

IN THE SUPREME COURT OF SEYCHELLES

Civil Side No: 32 of 2015

[2018] SCSC 324

---

**MRS ESTELLE BUTLER-MOOS-ALL  
BORN CHANG-YUNN AND FORMERLY  
KNOWN AS ETHEL BUTLER-MOOS-ALL OF 5407  
THICKET WAY, BAKERSFIELD,  
CA 933306, USA  
ELECTING HER LEGAL DOMICILE AT THE CHAMBERS  
OF MR SERGE ROUILLON, ATTORNEY-AT-LAW,  
AT 14 KINGSGATE HOUSE, VICTORIA, MAHE  
SEYCHELLES**

Plaintiff

versus

**MR EDDIE CHANG-YUNN  
OF ANSE LOUIS, MAHE  
SEYCHELLES**

Defendant

---

Heard: 4<sup>th</sup> April 2016; 13<sup>th</sup> February; 25<sup>th</sup> July and 25<sup>th</sup> October 2017.

Counsel: Mr. S. Rouillon for the Plaintiff  
Ms. L. Pool for the Defendant

Delivered: 20<sup>th</sup> day of March 2018

---

**JUDGMENT**

---

**S. GOVINDEN J**

- [1] This Judgment arises out of a Plaint as Amended and filed on the 25<sup>th</sup> November 2015 filed before the Court by Mrs Etelle Butler-Moos-all (“Plaintiff”), against her brother, Eddie Chang-Yunn (“Defendant”), in his capacity as Executor to the Estate of the late Antoine Chang-Yunn Plaintiff’s uncle. In her Amended Plaint, Plaintiff requests *inter alia* that Defendant be removed as Executor as well as for loss and damages. On 4<sup>th</sup> December 2015, the Defendant filed an Amended Statement of Defence.

- [2] The hearing took place on the above-mentioned dates and upon completion of the hearing, both parties filed written submissions of which contents have been duly considered for the purpose of this Judgment.
- [3] The following are in a gist the relevant factual background as per evidence on record.
- [4] Plaintiff is one of eleven heirs to the Estate of the late Antoine Chang-Yunn (“Deceased”) who passed away intestate in the year 2000. Defendant was appointed Executor of the Estate of the Deceased in 2001, with his tenure as Executor starting after the death of late Yvon Chang-Yunn on 21<sup>st</sup> August 2006.
- [5] The Estate is comprised of land known as Title C5966 and the building thereon (“the Property”). There are eleven heirs to the Deceased’s Estate namely, two sisters residing in Australia and the United States, namely Isabelle Arnephy and Jeanne D’arc Ojeda; two children from one of the Deceased’s late brother Benoit Lepere (formerly Chang-Yunn), namely Rodney Lepere and Eileen Louange; one child from one of the Deceased’s late sister Marguerite Hoareau (nee Chang-Yunn), namely Brigitte Francis; and Six children from Deceased’s late brother Yvon Chang-Yunn, namely Plaintiff and Defendant as well as Herve Chang-Yunn, Marie-Yvonne Purdham, Medline Butler, and Lorna Ansorge.
- [6] For the period of 22<sup>nd</sup> August 2006 through 29<sup>th</sup> August 2011, Plaintiff avers that she was unaware that she was an heir to the Estate and that the Defendant never informed her.
- [7] In her Amended Statement of Defence, Defendant generally denied Plaintiff’s averments and maintains inter alia that, firstly, there is no reasonable cause of action in that the Amended Plaint does not comply with section 71 of the Seychelles Code Civil Procedure Code and secondly, that the action is time-barred.
- [8] The Plaintiff, who lives in the United States, testified that she only found out that she was an heir to the Estate in August 2011, as she was not yet an heir to the Estate of the Deceased in 2001, as her own father, a direct heir, had only passed away in 2006.
- [9] She testified that in March 2015, she discovered that a valuation of the Property was done in June 2009 and that the valuation was done by Isabelle Arnephy, Jeanne D’arc Ojeda, and Brigitte Francis. She testified that they had formally agreed to a sale and had produced the valuation in the amount of SR 825, 000 (*Exhibit P2 being 22<sup>nd</sup> June 2009 Valuation*) to Defendant in 2012. She maintained that this valuation was hidden from her.
- [10] She further testified that she found out that she was linked to the Property in August 2011, through Brigitte Francis’s, her cousin, requesting to be appointed Executor. When she received the request, she testified that she objected and was told to contact, the two direct heirs: Isabelle Arnephy and Jeanne D’arc Ojeda.

