

SUPREME COURT OF SEYCHELLES

---

Reportable/ Not Reportable / Redact  
[2019] SCSC ...<sup>915</sup>...  
CS 156/2018

In the matter between:

<b>JOSEPH LABROSSE</b>	<b>1<sup>st</sup> Plaintiff</b>
<b>ELISABETH LABROSSE</b>	<b>2<sup>nd</sup> Plaintiff</b>
<b>HENRY GEORGES MICHEL</b>	<b>3<sup>rd</sup> Plaintiff</b>
<b>MARIE-ROSE MICHEL</b>	<b>4<sup>th</sup> Plaintiff</b>
<b>MARIE ELIZABETH MICHEL</b> <i>(rep. by Nichol Gabriel)</i>	<b>5<sup>th</sup> Plaintiff</b>

and

<b>THE ESTATE OF THE LATE</b>	<b>Defendant</b>
<b>HENRI WIDLER MOSES</b>	
<b>REPRESENTED BY ELIZABETH MOSES</b> <i>(unrepresented)</i>	

---

**Neutral Citation:** *Labrosse and Ors v Estate of Henri Widler Moses* (CS156/2018) [2019] SCSC ...<sup>915</sup>... (31 July 2019).

**Before:** Carolus J

**Summary:** Action en Recherche de Paternite Naturelle – Article 240 Civil Code of Seychelles Act

**Heard:** 22 May 2019

**Delivered:** 31 July 2019

---

**ORDER**

- (a) Declaration that the first plaintiff Ange, Joseph Labrosse, the second plaintiff Elisabeth Labrosse, the third plaintiff, Henry Georges Michel, and the fourth Plaintiff Marie-Rose Michel, to be the natural children of the Deceased Henri Widler Moses.

(b) Order directing the Chief Officer of the Civil Status to enter in the Acts of Civil Status of the first, second, third and fourth plaintiffs the name Henri Widler Moses as their father.

(c) A copy of this judgment is to be served on the Chief Officer of the Civil Status.

---

## JUDGMENT

---

### CAROLUS J

#### Facts

- [1] The Plaintiffs have filed an *action en recherche de paternité naturelle* against the estate of the late Henri Widler Moses for the latter to be declared as their father.
- [2] They aver in the Amended Complaint dated 11<sup>th</sup> February 2019, that they are the children of the late Henri Widler Moses who passed away on 5<sup>th</sup> March 2018 (“the Deceased”), in Seychelles; that their birth certificates do not contain the name of their father despite the fact that he had been living with them and their mother Rosine Michel in *concubinage notoire* for more than thirty years; and that the Deceased always maintained them during their younger days and has always considered himself as their father. The Plaintiffs further aver that the Elizabeth Moses is the sister and sole surviving heir of the Deceased.
- [3] In terms of the Complaint the Plaintiffs pray –
- (a) For an order authorising them to be registered as the children of the late Henri Widler Moses;
  - (b) For the surname Moses to be entered in their birth certificates.
- [4] Elizabeth Moses representing the Defendant, having been served with the complaint appeared in Court and admitted the Complaint. The matter was consequently fixed for ex-parte hearing.

- [5] At the hearing, the first Plaintiff Joseph Labrosse, sixty years of age and a resident of Barbarons testified that he knows the other Plaintiffs because they are his siblings as they all have the same father. He stated that their father is Henri Widler Moses who passed away on 5<sup>th</sup> March 2018, and produced the Death Certificate of the said Henri Widler Moses as an exhibit confirming the same. The first Plaintiff confirmed that the name of Henry Wilder Moses is entered in neither his nor the other Plaintiffs' Birth Certificates as their father.
- [6] He produced the Birth Certificates of all the other Plaintiffs as exhibits. I note that in his Birth Certificate and that of the second Plaintiff, their mother's name is entered as Elisa Labrosse and no father's name is entered therein. In the Birth Certificates of the third and fourth Plaintiffs, their mother's name is entered as Rosine Michel and there is no entry for their father's name whereas in the Birth Certificate of the fifth Plaintiff, her mother's name is entered as Rosine Michel but her father's name is entered as Henry Allisop.
- [7] The first Plaintiff testified that as far back as he can remember, the Deceased and his mother the late Josephine Labrosse lived together with him and his sister Elisabeth Labrosse, the second Plaintiff. The Deceased and their mother later separated when the first Plaintiff was about nine years old. He stated that during the time the Deceased lived with them, he provided for them materially and also gave them love and affection.
- [8] He stated that at some point after his separation from his and second plaintiffs' mother, the Deceased started cohabiting with Rosine Michel at Port Glaud and the third, fourth and fifth Plaintiffs were born out of that relationship. The first Plaintiff recalls visiting the Deceased at his home at Port Glaud including during the school holidays, where he was well received by both the Deceased and Rosine Michel, with whom he got on well.
- [9] According to the first Plaintiff, after they were grown up, he continued seeing the Deceased. He stated that he would stay over and sleep with the Deceased when he was ill. He stated that on the Friday before the Deceased died, he learnt that the Deceased was ill and went to see him. The Deceased died on the following Monday and the first Plaintiff and his brother were the ones who brought the doctor to him to confirm that he was dead.



