

[21] Plaintiff reiterates that the deceased was always there for him. Whenever Plaintiff needed something, the deceased would provide it for him.

[22] Plaintiff and Defendants are the sole heirs of the deceased.

[23] The house was initially built by the deceased, with another story added onto the house later. There have been substantial improvements to the house.

[24] When First Defendant came to Seychelles, she habitually stayed at the deceased's house and at times she stayed at Third Defendant's house. Plaintiff's cousin, Neville Labaleine, sometimes stayed at the deceased's house. At the time of the deceased's death, one of Defendants who lived in Italy came to stay with the deceased.

[25] Plaintiff visited the deceased regularly. He went to the house of the deceased or sometimes met him on the road. Plaintiff was unable to stay with the deceased as he has his own problems. It was his cousin Neville Labaleine who came to the house of the deceased. Plaintiff was unable to invite the deceased to stay with him because the house where he stays is not his. The house belongs to his wife. The lady has her own children and there is no spare room. The distance between where he and the deceased live is quite far.

[26] Since the deceased has passed away, Plaintiff does not go to the house because of an issue. Plaintiff does not want to aggravate that issue. First and Third Defendants do not speak to him.

[27] In re-examination, Plaintiff explained that First and Third Defendants have not spoken to him since the funeral. He does not go to the house anymore.

[28] ***The evidence of Jena Belle.*** Jena Belle is the mother of Plaintiff. She has seven children. Plaintiff is her first born. She has acknowledged Plaintiff.

[29] Jena Belle and the deceased started having a relationship when she was 15 years old. The deceased was much older than her. She lost her virginity to and was impregnated by the deceased at the age of 15. One day Jena Belle and the deceased went to a dance at "Greenways". After the dance, at about 5 a.m., she and the deceased were walking from the dance by foot. When Jena Belle and the deceased arrived near the house, they decided to have sex. It is to be noted that she did not state the date of this event. After the second month of not seeing her period, she approached the deceased and informed him. The deceased told her to let it be. She also informed her parents who spoke to the deceased.

[30] Jena Belle did not have any other sexual relationship before the one she had with the deceased. During the time that she knew the deceased, she did not have any other relationships or any other sexual encounters with other men. The deceased was the only person in her life.

[31] When Jena Belle was pregnant, the deceased gave money to her parents for them to buy things for her and the baby. Her parents helped her until she delivered the baby. The

deceased did not attend the delivery of Plaintiff, but he provided for him. The father of the deceased knew that the child was of the deceased. The mother of the deceased loved Plaintiff. The deceased did not declare the child because he was scared of his father. His parents did not like that Jena Belle was having a relationship with their son. She was the one who separated from the deceased because of the family problems. She had a relationship with another man. Every time that the deceased met her, he gave things for the child and gave her things as well.

[32] When Plaintiff was small, she was the one who brought him to see his paternal relatives. When Plaintiff became older, he went there by himself many times. He would go whenever there were parties, such as during Christmas and New Year. Plaintiff did not stay with the deceased for a long period of time. At Christmas, Plaintiff typically stayed over and returned the next morning.

[33] She states that Plaintiff and the deceased worked together. Next she added that the deceased would call Plaintiff to come and work, but he did not go. Despite that, the deceased would still give money to Plaintiff.

[34] Jena Belle states that she does not know if Plaintiff has taken any photos with the deceased.

[35] There are no written communications between the deceased and Plaintiff. The deceased told her verbally that First Defendant would give her son (Plaintiff) a small piece of land. The case is before the court because First Defendant did not give Plaintiff a piece of land. The land is for First Defendant.

[36] For over a year, the deceased went in and out of the hospital. Then he went to "*North East Point Hospice*", where he died in 2012. When the deceased was sick, he asked for Plaintiff to come see him. Plaintiff did not go. Plaintiff visited the deceased regularly when he realised that the deceased was about to die. Before the deceased died, he was still caring for Plaintiff. He gave money to Plaintiff. Jena Belle believes that the deceased loved Plaintiff a lot. Plaintiff did not show the deceased much love.

