

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC 172

XP172/2019

In the ex parte matter of:

DORIS ROSY GERTRUDE NEE HENDERSON

(Represented by Mr. Bernard Georges)

Applicant

Neutral Citation: *Doris Rosy Gertrude nee Henderson* (XP172/2019) [2020] SCSC 172

(3 March 2020)

Before: B. Adeline, Master

Summary: Appointment of executor

Heard: 23 October 2019

Delivered: 3 March 2020

ORDER

Application by Petition to be appointed executor and to appoint executor. “There is nothing in the Civil Code that requires the person who applies for appointment of an executor to obtain the consent of all other parties interested in the succession”, (*Westergreen vs Whiting*). Therefore, this court dispenses with the consent of Linda, Doreen, Henderson and Danny, Neville, Henderson and hereby grant the application. Accordingly, this court appoints the Applicant Doris, Rosy, Gertrude nee Henderson as well as Kenneth, John Andrew Henderson as joint executors of the estate of the deceased Philis Henderson.

ORDER

B. ADELINE, MASTER

[1] This is an application by petition, filed by one Doris, Rosy, Gertrude nee Henderson of La Misere, Mahe, Seychelles (hereinafter referred to as “the Applicant” and or “the Petitioner”). The Applicant has filed this application by virtue of Article 1026 of the Civil Code of Seychelles Act, Cap 33, which application is supported by an affidavit duly sworn by the Applicant as well as other relevant documents required by Practice

Direction No 1 of 1989 attached there to. By her application, *interalia*, the Applicant prays this court to appoint her and her brother Kenneth, John, Andrew, Henderson as joint-executors of their estate of their late mother Philis Henderson, nee Maria.

[2] On account of the affidavit evidence in support of the application, and the documentary evidence tendered as supporting exhibits, I am satisfied, that as per her Certificate of Death pertaining to the Civil Status Register No 226 of 2015. C, Philis Henderson nee Maria, (hereinafter referred to as “the deceased”) died on the 12th May 2015. The deceased died intestate. The deceased’s Certificate of Death tendered as exhibit marked P1.

[3] I am also satisfied, that the deceased was married to one Yvon, Chang-Quor, Neville, Henderson who passed away on 17th March 2011, thus predeceased the deceased. The deceased’s Certificate of Marriage and her husband’s Certificate of Death tendered as exhibits marked P2 and P3 respectively.

[4] I am further satisfied, that the deceased is survived by her seven legitimate children who are her sons and daughters, namely,-

(i) Her daughter, the Applicant Doris, Rosy, Gertrude nee Henderson born on the 7th September 1956. Her Certificate of Birth tendered as exhibit P4.

(ii) Her daughter Judith, Jessica, Henderson born on the 30th May 1958. Her Certificate of Birth tendered as exhibit marked P5.

(iii) Her daughter Linda, Doreen, Henderson born on the 6th October 1959. Her Certificate of Birth tendered as exhibit marked P6.

(iv) Her son Danny, Neville, Henderson born on the 23rd July 1961. His Certificate of Birth tendered as exhibit marked P7,

(v) Her son Philip, Peter, Henderson born on the 17th February 1963. His Certificate of Birth tendered as exhibit marked P8.

(vi) Her son Jimmy, Edward, Henderson born on the 16th September 1965. His Certificate of Birth tendered as exhibit marked P9

(vii) Her son Kenneth, John, Andrew, Henderson born on the 22nd December 1970. His Certificate of Birth tendered as exhibit marked P10.

[5] I am satisfied, that at the time of her death the deceased had inherited from the estate of her late husband Yvon, Chang-Quor, Neville, Henderson $\frac{1}{2}$ undivided share in a parcel of land registered as Title V934 owned by her late husband and situate at Mont Buxton, Mahe Seychelles. The Certificate of Official Search pertaining Title V934 tendered as exhibit marked P11.

[6] I am also satisfied, that the $\frac{1}{2}$ undivided share in Title V934 which the deceased is entitled, now belongs to her estate and needs to be vested into an executor.

[7] I am further satisfied, that is it necessary for an executor to be appointed to administer the estate of the deceased, and the applicant Doris, Rosy, Gertrude nee Henderson, as well as Kenneth, John, Andrew, Henderson suffer from no impediment or any legal incapacity preventing them from being appointed joint executors of the estate of the deceased. I am satisfied, that they are both willing to act as joint executors, and to perform the duties of

executors as laid down by law, in particular, under Article 1027 of the Civil Code of Seychelles Act Cap33.

[8] I am also satisfied, that of the seven heirs of the deceased, two of them, namely, Linda, Doreen, Henderson and Danny Neville Henderson have withheld their consent to the appointment of Doris, Rosy, Gertrude nee Henderson, and Kenneth. John, Andrew, Henderson as joint executors to the estate of the deceased, and although they were both served with notice of the Application to appear in court for their answer to the application, both of them failed to put appearance in court, in person, or otherwise.

[9] In the case of Westergreen vs Whiting C iv App 9 of 1988, the court held, *inter alia*, that, “nothing in the Civil Code requires the person who applies for appointment of an executor to obtain the consent of all other parties interested in the succession”. In the circumstances, this court dispenses with the consent of Linda, Doreen, Henderson and Danny, Neville, Henderson, and hereby grant the application. Accordingly, this court appoints the Applicant Doris, Rosy, Gertrude nee Henderson as well as her brother Kenneth, John, Andrew, Henderson as joint Executors to the estate of the deceased Philis Henderson.

Signed, dated and delivered at Ile du Port 3rd March 2020.

B. Adeline

Master of the Supreme Court

