IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS21/2018

[2018] SCSC 810

BENTING CRISPIN
First Plaintiff

NATHANIELLE CRISPIN

Second Plaintiff

versus

NOELLINE JEAN
First Defendant

THE LAND REGISTRAR

Second Defendant

Heard: Counsels filed written submissions

Counsel: Mr. S. Rouillon for plaintiff

Mrs. A. Amesbury for first defendant
Ms. L. Monthy for the Second Defendant

Delivered: 4 September 2018

RULING

Vidot J

The Cause of Action

[1] Thomas Spiro (hereafter "Thomas") died on 11th April 2017. It is averred that Jean-Claude Spiro (hereafter Jean-Claude) who passed away on 05th November 2012 was the only child of Thomas. Jean Claude was born Jean-Claude Crispin on 03rd January 1963 but was acknowledged by his father Thomas on 15th March 1989. The 1st and 2nd Plaintiffs who are brother and sister claim to be to be the "legitimate" children of Jean-Claude. At the time of his death Thomas owned immovable property; namely land title V808 ("the Property"). There is a house standing on the Property.

[2] It is alleged that the 1st Defendant claims to be a "*legal child*" of Thomas on the basis that she is in possession of An Acknowledgment of Child document. She was born Roucou as on her birth certificate her parents are recorded as being Paulin Roucou and Virginia Roucou.

[3] When Thomas passed away, the Plaintiffs were residing abroad. They came to Seychelles and on 15th May 2017, submitted an Affidavit of Transmission By Death to the Land Registrar, so that that property could be transferred into their names as they considered themselves to be the sole heirs of Jean-Claude and Thomas. The 2nd Defendant declined the registration of that document. They were informed by letter dated 21st August 2017, that the reason for such non registration was because on 16th May 2017, the 1st Defendant had filed an Affidavit of Transmission by Death claiming to be the sole heir of Thomas Spiro. It is alleged that the 1st Defendant is in possession of a Will in which Thomas bequeathed the Property to the 1st Defendant.

[4] Thereafter, a transcribed copy of the Will was retrieved by the Plaintiffs and they aver that the Will is fraudulent and defective and therefore void. The Plaintiffs allege that the Will violates the Notaries Act and the Civil Code of Seychelles. The Plaint was not adequately explicit as to the grounds on which such allegations of breach are anchored. Nonetheless, the Plaintiffs pray the Court to declare the Will null and void and for the 2nd Defendant to register the Plaintiffs' Affidavit of Transmission by death.

Pleas in Limine

[5] Both Defendants accordingly filed their Statements of Defence, on the merits and raised pleas in limine. That of the 1st Defendant reads as follows;

"The Plaintiffs are not the executors of the estate of Jean-Claude Crispin and legally neither are they his children, therefore they do not have standing to challenge the Will or the status of the 1st Defendant."

The 2nd Defendant's pleas in limine read a follows;

(i) *"The Plaintiff's action should not be entertained by this Honourable Court in that the Plaint raises multiple causes of action of fraud to annul the Will of the Deceased and/ or return the property given to the 1st Defendant by Will, unless the Plaintiffs clarifies their causes of action or pleads them in the alternative."*

(ii) *"Ex facie the pleadings, the Plaintiffs' action does not disclose a reasonable cause of action against the 2nd Defendant and the 2nd Defendant should be disjoined as a party to this suit"*

Plea in Limine of the 2nd Defendant

[6] I shall deal with the 2nd Defendant's pleas in limine first. Firstly, I refer to Section 90 of the Seychelles Code of Civil Procedure ("SCCP") which makes provision for hearing of pleas in limine at any time before trial. It reads as follows; *"a party shall be entitled to raise by his pleadings any point of law, and any point so raised shall be disposed of at the trial, provided that by consent of the parties, or by order of court, on application of either party, the same may be set down for hearing and disposed of at any time before trial"*. The parties consented that the pleas should be resolved prior to the hearing.