- [37] Jena Belle identifies the funeral booklet of the deceased, which is before the court as exhibit P4. All of Jena Belle's children attended the funeral of the deceased. They all know that he is the father of Plaintiff. When the deceased died, it was First and Third Defendants who did the obituary on the radio, which stated that Plaintiff is the son of the deceased.
- [38] Three years ago, when Plaintiff was sick, he spent seventeen days in "ICU". Second and Third Defendants and a cousin came to see him. They provided a blood sample to Plaintiff. Jena Belle points out that if Second and Third Defendants did not know Plaintiff, why would they provide such a blood sample?
- [39] In cross examination, Jena Belle was shown a bank card containing a photograph of the deceased and a photograph. She identified the deceased on the bank card's photograph (exhibit D1) and the father of the deceased on the photograph (exhibit D2).
- [40] Plaintiff is her first child out of seven. Jena Belle had Plaintiff with the deceased and the other six children are with two different men. Neither Jena Belle nor Plaintiff lived with the deceased. She did not have any other man when she was with the deceased, but when they separated she had a relationship with another man. Despite being separated, they remained on good terms. The paternal grandfather has passed away. Jena Belle believes it is over ten years. Over the ten years, the deceased did not acknowledge his son. The deceased never recognised Plaintiff in any form of document.
- [41] Jena Belle confirms that the deceased and her son worked together regularly. Jena Belle states that her son did not visit the deceased as often as he should, despite the deceased asking him to come. However, when the deceased became very ill, Plaintiff went to visit him regularly. Despite the deceased being a pensioner, he still gave Plaintiff money. It was Jena Belle who brought the deceased to his first appointment when he fell ill. She also took him to the doctor. Jena Belle took him to the hospital when he was admitted. She called Third Defendant to inform her that her brother had been admitted to the hospital.

- [42] Plaintiff's name was mentioned in the obituary. They were all at the "*North East Point Hospice*" when the deceased died. Jena Belle and Plaintiff were present. One Stella posted the death notice that was broadcasted over the radio, but all agreed to include Plaintiff's name as the son of the deceased.
- [43] In re-examination, Jena Belle states that Plaintiff's cousins, on his paternal side, Neville Labaleine and Vivian, provided a blood sample to him.
- [44] Jena Belle does not know why the deceased did not do anything formal with regards to Plaintiff.
- [45] ***The evidence of Jislene Belle.*** Jislene Belle is the sister of Jena Belle and Plaintiff's aunt. She is 45 years old. According to her evidence the deceased is the father of Plaintiff. She explains that since she [Jislene Belle] was ten years old, Plaintiff has been living with them. Plaintiff has never lived with the deceased. The deceased loved and cared for Plaintiff. He often came to the house and contributed to the daily needs of a child, such as providing food, drink and money. She states that when Plaintiff went to school, he was not in regular contact with the deceased but he would go and see the deceased if he needed money. This happened continuously.
- [46] Plaintiff went to the family of the deceased. He saw his cousin, Neville Labaleine. Jislene Belle knows the Defendants. She states they are the aunties of Plaintiff on his paternal side. She states that Defendants know Plaintiff.
- [47] She testifies that she, Jena Belle, and Plaintiff visited the deceased in the hospital. The obituary stated that Plaintiff is the son of the deceased and that his grandchild is Adrian Moumou. The sisters of the deceased sent out the obituary. Jena Belle assisted with the funeral arrangements.
- [48] Jislene Belle confirms that in her presence, the deceased has referred to Plaintiff as his son many times.

