

SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 526
XP 47/2020

In the ex parte matter of:

NN
(Present/ Self Represented)

Applicant

Neutral Citation: NN (XP 47/2020) [2020] SCSC 526 (03 August 2020)
Before: B. Adeline, Master
Summary: Order to declare and register birth of Child – infant out of time
Heard: 01 July 2020 and 22 July 2020
Delivered: 03 August 2020

ORDER

Application for an order of the Court to declare and register the birth of a child – infant out of the prescriptive period of 30 days following the day of its birth, and to order that the child – infant be declared and registered on the name of its biological father to bear the surname R. In exercise of the powers conferred upon this Court by virtue of Section 31 (2) read with Section 31 (3) of the Civil Status Act, Cap 34, the application is granted, and accordingly, the Applicant, NN of [. . .], Mahe, Seychelles shall declare and register the birth of her child – infant born on the 22nd January 2020, out of the time upon payment of a fine of three hundred rupees for late declaration and registration of the birth of her child – infant. The Applicant having rebutted the presumption of paternity under Article 312 of the Civil Code of Seychelles Act, Cap 33, shall have the liberty to declare and register the birth of her child – infant on her maiden name D, or on the child’s biological father’s name, R.

ORDER

ADELINE, MASTER

[1] This is an application filed in Court by one NN of [. . .], Mahe, Seychelles (hereinafter referred to as “the Applicant”). The application is supported by an affidavit, and is made by virtue of Section 31 (2) of the Civil Status Act, Cap 34, (hereinafter referred to as “the Act”) for an order of this Court in exercise of its powers under Section 31 (2) of the Act, that would allow her to declare and register the birth of her newly born female child – infant (hereinafter referred to as “the Child – infant) out of time. By her application, inter alia, the Applicant prays this Court to make the following orders;

- (a) an order for her to register the birth of her child out of time and to enter the child’s name as EN on her Birth Certificate
- (b) to register the birth of her child on her maiden surname, D, or
- (c) to allow the biological father of the child to acknowledge and declare the child on his surname of R.

[2] As per the Applicant’s pleadings supported by affidavit evidence and documentary evidence, on the 22nd January 2020, at 7.45 pm, the Applicant gave birth to a female Child – infant at the Maternity Department of the Seychelles Hospital, Victoria, Mahe, Seychelles. The Applicant tendered as exhibit in support of her application, the Birth Notification issued to her by the Maternity Department of the Seychelles Hospital dated 23rd January 2020, marked P1.

[3] In her affidavit in support of the application, the Applicant makes the following averments, inter alia, to satisfactorily account for the lateness or delay in having the birth of the Child – infant declared and registered;

- 1. “that on the 22nd January 2020, I gave birth to a female child at the Maternity Department of the Seychelles Hospital at 7.45 pm”.
- 2. “That on the 29th January 2020, I went to the Civil Status Office to declare my child with the biological father, Mr. CR. The Officer of the Civil Status wanted to enter the name of my husband as the father of my child on the child’s Certificate of Birth but I did not agree, and”

3. “That was within time to declare my child but I did not want my husband’s name to be on my child’s Certificate of Birth. I wanted the biological father’s name to be on my child’s Certificate of Birth. I was told by the Officer of the Civil Status to seek for legal advice to declare my child”.

[4] Section 31(1) of the Act, provides;

“ 31(1) the declaration of the birth of any child shall be made at any time within thirty days following the day of its birth before the Officer of the District where the child is born. It shall not be necessary to present the child when its birth is declared, and all acts of Birth drawn up before the passing of this Act are hereby declared to be valid whether the child has been presented to the officer of the Civil Status or not”. The underlined emphasis is mine.

[5] Section 31 (2) of the Act, provides;

“31(2) If the birth has not been declared within the aforesaid period, the birth shall not be registered except upon an order of a Judge and on payment of a fine not exceeding one hundred rupees unless the lateness of the declaration be accounted for to the satisfactory of the Judge. The Judge shall be entitled to require such evidence as he may deem necessary to satisfy himself touching the exact date of birth of the person whose birth is sought to be registered”. The underlined emphasis is mine.

[6] Section 31 (3) of the Act, provides;

“31 (3) If the birth to be registered be that of a person more than 3 months old, no such order shall be given by the Judge except of payment of a fine not exceeding five hundred rupees provided that it shall be lawful for the President to remit or reduce such fine upon sufficient cause being shown”. Underlined emphasis is mine.

[7] On account on the evidence laid before this Court, this Court is satisfied, that the Applicant did give birth to a female Child – infant on the 22nd January 2020 at the Maternity Department of the Seychelles Hospital, Victoria, Mahe, Seychelles. By law, the Child – infant’s birth should have been declared and have its name registered by the

latest 21st February 2020. Although, I am satisfied, that the lateness or delay in declaring and registering the birth of the Child – infant has been adequately and satisfactorily accounted for by the Applicant, in view that the child to be declared and have its birth registered is over 3 months old, this Court has to have regard to Section 31 (3) of the Act.

[8] In the circumstances, this Court is therefore mandatorily compelled by virtue of Section 31 (3) of the Act, to impose the mandatory fine of not more than five hundred rupees on the Respondent unless the fine is “remitted or reduced by the President upon sufficient cause being shown”.

[9] Therefore, the Court grants the application to register the birth of the Child – infant out of time, and in exercise of the powers conferred upon it by virtue of Section 31 (2) read with Section 31 (3) of the Act, the Court makes the following orders;

1. The Applicant, NN is fined the sum of three hundred rupees for late declaration and registration of her Child – infant’s birth, given that the 30 days prescriptive period following the day of the Child - infant’s birth as provided for under Section 31 (1) of the Act lapsed since 21st February 2020. The three hundred rupees fine shall be paid in the Registry of the Supreme Court, Palais de Justice, Ile du Port.

[10] This Court also orders, that upon proof of payment of the fine of three hundred rupees, the Chief Officer of the Civil Status shall allow the declaration and registration of the birth of the Child – infant whom the Applicant gave birth on the 22nd January 2020 at the Maternity Department of the Seychelles Hospital.

[11] The issue that now remains to be determined, is whether the Child – infant should be declared and registered on the name of the Applicant’s husband, EN. In her affidavit evidence, the Applicant avers, that her husband, the said EN is not the father of her newly born Child – infant. She tendered as exhibit, an affidavit sworn by her husband before the Senior Registrar of the Supreme Court of Mauritius, exhibit P2, by which affidavit, her husband avers, that he is not the father of the Child – infant the Applicant gave birth on the 22nd January 2020, and whose birth she seeks to declare and register out of the prescriptive period of time.

[12] Therefore, that having been the case, this Court finds, that the presumption under Article 312 (1) of the Civil Code of Seychelles Act, Cap 33, that the Applicant's husband, EN is the father of the child she seeks to declare and register, has been rebutted on the balance of probabilities. In the circumstances, the Applicant is at liberty to declare and register the birth of her Child – infant on her maiden name D, or on the child's biological father's surname, R, which ever she chooses.

Signed, dated and delivered at Ile du Port on 03 August 2020.

Adeline B, Master