

IN THE SUPREME COURT OF SEYCHELLES

Miscellaneous Cause: 68/2018

[2018] SCSC 1016

In the matter of the Estates of the late Louis Joseph Maxime Larue and Emmeline Beronis Larue née Pool

1. Gonsalves Larue
2. Donald Larue
3. Louis Larue
4. Elizabeth Larue

Applicants

versus

SIMBC trading as Nouvobanq.

Respondents

Heard: 25 October 2018

Counsel: Mr. Frank Elizabeth for Applicants
Mr. Kieran Shah, SC. and Ms. Lara Michaud for Respondents

Delivered: 7 November 2018

JUDGMENT

M. TWOMEY, CJ

The case before the court

[1] The applicants are the surviving children and heirs of the late Louis Joseph Maxime Larue and Emmeline Beronis Larue née Pool who died intestate on the 16 July 2009 and 26 June 2018 respectively (hereinafter the Deceased). The Respondent is a bank trading in Seychelles.

- [2] Apart from the Applicants, the Deceased had another child, one Paul Harry Larue who died on 22 September 2017 and who is survived by his wife Dolores Michelle Larue née Low-Hang and two children namely Maxime Conrad Larue and Sebastien Jean-Francis Larue.
- [3] It is the Applicant's case that at the time of their deaths the Deceased left behind money in a Savings Account and in a Deposit Account with the Respondent bank.
- [4] They have averred that as the heirs of the deceased together with the surviving heirs of their brother Paul Harry Larue, they are entitled to inherit the funds contained in the accounts.
- [5] It is their case that the Respondent has insisted that an executor be appointed for the disbursement of the funds to be made to them and that such an appointment is not necessary under the law since the Deceased did not leave behind immovable property.
- [6] The Respondent has averred that it is not opposed to disbursing the funds but is not aware who the heirs of the Deceased are and that generally Banks do not administer Deceaseds' estates nor distribute assets among heirs. They have stated that these are the functions of a duly appointed executor.
- [7] It has further stated that, in particular, the Applicant's Affidavit lacks the following averments which has a bearing on the distribution of the funds, namely:
- i. Whether Emmeline Beronis Larue née Pool (one of the Deceased) owned immovable property at the time of her death and if so, her stake in the succession of her late husband which would vest in an executor.
 - ii. Whether Paul Harry Larue owned any immovable property at the time of his death and whether or not an executor has been appointed?

Submissions

- [8] In his submissions to court on the above two mentioned issues, Mr. Shah, learned senior counsel for the Respondent, has explained that in general banks accept duly drafted

affidavits with all particulars necessary for the bank to effect the disbursement of monies from accounts. These affidavits have to be comprehensive in fulfilling the requirements of the provisions of the laws, namely that the deceased died testate or intestate; that the heirs are named and their shares to the estate clearly stated; and their consent given for the disbursement.

- [9] Mr. Elizabeth, learned counsel for the applicants has submitted that it is his experience that as a general rule despite comprehensively drafted affidavits banks refuse to disburse funds from accounts of deceased persons to heirs without an executor appointment despite the fact that no immovable property is involved in the succession as is the case in the present application.

The law

- [10] French law provides for forced heirship and therefore the automatic passage of ownership of property on death of the *de cuius* to his heirs (*saisine de droit*). In contrast, the English common law provides for testamentary freedom - the deceased's property is his own to deal with as he so chooses. Consequently those to whom the property is bequeathed or who inherit by legal provision do not automatically take it on the death of *de cuius* but must await its distribution to them by an intermediary (an executor or a trustee).

- [11] Seychellois succession law is derived from French law but Article 1026 of the Civil Code of Seychelles provides that :

If the succession consists of immovable property, or of both immovable and movable property, and if the testator has not appointed a testamentary executor or if an executor so appointed has died or if the deceased has left no will, the Court shall appoint such an executor, at the instance of any person or persons having a lawful interest. A legal person may be appointed to act as an executor. But a person who is subject to some legal incapacity may not be so appointed.

