

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2019] SCSC ... 696
CS 26/2019

In the matter between:

COLIN DEREK JACQUES PAYET	1st Plaintiff
LESTER KEVIN ANDREW PAYET	2nd Plaintiff
VELDA FLORIDA PAYET	3rd Plaintiff
VANESA SYLVIE ANIELLE PAYET <i>(rep. by Bernard Georges)</i>	4th Plaintiff

and

THE ESTATE OF FERDINAND HAIG VIDOT
Herein Represented by:

QUEENCY VIDOT	1st Defendant
HUGE PHILIPPE VIDOT	2nd Defendant
HAIG MAURICE VIDOT <i>(rep. by Wilby Lucas)</i>	3rd Defendant

Neutral Citation: *Payet & Ors v Estate of Ferdinand Haig Vidot* (CS26/2019) [2019] SCSC
..... (30 July 2019).

Before: Carolus J

Summary: Action en recherche de Paternite Naturelle – Article 240 of the Seychelles
Code of Civil Procedure

Heard: 24 June 2019

Delivered: 30 July 2019

ORDER

- (a) Declaration that the first plaintiff Colin, Derek, Jacques Payet, the second plaintiff Lester, Kevin, Andrew Payet, the third plaintiff Velda, Florida Payet and the fourth plaintiff Vanesa, Sylvie, Anielle Payet, are the natural children of the Deceased Ferdinand Haig Vidot and that they are therefore entitled to bear their father's name and to a share in his

succession subject to the provisions of Article 760 of the Civil Code of Seychelles Act as to the share of adulterine children in the succession of their natural father.

- (b) Order directing the Chief Officer of the Civil Status to enter the name of Ferdinand Haig Vidot in the Acts of Birth of the Plaintiffs as their father's name.
- (c) The Chief Officer of the Civil Status is to be served with a copy of this Judgment.

JUDGMENT

E. Carolus J

[1] The plaintiffs have filed a plaint against the estate of the late Ferdinand Haig Vidot represented by the defendants, seeking to be declared as the children of the said Ferdinand Haig Vidot ("the Deceased"). The Plaintiffs claim that they are the illegitimate children of the Deceased.

[2] The following is averred in the plaint:

1. *The Plaintiffs, are brothers and sisters and they allege that they are the illegitimate children of the late Ferdinand Haig Vidot (the deceased) who died on the 14th November 2018.*
2. *The First Defendant is the wife of the deceased, and the 2nd Defendant and the 3rd Defendant are legitimate children of the deceased.*
3. *The Plaintiffs' mother, Louicy Antoinette Payet was the concubine of the deceased.*
4. *The Plaintiffs' mother and the deceased had a relationship for forty-four years but lived together for approximately thirty years.*
5. *Whilst the Plaintiffs' mother was the partner of the deceased, she gave birth to four children, the Plaintiffs, namely:*
 - a) *Colin Derek Jacques Payet, the 1st Plaintiff, born on the 13th December 1974 in Seychelles,*
 - b) *Lester Kevin Andrew Payet 2nd Plaintiff, born on the 26th June 1981 in Seychelles,*

- c) *Velda Florida Payet the 3rd Plaintiff, born on the 4th May 1988 in Seychelles, and*
d) *Vanessa, Sylvie Anielle Payet the 4th Plaintiff, born on the 16th April 1992 in Seychelles.*
6. *The deceased did not acknowledge the Plaintiffs and the Plaintiffs' last names were consequently registered as Payet on their respective birth certificates.*
7. *The deceased lived with the Plaintiffs and their mother at Baie Lazare, Mahe until his death.*
8. *In his capacity as a father, the deceased contributed to the maintenance and education of the Plaintiffs.*
9. *Further, the Plaintiffs aver that they have always been recognised as the children of the deceased by society at large and by his family members in particular.*

[3] The Plaintiffs consequently pray for orders:

- (i) That the Plaintiffs be declared to be the children of the late Ferdinand Haig Vidot.
- (ii) That the Chief Officer of the Civil Status record that fact in the Plaintiffs' Birth Certificates, and amend their Birth Certificates accordingly.
- (iii) That the Plaintiffs be entitled to their share in their father's succession.

[4] Counsel for the defendants filed a statement of admission substantially admitting the averments contained in the plaint except that they could not confirm that the plaintiffs are the illegitimate children of the Deceased. The prayer of the Defendants is as follows:

That in the event the Plaintiffs can establish their paternity such declaration shall expressly stated that the Plaintiffs share from the Deceased succession will be affected in terms of the provision of Article 760 of the Civil Code of Seychelles being Adulterine children of the Deceased.

[5] On the date fixed for preliminary hearing of the matter, neither the defendants nor their counsel was present in Court and the matter was fixed for ex parte hearing. Louicy Antoinette Payet and all four Plaintiffs testified at the hearing.