- [49] The deceased left behind a property at "*Intendance*" with a house on it. Neville, the son of First Defendant, resides there. She states that it is "*not sincere*" that First and Third Defendants have said that they do not know if Plaintiff is the son of the deceased.
- [50] In cross-examination, referring to exhibit B1 and the funeral booklet (exhibit P4), Jislene Belle was asked to state whether Plaintiff resembled the deceased. Jislene Belle is adamant that Plaintiff resembled the deceased. She adds, however, that she has not seen anything in writing confirming that the deceased is Plaintiff's father. She has not seen any photographs of Plaintiff and the deceased together.
- [51] In re-examination, Jislene Belle states that when the deceased came to the house, he would call for Jena Belle to come out.
- [52] ***The evidence of Leon Hortere.*** Leon Hortere is a resident of Takamaka. He is 68 years old. He knows the deceased. The deceased was a bit older than him. They grew up together. The deceased did not like to mingle with others, but he treated Leon Hortere as a friend. They were not living far from each other. Leon Hortere is around the same age as the sister of the deceased, Third Defendant.
- [53] The deceased has done a few painting jobs for him. When the deceased came to his house to paint, he would tell him that he has a son named Patrick Belle. Plaintiff worked for him as well. The deceased introduced Plaintiff to him as his son.
- [54] Leon Hortere knows the mother of Plaintiff, Jena Belle. At that time he lived at "*Kan Marten*" and he used to pass through an alley by Jena Belle's house to get to his own house. At times when he used to pass by the house, he would see the deceased and Jena Belle talking. When he was living at "*Kan Marten*", one of his younger brothers was with Jena Belle's sister. He would often see the deceased on the veranda of Jena Belle's family house. All this occurred over 40 years ago.
- [55] Leon Hortere did not know if Jena Belle and the deceased had a relationship. What he knew was that the deceased had told him that he had fathered a child with Jena Belle. The child was a boy. He would not know if Jena Belle and the deceased lived together.

[56] Leon Hortere did not witness the deceased assisting Plaintiff. However, there are times that Plaintiff would be working and the deceased would call him and Plaintiff would tell him that he was going to visit the deceased. Leon Hortere could not say if other persons would know if Plaintiff is the son of the deceased.

[57] Leon Hortere is friends with Defendants. Leon Hortere confirms that he knows First Defendant. She is older than him. He knows her as she lived at "*Takamaka*" and then moved abroad. He knows Second Defendant from school. Before he lived at "*Kan Marten*", he used to live at "*Quatre Borne*". He didn't live far from them. They were living on the same land as he was. They all lived together in the neighbourhood. He knows Third Defendant as well.

[58] Leon Hortere could not say whether or not Defendants knew about the relationship between Plaintiff and their brother and he would also not know whether or not Defendants knew about the relationship between Jena Belle and the deceased.

[59] Leon Hortere confirms that Plaintiff used to go the house of the deceased. He would sometimes sleep there.

[60] In cross-examination, Leon Hortere states that he was a close friend of the deceased. They met often. The deceased mentioned that he had one child, referring to Plaintiff. He lived close to the deceased. He saw the deceased pass by Jena Belle's house when Plaintiff was born. He did not see whether or not deceased was carrying anything at that time. He would see the deceased at Jena Belle's place two times a week and during the weekends. Leon Hortere states emphatically that Plaintiff resembled the deceased.

[61] **THE EVIDENCE FOR DEFENDANTS**

[62] For Defendants the court heard evidence from First and Third Defendants.

[63] ***Evidence of First Defendant.*** First Defendant is the sister of Second and Third Defendants and the deceased. She lives at Takamaka. First Defendant states bluntly that

her brother never told her that he has a child; that she has never seen any pictures of Plaintiff and her brother; that she has never seen any writing of the deceased that concerns Plaintiff; that the deceased never told her that Plaintiff was his son; that she does not know Plaintiff; that she has never seen him before coming to court; and that she has never seen her brother provide anything to Plaintiff. First Defendant has lived overseas for almost 37 to 38 years. Every time she came back, she stayed at her brother's place. First Defendant had nothing to do with the obituary. Second Defendant prepared the obituary.