[7] The 2nd Defendant argues that the Plaint discloses several causes of action and therefore should be dismissed. The Plaintiffs dispute that there are any *"duplicity or confusion in the plaint"* and proceeds to explain the capacity in which the Defendants are sued and that the Plaintiffs are direct heirs and that there are no issues of aunts and uncles involved and, that Defendants are distracting the court in entertaining the claims of aunts and uncles. With respect to Counsel for the Plaintiff I don't believe that such argument brings any merit to

the plea pertaining to causes of action. Maybe it will have some bearing on the objection in respect of locus standi raised by the 1st Defendant.

[8] I note nonetheless that as per Section 105 of the SCCP that "*different causes of action may be joined in the same suit, provided that they be between the same parties and that the parties sue and are sued respectively in the same capacities, but if it appear to the court that any of such causes of action cannot be conveniently tried or disposed of together, the court may, either of its own motion or on the application of the defendant, order separate trials of any of such causes of action, or may make such other order as may be necessary or expedient for the separate disposal thereof, or may order any of such causes of action to be excluded, and may make such order as to costs as may be just*".

[9] Section 71 of the SCCP has some relevance here. That section provides;

"A plaint shall contain the following particulars;

(a) ....

(b) ....

(c) ....

(d) *a plain concise statement of circumstances constituting the cause of action and where and when it arose and of material facts which are necessary to constitute the action;*

(e) *a damand of the relief which the plaintiff claims*

(f) ....

It is therefore important that pleadings are clear and concise because at the end of the day parties are bound by their pleadings; see **Gallante** v **Hoareau [1988] SLR 112** . Having considered the Plaint, I am satisfied that the cause(s) of action can be sufficiently made out. The Plaintiff cause of action is based on a Will which they allege was obtained fraudulently and that if not, is legally defective in that the testator had no knowledge of what he was affixing his thumb print to, therefore causing it to be in breach of the Civil

Code of Seychelles (CCS). From the prayer, it is also sufficiently clear what the Plaintiffs claim is, the Plaintiffs might not have a cause of action against the 2nd Defendant but does not mean that they have no cause of action against the 1st Defendant.

[10] The 2nd plea in limine of the 2nd Defendant, pertains to joinder of the 2nd Defendant to the suit. The Plaintiffs' bone of contention is that joinder of the 2nd Defendant to the Plaint, is the failure of the latter to register the Plaintiffs Affidavit of Transmission by Death.

[11] In its submission aimed at defeating that plea, Counsel for the Plaintiffs relied on **Yves Maurel & Anor v Mary Geers MA 2014/2015 SCSC** and Section 102 of the SCCP. However, one needs first to consider Section 109 of the code which states as follows;

"All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment".

[12] Section 112 of the SCCP provides;

"No cause or matter shall be defeated by reason of the misjoinder or non joinder of parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the names of any persons improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added."

[13] However, a consideration of the Plaint reveals that the only averment of the Plaintiffs against the 2nd Defendant is to be found in paragraphs 4 and 5. It merely alleges that the 2nd Defendant faced with 2 Affidavits of Transmission By Death filed, one by the

Plaintiffsand the other by the 1st Defendant, wrote to the parties informing them that the same could not be registered. In fact, the 2nd Defendant was acting in conformity with Section 30 (3) of the Land Registration Act that provides that *"where more than one instrument or application are presented on the same day, or on different days but at so short an interval from each other that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar may refuse registration until he has heard and determined the rights of the parties interested thereunder"*. The Plaint however, does not identify any breach of statutory law by the 2nd Defendant. The submission of Counsel for the Plaintiffs fails to identify any infraction or how a cause of action against the 2nd Defendant arises.

[14] I agree with Counsel for the 2nd Defendant that as far as the 2nd Defendant is concerned, the Plaintiffs have not identify a cause of action and the necessity to join the 2nd Defendant as a party to the case. If the Plaintiffs were to succeed in its action against the 1st Defendant, it suffices for this Court to make an Order as to which of the 2 affidavits, if at all has to be registered. Therefore, the pleas in limine of the 2nd defendant succeed and the 2nd Defendant accordingly discharged from this case.

