

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 75/2015

[2018] SCSC 12

CAROLYN LANA ROSEDA DELPECHE
Plaintiff

versus

THE ESTATE OF HEINRICH GEORG LUMMEL
HEREIN REPRESENTED BY SERGE LUC ROULLION
OF KINGSGATE HOUSE, VICTORIA, MAHE, SEYCHELLES
Defendant

Heard: 27th day of July 2017

Counsel: Ms. V. Gill for plaintiff

Mr. J. Camille for defendant

Delivered: 15th day of January 2018

JUDGMENT

Govinden J

[1] This Judgement arises out of a Plaint filed before the Court by Carolyn Lana Roseda Delpech (“Plaintiff”) on 14th day of September 2015 against the Estate of Heinrich Georg Lummel (“Defendant”) wherein it is prayed that the Plaintiff be recognized as the biological child of the late Heinrich Georg Lummel (“deceased”); that the Chief Officer of

the Civil Status record this fact in the Plaintiff's Birth Certificate and that the Plaintiff be entitled to a share in the deceased succession.

- [2] Thereafter, the matter was heard on the above-indicated date and the Plaintiff further filed written submissions and the Defendant opted not to do so and to rely on the evidence as led on Record of proceedings.
- [3] In that same light, the salient factual background as per the records of proceedings for the purpose of this Judgement reveal as follows.
- [4] The Plaintiff is a university graduate who was born on the 1st day of September 1993 in Seychelles (*Exhibit P1*) and the Defendant is being represented by Mr. Serge Rouillon an Attorney and Notary Public who is the Executor to the Estate of the deceased.
- [5] The Plaintiff alleges that her name was registered as Carolyn Lana Roseda Delpech on her birth certificate and her mother is recorded as Monica Lana Delpech whilst her father's name has not been recorded on her birth certificate.
- [6] The Plaintiff further contends that she is the daughter of the deceased who passed away in Seychelles on the 17th day of September 2014 (*Exhibit P2*).
- [7] The Plaintiff further avers that ever since she can remember, the deceased made regular contact with her, who treated her like a daughter and that although the deceased lived in Germany he frequently visited Seychelles and lived with the plaintiff's mother for most of the time he spent in Seychelles until his death.
- [8] It is further averred by the Plaintiff that in his capacity as father, the deceased gave her mother money for her maintenance, paid for school fees to ensure she had a proper education and upbringing, contributed to her daily expenses as well as family holidays and her university tuition fees.
- [9] The Plaintiff further maintains that she was recognised as the child of the deceased by her step-brothers and sister, her maternal grand-parents, uncles and aunts as well as society at large even if the deceased never married her mother.

- [10] As a direct result of the afore-said averments, Plaintiff maintains that the prayers as per [paragraph 1] above, be granted in her favour.
- [11] In its Statement of Defence of the 16th day of February 2017, the Defendant in a gist admits that the deceased passed away on the 17th day of September 2014 and all other averments of the Plaintiff as illustrated are alleged as to not being within the knowledge of the Defendant and hence vehemently denied.
- [12] The Defendant thus moves the Court *to make a Judgement as to what it deems fit according to law and dismissing the Plaintiff if the Plaintiff fails to prove her case to the required standard as required by the law and evidence.*
- [13] At the hearing, Plaintiff called four witnesses namely, (inclusive of herself), Ms. Monica Lana Delpech (“Plaintiff’s mother”), Mr. Henri Eichler, and Mr. Marcel Delpech.
- [14] The Plaintiff testified that according to her birth certificate, Plaintiff’s mother is recorded as Monica Lana Delpech and although her father’s name is not recorded, she testified that her father is the deceased who passed away due to a chronic illness in Seychelles on the 17th day of September 2014 (*Exhibit P1*) as proof of the date of the deceased demise.
- [15] The Plaintiff further testified very coherently as to how she would call the deceased her father and how she had a good relationship with him up to his demise in 2014. That she would always socialize with the deceased in the presence of Plaintiff’s mother and her sister one Chantale Grange nee Barallon and also one Jean-Francois Barallon.
- [16] The Plaintiff further described her childhood in the presence of the deceased and also revealed that she knew the deceased lived in Germany and had a family of his own, in which he was married and had three children. The Plaintiff was also able to testify that she had knowledge of the deceased children who reside in Germany although she never did have a relationship with her stepbrothers and sister. However, she clarified that she had seen them as well as the deceased wife at the deceased funeral/cremation ceremony that was held in Seychelles.

- [17] The Plaintiff further testified that although she tried to involve herself with the funeral arrangements of the deceased, she was not given any opportunity to assist and that at the funeral of the deceased she was able to get a sample of the deceased ashes through the reluctant consent of Stefan Lummel her step brother.
- [18] The Plaintiff also produced a Will made by the deceased before Mr. Bernard Goerges Notary Public, on the 20th day of November 2002 wherein the wishes of the deceased were to the following effect: *“I give devise and bequeath all my rights in the immoveable property situate at Reef Estate, Anse Aux Pins, Mahe, Seychelles, registered in the name of my companion, Monica Delpetch, including my rights under a charge registered against the property to my daughter, Carolyn Lana Roseda Delpetch.” (Exhibit P3)*
- [19] The Plaintiff’s mother on her part testified in support of the Plaintiff’s evidence that she knew the deceased because she was in a long-term relationship with him and she also worked for him. That although they never got married, they were happy living together each time the deceased visited Seychelles. She further testified that the deceased had a family in Germany of which she was aware but even so, she was satisfied with the arrangements that herself and the deceased had with respect to their relationship and the Plaintiff who was born out of that relationship. Plaintiff’s mother further testified that the deceased was financially supporting the Plaintiff in her education since she was a young child right to the point of her university studies.
- [20] Plaintiff’s mother additionally testified and described vividly the routine of the deceased each time he came to visit them in Seychelles and the different fax machine messages they shared whilst deceased was in Germany illustrative of the bondage the deceased had with the Plaintiff, Plaintiff’s mother and Plaintiff’s siblings. It is to be noted further in that regards, that a series of photographs were produced (*Exhibits P4 to P6*), wherein the deceased is seen in the presence of the Plaintiff after her birth, during her baptism ceremony, her birthdays, family dinners involving the Plaintiff as well as her siblings as referred and several other gatherings and holidays abroad.