[64] In cross-examination, First Defendant made the following points. First Defendant is 74 years old. She grew up at Takamaka. She has lived outside Seychelles for 37 to 38 years. First Defendant came to Seychelles every two to three years for a period of three months. She stayed at her brother's place every time she came to Seychelles. When her brother died she returned to Seychelles. She no longer works abroad. She never saw Plaintiff, in spite of Takamaka being a small community.

[65] First Defendant has two children. She confirms that one of her children is Neville Labaleine. She is aware that the property that used to belong to the deceased has been transferred to her son. The deceased "*passed*" the land to her son. Her son lived with the deceased and took care of him. First Defendant and the deceased built the house. She gave the deceased the right to access her bank account to withdraw money to use for the house. She denies the suggestion of learned counsel that she is refusing to admit that Plaintiff is the son of the deceased because her son, Neville Labaleine, stands to lose the property. She explains that the deceased never told her that Plaintiff was his son. First Defendant and her son live in the house of the deceased.

[66] She is not aware that Second Defendant has acknowledged that Plaintiff is the son of the deceased. She only heard this upon coming to court.

[67] First Defendant is not aware about the obituary and did not take care of the funeral arrangements.

- [68] ***The evidence of Third Defendant.*** Third Defendant does not know Plaintiff. She is not aware that Plaintiff is claiming to be the son of her brother, the deceased. The deceased did not mention that he had a son. She never heard him saying that he was going to buy baby things or things for a child.
- [69] It was she who accompanied her brother to hospital appointments. The deceased was ill for approximately a year. She did not see Plaintiff come to the hospital. The deceased stayed at her place in his final days. Before that he was living in the house where her sister is living. Her nephew and sister were living with the deceased. She never saw Plaintiff until the death of her brother.
- [70] Third Defendant states that she knows Leon Hortere. She states that it is not true that Leon Hortere lives close to their house and would pass close to their house.
- [71] Third Defendant explains that they lived in a rented property. The whole family, her parents and siblings, all lived together. The person who helped the most was First Defendant, who gave money to the deceased for the house. She never saw Plaintiff come to the house. Plaintiff had never slept at the house.
- [72] First Defendant lived outside of Seychelles for quite a while and was not aware of what was happening in Seychelles.
- [73] Third Defendant made the following points in cross-examination. Third Defendant lived in the family house until she left to live with her partner. She lived with her partner for almost 20 years. The deceased is the eldest child. When she left the family house, her parents were still alive. The deceased was living with them. She had never seen the deceased leave the house to go and live with a woman or wife. After she left to live with her partner, she did not go back to living with her family. Despite not living at the house, she would have seen Plaintiff. The deceased never once mentioned the child (Plaintiff) to her.
- [74] Third Defendant states that she is close to her sister, First Defendant. First Defendant does not stay at her house. Third Defendant is close to Second Defendant. However, recently Second Defendant does not speak to her. Second Defendant says that Plaintiff is

their brother's son. According to her, Second Defendant is spreading this "news" because she [Second Defendant] is jealous of First Defendant. However, Third Defendant does not know whether or not Plaintiff is the deceased's son. Third Defendant denies that the reason why she [First Defendant] and Third Defendant do not speak to Second Defendant is because Second Defendant has accepted that Plaintiff is the son of the deceased.

[75] Third Defendant explains that if the deceased transferred the land to Neville Labaleine, it was because he was living with him. When the deceased was sick, she never saw Plaintiff at his place. She does not know Jena Belle. She also does not know whether or not Jena Belle was her neighbour. She is not a person who goes out. When the deceased had his medical appointment, he would call her (Third Defendant) to tell her about it. She would tell him to go by bus and wait for her at the hospital. She would meet him at the "Yellow roof". She has never seen Jena Belle accompanying him. Third Defendant never saw Plaintiff visit her brother in hospital. She states that she did see a few people visiting her brother, however, if Plaintiff was among them she would have seen him.

