

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2019] SCSC ..761
EXP 77/2019

In the ex parte matter of:

V [REDACTED] L [REDACTED] Petitioners

V [REDACTED] I [REDACTED]
(rep. by John Renaud)

Neutral Citation: *Ex parte V [REDACTED] L [REDACTED]* (EXP 77/2019) [2019] SCSC
(..... September 2019).
Before: Pillay J
Summary: Proof of paternity
Heard: On affidavit and one 5th July 2019
Delivered: 11th September 2019

ORDER

The deceased is declared the natural father of the two Petitioners.

JUDGMENT

PILLAY J

[1] The Petitioners in this case seek to prove that the late [REDACTED] [REDACTED] who died intestate in Seychelles on 15th April 2018 is their father.

[2] The Petitioners averred that they are the illegitimate daughters of the late S [REDACTED] [REDACTED]
[REDACTED]

- [3] The first Petitioner, [REDACTED], was born on 10th March 1978 whereas the second Petitioner was born on 29th July 1984. Neither of the Petitioners was acknowledged by their father, the deceased.
- [4] The Petitioners further averred that prior to living on La Digue the deceased was a resident of Cascade and had a relationship with their mother [REDACTED] [REDACTED] [REDACTED] [REDACTED] for more than 15 years during which the Petitioners were born.
- [5] The Petitioners averred that the deceased had always maintained and supported the Petitioners and that at all times they were recognised and treated as the deceased's daughters by known relatives of the family, the persons in the neighbourhood and on La Digue.
- [6] The Petitioners averred that they had from time to time visited the deceased on La Digue prior to his death. On the basis of their averments they prayed for an order declaring them the daughters of the deceased.
- [7] Their Petition was supported by affidavits from each Petitioner, their birth certificates, the deceased's death certificate as well as affidavits from the deceased's step-son, their mother, their aunty and one [REDACTED] a resident of Cascade.
- [8] All deponents averred that the deceased had been in a relationship with [REDACTED] for 16 years. [REDACTED] the Petitioners aunty averred that the deceased had been in a relationship with her sister [REDACTED] [REDACTED] [REDACTED] [REDACTED] was 17 years old and a teacher at the Cascade School.
- [9] [REDACTED] [REDACTED] testified that the deceased had been living in concubinage with his mother for over 24 years at La Passe La Digue. He stated that during the time his step-father had co-habited with his mother he had always known that the Petitioners were the daughters of the deceased. He further stated that the Petitioners would stay with the deceased and his mother when they came to La Digue.
- [10] The law with regard to establishment of paternity is found Article 340 of the Civil Code of Seychelles which states,

'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 moth as provided article 312.

(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 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 the 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 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.)'

[11] I note that the matter has been filed as a Petition and according to the case of **Medine (2007) SLR 38** a party seeking declaratory relief under Article 340 of the Civil Code must commence the action by way of plaint. However on the authority of **Amina Khatib, ex**

parte (2002) SLR 113 I find that the action being commenced by way of Petition is not fatal to the case.

[12] The Petition has been filed within the one year of the deceased's death on the 10th April 2019.

[13] On the evidence and the affidavits I am satisfied that the Petitioners are indeed the daughters of the late [REDACTED] [REDACTED] who died intestate on 15th April 2018.

[14] I accordingly declare that the late [REDACTED] is the natural father of [REDACTED]
[REDACTED]

[15] I hereby order the Chief Officer of the Civil Status to enter the name of the deceased on the Petitioners' birth certificate.

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



Pillay J