

SUPREME COURT OF SEYCHELLES

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**Reportable**

[2021] SCSC 646

Arising in Ex-Parte 03/2020

In the matter between:

**HAZEL RENAUD**

*(rep. by Frank Elizabeth)*

**Applicant**

and

**KIMBERLEY RENAUD**

*(unrepresented)*

**1<sup>st</sup> Respondent**

**VALERIE RENAUD**

*(unrepresented)*

**2<sup>nd</sup> Respondent**

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**Neutral Citation:** *Renaud v Renaud* (Ex-Parte 03/2020) [2021] SCSC 646 (6<sup>th</sup> October 2021).

**Before:** Pillay

**Summary:** Appointment of Executor

**Heard:** 31<sup>st</sup> August 2021

**Delivered:** 6<sup>th</sup> October 2021

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**ORDER**

The Applicant is appointed the executrix to the estate of the late Gaetan Antoine Renaud.

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**JUDGMENT**

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**PILLAY J**

- [1] The Applicant filed an application to be appointed executrix to the estate of the late Gaetan Antoine Renaud (hereinafter “the deceased”) on 13<sup>th</sup> January 2020. The second Respondent objected resulting in an amended Application being filed on 12<sup>th</sup> November 2020.

- [2] The Applicant averred that she is the daughter of the late Gaetan Antoine Renaud who died intestate on 11<sup>th</sup> April 2018. During his first marriage he had three children Nadim Andrew Renaud, Lise Georgette Simeon nee Renaud and Walton Antonio Gaetan Renaud. Lindy Maria Renaud was born from a relationship after his first marriage was dissolved. From his second marriage the Applicant was born. From his third marriage the two Respondents were born.
- [3] She further averred that the deceased's third marriage was dissolved by the Supreme Court of Seychelles on 14<sup>th</sup> August 2013 and a decree absolute was issued. She averred that prior to his death the deceased had commenced proceedings against his wife for division of matrimonial property and she wished to be appointed executrix of the estate of the deceased so that she could continue with the proceedings for the recovery of his immovable property.
- [4] According to her she is not suffering from any infirmity or disability and is ready and willing to be appointed and to act as executrix to the estate of the deceased.
- [5] Before the Master the first Respondent stated that "whatever happens, happens" which the Master treated as her consenting.
- [6] The second Respondent maintained her objection and filed a response. She admitted that the deceased was father to all the children listed but disputed that there was any proceedings pending for the settlement of matrimonial property.
- [7] The Applicant rehearsed her affidavit in support and the second Respondent confirmed the claims in her response.
- [8] The issue for the Court is simply whether there is any basis for the Applicant not to be appointed as executrix to the estate of the deceased.
- [9] In accordance with Article 1026 of the Civil Code of Seychelles provides that :

*If the succession consists of immovable property, or of both immovable and movable property, and if the testator has not appointed a testamentary executor or if an executor so appointed has died or if the deceased has left no will, the Court shall appoint such an executor, at the instance of any person or persons having a*

*lawful interest. A legal person may be appointed to act as an executor. But a person who is subject to some legal incapacity may not be so appointed.*

[10] Article 774 of the Civil Code also provides that

*1. Where a succession consists of movable property only, it may be accepted purely and simply or subject to the benefit of inventory. Where the succession includes both movable and immovable property it shall not be necessary to accept it, and an executor shall be appointed as provided by this Code. However, if the succession consists of movable property only, the heirs and legatees may, by agreement, elect to appoint an executor, in which case the distribution shall proceed as if the succession included immovables as well as movables; however, the Court may also appoint an executor on the application of any interested party.*

*2. A succession consisting of immovable property only or of both movable and immovable property shall devolve upon an executor who shall act as a fiduciary...*

[11] In the case of In the matter of the **Estates of the late Louis Joseph Maxime Larue and Emmeline Beronis Larue nee Pool (MC68/2018 [2018] SCSC 2018 (25 November 2018)** confirmed by the Court of Appeal in **Ex Parte Juliana Rose (SCA 25/2017 (Appeal from Supreme Court Decision CS206/2016)) [2019] SCCA 48 (17 December 2019)** found that

*“... the requirements of Articles 1026 and 774 preclude automatic vesting of property in the heirs. Article 1027 further requires an executor to establish the assets of the succession and pay its debts, and only then is the property to be distributed in accordance with the law.”*

[12] So in the case at hand does the estate of the deceased consist of immovable property? The Applicant argues that the deceased had an interest in the matrimonial home which had not been settled after his third divorce whereas the second Respondent contends that the matter was dismissed and the deceased had no pending case before the Court with regards to matrimonial property and therefore no interest in immovable property.

[13] What is the truth then? The court order dated 25<sup>th</sup> November 2016 (PE7) reads thus:

*Upon consent of the parties, I hereby order the Respondent Evaline Mary Kilindo to pay SCR 7, 500.00 to the Petitioner Mr. Gaetan Antoine Renaud from the rent*

*she is collecting from the tenants and the utility bills should be shared equally. This will take effect from end of this months, that is, November 2015. The case will be review 10<sup>th</sup> February 2016.*

- [14] I called for the file DC 141/13 from which MA 172/15 resulted and the above order.
- [15] In MA172/2015, the deceased prayed for an order allowing him sole ownership of the matrimonial property and payment of a half share to his former spouse. In his affidavit he averred that he and his former house own the house and built it jointly. No hearing was held. Following some discussions in Court the parties agreed that the deceased would be paid a share of the monies that his ex-wife was receiving as rent.
- [16] In fact the proceedings of 25<sup>th</sup> November 2015 shows the following exchange:

*Court: So you do not want to divide the property you want only contribution.*

*Ms. Kilindo: He wants only money.*

*Court: Only money from the rent.*

*Ms. Kilindo: Yes*

*Mr. Renaud: Yes*

- [17] Subsequently, on 31<sup>st</sup> July 2019 MA 143/2019, which was a summons to show cause against the deceased third ex-wife, was withdrawn on the basis that alternate modes of satisfying the judgment debt would be explored.
- [18] It is clear on the record that there was no formal division of the matrimonial property or for that matter any finding that the deceased had no interest in the matrimonial property as far as I can see from the file. In any event, even if one was to argue that from the records of MA172/2015 the deceased had no rights in the property but rights to the proceeds of rent there would still need to be a person representing the estate to make a claim for the payments for rent or proceeds of sale of the property if it has been sold or otherwise.
- [19] With all that said on the basis of Article 774 (1) the Court may appoint an executor even if the estate consists of only movable property on the application of an interested party.

[20] With the above in mind I find it necessary for the appointment of an executor to settle the deceased's interest in the matrimonial property subject of the matter in MA172/2015.

[21] I am satisfied that the Applicant is not subject to any legal incapacity and is ready and willing to be appointed and to act as executrix to the estate of the late Gaetan Antoine Renaud.

[22] I therefore appoint the Applicant as executrix of the estate of the late Gaetan Antoine Renaud.

Signed, dated and delivered at Ile du Port on ... *6th October 2021.*

  
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Pillay J