They left when the Deceased's body was taken to the morgue. The first Plaintiff together with the rest of the Plaintiffs except for one attended the funeral.

- [10] The first Plaintiff testified that a lot of people knew that the Deceased was his father. He recounts that at the funeral, when the Deceased's coffin was being brought in the church, someone said that Henri was dead but his son is his spitting image.
- [11] The first Plaintiff testified that he wished for himself and the second, third, fourth and fifth Plaintiffs to be declared as the children of the Deceased.
- [12] The second Plaintiff Elisabeth Labrosse aged 58, and residing at Beau Vallon, confirmed in her testimony that the other Plaintiffs are all her siblings and that their father is Henri Widler Moses. She stated that her mother is Josephine Labrosse and testified that although she does not recall the time when the Deceased lived with her mother, she knows that he is her father because after her parents' separation, she and the first Plaintiff often visited him at his home at Port Glaud where he lived with Rosine Michel. She testified that whenever they visited the Deceased would give both of them "a little something".
- [13] The second Plaintiff stated that Rosine Michel knew that she and the first Plaintiff are the children of the Deceased and confirmed that the third, fourth and fifth Plaintiffs are also the children of the Deceased and Rosine Michel.
- [14] She testified that she recalls clearly when the Deceased passed away because her mother in law passed away the previous day. She attended the funeral service at Baie Lazare.
- [15] She also stated that Elizabeth Moses who is cited as representing the estate of the Deceased is her aunt, that she used to look after her and the first Plaintiff when they were children, and that she is the aunt with whom she gets along the best.
- [16] The second Plaintiff confirmed that the Deceased's name is not entered in the her Birth Certificate as her father and stated that she wishes for the Court to declare her as the child of Henri Wilder Moses and for her surname to be changed from Labrosse to Moses. She prays for the same relief in respect of the other Plaintiffs.

[17] Other than the first and second plaintiffs none of the other plaintiffs testified at the hearing of this matter.

### **Relevant Law**

[18] 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. For the purposes of this matter the applicable legal provision is Article 340 of the Civil Code of Seychelles Act. It provides as follows –

#### 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).

Emphasis is mine.

[19] Article 321 contains provisions setting out the circumstances in which possession of status (referred to in Article 340 above) may be established. It reads as follows:

#### Article 321

1. Possession of status may be established when there is a 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.

Emphasis is mine.

[20] I have considered the testimony of the first and second Plaintiffs and I am satisfied on a balance of probabilities that the first, second, third and fourth Plaintiffs are, in accordance



with Article 340 alinea 1(b) in possession of status of natural children of the Deceased as provided in Article 321 in that the Deceased treated them as his children and that in his capacity as father he has provided for their maintenance, that the Plaintiffs have always been recognised as children of the Deceased in society and that they have been recognised as such by the family of the deceased namely his sister Elizabeth Moses.

[21] I am also satisfied that the Deceased has provided for or contributed to the maintenance and education the first, second, third and fourth Plaintiffs in his capacity as their father in accordance with Article 340 alinea 1(f).

[22] As to the fifth Defendant Marie Elizabeth Michel, as noted above the name Henry Allisop is entered as her father's name in her Birth Certificate. This means that she has been acknowledged by the said Henry Allisop as his daughter.