- [6] The testimony of Louicy Antoinette Payet, a housewife of Val Dan D'Or, Baie Lazare, is that she met the Deceased when she was sixteen years old, that she has been in a relationship with him for forty-six years out of which they have lived together for thirty years at the Deceased's place at Val Dan D'Or until his death on 14th November 2018. She produced his death certificate as exhibit P1. When she met the Deceased she knew that he was married to Queency Vidot but stated that they were separated. The Deceased had 2 legitimate children born of his marriage, on which she had been on good terms until their father died when they stopped visiting.
- [7] During the time that she was in a relationship with the Deceased, she bore him four children whose birth certificates she produced as exhibits P2, P3, P4 and P5, namely Colin, Derek, Jacques Payet born on 13th December 1974, Lester, Kevin, Andrew Payet born 26th June 1981, Velda, Florida Payet born on 4th May 1988 and Vanesa, Sylvie, Anielle Payet born on 16th April 1992. The Deceased took care of all the four children and contributed towards their education. She confirmed that the birth certificates of her children did not bear their father's name because at the time the Deceased was still married to his wife.
- [8] Vanesa, Sylvie, Anielle Payet, the fourth plaintiff testified that she is twenty seven years old, was born on 16th April 1992, and resides at Baie Lazare. She lived with her parents Mr. Ferdinand Vidot and Ms. Louicy Payet at Val Dan D'Or from childhood until she had her first child when she moved out. However after moving out she still went to her parents' home because she worked with her father who was a herbalist. She worked with him for about eight to nine years since leaving school, but now works with the Four Seasons Hotel since he has passed away.
- [9] Vanesa is aware that her father's name has not been entered in her birth certificate and says that this is because at the time of her birth he was married but that she has always known the Deceased to be her father. She described their relationship as a close one, and stated that she and her sister had always been around him since they were little, and they called him Daddy. They also travelled with him. The Deceased has contributed towards her education, wellbeing and welfare and always been there for her. She stated that the Deceased loved her.

- [10] She confirmed that she has five siblings namely the first, second and third plaintiffs as well as Haig and Huge Vidot.
- [11] Velda, Florida Payet, the third plaintiff, born on 4th May 1988, lives at Val Dan D'Or, Baie Lazare, and is thirty-one years of age. She works with her mother Louicy Antoinette Payet as a home carer. She testified that although her father's name is not entered in her birth certificate because he was married at the time of her birth, she knows that the Deceased is her father because she has always lived with him at his place of residence and he has always looked after her and provided for her. She confirmed that he has always taken care of her and her siblings and provided for their education and all their needs. She stated that she is still living at her parents' house with her two children.
- [12] She described her relationship with the Deceased as a good one. She stated that they were close and that she called him Daddy. She reiterated the fourth plaintiff's testimony that they used to travel with him and also stated that when he was sick she would bring him to the doctor.
- [13] Velda confirmed that she has two half-brothers Haig and Huge Vidot born of another mother and two brothers and a sister with the same mother and father as her namely the first, second and fourth plaintiffs. Haig would visit the Deceased daily and Huge visited him every Sunday, on Christmas day, on birthdays and special occasions.
- [14] She produced the funeral booklet of the Deceased as Exhibit P 6 which was prepared by her and was used at his funeral service on the 29th November at St, Francis Church at Baie Lazare. From pictures in the booklet she identified her father, her half-brothers Haig and Huge Vidot, her mother, her siblings Colin, Lester and Vanesa Payet and herself. She pointed out the last picture taken of the Deceased which was on 11th November on his 85th birthday with all of them.
- [15] Colin, Derek, Jacques Payet, the first plaintiff testified that he lives at Baie Lazare and works for the Seychelles Agricultural Agency at Grand Anse. He is the child of Louicy, Antoinette Payet and the Deceased, and has a younger brother Lester Payet and two younger sisters Velda and Vanesa Payet, as well as two half-brothers Haig and Huge Vidot.

As a child he lived and grew up with his mother and grandfather at Val Dan D'Or until his father built his mother a house at Dame Le Roi where he moved with his mother. When Velda the third plaintiff was born, his mother moved to his father's house in Val Dan D'Or leaving him and his brother Lester at the house at Dame le Roi where he still lives. At the time his mother moved he was an adult.

[16] He described his relationship with his father as "okay" and stated that he visited him every weekend and on birthdays and when there were other 'functions'. His father also took care of him and provided for his maintenance and education until he became of age. He agreed with the testimony of the third and fourth plaintiffs which he adopted.

[17] Lester, Kevin, Andrew Payet, the second plaintiff testified that he is a farmer living at Val Dan D'Or, Baie Lazare. He was born on 26th June 1981, out of the relationship between Louicy Antoinette Payet and the Deceased. He has three siblings Colin, Velda and Vanesa Payet. He grew up with his mother and grandfather while his father lived in Val Dan D'Or. He described his relationship with his father as normal and stated that his father took care of him until he became an adult. He has worked with his father for the past twenty-eight years and is still working on the farm that his father used to own.

