

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2021] SCSC 701  
CS 29/2021

**In the matter between:**

**Judette Maria**  
(rep by Mr. F. Bonte)

*Plaintiff*

v/s

**Patricia Sheila Mathiot**  
(rep by Ms. Allear standing in for Mr. B. Georges)

*Defendant*

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**Neutral Citation:** *Marie Judette v Mathiot Sheila Patricia CS 29/2021* [2021] SCSC 701  
(28<sup>th</sup> October 2021)

**Before:** Andre J  
**Summary:** Plea *in limine litis* – No cause of action.  
**Heard:** 28 July 2021  
**Delivered:** 28 October 2021

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**ORDER**

The Court orders as follows:

[1] The points *in limine* are set aside.

[25] The plaint raises a valid cause of action and a trial is necessary to dispose of the legal issues arising from this matter.

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**RULING**

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**ANDRE J**

[1] This Ruling considers whether there is merits in the pleas *in limine litis* as raised by the defendant as against the Plaintiff filed in CS No. 29/2021.

**Background (ex-facie the pleadings)**

[2] The plaintiff Judette Maria is the wife of the late Donald Mellon ‘the deceased’, who died on 29 January 2020.

[3] The deceased executed a “Last Will and Testament” and declared therein, that in the event of his death, he leaves behind all his movable and immovable property to his partner, the plaintiff. deceased testamentary intention also impliedly and expressed his intention to exclude his three adult children from inheritance of his properties.

[4] On 8 July 2020 plaintiff duly presented the Last Will and Testament to a Judge in chambers who perused, accepted and judicially validated the same by endorsing ‘*Ne Varietur*’ on it, and also ordered its registration accordingly. The document was registered at the Land Registry on 28 August 2020.

[5] Subsequent to the registration of the Will, the defendant, who is the daughter of the deceased, allegedly approached the court and applied for appointment as executrix to the estate of the deceased, falsely stating that the deceased had died interstate.

[6] Relying on the application by the defendant, the court granted an order (“the impugned order”) appointing the defendant as executrix to the deceased estate.

[7] In accordance with that order the defendant caused the registration of two immovable properties, two local business accounts and a car, into her name as the executrix of the estate of late Donald Mellon.

[8] In contesting the appointment of the defendant as executrix of the estate, the plaintiff applied to this court for an order to set aside the appointment as executrix on 6 April 2021.

[9] In the plea *in limine litis* as raised by the defendant, it is averred that:

- (i) The plaint discloses no cause of action;
- (ii) The laws of Seychelles do not recognise ‘declarations of intention’;
- (iii) The court has no power to make the order sought in the plaintiff’s prayer (d) as the plaintiff ought to make an application to the Court for her appointment in that respect.

[10] The defendant argues that the plaint does not disclose a cause of action. A cause of action is basically a set of facts or allegations that make up the grounds for filing a suit, or the legal basis for the filing of a suit, and the question is whether the plaintiff raises a cause of action in the plaint.

[11] The plaintiff clearly sets out the facts and outlines that the deceased left a Will referred to as a *declaration of intent* and that the defendant without the plaintiff’s knowledge applied to be appointed as executrix of the deceased’s estate. That consequent to that, the defendant caused the registration of property in her names and blocked banks accounts belonging to the deceased. Therefore, the plaintiff seeks that the appointment of the defendant as executrix be set aside, and that all acts done by the defendant including the registration be declared null and void.

#### **Analysis of the pleadings in line with the relevant law**

[12] It is this Court’s opinion that there is a valid and reasonable cause of action illustrated in the plaint as filed and this taking into account that there is an existing Will prepared by the deceased prior to his passing and validated by the Court. It is not clear at this stage the contents of the Will excepted what is averred in the plaint and which remains unconstested by the defendant in the statement of defence. Copy of the Will it is to be noted, is to be produced as evidence at the relevant stage of the hearing. The Plaintiff averred that a copy of the registered Will and the Order of court were attached to pleadings but none was provided.

[13] The Defendant also raises the point that the laws of Seychelles do not recognise a declaration of intention. In submission to this point *in limine*, the plaintiff states that the defendant has misunderstood the plaint, and clarifies that the plaint does not refer to any declaration of testamentary intention as subject matter of the cause of action but rather to a last will and testament of the deceased referred to as the declaration of testamentary intention just for the purpose of pleadings.

[14] In terms of Article 969 of the Civil Code of Seychelles, a Will may be a holograph or authentic or secret Will. A holograph Will is considered to be valid only if it is wholly written, dated and signed by the hand of the testator as per Article 970 and if it is subject to no other form. In terms of Article 1007, a holograph will, before being executed, must be presented to a judge in chambers. The will must be opened if sealed, and the judge must draw up a report of the presentation, opening and condition of the will and must order that it be deposited with a notary designated in the order.

[15] In paragraph 3 of the plaint, the plaintiff indicated that the deceased executed a Will and their exact words are:

*“the deceased executed a document, a declaration of intention titling it as “My Last Will and Testament”, hereinafter called the “declaration of testamentary intention.”*

[16] It is clear that the document was the deceased’s Will, as it was titled as such. The reference to the declaration of intention by the plaintiff was perhaps to establish the intention of the deceased/testator, and is open to speculation. This Will or document was also accepted and judicially validated by a Judge of this Court and thus it is considered therefore that this Will complied with all the requirements of a valid Will.

[17] Accordingly, this Court rules that the defendant’s contention has no merit and this matter should proceed to hearing to determine the merits of the case as alleged in the plaint.

[18] The defendant further argues, that the court has no power to make the order sought in the plaintiff's prayer (d) as the plaintiff ought to make an application to the Court for her appointment in that respect.

[19] In response to this the defendant stated that this issue does not arise since the deceased's assets have been bequeathed wholly to the plaintiff as per the last Will and Testament. Instead the prayer is simply asking the court for the cancellation of the appointment of the defendant as executrix, as it was done by way of false pretence by the defendant.

[20] In paragraph (d) of the prayers, the plaintiff sought an order for the appointment of the plaintiff as Executrix to the estate of the deceased, to manage and distribute the remainder to the children of the deceased according to law.

[21] As stated above, the deceased left a valid will in which he left behind all his movable and immovable property to the deceased, but it is not clear whether an executor was appointed for the estate.

[22] It will therefore be necessary for this Court to hear the evidence of both the plaintiff and defendant in order to make findings on this particular issue as raised.

### **Conclusion**

[23] In conclusion therefore, the points *in limine* are hereby set aside, following the above analysis and findings.

[24] Accordingly this Court finds that this case raises a valid cause of action and a trial is necessary to dispose of the legal issues arising from this matter.

Signed, dated and delivered at Ile du Port on the 28 October 2021.

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**ANDRE J**