- [21] Also pertinent to note is that the Plaintiff's mother further testified that the deceased died in Seychelles because it was his wish to do so and she was by his side till he passed away on the above-indicated date.
- [22] Mr Henri Eichler on his part testified to have been close to the Plaintiff and the deceased during the time the deceased spent in Seychelles and that he had always known that the deceased was the father of the Plaintiff and that she always referred to the deceased as her father in his presence and society at large.
- [23] Mr. Marcel Delpech, being the uncle of the Plaintiff and brother of the Plaintiff's mother finally testified corroborating the other afore-mentioned witnesses' evidence on behalf of the Plaintiff, that he had also known the deceased and that he was the father of the Plaintiff and he was also present at family gatherings and interacted very well with the family as well as the Plaintiff.
- [24] The Defendant only called one witness namely Mr. Stefan Lummel one of the legitimate sons of the deceased who is residing in Germany. Mr. Stefan Lummel testified that he had no knowledge of the deceased having a daughter namely the Plaintiff in Seychelles albeit admitting the deceased frequently visited Seychelles.
- [25] Mr. Stefan Lummel however acknowledged that he did see the Plaintiff at the deceased funeral and did give her some of the deceased remains. Mr. Stefan Lummel also testified albeit reluctantly that his brother who was also present at the funeral did inform him that the Plaintiff was their sister at the funeral. I note in that respect the demeanour of Mr. Stefan Lummel and his testimony was rather an attempt to entertain the Court rather than speak the truth in this matter as to the real status of the Plaintiff vis-à-vis their late father the deceased.
- [26] I shall now move to consider the legal standard applicable and its analysis thereto in the light of the evidence as aforementioned.
- [27] Article 312 of the Civil Code (Cap 33) (hereinafter referred to as the "Code"), provides for the presumption of paternity for a child conceived during marriage hence the presumption that the husband is the father. However, same is not applicable in the instant action.

[28] Article 334 of the Code further provides that “*the recognition of an illegitimate child shall be made by an authentic document, if it has not been made in the act of birth. It may also be made by a declaration signed or marked before a Judge, a Magistrate, a civil status officer or the Registrar of the Supreme Court.*”

[29] Article 340 of the Code, further provides that:-

“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) *Where there exists letters or other writings emanating from the alleged father containing the unequivocal admission of paternity.*

(e) *When the alleged father or mother have notoriously lived together as husband and wife, during the period of conception.*

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

[30] Article 321 of the Code, further provides that:-

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

The principal facts are:

That the 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 was providing 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.”*

[31] Now, as transpired from the record of proceedings in terms of the salient evidence illustrated above, the deceased has always been recognised as the father of the Plaintiff in society, by the family of the Plaintiff and even to that of the deceased family, that the deceased was treating Plaintiff as his child from her birth up to the deceased death by caring for her financially and also spending time with her whenever he was in Seychelles.

[32] The evidence as led by the Plaintiff is overwhelming towards the proof of enjoyment of possession of status by the Plaintiff vis-à-vis the deceased for the evidence adduced has established sufficient coincidence of facts indicating the relationship of descent and parenthood between the deceased and the Plaintiff. The evidence of the Defendant's witness in contest I note was very superficial in nature and speculative as to lack of knowledge of the possession of status of the Plaintiff with regards to the deceased.

[33] Similarly, the Court notes the contents of (*Exhibit P3*) being the Last Will and Testament of the deceased which is an unequivocal admission of paternity of the Plaintiff. And in that latter regards, the Defendant's witness justification for contesting the authenticity of the Will is merely untenable in view of the contents of the said Will and lack of proof of any fraud as between the author of the Will and the Notary Public who attested same.

[34] In the light of my above endorsement of the evidence of the Plaintiff and her witnesses which evidence I believe in their entirety, I find that it has been established through evidence as above-referred that:

1. The Plaintiff is indeed the daughter of the deceased and as such make an Order that Plaintiff namely Carolyn Lana Roseda Delpech, be recognized as the natural daughter of the deceased namely late Mr. Henrich Georg Lummel;

2. That the Chief Executive Officer of Civil Status record this fact in the Plaintiff's Birth Certificate; and
3. That the Plaintiff is entitled to a share in the deceased late Henrich Georg Lummel's succession.

[35] Judgement entered in terms of the above in favour of the Plaintiff.

Signed, dated and delivered at Ile du Port on 15th day of January 2018

The image shows a circular official seal of the Seychelles Supreme Court. The seal contains the text "SEYCHELLES SUPREME COURT" and "Seychelles". A handwritten signature in black ink is written over the seal. The signature appears to be "S. Govinden".

S. Govinden
Judge of the Supreme Court