

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 33

CS 158/2018

Referral to Constitutional Court

In the matter between

MURVIN GREEN

(rep. by Manuella Parmentier

Plaintiff

and

SHARON PAYETTE

1st Defendant

GAMALIEL DUGASSE

2nd Defendant

NATHAN PAYET

(rep. by Basil Hoareau)

3rd Defendant

Neutral Citation: *Green v Payette & ors* (CS 158/2011) [2019] SCSC [] 28 January 2019).

Before: Twomey CJ.,

Summary: gifts inter vivos- constitutionality of Civil Code provisions relating to disposable portion- referral to Constitutional Court

Heard: [28-01-2018]

Delivered: [28-01-2018]

ORDER

The constitutional issue raised at the trial is referred to the Constitutional Court for a decision.

ORDER

TWOMEY CJ

[1] In a matter between the Plaintiff and the Defendants involving the disposition by gift *inter vivos* of the *de cuius*, Walter Marston Green, the Defendants raised the following plea in *limine litis*:

Articles 913 and 920 of the Civil Code – on which the suit – is based- is unconstitutional in that they are in contravention of the right to acquire, own and peacefully enjoy and dispose of property as protected by Article 26 of the Constitution

[2] The constitutionality of Article 913 of the Civil Code was tested in the case of *Durup & Ors v Brassel & Anor* (2013) SLR Part 1 259 and the Constitutional Court decided that it was not unconstitutional in that:

“Article 913 of the Civil Code is a limitation that is necessary in a democratic society guaranteeing the family, which is the fundamental group unit of society legal, economic and social protection” (per Robinson J parag 48 p. 277)

[3] There was no appeal of this decision. Therefore, in terms of Article 46 (7) of the Constitution “the question ...has already been the subject of a decision of the Constitutional Court” and is not one that the Supreme Court can again refer to the Constitutional Court for determination.

[4] However, insofar as the constitutionality of Article 920 of the Civil Code is concerned, that question has not been answered.

[5] Although the provisions of Article 920 of the Civil Code relate to the same subject matter as Article 913 in that it concerns the portion of disposable property in the law of succession, out of an abundance of caution, and being satisfied that the question raised is not frivolous or vexatious and has not specifically been a decision of the Constitutional Court or the Court of Appeal, I adjourn the proceedings in the Supreme Court and refer the following question for determination by the Constitutional Court:

Does Article 920 of the Civil Code of Seychelles, and the resultant statutory scheme for succession, contravene Article 26 of the Constitution of Seychelles by inhibiting a proprietor of property from freely disposing of his property and a donee from receiving and enjoying such dispositions?”.

Signed, dated and delivered at Ile du Port on 28 January 2019.

Twomey CJ