

1 SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 651
XP103/2019

In the ex parte matter of:

████████████████████ A ██████████
(rep. by Samantha Aglae)

Applicant

Neutral Citation: ██████████ ([XP103/2019] XP103/2019) [2018] SCSC 651
([30th July 2019] 30th July 2019).
Before: B. Adeline, Master
Summary: To declare and Register birth of child out of time.
Heard: [17th July 2019]
Delivered: [30th July 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 virtue of section 3 (2) read with section 3 (3) of the Civil Status Act, CAP34, the Application is allowed upon payment of a fine of three hundred rupees.

ORDER

B. ADELINE, MASTER

- [1] This is an application, by petition, by one ██████████, ██████████, Seychelles (hereinafter referred to as “the Applicant”) for an Order to this Court under section 31(2) of the Civil Status act, CAP 34, for her to be allowed to declare her newly born infant (herein after referred to as “the 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 by making the following entries;
- i. The name of the child as ██████████ in the birth register and on the child’s Certificate of birth ██████████, the biological father’s surname)

ii. In the alternative, to register the child's name so as to reflect her maiden surname [REDACTED] in the Register of Birth, and on the child's Certificate of Birth.

- [2] In her affidavit in support of her application, *inter alia*, the Applicant avers, that on the 26th [REDACTED] 2019, at [REDACTED], she gave birth to a female child at the Maternity Department of the Seychelles Hospital. The Applicant tendered as exhibit the Child's Birth Notification marked exhibit P1.
- [3] The Applicant also avers, that she could not register the child's birth within the prescriptive period of 30 days as required by the Civil Status Act because the Officer of the Civil Status would not allow her to declare and register the child's birth as per the name of the child's biological father or as per her maiden name.
- [4] The Applicant avers, that she could not declare and register the birth of her child because she is a married woman, and since the father of her child is presumed to be her husband, knowingly, that her husband is not the biological father of her child, and that the biological father is one [REDACTED] she could not agree to declare and register her child's birth on her husband's name. She stated that her request for her to declare and register the child on her Maiden name was also refused by the Officer of the Civil Status.
- [5] It is shown by way of evidence, that on the 26th [REDACTED] 2019, at [REDACTED], the Applicant gave birth to a female child.
- [6] It is also in evidence, that to date, the child's birth has not been declared and registered, primarily, because when the Applicant went to the Civil Status office to declare and register the birth of her child, she wanted the name of the biological father, [REDACTED] or in the alternative, her maiden name [REDACTED] to be entered in the child's Register of Birth and on the child's Certificate of Birth, instead of the name of her husband. The Civil Status Officer did not agree to make the proposed entries.
- [7] *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 thirty days following the days 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”.

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

“32(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 fine not exceeding one hundred rupees unless 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 deemed necessary to satisfy himself touching the exact date of birth of the person whose birth is sought to be registered “(Underlined emphasis mine)

[9] Section 31(3) of the civil Status Act provides *“31 (3). If the birth to be registered, be that of 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 provided that it shall be lawful for the President to remit or reduce such fine upon sufficient cause being shown (Underlined emphasis mine)*

[10] On the account of the affidavit and documentary evidence laid before this Court, I am satisfied, that the Applicant gave birth to a male child on the 26th [REDACTED] 2019. By law, the child should have been declared and have its birth registered by the latest 25th April, 2019. 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 the prescriptive period of 30days following the day of the Child’s birth, this Court is not satisfied, that the lateness in declaring and registering the birth of the child is satisfactorily accounted for.

[11] Even if the Court was to find otherwise, that is, that the lateness in declaring and registering the birth of the child is accounted for satisfactorily, given that the child is now over three months old, Section 31(3) has to be involved, 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 such fine is remitted or reduced by the President.

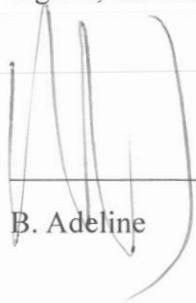
[12] I therefore allow the Applicant to declare and Register the birth of the child out of time, and in exercise of the powers conferred upon this Court by section 31 (2) read with section 31(3) of the Civil Status Act, accordingly, I make the following Order;

- i. I order the Applicant [REDACTED], to pay a fine of three hundred rupees for late declaration and registration of her child's birth 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, CAP33, has and the child is now over three months old. The three hundred rupees 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, in accordance with the law, allows the Applicant to declare her child and to register the birth of the child whom the Applicant gave birth on the 26th [REDACTED], 2019 at the Maternity Department of the Seychelles Hospital.

[13] 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.

[14] This Court declines to make an Order to require the Chief Officer of the Civil Status to enter the name of [REDACTED] whom the Applicant says is the biological father of the child, or the Applicant's maiden surname [REDACTED] on the child's Certificate of Birth because that can only follow upon successful completion of a different procedure under a different provision of the law, notably under, Article 312 of the Civil Code of Seychelles Act, CAP33.

Signed, dated and delivered at Ile du Port on 30th July 2019.



B. Adeline