[18] The final witness Mr. Georges Robert is retired and lives at Baie Lazare. He has known the deceased for over forty years and stated that they were friends. He himself used to run a small shop and knew the Deceased as a farmer and as a herbalist and used to go to his place. He testified that he knew the Deceased when he was still with his wife and that they had two children together. Later the Deceased entered into a relationship with Mrs. Payet and they came to live at Val Dan D'Or, in the same neighbourhood where Mr. Robert was living. The couple were in a relationship for well over thirty years. They had four children Colin, Lester (whom he described as a good friend of his), Velda and Vanessa. He testified that he would often visit their home and had also been at their house on special occasions like Christmas and New Year and had even attended a birthday party. The children were at the Deceased's place most of the time when he went there. He also recalled that Lester worked on the Deceased's farm and helped him out. Vanessa was also present at the house most of the time as a young child but moved out as an adult. Velda lived with the Deceased

and also took care of him until his death. He confirmed that he has known the Deceased as the father of the four plaintiffs.

[19] The recognition of illegitimate children and proof of their descent is dealt with in section II of Chapter III of the Civil Code of Seychelles Act. The relevant provisions for the purposes of the present case are Articles 340 and 321 which respectively provide as follows

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Article 340

1. *It shall not be allowed to prove paternal descent, except:*
 - (a) *In cases of rape or abduction, provided that the time when the rape or abduction took place coincides with that of the conception.*
 - (b) *When an illegitimate child is in possession of status with regard to his natural father or mother as provided in article 321.*
 - (c) *In cases of seduction, provided that the seduction was brought about by fraudulent means, by abuse of authority or promise of marriage.*
 - (d) *When there exist letters or other writings emanating from the alleged father containing an unequivocal admission of paternity.*
 - (e) *When the alleged father and the mother have notoriously lived together as husband and wife, during the period of conception.*
 - (f) *When the alleged father has provided for or contributed to the maintenance and education of the child in the capacity of father.*
2. *The right to prove paternal descent under this Article is for the benefit of the child alone, even if born of an incestuous or adulterous relationship.*
3. *An action under this Article may be brought —*
 - (a) *by the child's mother, even if she is under age, or by his guardian, at any time during the child's minority; or*
 - (b) *if action has not been brought under sub-paragraph (a), by the child within 5 years of his coming of age or within 1 year of the death of the alleged father whichever is the later.*

4. *A child whose paternal descent has been proved under this Article is entitled to bear his father's name (in addition to a share in his father's succession under the title Succession).*

Article 321

1. *Possession of status may be established when there is sufficient coincidence of facts indicating the relationship of descent and parenthood between a person and the family to which he claims to belong.*

The principal facts are:

That that person has always borne the name of the father whose child he claims to be;

That the father has been treating him as his child and that, in his capacity as father, he has provided for his education, maintenance and start in life;

That he has always been recognised as a child of that father in society;

That he has been recognised as such by the family.

2. *Natural descent may also be established by the possession of status, both as regards the father and the mother in the same manner as legitimate descent.*

[20] I am satisfied on the testimony of the plaintiffs and that of Ms. Louicy Antoinette Payet and Mr. Robert Georges as well as the documentary evidence adduced in this matter, that in accordance with Article 340(1)(b) of the Civil Code of Seychelles Act, the plaintiffs are in possession of status with regard to the Deceased as provided in Article 321 of the same Code, in that the Deceased has been treating them as his children and that, in his capacity as father, he has provided for their education, maintenance and start in life; that they have always been recognised as the children of the Deceased in society; and that they have been recognised as such by the family. I am also satisfied that the Deceased and Ms. Louicy Antoinette Payet notoriously lived together as husband and wife, during the period of conception of at least the fourth plaintiff in accordance with Article 340(1)(e) of the Civil Code, and that the Deceased has provided for the maintenance and education of the plaintiffs in the capacity of father in accordance with Article 340(1)(f) of the Civil Code. I further take into account the admissions of the defendants in their statement of admission. Consequently I find that the Deceased is the natural father of all the four Plaintiffs.

[21] Accordingly –

(a) I declare that the first plaintiff Colin, Derek, Jacques Payet, the second plaintiff Lester, Kevin, Andrew Payet, the third plaintiff Velda, Florida Payet and the fourth plaintiff Vanesa, Sylvie, Anielle Payet, to be the natural children of the Deceased Ferdinand Haig Vidot and that they are therefore entitled to bear their father's name and to a share in his succession subject to the provisions of Article 760 of the Civil Code as to the share of adulterine children in the succession of their natural father.

(b) I make an Order directing the Chief Officer of the Civil Status to enter the name of Ferdinand Haig Vidot in the Acts of Birth of the Plaintiffs as their father's name.

[22] The Chief Officer of the Civil Status is to be served with a copy of this Judgment.

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

Carolus.

Carolus J