

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC
MC 38/2021

In the Miscellaneous Cause between:

DANNY DANIEL ALLY
(Present/Rep. by Mr Olivier Chang-Leng)

Applicant

and

JEAN-YVES GIOVANI NICHOLAS ALLY

1st Respondent

and

DANIELLE ELFRIDA ALLY
(Both Present/Self represented)

2nd Respondent

Neutral Citation:	<i>Ally vs Ally & Or</i> (MC 38/2021) [2021] SCSC	(8 th November 2021)
Before:	B Adeline J	
Summary:	Appointment of executor	
Heard:	25 October 2021	
Delivered:	8 November 2021	

FINAL ORDER

Application by petition for appointment as executor – Article 1026 of the Civil Code of Seychelles Act – Deceased died intestate – Deceased’s estate comprises of immovable property only - Applicant has a lawful interest in the estate of the deceased - Applicant has no legal incapacity to be so appointed executor – Applicant is one of three children and only heirs of the deceased – The other two legal heirs withhold consent – Consent of all other parties interested in the succession not required for appointment – This Court appoints Danny, Daniel, Ally of Mont Signal, Mont Buxton, Mahe, Seychelles executor of the estate of the deceased, his late father Daniel, Antoine, Giovanni Ally also known as Giovanni Ally.

ORDER

B Adeline, J

- [1] By way of an application by petition, dated 5th May 2021, filed in Court on the same date, one Danny, Daniel, Ally of Mont Signal, Mont Buxton, Mahe, Seychelles (hereinafter referred to as “the Applicant” and, or “the Petitioner”) petitions this Court for an order appointing him executor of the estate of his late father Daniel, Antoine, Giovani, Ally also known as Giovanni Ally, who died intestate on the 14th April 2020, at Victoria, Mahe, Seychelles.
- [2] It is pleaded by the Applicant, that his late father (hereinafter referred to as “the deceased”) is survived by his three children, who are himself, and his two siblings, namely;
- (i) his brother Jean-Yves, Giovani, Nicholas, Ally born on the 14th November 1994, and
 - (ii) his sister Danielle, Elfrida, Ally born on the 16th January 1997.
- [3] It is contended by the Applicant, that at the time of his death, the deceased left behind his estate comprises of immovable property registered as title H2151 that needs to be vested into an executor for its proper administration.
- [4] The Applicant also contends, that he has no legal incapacity that may impede his appointment as executor of the estate of the deceased, and that he is legally capable and is willing to carry out the duties of an executor although he has not obtained the consent of his siblings for his appointment.
- [5] In their joint reply to the Applicant’s application, the 1st Respondent Jean-Yves, Giovani, Nicholas, Ally and the 2nd Respondent Danielle, Elfrida, Ally (hereinafter referred to as “the Respondents”) plead, that they object to the appointment of their brother, (the Applicant), as executor of the estate of the deceased for the following reasons, amongst others;

(i) “3. The Applicant has been hostile towards us since before the deceased passed away and we have reasons to believe that he will not be acting in a fair manner towards us in the discharge of his duties if he was to be appointed sole executor of the estate of the deceased”

(ii) “4. The deceased was residing with the 2nd Respondent for several months before he passed away, and the 2nd Respondent is very familiar with the affairs and properties of the deceased”.

[6] The Respondents also plead, that they are willing, able and desirous to be so appointed co-executors of the estate of the deceased together with the Applicant and moved the Court to appoint them as joint executors.

THE EVIDENCE

[7] The Applicant is a 39 year old who runs a maintenance services business. He is one of three children of his late father Daniel, Antoine, Giovanni, Ally (exhibit P1), who died intestate on the 14th April 2020, (exhibit P2). The other legal heirs are the Applicant’s siblings who are Jean-Yves, Giovanni, Nicholas, Ally (exhibit P3), and Danielle, Elfrida Ally (exhibit P4).

[8] At the time of his death, the deceased who died intestate, left behind his estate comprises of a parcel of land and a house built thereon, situate at La Gogue, Mahe, Seychelles registered as title H2151, (exhibit P5), which property now needs to be vested into an executor. The house is presently being occupied by the Applicant’s brother Jean-Yves, Giovanni, Nicholas, Ally, the 1st Respondent.

[9] The Applicant understands, that as executor, if he is so appointed, he will have to administer the estate according to the laws of intestacy. He stated, that he is not subject to any legal incapacity to be so appointed executor and that he is ready to carry out the duties of an executor as required of him by law.

