

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2020] SCSC 229  
MA 318/2019  
(Arising in CS 88/2009)

In the matter between:

**JACQUELINE LEON**  
(*rep. by S. Rajasundaram*)

**Judgment Creditor**

and

**THE ESTATE OF LOITA LAURENCINE**  
(*rep. by K. Louise*)

**Judgment Debtor**

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**Neutral Citation:** *Leon v Estate Loita Laurencine* (MA 318/201) [2020] SCSC 229 (3 April 2020)

**Before:** Andre J

**Summary:** Execution Application filed under sections 239, 240 and 246 of the Seychelles Code of Civil Procedure (Cap 213)

**Heard:** 5 March 2020

**Delivered:** 3 April 2020

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**ORDER**

The Execution Application as filed by the Judgment Creditor is dismissed for want of merit and the Registrar is directed accordingly in terms of section 246 of the Seychelles Code of Civil Procedure (Cap 213).

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**RULING**

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**ANDRE J**

[1] This order arises out of an application for execution filed under sections 239, 240 and 246 of the Seychelles Code of Civil Procedure (Cap 213) ("the Act") of the 26 September 2019 filed by Jacqueline Leon (*"Judgment creditor "*). She is moving the court for the following orders: a writ to be issued by the Registrar to the usher of the

Supreme court to seize the immovable property comprised in title V1832 at St Louis, Mahe, to recover the judgment debt remaining outstanding arising out of the judgment of this court of 26 October 2018; an order to sell the attached immovable property; and to recover the costs of this execution proceedings.

- [2] The Judgment debtor is not contesting the application as per the response of 9 December 2019. The Judgment debtor admits the existence of the property inherited by the Judgment debtor's representative from the Estate of late Loita Laurencine, but avers that the Estate has no assets which will satisfy the Judgment debt. The Judgment debtor avers that all the assets in the estate have been distributed following laws of succession and no longer form part of the estate including but not limited to the property in issue which was transmitted by way of affidavit. Hence, the Judgment debtor moves for dismissal of the application because the judgment lies against the estate and the estates' assets have already been distributed.

#### *Evidence and Analysis*

- [3] Both parties filed written submissions in this matter of which contents have been duly considered for this order.
- [4] Now, the judgment of this Court of the 26 October 2018 ("judgment of the Court") was rendered as against the late Loita Claire Laurencine, hence attaching to her estate at the time of her demise and the judgment applies to assets existing in her estate at the stage of the delivery of the Judgment of the Court.
- [5] The Judgment debtor's representative was appointed executrix to the estate of her late mother, the Judgment debtor, on the 24 November 2014. At the time of her appointment as executrix, there was no judgment of the court against the Estate until it was delivered on the 26 of October 2018 – two years after her appointment as executrix.
- [6] It is to be noted further, that as admitted by the Judgment creditor, upon appointment of the Judgment debtor, she complied with her duties under section 825 and 830 of the Civil Code, by opening the succession and distributing the property amongst the heirs of the Estate of the late Loita Laurencine being herself in terms of the bare-ownership and one

Gilbert Ronnie Maria in terms of the usufructuary interest in the land and house situated on the property through an affidavit of transmission by the death of the 28 November 2014. This was completed long before the judgment of the court. These actions were in line with the duties of executors as clearly outlined in the cases of ***Ramkalawan & Ano v Nibourette & Ano (MA 178/2017) [2018] SCSC 618*** and ***Rajasundaram & Ors v Pillay (SCA 09/2013) [2015] SCCA 12*** which relate directly to duties and obligations of executors.

[7] Albeit having filed the plaint in CS Side No. 88/2009, the Judgment creditor has been unable to prove that appropriate legal measures were undertaken through the court in that main matter to preserve the asset in the event of a judgment in its favour.

[8] Further, this Court notes that this matter is against the Executor of the Estate of Loita Laurencine in her capacity as a "third party" since no assets remained in the Estate of the judgment debtor as at the time of the judgment of the court. Hence, the provisions of Article 1167 of the Civil Code comes into play wherein judgments of this nature, as sought by the Judgment creditor, is to be enforced by an "*action paulienne*". To succeed in such an action, however, as rightly pointed out by the Judgment debtor's representative, there is an essential need for an element of fraud in the disposal of the property in question to be proven by the Judgment creditor. This is supported by the cited case of ***Franchette and Ors v Blacon (Pty) Ltd (1978-1982) SCAR 114***.

[9] It is obvious in the specific circumstances of this case that there was no judgment of the court when the assets of the Estate of Loita Laurencine were distributed upon the opening of her succession. In addition, no court orders prevented such disposal at the material time, and no element of fraud was proven against the Executrix in this case.

[10] It follows thus, that I find based on the analysis of the evidence admitted on records, that the Judgment creditor does not have a cause of action giving rise to the execution application in this matter as per the cited provisions of the Act. The Registrar is therefore not to entertain this matter in line with the provisions of section 246 of the Seychelles Code of Civil Procedure (*supra*).

*Order*

[11] Following the above findings, the execution application as filed is dismissed for it is devoid of merits.

[12] The Registrar is directed as to the above accordingly.

Signed, dated and delivered at Ile du Port on the 3rd day of April 2020.

Andre J

**Supreme Court Judge**