

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS72/2017

[2018] SCSC 700

**JACQUES PATRIQUE BACCO
OFROCHE CAIMAN, MAHE
SEYCHELLES**

Plaintiff

versus

**ALI MAOLANA BACCO
REPRESENTED BY ALBERTINE BACCO
1ST DEFENDANT**

**ALBERTINE BACCO
OFIDLTON
SEYCHELLES LABRIZ
RESORT
AND SPA SILHOUETTE
ISLAND**

2nd Defendant

Heard: 20 July 2018

Counsel: Miss Parmantier for petitioner

Miss Lucy Pool for respondent

Delivered:

JUDGMENT

R. Govinden,J

[1] The Plaintiff and the 2nd Defendant were married in Madagascar. The 1st Defendant was born in Madagascar before the marriage and the Plaintiff recognised the 1st Defendant in

an act of recognition in Madagascar before the celebration of the marriage between the Plaintiff and the 2^od Defendant. At the time of or before the *birth* of the 1st Defendant the Plaintiff had had no sexual contact with the 2nd Defendant. The child is, admittedly, both through evidence and the pleadings, not the biological child of the Plaintiff.

- [2] The Plaintiff and the 2nd Defendant have since divorced and the Plaintiff wishes to disavow the paternity of the 1st Defendant and is asking the Court to make an order for the 1st Defendant to stop bearing the surname "Bacco."
- [3] Article 339 of the Civil Code of Seychelles Act provides that the recognition by a father or mother and all claims on the part of the child may be contested by all those having a lawful interest therein. The Author of the recognition (which in this case is the Plaintiff) is allowed to contest his own recognition even though that the recognition has been effected by an authentic document. The reason for this rule is that the recognition has value only in so far as it corresponds to the truth. Vide *Jurrisclasseur Civil Articles 335 and 339 verbo Filiation Naturelle* paragraphs 143 and 155 D.A. 1913. 1.83 DH I 932.540. However the child who has been recognised has a right of action as against the author of the untruthful recognition for the prejudice that he may have suffered therefrom. Vide *A. Sauzier in Cosimo Centaro v/s Jones Dorothy Anne Centaro and Jeanine Vel* (1981) SCR P209.
- [4] It is abundantly evident from the averments in the Plaintiff and Statement of Defence and the evidence of the Plaintiff and the 2nd Defendant that the Plaintiff was not the father of the 1st Defendant and that the recognition of the 1st Defendant by the Plaintiff does not represent the truth.
- [5] Accordingly, I therefore order that the Plaintiff is not the father of the 1st Defendant and that the 1st Defendant should stop bearing the surname "Bacco".
- [6] I am aware of the consequence of this order on the 1st Defendant. That it may lead to him losing the Seychellois nationality or even possibly render *him* stateless. However, to my mind these are only consequential to the matter at hand. The right of the Plaintiff under Article 339 cannot be denied because of its effect that it may have on the 1st Defendant.

In balancing the interest of the parties in this case the Court has to ensure that at the end of the day the truth prevails above possible fraud in official transaction which has to be averted at all cost. The 1st Defendant may or may not lose his Seychellois nationality and hence be rendered stateless, this however is a separate legal procedure that is not the subject matter of this case before the Court.

[7] I make no order as to cost.

Signed, dated and delivered at Ile du Port on 20 July 2018

R. Govinden

Judge of the Supreme Court