- [11] She testified that after several emails to Defendant, he replied that he had resigned as Executor in 2008 and that he did not know what was going on. Moreover, she testified that he indicated that Isabelle Arnephy and Brigitte Francis had formally accepted an offer of SR 900, 000 from Deceased's neighbor, and that if she desired more information that she should call him. She said that Defendant called her but did not really offer any other information and that despite sending him three more emails, he never replied.
- [12] Later in April 2013, she testified that she received an email, as did everybody else, from the Executor indicating that her sister, Lorna Ansorge, had priority over the land and had placed an offer of SR 1 million and that she had one week to respond. She testified that she objected categorically, but indicated that she would reconsider as she had wanted information regarding comparable sales because property prices had really sky rocketed.
- [13] In December 2014, while she was in the Seychelles, she testified that she and her husband inquired about the Property. She testified that the Executor never offered to take her to see the land, but she testified that she had seen it from the road and that it was completely abandoned.
- [14] Given its sentimental value, after several challenges in contacting the Executor, she testified that she managed to get his attention and she and her husband communicated an offer of SR 1.2 million in March 2015. She testified that they did not receive a response for a while, but ultimately he declined her offer. In declining the offer, he indicated that he would have the Property re-evaluated and placed on the open market and told her that if she managed to get all "yes", he would approve the sale. She testified that her offer was based on the fact that accepted two lesser offers were accepted in the past, the fact that property prices had just gone down in the Seychelles, and that no one had placed a higher offer.
- [15] She testified that the Executor moved for his own valuation, which she believes was conducted by someone with ties to him, and this valuation found the value of the Property to be SR 2 million (*Exhibit P3 of the 13<sup>th</sup> March 2015 Valuation*). She testified that nine of the eleven heirs objected to the Executor conducting another valuation, because there was already one conducted in 2009 and that it would be an unnecessary expense. She testified that the R 1 million appreciation in value within a two year period and the fact that she had conducted her own valuation, which had come at SR 1,325, 000 suggested that the Quantity Surveyor may not have been independent.
- [16] When asked to explain the particulars of Defendant's alleged breach of his duties, she testified that she believed that he had shared information concerning the 2009 valuation with Lorna Ansorge and helped her pay down her offer. When Lorna Ansorge had placed he offer, he has indicated that it would be based on a majority vote; whereas, when she placed her offer, he told her that she would require all the votes. Moreover, after only two rejections, he moved to have the Property re-evaluated. Moreover, she testified that evidence of his bias was that he told her she could put her offer in "a pipe and smoke it" and that they did not know her husband, Fred Butler Moos.

- [17] She testified that she was never formally told that the majority of heirs had objected to her offer, as she had stated in her plaint; and she further testified that he never formally declined her offer, but moved to re-evaluate after sending her two rejection emails from other heirs.
- [18] Mrs Cecile Bastille Quantity Surveyor who testified on plaintiff's behalf testified that she made a valuation of the Property in 2009 and 2015. She testified that in 2009, she believes that Brigitte Francis requested a valuation of the Property, which she valued at SR 825, 000 and indicated that it was abandoned. She testified that the Property was in a low cost area. In 2015, Plaintiff requested that she conduct a valuation and she valued it at SR 1, 325, 000. She testified that her valuation would not reach SR 1.5 or SR 1.8 million in 2015.
- [19] She testified that SR 2 million valuation for the Property is a bit on the highside, but that she is not here to argue with another professional that is for them to have to explain.
- [20] In his Defence, the Defendant also testified to the effect that he was the Executor to the Estate. When asked whether his brothers and sisters knew that that he was managing the Estate and the transactions that were happening, he testified that nobody knew that he was doing all the transactions to put the Property in order. He testified that he wanted to step down as Executor, but his aunties from abroad did not want him to step down, but Brigitte Francis and a person by the name of Karl Pool wanted to become Executor.
- [21] He testified that he does not think that he hid anything from Plaintiff and that she should have known that she was an heir when her father died. Moreover, he indicated that the rest of his brothers and sisters did not complain that he did hide anything or did not inform them of anything. He testified that Karl Pool died in South Africa and that the Court rejected Brigitte Francis's request to become an Executrix because Plaintiff had not consented.
- [23] Thereafter, on 4<sup>th</sup> April 2013, he testified that he sent an email to everyone to inform them that Lorna Ansorge wanted to buy the Property for SR 1 million, but Plaintiff and Mrs. Berta, wife of the late brother of Antoine Chang-Yunn, objected stating that it was worth more.
- [24] Moreover, he sent an email on 5<sup>th</sup> April 2013 to the heirs informing them that the Property was open for sale to all members of the family and that if the members were not in agreement he would put it up for sale on the open market. He testified that he received an email on 16<sup>th</sup> April 2013 from the two heirs of Benoit Chang-Yunn, indicating that they wanted it for R 2 million (*Exhibit D12 being letter from Nichol Gabriel Nichol on Behalf of Eileen Louange and Rodney Lepere dated 16<sup>th</sup> April 2013*).
- [25] On 24<sup>th</sup> April 2013, Defendant testified that he sent an email to all the heirs (*Exhibit D13*) informing them that Lorna Ansorge had no further intentions to buy the Property and that if any others heirs were interested they should come forward.