[23] I take note of Article 322 of the Civil Code of Seychelles Act which provides as follows –

*Article 322*

*No one no one may claim a status contrary to that which his act of birth confers upon him or to the possession of status corresponding to it.*

*Conversely, no one may contest the status of a person who has possession thereof corresponding to his act of birth.*

[24] In the Court of Appeal case of Quilindo & Ors v Moncherry & Anor SCA 29/2009 (7 December 2012) the Respondents were born during the subsistence of their mother's marriage to Valentin whose surname appeared on their Birth Certificates. The Supreme Court, seized of an *action en recherche de paternité naturelle* seeking to have them declared as the natural children of Maxime Quilindo, declared them as such. On appeal the Appellants invoking Article 322 of the Civil Code argued that the first Respondent who was conceived during marriage and had the surname of her mother's husband (Valentin) entered on her Birth Certificate by virtue of their marriage cannot escape the presumption created by Article 312 (presumption of paternity) that she is indeed Valentin's legitimate child whilst simultaneously claiming that Maxime Quilindo is her father.

[25] The Court of Appeal stated the following in that respect:

*14. This is an interesting argument and would succeed were it not for the fact that no provision of the Code precludes an action to prove paternity which may have the result of annulling the status on the birth certificate. Article 312(2) does not specify or limit who may bring an action to rebut the presumption under Article 312(1). Although it is correct that the case brought by the 1<sup>st</sup> Respondent is one for a declaration of natural paternal descent, it is not correct to conclude that the 1<sup>st</sup> Respondent is precluded from rebutting the presumption under Article 312(1) unless and until she has undone her status as appears on her birth certificate. The Court can in this case pronounce against an official document as proof contrary to what is stated in the document has been brought. If the result of the granting of the remedy sought, in this case a declaration that Maxime Quilindo is the father of the 1<sup>st</sup> Respondent, is to change the status stated on the declaration of birth then so it should be.*

Underlining is mine

[26] In the present case, the fifth Respondent's status according to her birth certificate is the natural child of Henry Allisop. Although the presumption of paternity established by Article 312 (1) is not applicable in this matter, an analogy can be drawn between the situation in this case and the one in Quilindo v Moncherry (supra).

[27] I also take note of the following passage quoted in the case of Kanhye v Kanhye (1966) MR 68 which was relied upon in Quilindo v Moncherry (supra), and the consequent findings by Ramphul, AG. J in Kanhye v Kanhye :

*16. ... Relying on Note 287 of Dalloz, Repertoire Pratique Vo. Filiation:*

*“L'action en contestation d'état est recevable dans tous les cas excepté où l'enfant a en sa faveur un acte de naissance et une possession d'état conforme. Ainsi, pour qu'il puisse y avoir contestation de son état, il faut que l'enfant ait seulement soit la possession de cet état, soit un titre qui le lui reconnaisse, sans une possession conforme.”*

*Ramphul, AG. J states:*

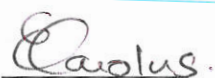
*“It is therefore clear that the prohibition referred to in Article 322 C.C. would find its application in the case of a child who has been declared to*



*the civil status officer as the legitimate child of his parents and who has enjoyed the reputation of being that their legitimate child; but it would not apply to a child who has been so declared but has never been known or considered as the legitimate child of the parents named in his act of birth.”*

- [28] The fifth Respondent’s status according to her Birth Certificate is that of the natural daughter of Henri Allisop. However I am not of the view that there is sufficient evidence to show that she has the “possession d’état conforme”. I therefore refuse to grant the prayers of the fifth Plaintiff.
- [29] I declare the first plaintiff Ange, Joseph Labrosse, the second plaintiff Elisabeth Labrosse, the third plaintiff, Henry Georges Michel, and the fourth Plaintiff Marie-Rose Michel, to be the natural children of the Deceased Henri Widler Moses.
- [30] I further make an Order directing the Chief Officer of the Civil Status to enter in the Acts of Civil Status of the first, second, third and fourth plaintiffs the name Henri Widler Moses as their father’s name.
- [31] A copy of this judgment is to be served on the Chief Officer of the Civil Status.

Signed, dated and delivered at Ile du Port on this 31<sup>st</sup> day of July, 2019.



Carolus J