

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 680
CS130/2020

In the matter between:

Peter Faure
(*rep A Madeleine*)

Plaintiff

vs

Gemma Sultan (born Faure)

Defendant

Neutral Citation: *Peter Faure vs Gemma Sultan (born Faure)* (C130/2020) [2021] SCSC 680
(22nd October 2020).

Before: Govinden C J

Summary: Equitable jurisdiction; insufficiency of law; registration of birth; proof of maternal descent.

Heard: 18th June 2021

Delivered: 22nd October 2021

ORDER

The court declares that Peter Milton Faure is the biological child of Andrine Faure also known and referred to as “Marie Andrina Faure” and “Andrina Faure”.

That the birth of Peter Milton Faure, a male child, born on the 1st of December 1955 of Andrine Faure be registered in the acts of birth of the Civil Status.

That the Chief Officer of the Civil Status to make the necessary entries in the Register of Births as per the above orders.

JUDGMENT

GOVINDEN CJ

Background

- [1] The Plaintiff avers that he was born in Seychelles on the 1st day of December 1955 and that the Defendant is his biological sister. He claimed that, however, his birth was never registered in the register of birth at the Civil Status Office. He was nonetheless baptized in the Catholic Church and the ceremony was conducted at La Passe, La Digue on the 6th of January 1955. He avers that his mother's name is Andrine Faure, also known as " Marie Andrina Faure " and " Andrina Faure" , who is now deceased and that his father's name is Emmanuel Uzice. He avers that he has always lived with and had been cared for by Andrine Faure as a child. Plaintiff claimed that his non-registration is causing him some serious impediments. As a result of which he has no Seychelles National Identification Number, which means that he is not in receipt of a pension, though he has passed the pensionable age.
- [2] As a result, Plaintiff requests that this court orders and declares him as the child of Andrine Faure; that his birth be registered at the Civil Status Office with his mother's name entered as Andrine Faure and that the Chief Officer of the Civil Status be ordered to make the necessary entries accordingly.
- [3] The Defendant did not contest the averments in the Plaintiff's case.

Matters for the court's determination

- (1) Whether the Plaintiff is the biological child of Andrine Faure.
- (2) If the Plaintiff manages to prove his maternal descent whether he can be registered in the acts of birth as the child of the said Andrine Faure

The law

Section 31 of the Civil Status Act

Period within which declaration of birth must be made

31. (1) *The declaration of the birth of any child shall be made at any time within the 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.*
- (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 satisfaction 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 the birth of the person whose birth is sought to be registered.*
- (3) *If the birth to be registered be that of a person more than three months old, no such order shall be given by the judge, except on 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.

32. *The birth may be declared by the father and mother together, or if the father is not known, the mother alone, by any medical practitioner, midwife or other person*

having been present at the birth or by the owner or occupier of the premises on which the birth took place.

The act of birth shall be drawn up forthwith in the presence of two witnesses. No fee or duty of any kind shall be charged by the officer for receiving such declaration and drawing up the act of birth.

Facts to be mentioned in act

33. *In the act shall be mentioned the day, hour and place of birth, the sex of the child, the names given to it, the names, surnames, national identity numbers, profession and residence of the father and mother and those of the witnesses.*

Article 341 of the Civil Code of Seychelles

Proof of maternal descent is allowed. A child who claims such descent shall be bound to prove the confinement of the mother and his identity with the child of whom she was delivered.

Article 342 of the Civil Code of Seychelles

Proof of maternal descent shall carry with it, without prejudice to any special stipulations, the obligation to maintain and educate the child.

Section 6 of the Courts Act

6. *The Supreme Court shall continue to be a Court of Equity and is hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the law of Seychelles.*