- [26] On 17<sup>th</sup> February 2015, after receiving a bid of R 1.2 million from Fred Butler Moos, Plaintiff's husband, he sent an email to all the heirs informing them (*Exhibit D14*). On 26<sup>th</sup> February 2016, he testified that he received an email from Lorna Ansoorge objecting to the bid, and he therefore emailed the other heirs asking whether they agreed. (*Exhibit D15*).
- [27] Then, he testified that he advertised the Property in the Nation for three days and asked that the Property be re-evaluated by Nigel Roucou.
- [28] Regarding the 2009 valuation, he testified that he did not believe he hid anything from Plaintiff. He testified that Brigitte Francis had conducted the valuation without his knowledge. Moreover, he testified that everyone is entitled to make their own valuations, however, he testified that he could not produce this valuation to any prospective buyer because he had not conducted it. He testified that Plaintiff had conducted her valuation in 2015 without first informing him.
- [29] Thereafter, given that Plaintiff's offer had been objected to and that the heirs were not in agreement, he filed a Petition for sale by licitation in the Supreme Court. Excepting Plaintiff and Herve Chang-Yunn, he testified that he received consent from nine of the heirs for the sale by licitation (*Exhibit D21*).
- [30] Regarding the 2013 SR 1 million offer by Lorna Ansoorge, he confirmed that several heirs had refused, but that he felt that she should be given priority because at that particular time she was the only one that had made an offer and he believed it was a good offer.
- [31] Mr. Nigel Roucou a Quantity Surveyor called on behalf of the Defendant, confirmed that he physically visited the Property and had done a valuation report regarding the Property dated 13 March 2015 (*Exhibit P3*). He testified that he had valued the Property at S.R. 2 million.
- [32] I now turn to address the legal standards and its analysis based on the evidence led in this matter. (*supra*).
- [33] The issue framed for this Court's determination is whether the Defendant adequately fulfilled his duties as Executor of the Estate. The Court of Appeal in (***Rajasundaram & Ors. v. Pillay, [2015] SCCA 12***) explained that the duties of the executor, (in line with the provisions of Article 1027 of the Civil Code) prescribes that the duties of an executor, ***"shall be to make an inventory of the succession to pay the debts hereof, and to distribute the remainder in accordance with the rules of intestacy, or the terms of the will as the case may be."*** Importantly, the Court in ***Rajasundaram*** stated that: ***"The purpose of an executor appointment is to have the executor share out the succession among the heirs. Winding up a succession estate means evaluating the share of the heirs under the laws of succession and then to propose and make a physical allocation of property to the heirs where that is possible and to sell the land and share out the proceeds of sale to the heirs where partition is impossible. Of course if the heirs disagree with his method of allocation they can resort to court."***

[34] In the present case, Plaintiff has made several allegations that Defendant did not comply with duties as Executor and fiduciary and he conspired with some of the other heirs to preclude her from purchasing the Property. The Court is unconvinced of these allegations based on evidence as illustrated and analyzed. While the parties do not appear to be on friendly terms, the Plaintiff has not demonstrated that the Defendant colluded with the other heirs to prevent her from purchasing the Property. Indeed, the evidence submitted at the hearing indicate that several heirs objected to the private sale of the Property. Such objections were raised in response to the offers of Lorna Ansorge and Plaintiff. Faced with these disagreements, Defendant's decision to resort to a sale by licitation is not inconsistent with his duties.

[35] I thus, find no wrong with the Executor's administration as alleged hence the Amended Plaintiff to my mind should not succeed excepted in that the Executor should do an inventory and place to light all the affairs of the Estate to all the Heirs.

[36] The Plaintiff is thus dismissed with costs in favour of the Defendant subject to the condition of an inventory being effected as above ordered.

**Dated this ..... day of ..... 2018.**

**Govinden S-J**  
Judge of the Supreme Court