

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS104/2016

[2018] SCSC 502

DAVE SABADIN

Plaintiff versus

BERNARD MOUSTACHE

First Defendant

SYLVANIE CONFIANCE

Second Defendant

EUGENIA ALLY

Third Defendant

LAURETTA PORT LOUIS

Fourth Defendant

JENCY MOUSTACHE

Fifth Defendant

Heard: 22nd May 2018

Counsel: Mr Nichol Gabriel for plaintiff

Absent and unrepresented All defendants

Delivered: 28th day of May 2018

**JUDGMENT
EX-PARTE**

ANDRE J

- [1] This Judgement arises out of a Plaintiff filed before the Court by Dave Sabadin (“Plaintiff”) on 22nd July 2016 against Bernard Moustache, Sylvanie Confiance, Augenia Ally, Lauretta Port Louis and Jency Moustache (Cumulatively referred to as “Defendants”), wherein it is prayed that the Plaintiff be recognized as the biological child of the late Martial Moustache (“deceased”); that the Chief Officer of the Civil Status record this fact in the Plaintiff’s Birth Certificate pursuant to the Civil Status Act (Cap 34).
- [2] Thereafter, the matter was heard on the above-indicated date Ex-parte for none of the Defendants appeared to defend the Plaintiff albeit duly summoned to do so.
- [3] The salient factual background as per the records of proceedings for the purpose of this Judgement reveal as follows.
- [4] The Plaintiff testified that he is the son the deceased who died intestate on the 2nd December 2015 in Seychelles (*Exhibit P2*) and that by virtue of his own birth certificate (*Exhibit P1*) his father the deceased failed to acknowledge him officially during his lifetime.
- [5] The Plaintiff further testified that the Defendants are all brothers and sisters of the deceased.
- [6] He testified that his mother namely Farence Sabadin had lived with the deceased for more than forty (40) years within which time he was residing with them from birth till the death of the deceased and that the deceased took care of him as any father would do and that he catered for all his needs as a child with inter alia his daily needs and schooling and behaved himself as his father in the eyes of the public and family. The Plaintiff provided an affidavit of his named mother (*Exhibit P3*) confirming the cohabitation as testified).
- [7] As a direct result of the afore-said evidence on oath, Plaintiff maintains that the prayers as per [paragraph 1] above, be granted in his favour.
- [8] I shall now move to consider the legal standard applicable and its analysis thereto in the light of the evidence as aforementioned.

[9] Article 334 of the Civil Code (Cap 33) (the Code”), 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.”*

[10] 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.”*

[11] 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.”*

[12] 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 as testified and uncontested, by the family of the Plaintiff namely his own mother as per *Exhibit*, that the deceased treated the Plaintiff as his child from his birth up to the deceased death when the Plaintiff was by his side and this by caring for him financially and also spending time with him in the same home.

[13] The evidence as led by the Plaintiff is clearly illustrative of 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 affidavit of the mother of the Plaintiff (*Exhibit P3*) corroborates Plaintiff's evidence in all respect as to proof of status.

[14] In the light of my above endorsement of the evidence of the Plaintiff and *Exhibits* produced in support, I find that it has been established through evidence as above-referred that:

1. The Plaintiff is indeed the son of the deceased and as such make an Order that Plaintiff namely Dave Sabadin be recognized as the natural son of the deceased namely late Mr. Martial Moustache; and
2. That the Chief Executive Officer of Civil Status record this fact in the Plaintiff's Birth Certificate.

[15] Judgement entered in terms of the above in favour of the Plaintiff and copy of this Judgment is to be served on the Chief Executive Officer Civil Status Officer with immediate effect.

Signed, dated and delivered at Ile du Port on 28th May 2018

S. Andre
Judge of the Supreme Court