[76] It was Second Defendant who prepared the obituary. Second Defendant did not consult them before she sent the obituary. Third Defendant could not recall who carried the cross at the funeral in church as she was grieving. First Defendant did all the funeral payments, while her other sister, Second Defendant, prepared the obituary.

[77] Third Defendant states that if her brother had a son he would have lived at their house. She is not concerned with the property of the deceased because she has her own place. If her sister, First Defendant, is arguing over the property, it is because she has invested a lot of money in it. First Defendant does not have any other property.

[78] THE WRITTEN SUBMISSIONS OF COUNSEL

[79] Learned counsel for Plaintiff and Defendants very helpfully filed written submissions, and as these are available for reference, the court will not set these out here.

[80] THE LAW

[81] The court reads articles 340 and 321 of the Civil Code, so far as relevant.

"Article 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.*

...

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

....".

"Article 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.

2. *Natural descent may also be established by the possession of status, both as regards the father and the mother in the same manner as legitimate descent."*

[82] THE DISCUSSION

[83] Based on articles 340 and 321 of the Civil Code, the court finds that the suit has been properly instituted.

[84] Applying article 340 (b) of the Civil Code, the court is of the opinion that it is essential for Plaintiff to establish that, during the lifetime of the deceased, he enjoyed what are known as (i) "*nomen*"; (ii) "*le tractatus*"; and (iii) "*la fama*". Demolombe, *Traité de la Paternité et de la Filiation*, 1881, para. 208, at page 217, states the law to be as follows —

"208. - L'article 321, en citant par forme d'exemple, certains faits principaux, n'a eu d'ailleurs pour but ni d'exiger toujours la réunion des faits qu'il énonce ni d'exclure les autres faits qu'il n'énonce pas. La définition même qu'il donne d'abord de la possession d'état laisse, sous ce rapport, aux magistrats la souveraine appréciation des circonstances.

...

La loi en effet ne pouvait ici que poser la règle; quant à l'application elle est essentiellement subordonnée aux faits si divers et si variés de chaque espèce ...".

Similarly, the learned editors of Baudry-Lacantinerie, *Traité de Droit Civil*, 3rd Edition, Vol. IV, para. 463 of page 374, after stating that the principal facts which found "*possession d'état*" can be divided under the three groups "*nomen*", "*tractatus*", "*fama*", — lay it down very clearly that it is by no means necessary that all these facts should co-exist, nor is it meant that the listings of the facts under article 321 of the Code Napoléon be limitative —

"Pour que la filiation soit prouvée par la possession d'état, il n'est du reste pas nécessaire que tous ces faits soient réunis... D'autre part l'énumération donnée par le texte n'est pas limitative, et le réclamant peut invoquer d'autres faits pour établir sa possession d'état".

In Dalloz Code Civil Annoté, verbo "*Preuves de la filiation des enfants légitimes*" at note 2 under article 321 —

"Jugé en ce sens, que la loi n'exige pas le concours de tous les faits énumérés dans l'article 321, et qu'elle n'exclut pas ceux qui ne sont pas mentionnés dans cet article".

[85] **The court has to determine whether or not there is a sufficient coincidence of facts indicating the relationship of descent and parenthood between Plaintiff and the deceased**

[86] **"Le tractatus"**:

[87] *Has the deceased treated Plaintiff as his child?*

[88] The evidence of Plaintiff, Jena Belle and Jislene Belle appears to establish unequivocally that the deceased continuously looked upon Plaintiff as his child. The court finds their evidence convincing, although there are some minor inconsistencies, and accepts their evidence. The court is satisfied that the deceased cared for Plaintiff, as demonstrated by providing food, drink and money. The court accepts the evidence of Plaintiff, Jena Belle and Jislene Belle that Plaintiff was not in regular contact with the deceased, but that he went and saw the deceased if he needed money. The court is also satisfied that the deceased and Plaintiff worked together regularly. Further, the court is satisfied that when the deceased became very ill and was admitted to the hospital, Plaintiff visited him regularly. Further, a feature of this case which is highly significant is the relationship between Jena Belle and the deceased. The court accepts the evidence of Jena Belle that she remained on good terms with the deceased; that she took the deceased to his first appointment when he fell ill; and that she also took him to the doctor. In addition, when he was admitted to the hospital, it was Jena Belle who took him there, and that she called Third Defendant to inform her that her brother had been admitted to the hospital. The court also accepts Jena Belle's evidence that she and Plaintiff were present at the "North East Point Hospice" when the deceased passed away. On a consideration of the evidence the court is also satisfied that the element of publicity is present. Having considered the evidence of First and Third Defendants, in relation to the issue under consideration, the court is satisfied that they gave evasive evidence. The court is convinced that First and Third Defendants resent the fact that Plaintiff is asking for a share of a property, which

allegedly belonged to the deceased. The evidence of First and Third Defendants is that the deceased has transferred the property to Neville Labaleine, the son of First Defendant; and that First Defendant lives with him.

[89] "La fama":

[90] *Has Plaintiff always been recognised as such by the family of the deceased?*

[91] The court has considered the evidence of First and Third Defendants, who do not consider Plaintiff as the child of the deceased. Third Defendant, who has a close relationship with First Defendant, gave an incredible answer as to why Second Defendant is saying that Plaintiff is the deceased's son. According to her, Second Defendant is jealous of First Defendant.

[92] It is also significant that Jena Belle's allegation that Second and Third Defendants and a cousin (Neville Labaleine) visited Plaintiff in intensive care unit, where he was admitted, is not seriously disputed by Third Defendant. The court also notes that one Vivian and Neville Labaleine, whom Jena Belle refers to as Plaintiff's cousins, provided a blood sample to Plaintiff, who was in intensive care unit. That fact was not disputed by First and Third Defendants. Balancing demeanour against the whole evidence, the court, further, finds it incredible that First and Third Defendants would never have encountered in person Plaintiff and Jena Belle until they came to court for this case.

[93] As regards the obituary, the court finds it unbelievable that Third Defendant knew nothing about it; and that she only paid for the funeral expenses. Yet again balancing demeanour against the evidence, the court is not convinced that First and Third Defendants were not involved with the other aspects of holding the funeral.

[94] For the reasons stated above, it is clear that Plaintiff was unequivocally and continuously acknowledged as such by the deceased's family, namely, First, Second and Third Defendants. The court is also satisfied that the element of publicity is present.

[95] *Has Plaintiff always been recognised as such by the society?*

[96] The court considered the evidence of Leon Hortere as to whether or not Plaintiff has always been recognised as such by the society. Having observed him during examination, the court is satisfied that he was respectful in his answers. However, the court finds that he was prone to exaggeration and sought to embellish his answers as his examination advanced. The court attaches no weight to his evidence.

[97] *Miscellaneous issue*

[98] The court states in passing that it made order on 1 March, 2017, upon a joint consent of Plaintiff and First and Third Defendants for DNA testing. On 14 June, 2017, the court made further order for the costs of the DNA testing to be shared on a 50:50 basis. To date the DNA test has not been done. A DNA test would have provided conclusive proof that Plaintiff is the son of the deceased.

[99] THE DECISION

[100] For the reasons stated above, the court is satisfied from the provisions of article 340 and 321 of the Civil Code that there is a sufficient coincidence of facts indicating the relationship of descent and parenthood between Plaintiff and Philippe Labaleine; and that therefore, Plaintiff is the natural son of Philippe Labaleine. The court orders that Plaintiff be so declared; and that the Chief Officer of the Civil Status rectify his Act of Birth accordingly.

[101] The court makes no order as to costs.

Signed, dated and delivered at Ile du Port on 10 October 2017.

F. ROBINSON

JUDGE OF THE SUPREME COURT