

SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2020] SCSC ...
CS. No 162/2019

In the matter between:

Rachid Meme
(represented by Bernard Georges)

Plaintiff

and

The Estate of the late Louis Telermont
(represented by its Executrix Ms. Dorothy
Brioche)

Defendant

Neutral Citation: *Meme v The Estate of the late Louis Telermont (CS No. 162/2019) [2020] SCSC ... (27 March 2020).*

Before: Andre J

Summary: Presumption of paternity – ‘*Recherche de paternite*’ - Articles 312, as read with Articles 321 and 340 of the Civil Code (Cap 33).

Heard: 3 March 2020

Delivered: 27 March 2020

ORDER

The Plaintiff is allowed and the Court makes an Order that the Plaintiff, namely Rachid Meme, be recognized as the natural son of the deceased, namely late Mr. Louis Telermont, and that the Chief Executive Officer of Civil Status record this fact in the Plaintiff’s Birth Certificate.

**JUDGMENT
EX-PARTE**

ANDRE J

Introduction

- [1] This Judgment arises out of a plaint, filed on 4 December 2019, wherein Rachid Meme (*“Plaintiff”*) moves this Court to order that the Plaintiff is declared the son of late Louis Telermont (*“deceased”*) and not Molson Meme as inscribed on his birth certificate, and that the Chief Civil Status Officer of the Civil Status record that fact in the Register of Births and amend the Plaintiff’s Birth Certificate accordingly.
- [2] The Defendant’s Executrix as named (*supra*), appeared before Court on the 20 January 2020 and informed that she is not contesting the Plaint hence the hearing proceeding *ex-parte*.

Plaintiff’s case

- [3] In short, this is an action of *“recherche de paternite”* brought under Article 340 of the Civil Code (*supra*). The Plaintiff’s name is registered as Rachid Anthony Meme with his father being registered as Molson Meme. The plaintiff seeks to prove that his father is not Molson Meme who, although still married to his mother, had separated from his mother at the time of his conception. It is the plaintiff’s case that he is instead the biological son of the late Louis Telermint who passed away on 26 December 2018. In September 2014, the deceased informally recognized him as his son and from then on they enjoyed a parent-child relationship until the deceased’s death.
- [4] Forthe aforesaid reason, and given that the plaintiff is widely recognized as the deceased’s son by society at large and by the deceased’s family, the plaintiff seeks the above-stated Orders.

Evidence

- [5] The plaintiff testified on oath in support of his Plaint in essence as follows.
- [6] That his biological father is the deceased but that his name as registered on his birth certificate appears as Rachid Anthony Meme, for at the time of his birth his mother Helna Meme was married to Molson Meme.

- [7] That at the time of his conception his mother and Molson Meme, albeit married, were separated ‘*de fait*’, and his mother had relationships with the deceased hence his conception.
- [8] That Molson Meme and his mother were divorced as per absolute decree of divorce on 21 June 1993. He was born in 1986 (Exhibit P3) and the deceased passed away in 2018 (Exhibit P2).
- [9] The Plaintiff further testified that throughout his lifetime, the deceased maintained him when he was a child and was acknowledged to be his father and never pretended to not be his father. A series of photographs in the form of Exhibit P 3 was produced as evidence in support.
- [10] The Plaintiff additionally testified that as per Exhibit P1 it is clear that the deceased family and society acknowledge him as the deceased’s child.

Legal Analysis in line with Evidence

- [11] Having illustrated the salient evidence pertinent to the plaint, I shall now move on to the applicable law and its analysis thereto.
- [12] The instant application concerns the paternity of a child.
- [13] Article 312 of the Civil Code (Cap 33) (“Code”) provides that:
- “1. *A child conceived during marriage shall be presumed to have the husband as father.*
2. *Nevertheless, any presumption of law as to the legitimacy or illegitimacy of any person, may in any civil proceedings, be rebutted by evidence which shows that it is more probable than not that that person is illegitimate or legitimate, as the case may be, and it shall not be necessary to prove that fact beyond a reasonable doubt in order to rebut the presumption.”*

[14] The Applicant claims that the husband of his mother at the time of his conception is not his biological father hence rebutting the legally presumed paternity of his mother's husband then.