The evidence

- [4] The Plaintiff testified that he is 65 years old and he was born on the 1st of December 1955 at the Seychelles hospital and that the Defendant is his biological sister. His mother's name is Andrine Faure, also known as Adriana Faure and Marie Andriana Faure. He does not have a Birth Certificate issued by the Civil Status as his birth was not registered, though he has a baptism certificate issued by the La Digue Roman Catholic Parish Church. The certificate which was produced reveal that the Mother's name was entered as Andrine Faure, whilst the father's name as Emmanuel Uzice. He testified that his mother has passed away and that he lived with the Defendant in the community with Andrine Faure and was commonly known to be the son of the deceased. Later he lived with his sister. He further states that he has been entitled to a pension since 2018, however, as his birth is not registered and having no ID card, he cannot claim his pension. As such, he is of the view that it is just and equitable that his birth be registered so that he can be issued with an Identity Card; that he be declared the child of Andrine and the Civil Status Register be amended.
- [5] Gemma Sultan, the Defendant did not resist the Plaintiff and testified for the Plaintiff. She testified that she is the sister of the Plaintiff, though they have the same parents, though her Birth Certificate does not contain any entry regarding her father. She states that the Plaintiff is the biological child of Andrine Faure. She is also her Godmother. She confirms the date and place of baptism of the Plaintiff and the correctness of his Baptism Certificate, as produced before the court. She stated that he has always lived with her mother and that the latter treated him as her son. She gave the reasons for the non-declaration as follows; the Plaintiff was born on Mahe, her mother was given a paper to declare her child and she gave that paper to an old lady who threw it away and her mother would not bother as these things were not as important then as it is now.

Submissions

- [6] In her final Written Submissions Learned Counsel invited this court to apply its equitable jurisdiction given the particular facts and circumstances of this case and also give the fact

that a strict application of the law would lead to the perpetuation of great injustice to the Plaintiff.

Discussions and determination

- [7] I have looked at the facts and circumstances of this case. Having done so I find that if I am to apply the law *stricto sensu*, the Plaintiff's birth cannot be registered under the provisions of Section 31 of the Civil Status Act given that both of his parents have passed away and the medical practitioner, midwife or other persons who may have been present at the birth are unknown. Alternatively, if the birth was at a private premises, the owner or occupier of the premises on which the birth took place are also unknown.
- [8] Moreover, given that he is more than three months old, it is at any rate clear that he would have needed to have a court order in order to register his birth under Section 31 (3).
- [9] Furthermore, a strict application of Article 341 of the Civil Code will be of little use with proof of his confinement by his mother being impossible, given the passage of time and the non-availability of material witnesses. The mode of proof of this Article suffers the same challenges as that of Section 31 of the Act.
- [10] This leaves this court with only one option if it does not want to render the Plaintiff Stateless, that is to make use of its equitable powers of this under Section 6 of the Courts Act. Its usage here is not because there is a total absence of the law but because the law as it stands, is insufficient to bring about a just remedy.
- [11] I have carefully considered the entirety of the evidence led before the court and I have tested the veracity of the witnesses evidence and having done so I considered that both the Plaintiff and Mrs Gemma Sultan to be witnesses of truth. The Plaintiff was indeed born of Andrine Faure on the 1st of December 1955 in Seychelles, however due to some strange twist of faith his birth was not registered in the Birth Register of the Civil Status. As a result, officially he has no parents; no civil status; is not a citizen and cannot enjoy the rights and be made to abide to his obligations under the Constitution. The Baptism Certificate of the Plaintiff shows that at the time of his Roman Catholic baptism, the name of his mother was entered as that of Andrine Faure. The Defendant who is his biological

sister and also his Godmother testified that the Plaintiff and herself, when they were young, were living as children in the custody of Andrine Faure. The community at large treated them as a family. The Plaintiff's evidence in that respect is therefore fully corroborated.

[12] The passage of time constraints the Plaintiff's case, it however does not constraint the underlying truthfulness and justice of his case. Accordingly, I find it just and equitable to make the following orders;

- (1) I declare that Peter Milton Faure is the biological child of Andrine Faure also known and referred to as "Marie Andrina Faure" and "Andrina Faure".
- (2) I order that the birth of Peter Milton Faure, a male child, born on the 1st of December 1955 in Seychelles of Andrine Faure be registered in the acts of birth of the Civil Status.
- (3) I order the Chief Officer of the Civil Status to make the necessary entries in the Register of Births as per the above order.

[13] Following the registration of his birth, the Plaintiff shall be registered as a Citizen of Seychelles and he shall be entitled to be paid his Social Security benefits and any other benefits that he is entitled in law.

Signed, dated and delivered at Ile du Port on 22nd day of October 2021



Govinden CJ