

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2020] SCSC 155
CS 124/2018

In the matter between:

KENNETH JACQUES RACOMBO
(rep. by Bernard Georges)

Plaintiff

and

INESE LINA SINON
(rep. by Brian Julie)

Defendant

Neutral Citation: *Racombo v Sinon* (CS 124/2018) [2020] SCSC 155 (26th February 2020).

Before: Pillay J

Summary: The Plaintiff seeks to declare the Will of Finley Jacques Racombo dated 19th February 2018 null and void or in the alternative to declare that the dispositions in the Will contravene the law and to reduce them so as to ensure that all the reserved heirs of Finley Jacques Racombo receive their reserved portion of his estate in Seychelles.

Heard: By way of submissions

Delivered: 26th February 2020

ORDER

[1] With that said it is the finding of this Court that the deceased could only dispose of $\frac{1}{4}$ of his estate to the Defendant with the remaining $\frac{3}{4}$ reserved for distribution amongst his four children.

[2] In the circumstances I declare that the dispositions in the Will dated 19th February 2018 is contrary to law and should be reduced as per paragraph [26] above in order to ensure that all the reserved heirs of Finley Jacques Racombo receive their reserved portion of his estate in Seychelles.

JUDGMENT

PILLAY J

- [3] In this case the Plaintiff seeks an order declaring that the Will of Finley Jacques Racombo dated 19th February 2018 is null and void. In the alternative the Plaintiff prays the Court to declare the dispositions in the Will contravene the law and to reduce them so as to ensure that all the reserved heirs of Finley Jacques Racombo receive their reserved portion of his estate in Seychelles.
- [4] The Plaintiff claims that he is the child of the deceased Finley Jacques Racombo who died on 9th March 2018, along with his siblings Tessa Anne Laporte nee Racombo, Shanon Petra Racombo and Aisha Larissa Racombo.
- [5] The Plaintiff claims that the deceased made a Notarial Will on 9th January 2018 in which he made some dispositions in accordance with the law. The Plaintiff claims that on 19th January 2018 the deceased purportedly made a new Will revoking the previous Will, making new dispositions substantially more favourable to the Defendant and less favourable to his children.
- [6] The Plaintiff claims that the second Will is invalid in so far as the deceased on the date the Will was purportedly made was so ill that he had no knowledge of what he was doing. Alternatively the Plaintiff claims that the deceased was labouring under the influence of the Defendant when he made the said second Will and he did not make it of his own free will and accord.
- [7] The Plaintiff further claims in the alternative that the dispositions in the said second Will contravene the law of Seychelles in so far as the children of the deceased, including the Plaintiff, being reserved heirs, were not left the full portion of the deceased estate.

- [8] The Defendant admitted that the deceased passed away on 9th March 2018. The Defendant further admitted that the deceased is survived by four children namely, the Plaintiff, Tessa Anne Laporte nee Racombo, Shannon Petra Racombo and Aisha Larissa Racombo.
- [9] The Defendant for her part claims that the Plaintiff is contesting the Will dated 19th February 2018 because it is not favourable to him and the deceased appointed the Defendant as Executrix and instead of the Plaintiff.
- [10] As regards the Plaintiff's claim in paragraph 7 of the Plaint that the Will dated 19th February 2018 contravenes the Laws of Seychelles the Defendant's position is simply that the Plaintiff should respect the deceased's wishes.
- [11] By agreement of the parties¹ the matter did not go to trial but the parties opted to file submissions on the application of Article 913 of the Civil Code of Seychelles to the circumstances of this case and leave it to the Court to decide on that basis.
- [12] The mind boggles at the nature of the submissions filed by the Defendant's counsel in view of the fact that parties agreed that the matter would be heard by way of written submissions². Indeed the parties agreed that the matter at hand would be dealt by way of submissions on the law since the issue was a very technical one.
- [13] The Defendant's counsel submitted that the Plaintiff made unfounded allegations and has not been able to adduce any written evidence to prove that the Testator deceased had no testamentary intention.
- [14] The Defendant's counsel has not made any submissions on the law for reasons best known to himself, other than a reference to the judgment of Cockburn CJ in **Banks v Goodfellow (1870) L.R. 5 Q.B** that

“it is essential...that a testator shall understand the nature of the act and its effect; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give

¹ Proceedings of 26th July 2019 at 145pm

² Proceedings of 25th September 2019

effect...that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it, which if the mind has been sound would not have been made.”

[15] Counsel for the Plaintiff on the other hand submitted that the deceased's estate comprised of the following:

- (1) Parcel C2425, including his main house*
- (2) Parcel C5842, vacant parcel*
- (3) Monies in bank accounts and proceeds of Pension Fund benefits*
- (4) White Jeep S26707*
- (5) Parcel C5844 which has previously been sold*

[16] It was counsel's submission that the deceased had four children, therefore four reserved heirs each liable to inherit $\frac{1}{4}$ share of the disposable portion of his estate.