[15] It is to be recalled that in the case of **Fitz Gibbon v/s Carosin (1920) Mauritius Reports-23**, a married woman claimed from the defendant maintenance for a child born during marriage alleging that the defendant, and not her husband, was the father of the child. The husband had not disowned the child and was not a party to the proceedings. It was held that the provisions of Article 312 create a legal presumption of paternity which can only be rebutted by the husband or his heirs (in the circumstances envisaged in Article 317) and cannot be construed as authorizing a married woman to set up against her husband, even to obtain maintenance from the alleged person. Roseby J, in conclusion, stated: *"We are not prepared to say that a married woman may during the marriage, disown the paternity of a child on behalf or despite her husband."*

[16] In the case of **(Stella Juliene v/s William Joseph Julienne Divorce Side No. 61 of 1992)**, the Court held further that: 'However the Civil Code of Seychelles adopts the term "descent" rather than "filiation" used in the Mauritian Code. Professor Chloros, in his book "Codification in a mixed jurisdiction" on page 45 states - "considerable relaxation has been introduced with regard to the rules of proof of paternity. Although the presumption of legitimacy still applies, it can be freely rebutted by evidence on the balance of probabilities.'

[17] It appears thus that the Plaintiff too can disown the paternity despite the marriage status of his mother at the time of his birth.

[18] Further in the same line, Article 312 is to be read in line with the provisions of Article 340, 321 and 334 of the Civil Code. The latter Article provides that,

"The recognition of an illegitimate child shall be made by an authentic document if it has not been made in the act of birth. It may also be made by a declaration signed or marked before a Judge, a Magistrate, a civil status officer or the Registrar of the Supreme Court."

[19] Article 340, in turn, provides that:-

- “1. It shall not be allowed to prove paternal descent, except:*
- (b) When an illegitimate child is in possession of status with regard to his natural father or mother as provided in Article 321.*
 - (d) Where there exists letters or other writings emanating from the alleged father containing the unequivocal admission of paternity.*
 - (e) When the alleged father or mother have notoriously lived together as husband and wife, during the period of conception.*
 - (f) Where the alleged father has provided for or contributed to the maintenance and education of the child in the capacity of father.”*

[20] Article 321 of the Code, further provides that:-

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

The principal facts are:

That the 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 was providing for his education, maintenance and start in life;

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

That he has been recognized 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.”*

[21] Now, as transpired from the record of proceedings in terms of the salient evidence illustrated above, the deceased has always been recognized as the father of the Plaintiff in society, by the mother of the Plaintiff and even to that of the deceased family. The deceased was treating the Plaintiff as his child from his birth up to the deceased's death by maintaining him as a child and also spending time with him as per Exhibit P1 and by admission of the executrix to the Estate of the deceased.

[22] The evidence as led by the Plaintiff is to my mind sufficient on a balance of probabilities towards the proof of enjoyment of possession of status by the Plaintiff vis-à-vis the deceased for the evidence adduced has established sufficient coincidence of facts indicating the relationship of descent and parenthood between the deceased and the Plaintiff as same as admitted by the defendant's representative (supra).

Conclusion

[23] In light of my above endorsement of the evidence, I find that it has been established through the evidence as above-referred that:

1. The Plaintiff is indeed the son of the deceased and as such make an Order that Plaintiff namely Rachid Meme, be recognized as the natural son of the deceased namely late Mr. Louis Telermont.
2. That the Chief Executive Officer of Civil Status record this fact in the Plaintiff's Birth Certificate; and

[24] Judgment entered in terms of the above in favour of the Plaintiff.

Signed, dated and delivered at Ile du Port on the 27th day of March 2020

ANDRE J

Judge of the Supreme Court

