

## SUPREME COURT OF SEYCHELLES

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**Reportable**

[2020] SCSC 758  
MC101/2019

In the matter between:

**STEFAN ADRIAN ILIESCU**  
(rep. by Frank Elizabeth)

**Petitioner**

and

**STEFAN RENATO PETRESCU**  
(rep. by Serge Rouillon)

**Respondent**

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**Neutral Citation:** *Iliescu v Petrescu* (MC101/2019) [2020] SCSC 758 (15 October 2020).

**Before:** Burhan J

**Summary:** Objections to pleadings being instituted by way of petition and affidavit dismissed.

**Heard:** 17<sup>th</sup> and 19<sup>th</sup> February 2020, 8<sup>th</sup> and 10<sup>th</sup> March 202 (written submissions).

**Delivered:** 15<sup>th</sup> October 2020

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### ORDER

The objections set out in the plea in limine are dismissed with costs.

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### RULING

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#### BURHAN J

[1] The respondent in the main case MC/101/2019 (Stefano Renato Petrescu) filed a plea in limine litis on the 24<sup>th</sup> of January 2020. The plea in limine litis was based on the following grounds:

- a) That the petitioner should have filed the case by plaint in terms of section 23 of the Seychelles Code of Civil Procedure and not by petition and affidavit and therefore the case fails abinitio for defective procedures.

- b) There is no concept of domestic trust in Seychelles or nominee relationships except for specific statutory exceptions and the petition filed by the petitioner does not fall under or qualify to be under any such exceptions.

[2] On the 6<sup>th</sup> of February 2020, both parties in case MC 101/2019 agreed that the plea in limine litis (preliminary objections) could be heard first and thereafter proceeded to file their submissions. Despite both parties agreeing to hear the plea in limine and filing their submissions in respect of same, once again, on the 18<sup>th</sup> of August 2020, the respondent's counsel Mr. Rouillon filed MA application 141 of 2020, seeking that the plea in limine litis be heard urgently prior to the hearing of the main case. This Court, by ruling dated 11 September 2020, dismissed all objections, to the plea in limine litis being heard urgently and set down the case for ruling in respect of the plea in limine litis after due consideration of all submissions filed by the parties up to date.

[3] One of the main grounds urged by learned Counsel for the respondent Mr. Rouillon in his plea in limine litis is that the failure of the petitioner to file a plaint is in contravention of section 23 of the Seychelles Code of Civil Procedure which states "Every suit shall be instituted by filing a plaint in the registry," is a fatal error and the petition filed should therefore be dismissed.

[4] Learned Counsel Mr. Rouillon further contends that it is a wrong statement by law, if learned Counsel for the petitioner contends that his case has been brought using special procedures under the IBC Act which in his view does not exist. Learned Counsel Mr Rouillon also referred to the case of **Palani Batcha v Christopher Gopal and another [2011] SCSC 96**.

[5] Mr. Rouillon further submitted that there was no concept of domestic trusts in Seychelles or nominee relationship except for specific statutory exceptions and that the facts contained in the petition do not qualify for being included in the exceptions. Learned Counsel also relies on "Legal Metissage in a Micro Jurisdiction" at page 68 and quotes:

*"The Court of Appeal has categorically stated that "the law of trusts has no place in the law of Seychelles 337Hallock v d"Offay (1983-1987) SCAR (Vol) 295.*

- [6] The petitioner cited cases in support of their argument that the filing of a wrong application is not fatal to the case as the interest of justice demands that the matter be heard as filed, and that an application should not be defeated merely on the grounds that the application has been wrongly filed. He relies on the cases of **Hoareau & Anr v Karunakaran & Ors [2017] SCCA 33**, **Mary Quilindo and ors v Sandra Moncherry & Ors [2012] SCCA 39** and **Nina Aleksandrovna Fadeeva v Sofia Georgiyevna Kucheruk Civil Side MC 84/2017**.
- [7] The petitioner further submits that the nature of the present application falls outside the definition of a "suit" in that the petitioner is not seeking redress for personal injury or damages for breach of contract. The petitioner further argued that there is nothing in the law that prevents a person from commencing a civil proceeding by petition or application and that the proceedings brought by the petitioner is governed by the IBC Act 1994 as amended and the International Trusts Act.
- [8] It would be pertinent at this stage to refer to the relevant case law of the Seychelles Court of Appeal which sets precedent to this court to follow. In the case of **Mary Quilindo and Ors v Sandra Moncherry (supra)** a similar argument was taken up where the appellants in the Quilindo case claimed that the case was wrongly suited. It was contended by the appellants in the Quilindo case that the action to prove paternal descent can only be instituted by a plaint and not a petition as was done by the respondents in the said case. Relying on the Privy Council decision of **Toumany and Anor v Veerasamy [2012] UKPC 13** which held;

