

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 264

XP15/2019

In the ex parte matter of:

JOANNE ANACOURA

Ms. Manuella Parmantier)

Applicant

Neutral Citation: Joanne Anacoura (XP15/2019) [2019] SCSC 264

(1 March 2019).

Before: B. Adeline, Master

Summary: Register Birth out of time

Delivered: 1 April 2019

ORDER

Application, by petition, to declare and register birth of child out of time. In exercise of the powers conferred upon this Court by Section 31 (3) of the Civil Status Act, I fine the Applicant two hundred and fifty rupees for late declaration and registration of the birth of her child after the 30 days prescriptive period following the day of the child's birth lapsed. I further order, that upon proof of payment of this fine, the Chief Officer of Civil Status, shall in accordance with the law, register the birth of the female infant (child) whom the applicant gave birth on the 29th October 2018.

ORDER

B. ADELINE, MASTER

[1] This is an application, by petition, by one Joanne Anacoura of Pointe-Larue, Mahé (hereinafter referred to as "the Applicant), for an Order of this Court under Section 31 (2) of the Civil Status Act, CAP 34, for her to declare her newly born child, and to register the child's birth. By her application, the Applicant prays this Court to direct the Chief Officer of the Civil Status to register the birth of her child out of time, and to waive any fine that may be levied.

[2] In her affidavit in support of her application, the Applicant avers, that on the 29th October, 2018 at 4:07 pm, she gave birth to a female infant (hereinafter referred to as “the child”) at the Seychelles hospital.

[3] It is also averred by the Applicant in her pleadings, that she failed to register the birth of the child within the one month (30 days) prescriptive period following the day of the child’s birth as required by Section 31 (1) of the Civil Status Act, CAP 33, because on the day she went to the Civil Status Office at Victoria, Mahé to declare and register the birth of her child, the Civil Status Officer refused the declaration and registration. Until now, the birth of her child has not been declared and registered at the Office of the Civil Status.

[4] In her application, the Applicant avers, that when she went to declare her child, she told the Officer of Civil Status that the name of the father of the child to be entered on the Child’s Certificate of Birth is not the man who is married to her. She also avers, that since the Officer of the Civil Status wanted to enter the name of her husband as the father of the child on the child’s Certificate of Birth she would not agree. She was then told by the Officer of Civil Status to seek for legal advice.

[5] Giving her oral testimony on oath, the Applicant stated, that on the 30th October, 2018 she was issued with a birth notification. This confirmed, that on the 29th October, 2018 at 4:07 p.m., she gave birth to “a live female infant at the Maternity Department of the Seychelles Hospital”.

[6] The Applicant deponed, that she was within time when she went to the Civil Status to declare her child and to have the child’s birth registered. She explained, that the Officer of the Civil Status did not want her to declare her child, and to register the birth of her child after she had told the Officer that she wanted the name of the child’s

father to be entered on the child's Certificate of Birth instead of the name of the man who is married to her.

[7] The Applicant also stated, that she and her husband have been separated for ten years, and her husband is not the father of her child. Therefore, she would not agree that the child's be declared on her husband's name. She deponed, that she was told to go and seek for legal advice.

[8] The Applicant testified, that the following day after she had been to the Civil Status Office, she went to seek for legal advice. She explained, that because of the lack of funds she came to see the Registrar of the Supreme Court, and on the 3rd January, 2019 she was given legal aid. The Applicant testified, that whilst seeking for legal advice the time to declare her child and to register the child's birth lapsed. She stated, that although time has lapsed to declare her child and to register the child's birth, the delay in declaring and registering the child's birth is not an unreasonable delay. The Applicant prays this Court for an Order directing the Chief Officer of Civil Status to register the birth of her child, and to wave any fine that may have become due.

[9] The oral evidence and the documentary evidence tendered before this Court, exhibit P1, shows, that the child was born on the 29th October, 2018. The Application for an Order of this Court to register the birth of the child out of time was filed at the Registry of the Supreme Court on the 28th January, 2019. That is, three months or so after the child's birth.

[10] Section 31 (1) of the Civil Status Act, provides;

“ 31 (1) The declaration of the birth of any child shall be made at any time within the thirty days following the day of its birth before the

Officer of the district where the child is born. It shall not be necessary to present the child when its birth is declared, and all acts of birth drawn up before the passing of this Act are hereby declared to be valid whether the child has been presented to the Officer of the Civil Status or not”.

[11] Section 31 (2) of the Civil Status Act provides;

“31 (2) if the birth has not been declared within the aforesaid period, the birth shall not be registered, except upon an Order of a Judge and or payment of a fine not exceeding one hundred rupees unless the lateness of the declaration be accounted for to the satisfaction of the Judge. The Judge shall be entitled to require such evidence as he may deem necessary to satisfy himself touching the exact date of birth of the person whose birth is sought to be registered”.

[12] Section 31 (3) of the Civil Status Act provides;

“31 (3) If the birth to be registered, be that of a person more than three months old, no such Order shall be given by the Judge, except on payment of a fine not exceeding five hundred rupees. Provided that it shall be lawful for the President to remit or reduce such fine upon sufficient cause being shown”. Emphasis mine.

[13] On account of the evidence led before this Court, I am satisfied, that the Applicant’s child was born on the 29th October, 2018. By law, the child’s should have been declared and have its birth registered by the latest 30th November, 2018. Although I fully understand the explanation given by the Applicant as to why she has not

declared and registered the birth of her child within that period of time, the Court heard no evidence as to the precise date when the Applicant went to the Civil Status to declare and register the birth of her child. The only thing she said, without any corroborative evidence, was that she was within time when she went to the Civil Status, and that time lapsed because it took her time to obtain legal advice over her wish to register the name of the child's father, Jeffrey Estico, instead of the name of the man who is married to her, as the father of the child.

[14] That having been the case means, that the Applicant has not provided this Court with a satisfactory account for the lateness in declaring the birth of the child. Even if it was otherwise shown, to the satisfaction of this Court, that the delay in registering the birth of the child was accounted for, given that the child is now more than three months old, Section 31 (3) of the Civil Status Act has to be invoked, in that, this Court is only empowered to make an Order to declare and register the birth of the child out of time on payment of a fine of not more than five hundred rupees in terms of Section 31 (3) of the Civil Status Act, unless it is remitted or reduced by the President.

[15] I therefore grant the Application, and accordingly, I make the following order;

(i) In exercise of the powers conferred upon this Court by Section 31 (3) of the Civil Status Act, I fine the Applicant, the sum of Two Hundred and Fifty Rupees for late registration of the birth of her child after the 30 days prescriptive period following the day of the child's birth as required by Section 31 (1) of the Civil Status Act, CAP 33 has lapsed. The two hundred and fifty rupees fine shall be paid in the Registry of the Supreme Court.

(ii) I further order, that upon proof of payment of this fine, the Chief Officer of Civil Status shall, in accordance with the law, register the birth of the female infant (child) whom the Applicant gave birth on the 29th October, 2018 at 4:07 p.m. at the Maternity Department of the Seychelles Hospital.

[16] The Applicant is informed, that because of the Proviso under Section 31 (3) of the Civil Status Act, the President of the Republic has the power to remit or reduce the fine so imposed on her by this Court upon sufficient cause being shown by her.

[17] This Court declines to make an Order to require the Chief Officer of Civil Status to enter the name of Jeffrey Estico as the father of the child on the child's Certificate of Birth because that would only follow upon successful completion of a different procedure under a different provision of the law.

Signed, dated and delivered at Ile du Port on the 01st April 2019.

B. Adeline
Master of the Supreme Court