[17] It was his submission that Article 913 of the Civil Code obliged the deceased to leave $\frac{3}{4}$ of his entire estate to his four children equally. The remaining $\frac{1}{4}$ was his disposable portion to be given to whomever he wished.

[18] Counsel further submitted that the deceased made two Wills prior to his death. The first one dated 9th January 2018 wherein he made specific dispositions among his four children, the Defendant and the Defendant's children and appointed the Plaintiff as executor. The second dated 19th February 2018 appointing the Defendant as executor and bequeathed the bulk of his estate to the Defendant. The Defendant's two children, the Plaintiff and his sister were also bequeathed part of the estate to the exclusion of the deceased's two other children Shannon and Aisha Racombo.

[19] Counsel submitted that on any interpretation of the disposition in the second Will of the deceased it contravenes Article 913. It was his position that in such situation the only remedy is to reduce the dispositions to make them conform with the law. The second Will being invalid in law, the first Will having been revoked by the second Will then, it was counsel's submission that the Defendant is only entitled to what the deceased was able to dispose of in terms of his disposable portion being $\frac{1}{4}$ of his whole estate. The remainder to be shared equally among his four children in their capacity as reserved heirs.

- [20] With regards to the appointment of an executor counsel submitted that the Court order an executor agreed by all the heirs be appointed.
- [21] In view of the agreement by the parties that the matter revolved around a very legal point, more specifically Article 913, the issue for the Court is on the basis of the alternative prayer of the Plaintiff. No evidence being led on the issue of the deceased's mental state the issue of the invalidity of the Will on the basis of the deceased's lack of capacity becomes redundant.
- [22] It is noted however that paragraph 4 of the Plaint in which the Plaintiff claims that the deceased purportedly made a Will on 19th February 2018 revoking the previous one, making new dispositions substantially more favourable to the Defendant and less favourable to his children, was not denied.
- [23] It is further noted that there is no serious challenge to the claims of the Plaintiff. The Defendant merely denies everything. Her defence is that the Will dated 19th of February 2018 represents the wishes of the deceased which the Plaintiff should respect instead of causing embarrassment to his siblings.
- [24] The relevant law is found in Article 913 of the Civil Code which in relevant part provides that:

“Gifts inter vivos or by will shall not exceed one half of the property of the donor, if he leaves at death one child; one third, if he leaves two children; one fourth, if he leaves three or more children; there shall be no distinction between legitimate and natural children except as provided by Article 915-1. ...”
(underlining my own)

- [25] The deceased having left behind 4 children, he could only dispose of $\frac{1}{4}$ of his estate with the remaining $\frac{3}{4}$ reserved for equal distribution amongst his children.
- [26] The Plaintiff has however not provided a valuation of the whole estate to assist the Court to come to a conclusion with regards to whether or not the dispositions fall within the reserved or disposable portions. The rule as per **Pragassen v Vidot (2010) SLR 163** is that a party who is relying on Article 913 of the Civil Code must prove the value of the

gift and the estate in order to successfully rely on Article 913. However in this matter the fact that the deceased's two minor children Shannon and Aisha Racombo have not been bequeathed anything in the Will in itself renders the Will dated 19th February 2018 contrary to Article 913, in accordance with the finding in **Calixte v Nibourette (2002) SLR 35** that children unaccounted for in wills succeed to all but the disposable portion of the estate. It is worth noting at this juncture that there is no claim that the two minor children have been given any gifts during the deceased's lifetime which could have been taken into account for the purposes of this case.

[27] As for the reliance of the Defendant's counsel on the decision of Cockburn CJ in **Banks vs Goodfellow (1870) L.R 5Q.B**, that is best addressed by referencing the remarks of Twomey CJ in **Desaubin and others vs Sedwick (SCA 12 of 2012) [2014] SCCA 20 (14 August 2014)**.

In legal parlance, la reserve in this particular case is three quarters of the estate as there were three or more children. The quotité disponible that could have been gifted to the Respondent could not amount to more than one quarter.

It was therefore nonsensical and in total denial of the law for the trial judge to state that:

"It is the duty of the court in interpreting a Will to ensure that the intention or the desire of the testator is given effect to."

That may well be true in jurisdictions which have testamentary freedom provisions in their law. Seychelles does not and until the law is changed by the legislature we have to apply it. Hence the Will of the testator can only be given effect within the confines of the law.

[28] With that said it is the finding of this Court that the deceased could only dispose of ¼ of his estate to the Defendant with the remaining ¾ reserved for distribution amongst his four children.

[29] In the circumstances I declare that the dispositions in the Will dated 19th February 2018 is contrary to law and should be reduced as per paragraph [26] above in order to ensure that all the reserved heirs of Finley Jacques Racombo receive their reserved portion of his estate in Seychelles.

[30] The heirs shall appoint an Executor to compile an inventory of the estate and distribute the estate as per paragraph [26] above.

[31] Each side shall bear their own costs.

Signed, dated and delivered at Ile du Port on 26th February 2020

Pillay J