Plea of the 1st Defendant

[15] The 1st defendant plea in limine is one of locus standi. Counsel for the 1st Defendant submitted that the Plaintiffs not being executors of the estate of Jean-Claude and legally not his children, therefore no status to challenge the Will or the status of the 1st Defendant. The 1st Defendant acknowledges that the Plaintiffs as per birth certificates are the children of Jean-Claude Crispin and Ginette Farabeau. The 1st and 2nd Plaintiffs were respectively born on 05th March 1985 and 2nd December 1988. Counsel relies on Article 765 of the CCS that provides that *"natural descent shall only give rise to rights of succession of the extent that a natural child has been legally recognized or whose descent has been proved otherwise."* Counsel argued that the Plaintiffs do not bear the surname Spiro and had they been the children of Jean-Claude Spiro, it can be safely be concluded that they would have acquired the name Spiro when Jean-Claude was acknowledged by Thomas and/or necessary steps would have been taken to register the Plaintiffs under the surname Spiro

from Crispin. Despite not being explicit about it, I understand the 1st Defendant's arguments to suggest that Jean-Crispin who was later acknowledged and bore the name Spiro, is not the same Jean-Claude Crispin as revealed on the Plaintiffs' birth certificate.

[16] Counsel submitted that since the Plaintiffs should have acted under Article 340(3)(a) or Article 340(3)(b) of the CCS to establish that they are the children of Jean-Claude Spiro. She argues that they needed to be acknowledged as such, through an Acknowledgment of Child document. This is because pursuant to Article 767 of the CCS *"natural descent shall only give rise to rights of succession to the extent that a natural child has been legally recognized or whose descent has been proved otherwise than simply by an affiliation order."* Counsel also made reference to Articles 312(1) and (2) and 754 of the CCS, which I have given due consideration to. The latter Article provides "*that those claiming to be heirs and to share in the succession of the deceased whether as children or grandchildren have first to satisfy court that they have the legal status to do so."*

[17] So, what is locus standi? In **Chow v AG [2007] SCA 2**, it was held that *"locus standi means the right of a litigant to act or be heard before the courts. Originating in private law, it has become "one of the most amorphous concepts in the entire domain of public law". The right of a citizen to act or be heard before the courts could exist as a private right as well as a public right"*

[18] Therefore, the issue to be considered is whether the Plaintiffs are the children of Jean-Claude Spiro (formerly Crispin). Their birth certificates confirm that Jean-Claude Crispin is their father. Thereafter, whether Jean-Claude Crispin who appears on their certificates is the same Jean Claude Spiro, the son of Thomas Spiro. The latter acknowledged by the former on 15th March 1989, as per Plaint. The Plaintiffs were born prior to the act of Acknowledgment. Once that act of Acknowledgment was effected, there exists no legal obligation that the said Jean-Claude Crispin had to have a change of name of his children. If the Plaintiffs are infact his children, it is absurd to expect that they were under obligation to seek an acknowledgment that Jean-Claude Spiro (Crispin) is their father or engage in legal proceedings to have Jean-Claude Spiro (Crispin) declared as their father either under Article 340(3)(a) or (b) of the CCS, (as the case may be). I am satisfied of the

overwhelming possibility that Jean-Claude Crispin and Jean-Claude Spiro are one and the same person and therefore, an overwhelming possibility the Plaintiffs are his children and evidently his heirs, a matter which can be safely and accurately determined by hearing the case on its merits. It would be in the interest of justice to allow the case to so proceed.

[19] I note that as highlighted by Counsel for the Plaintiffs has not submitted on the argument raised in limine that the Plaintiffs are required to prosecute this case through executorship rather than heirs entitled to inherit under the law of succession provided for under the CCS. My understanding of the plaint is that the Plaintiffs are seeking to enforce personal rights. I further agree with Counsel for the Plaintiffs when citing **Jumeau v Annacoura [1978] SLR 180**, that co-owners of land has no real right over property. The right is a personal one. Counsel for the Plaintiffs cited numerous cases in support of his argument, including; **Emmanuel Gill SSC 128/1995** (11th July 1996) where it was held that a co-owner has a right to sell, the right to protect the right of co-ownership and take appropriate steps to recover any loss of rights without intervention of an executor or fiduciary.

[20] I therefore hold that the plea in limine of the 1st Defendant fails, is dismissed and the case shall proceed on the merits.

Signed, dated and delivered at Ile du Port on 3 September 2018

M. Vidot
Judge of the Supreme Court