- [12] Further, Article 774 of the Civil Code also provides that

1. *Where a succession consists of movable property only, it may be accepted purely and simply or subject to the benefit of inventory. Where the succession includes both movable and immovable property it shall not be necessary to accept it, and an executor shall be appointed as provided by this Code. However, if the succession consists of movable property only, the heirs and legatees may, by agreement, elect to appoint an executor, in which case the distribution shall proceed as if the succession included immovables as well as movables; however, the Court may also appoint an executor on the application of any interested party.*

2. *A succession consisting of immovable property only or of both movable and immovable property shall devolve upon an executor who shall act as a fiduciary...*
(Emphasis added)

[13] It is clear from these provisions that there is a clear distinction between a succession consisting only of movables and successions consisting of immovables or immovables together with movables. Although as I have previously stated, Seychellois succession law is derived from French law, the executor in the above provisions is a creation provided in 1976 which moved Seychellois law more towards the English law approach to distribution of property on death. Although the Seychellois executor is in no way equivalent to the English law executor and is *sui generis*, the requirements of Articles 1026 and 774 preclude automatic vesting of property in the heirs. Article 1027 further requires an executor to establish the assets of the succession and pay its debts, and only then is the property to be distributed in accordance with the law.

[14] Practice Direction No 1 of 1989 provided that persons seeking the confirmation of the appointment of a testamentary executor or the appointment of an executor should submit to the Registry of the Supreme Court-

1. *The death certificate of the deceased.*

2. *The conveyance, deed of title or other document showing the entitlement of the deceased to ownership of immovable property.*

3. The bank statement, savings book or certificate of deposit showing ownership of any movable assets of the deceased, consisting of money, cash or securities.

4. The marriage certificate of any surviving spouse of the deceased.

5. The death certificate of the deceased's spouse, if any.

6. Birth certificates of all heirs.

7. Affidavits of alias where necessary in order to explain or reconcile any differences or discrepancies in names which appear in the supporting documents.

[15] As I have stated the Code makes no mention of the necessity to appoint an executor when the succession only consists of movable property. It may be reasonably inferred that if the succession only consists of movable property an executor need therefore not be appointed.

Discussion

[16] What then should suffice for the holder of the movables to release them to the heirs of the succession? Certainly nothing as cumbersome as what is required for the appointment of an executor where immovable property is concerned. I am of the view that given the clear distinctions between successions containing only movables and those containing immovables as outlined above, all that is required where only movables are involved is for the heirs to the succession to satisfy the holder of the movables that the deceased has died testate or intestate, that they are the only heirs entitled to the succession and their shares are specified.

[17] There is inferred in the provisions of Article 1026 a recognition of the lesser value accorded to successions only containing movables compared to those containing immovables. It would further not only be burdensome on the heirs but also illegal to compel by practice what is not provided for in the law. To have an executor necessarily appointed where the succession only consists of movables would equate a Seychellois executor with an English common law executor which was certainly not the intention of the legislator in 1976.

[18] It is certainly important that all the information relating to the dispositions of a will if such is the case, names and addresses of the heirs and their consent to the disbursement and account numbers be provided to the holder of the movables when an application for their disbursement and distribution is made. But anything else would go further than what is required by the law.

The Court's Order

[19] In the circumstances I make the following order in respect of the present case but the same clarificatory order is to apply henceforth to all Banks holding accounts belonging to successions in which only movables are contained therein where heirs seek their disbursement and distribution:

Banks holding accounts of Deceased persons should disburse them forthwith upon the applicant providing the following information in a duly sworn Affidavit by an heir containing the following averments:

- 1. The date of the death of the Deceased person(s) and whether he/she died testate or intestate. If he/she died testate, the dispositions of the will.*
- 2. That the succession contains no immovable property.*
- 3. The number of the bank account, savings book or certificate of deposit showing ownership of any movable assets by the deceased, consisting of money, cash or securities.*
- 4. The heirs to the succession and their shares in the succession.*
- 5. The consent of the heirs to the disbursement of the succession to the applicant who undertakes to provide each heir his share to the succession.*

[20] A copy of this Order is to be served on all banks in Seychelles.

Signed, dated and delivered at Ile du Port on 7th November 2018.

M. TWOMEY

Chief Justice