- [10] The Applicant has sought to obtain the consent of his siblings for his appointment as executor, but has been unsuccessful. In his testimony, he stated, that his brother Jean-Yves, Giovanni, Nicholas, Ally initially agreed to consent to his appointment as executor and that he was meant to talk to their sister Danielle, Elfrida, Ally about it to obtain her consent too. When he later changed his mind he did not talk to their sister about it. The Applicant testified, that he did not approach his sister directly about needing her consent for his appointment as executor because they were not on good speaking terms, she having said something bad about him.
- [11] The Applicant refuted the suggestion, that he has been hostile towards his siblings even before their father passed away. He testified, that since he filed in Court the application for his appointment as executor, he has been under constant verbal abuse, and has been accused of being a thief by his brother Jean-Yves on Social Media to the point that he had to instruct counsel to write a letter to him threatening him with legal action, (exhibit P6).
- [12] It is the Applicant's testimony, that although his brother Jean-Yves has been occupying the house since their father passed away, he has not been maintaining the house as he should have done, and that can be seen from the photographs of the house, (exhibit P7). As per his testimony, one of the reasons why he wants to be appointed executor of the estate of his late father, is to carryout the necessary maintenance and repair works on the house.
- [13] The evidence of the 2nd Respondent Danielle, Elfrida, Ally who was the only one available in Court to give her testimony, is that her late father is survived by three children, including her, who are the only legal heirs entitled to inherit from his estate. She confirmed, that her late father's estate is only comprised of a parcel of land and a house built thereon. She stated, that she and her brother objects to the appointment of the Applicant as executor of the estate of their late father.
- [14] According to her testimony, the Applicant should have come and talk to them about him wanting to be appointed executor of their late father before filing the application in Court.

Therefore, having not done so, they both want to be appointed joint executors of the estate of their late father. The 2nd Respondent stated, that the Applicant's motive for wanting to be appointed executor of the estate of their late father is because he wants to sell the house rather than because he wants to carryout maintenance works on it. She explained, that had the Applicant spoken to them about renovation works to be carried out on the house, they would have put their resources together to renovate and maintain the house. She reckons, that the problem between them and the Applicant has been the lack of communication by the Applicant.

[15] The relevant law to determine this application, which application was filed in Court on the 5th May 2021 prior to coming into force the Civil Code of Seychelles (Amendment) Act 2021, is Article 1026 of the Civil Code of Seychelles Act, Cap 33, that introduced the concept of executor in 1976. Article 1026 reads;

“If the succession consists of immovable property, or both immovable property and movable property, and the testator has not appointed a testamentary executor, or if an executor so appointed has died, and or the deceased left no will, the Court shall appoint such an executor at the instance of person or persons having a lawful interest. A legal person may be appointed to act as executor, but a person who is subject to some legal incapacity may not be so appointed”.

[16] Furthermore, Article 774.2 of the Civil Code of Seychelles reads;

“A succession consisting of immovable property only, or of both movable and immovable property, shall devolve upon the executor who shall act as a fiduciary as laid down in Article 724 of Civil Code”

[17] In addition, Article 724.4 of the Civil Code of Seychelles, in part, reads;

“If any part of the succession consists of immovable property, the property shall not vest as of right in any of its heirs but in an executor who shall act as fiduciary”.

- [18] In the instant case, the two other legal heirs of the deceased both of whom are the Applicant's siblings, have not given any legal basis for their objection to the Applicant's appointment as executor of the estate of the deceased, their late father. Their unreasonable objection to the Applicant's appointment seems to have been motivated by "family disputes" following the death of the deceased. They are brothers and sister who are not on good speaking terms, and the relationship between them is bad. In the circumstances, to appoint them as joint executors will in my view, be a recipe for disaster given the animosities that exist between them which was evident during the course of the proceedings before this Court, that unfortunately, led to the 1st Respondent being removed from the Court room.
- [19] It is well settled law, that "nothing in the Civil Code requires the person who applies for the appointment of an executor to obtain the consent of all other parties interested in the succession", Westergreen v/s Whiting Civ App 9/1998. All that is required, is for the other legal heirs of the deceased to be notified of the proceedings for appointment of the executor or executors. It follows, therefore, that notwithstanding the Respondent's objection to the Applicant's appointment as executor of the estate of the deceased, the Court is still required by law to make the appointment so long as the statutory requirements are met.
- [20] Therefore, on account of the evidence laid before this Court, I am satisfied, that the Applicant who is the son of the deceased, has a lawful interest in the estate of the deceased. I am also satisfied, that the Applicant who is not subject to any legal incapacity, is a fit and proper person to be appointed executor of the estate of the deceased. I am further satisfied, that the deceased's estate comprises of immovable property only, and that the same needs to be vested into an executor who shall act as fiduciary in its administration in accordance with the law.
- [21] For the aforementioned reasons in the preceding paragraphs of this order, this Court hereby grant the application, and accordingly, appoints Danny, Daniel, Ally of Mont

Signal, Mont Buxton, Mahe, Seychelles executor of the estate of the deceased, his late father Daniel, Antoine, Giovanni Ally also known as Giovanni Ally who died intestat on the 14th April 2020 at Victoria, Mahe, Seychelles.

Signed, dated and delivered at Ile du Port 8 November 2021.

B Adeline, J