

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2019] SCSC 573  
XP 97/2019

In the ex parte matter of:

**GC (NEE D)**  
*(present / unrepresented)*

**Applicant**

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**Neutral Citation:** GC XP 97/2019 [2019] SCSC 573  
**Before:** B. Adeline  
**Summary:** Declaration and Registration of birth of child out of time  
**Heard:** [26 June 2019]  
**Delivered:** [11 July 2019]

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**ORDER**

Application by Petition, to declare and register birth of child out of time. Application is granted for the child to be declared and her birth registered out of time according to law, conditional upon the Applicant paying a fine of Two Hundred and Fifty rupees imposed on her by virtue of Section 31 (3) of the Civil Status Act, CAP 34.

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**ORDER**

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**B. ADELINE, MASTER**

[1] This is an application, by Petition, by one GC (hereinafter referred to as the “the Applicant”) for an Order of this Court under Section 31 (2) of the Civil Status Act, CAP 34, that would allow her to declare and register the birth of her newly born infant (hereinafter referred to as “the child”) out of time. By her application, the Applicant prays this Court for an Order directing the Chief Officer of the Civil Status to do the following;

- (i) to register the birth of her child and to enter the child’s name as AC on her Certificate of Birth.

- (ii) to register the birth of her child on her maiden surname, and
- (iii) or to allow the biological father of the child to acknowledge and declare the child on his surname.

[2] In her affidavit in support of her application, inter alia, the Applicant avers, that on the 27<sup>th</sup> March, 2019 she gave birth to a female child at the Maternity Department of the Seychelles Hospital. The Applicant tendered as exhibit the Birth Notification marked P1.

[3] The Applicant also avers, that she could not declare and register the birth of the child within the 28 days prescribed by the Civil Status Act that would have been consistent with the law had she done so.

[4] The Applicant further avers, that she is married to one DC, and although she had indicated that her husband, the said DC is not the biological father of her child, and that the biological father of the child is one AC who wishes to have his name registered as the child's father on the child's Certificate of Birth, he was not allowed to do so. She stated, that she was also not allowed to declared and register the birth of the child on her maiden surname either.

[5] It is shown, by way of evidence, precisely, a Birth Notification, exhibit P1, that on the 27<sup>th</sup> March 2019, the Applicant gave birth to a female child.

[6] It is also in evidence, that to date, the child has not been declared and registered, primarily, because the Applicant wants to declare and register the birth of the child on the name of the child's biological father, one AC, or in the alternative, on her maiden name rather than on the name of the man who is married to her, one DC. This is the situation because of Article 312 of the Civil Code of Seychelles Act, that reads as follows;

1. *A child conceived during marriage shall be presumed to have the husband as father*
2. *Nevertheless, any presumption of law as to the legitimacy or illegitimacy of any person may, in any civil proceedings, be rebutted by evidence which shows that it is more probably than not that a person is illegitimate or legitimate, as the case*

*may be, and it shall not be necessary to prove that fact beyond reasonable doubt in order to rebut the presumption”*

[7] In essence, therefore, since the Applicant claims that her husband, DC is not the father of her child, in view that it is presumed that he is, and that such presumption is rebuttable on the balance of probabilities under Article 312 of the Civil Code of Seychelles Act, the Applicant has to initiate proceedings under Article 312 of the Civil Code of Seychelles Act for that matter.

[8] The instant application is for the declaration and registration of the child’s birth under Section 31 (1) of the Civil Status Act, CAP 34. Section 31 (1) provides;

*“31 (1) The declaration of the birth of any child shall be made at any time within 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”*

[9] Also relevant to determine this application, is Section 31 (2) of the Civil Status Act, that reads;

*“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.” (underlined emphasis mine).*

[10] On the facts and circumstances of this application as laid in evidence, it is also necessary to have regard to section 31 (3) of the Civil Status Act, Section 31 (3) reads as follows;

*“31 (3) if the birth to be registered, be that of a person more than 3 months old no such order shall be given by the Judge except on payment of a fine not exceeding Five*

*Hundred Rupees (underlined emphasis mine) provided that it shall be lawful for the President to remit or reduce such fine upon sufficient cause being shown”*

[11] On account of the evidence laid before this Court it is proved, that the Applicant gave birth to a child on the 27<sup>th</sup> March 2019. By law, the child should have been declared and registered at the Civil Status Office by latest 28<sup>th</sup> June 2019. Although I fully understand the explanation given by the Applicant as to why to date the birth of her child has not been registered within the prescriptive period of 30 days following the day of the child’s birth, the Court heard no evidence of a satisfactory account of the lateness in declaring and registering the child’s birth.

[12] Even if it was otherwise shown, to the satisfaction of this Court, that the delay in declaring and registering the birth of the child is accounted for, given that the child is now over three months old, Section 31 (3) of the Civil Status Act has to be applied, in that, this Court is only empowered to make the Order to declare and register the birth of the child out of time on payment of a fine 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.

[13] I therefore grant the application to register the birth of the child out of time, and in exercise of the powers conferred upon this Court by Section 31 (2) of the Civil Status Act, I accordingly make the following Orders;

(i) In exercise of the powers conferred upon this Court by virtue of Section 31 (3) of the Civil Status Act, I fine the Applicant, GC, the sum of Two Hundred and Fifty Rupees for late declaration and registration of the birth of her child given that the 30 days prescriptive period following the day of the child’s birth as required by Section 31 (1) of the Civil Status Act, has lapsed and the child is now over three months old. The Two Hundred and Fifty Rupees fine shall be paid in the Registry of the Supreme Court.

(ii) I also Order, that upon payment of this fine, the Chief Officer of Civil Status shall, in accordance with the law, register the birth of the child whom the

Applicant gave birth on the 27<sup>th</sup> March, 2019 at 10.09 pm at the Maternity Department of the Seychelles Hospital.

[14] 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.

[15] This Court declines to make an Order to require the Chief Officer of the Civil Status to register the child's birth as AC given that C is the surname of the, biological father. This Court also decides to make an order to require the Chief Officer of the Civil Status, to register the child's birth on the Applicants maiden name, D.

Signed, dated and delivered at Ile du Port on 11 July 2019

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B.Adeline, MASTER