*"The board has sought in the past to encourage the courts of Mauritius to be less technical and more flexible in their approach to jurisdictional issues and objections .... Let the Board now state as emphatically as it can it is clear conclusion on this appeal. In cases like these where mistakes appear in documentation as which particular jurisdiction of the Supreme Court has been involved , those mistakes should be identified and corrected without penalty*

*unless they have genuinely created a problem as soon as practicable and the court proceed should without delay to deal with the substantive issues raised before it on the merits."*

Twomey JA proceeded to hold that where no prejudice was suffered by the proceedings being initiated by petition and not by plaint such technical objections should not affect the fair administration of justice.

- [9] The findings in the case of Quilindo was also followed by the Seychelles Court of Appeal again in the case of **Ablyazov v Outen & Ors (SCA 56/2011 & 08/2013) [2015] SCCA 23 (28 August 2015)** where Domah JA held;

*"We adopt the reasoning that procedure is the hand-maid of justice and should not be made to become the mistress even if many hand-maids would aspire to become mistresses: see **Gill v Film Ansalt 2003 SLR 137; Mary Quilindo and Ors v Sandra Moncherry and Anor SCA 29 of 2009; Toomany and Anor v Veerasamy [2012] UKPC 13.***

*In the **Toomany and Anor v Veerasamy**, the Law Lords of the Judicial Committee such technicalities raised to shut out litigants from the court system constitute a blot on the administration of justice. This has been made part of the law of Seychelles as per the decision of Twomey JA, now Chief Justice."*

- [10] In this instant case too, the respondent has failed to show that the pleadings by way of petition has resulted in any prejudice being caused to the respondent. He has also failed to show that the statutory provisions of the International Business Companies (IBC) Act indicate that any action brought under the IBC Act should be by way of plaint and not by petition. I observe that several sections in the IBC Act refer to the filing of applications in court which means petition and affidavit. The mere fact that learned Counsel for the respondent has brought several actions by way of plaint in the Supreme Court as set out in his letter addressed to court dated 6<sup>th</sup> August 2020, does not overrule the aforementioned findings of the Seychelles Court

of Appeal that an action by way of petition and affidavit could be accepted by court and is not fatal to the case of the plaintiff if no prejudice is caused.

[11] Having given due consideration to the aforementioned cases, this court is of the view that the respondent has failed to properly support his plea that the petition should fail for irregularity of form. The respondent has not shown that he is prejudiced by the form of this suit, that is, it being a petition rather than a suit, nor has he shown that the rule in section 23 of the SCCP is non-derogable. In light of the above, this court holds that this plea in limine litis should fail.

[12] The respondent's second plea in limine is that there is no concept of domestic trusts in Seychelles or nominee relationship except for specific statutory exceptions and this petition or suit does not qualify for being included in any such exceptions. The respondent has set out provisions of the International Trusts Act 1995, if only to show that they are not applicable to the issue at hand. It is the petitioner's submission that the respondent's stance on the law is erroneous. Counsel for the petitioner also submitted that the International Trusts Act is applicable to this case. I am of the view that it is too premature to decide on this issue without first giving an opportunity to the petitioner to support his contention by way of evidence subject to cross examination by the respondent. Thereafter court would be in a better position to decide this issue.

[13] For the aforementioned reasons the objections set out in the plea in limine are dismissed with costs. A copy of this ruling to be filed in MA 141/2020 as well.

Signed, dated and delivered at Ile du Port on 15<sup>th</sup> October 2020.



M Burhan J