

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 42/2018

[2018] SCSC 750

FRANCIS SIMARA

1st Plaintiff

DAN JEAN-PAUL SIMARA

2nd Plaintiff

RON MERVIN AUBREY SIMARA

3rd Plaintiff

LINDY SAMANTHA JEAN

4th Plaintiff

Versus

PHILIPPE BONNE

1st Defendant

ANTOINE BONNE

2nd Defendant

Counsel: Mr. A. Derjacques for Petitioner

Unrepresented for Respondent

Delivered: 6th July, 2018

JUDGMENT

Carolus J

- [1] The Plaintiffs have filed a Complaint on 27th March, 2018, in which they aver that they are the illegitimate children of the late Mr. Gilbert Bonne and that he has not acknowledged them as his children. They are therefore seeking an Order of this Court declaring them as the children of the said Gilbert Bonne.
- [2] The Defendants who are the brothers of the late Gilbert Bonne did not contest the claim and in fact admitted that the Plaintiffs were indeed his children.
- [3] I find it appropriate at this stage to deal with the issue of prescription without considering the merits of the case.
- [4] Proof of paternal descent of illegitimate children is dealt with by Article 340 of the Civil Code of Seychelles Act. Prescription of an action filed under that Article is provided for in alinea 3 thereof, which reads as follows:
- “3. An action under this Article may be brought –
- (a) by the child's mother, even if she is under age, or by his guardian, at any time during the child's minority; or
- (b) if action has not been brought under sub-paragraph (a), by the child within 5 years of his coming of age or within 1 year of the death of the alleged father whichever is the later.”
- [5] In terms of Article 340 alinea 3(b), the present action should have been brought within 5 years of the Plaintiffs' coming of age or within 1 year of the death of Mr. Gilbert Bonne, whichever is the latest.
- [6] The 1st Plaintiff was born on 11th June 1980, the 2nd Plaintiff on 31st March, 1988, the 3rd Plaintiff on 27th January, 1984 and the 4th Plaintiff on 29th December, 1987. The last born of them is Dan Jean-Paul Simara, the 2nd Plaintiff, who was born on 31st March, 1988. He turned 18 on 31st March, 2006 and 5 years of his coming of age falls on 31st March 2011.
- [7] Mr. Gilbert Bonne died on 18th July, 2016 and one year after his death falls on 18th July 2017. The Complaint in the present proceedings should therefore have been filed on or before that date.

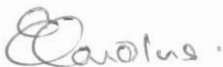
- [8] As stated above the Plaintiff was filed on 27th March 2018, a little over eight months after the time limit given for filing the Plaintiff under Article 340 alinea 3(b), that is 18th July 2017.
- [9] Mr. Derjacques has submitted that the period of prescription laid down in Article 340 alinea 3(b), was interrupted by the filing of an Application by the 1st Plaintiff Francis Simara to be appointed as executor to the estate of Gilbert Bonne on 22nd September, 2016, a little over two months after the death of Gilbert Bonne. These proceedings were postponed pending filing of an action to have the Plaintiffs declared as his children.
- [10] Mr. Derjacques also submitted that prescription is interrupted by a legal act which has been held countless times by the Courts to include legal proceedings pertinent. He stated that the proceedings for the appointment of an executor to the estate of Gilbert Bonne is pertinent to the present proceedings and highly relevant and that they constitute a legal act which was done well within the one year period prescribed for filing of an action for the Plaintiffs to be declared as the children of Mr. Gilbert Bonne. He submitted that in the circumstances legal interruption had occurred and prescription does not stop the Order sought from being granted.
- [11] I fail to see how the filing of the application for the appointment of the 1st Plaintiff as executor to the estate of Gilbert Bonne interrupts the legal prescription of the present proceedings provided for under Article 340. The only connection that the application for appointment of executor has to the present action is that the present action was filed after the Court brought to Counsel's attention in the aforementioned proceedings for the appointment of the 1st Plaintiff as executor, that the 1st Plaintiff did not have any lawful interest in making the application as neither he nor his siblings (the 2nd, 3rd and 4th Plaintiffs) had been acknowledged by Mr. Gilbert Bonne as his children. The present action was thereafter filed so that the Plaintiffs could be declared as the children of Mr. Gilbert Bonne and consequently have the necessary standing to bring the application for the 1st Plaintiff to be appointed as executor of the estate of Mr. Gilbert Bonne. The present action should in fact have been filed before the application for the appointment of the 1st Plaintiff as executor and it is only once the Plaintiffs were declared as the children of Mr. Bonne that the said Application should have been filed. In view of the foregoing I find that the

filing of such Application cannot be considered as pertinent to the present proceedings for the purposes of interrupting the prescription under Article 340 as submitted by Mr. Derjacques.

[12] I also note that at the time that the Court brought to Counsel's attention that the Plaintiffs should have been declared as the children of Mr. Gilbert Bonne in order for the 1st Plaintiff to have the necessary standing to make the application to be appointed as executor, the time limit for filing of an action under Article 340 had not yet expired and there was ample time to file such an action before the expiry of the time limit, which Counsel failed to do.

[13] The Application is therefore dismissed.

Signed, dated and delivered at Ile du Port on 6th July, 2018.



E. Carolus
Judge of the Supreme Court