SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2021] SCSC 924
MA 71/2021
(Arising in MC 114/2020)

In the matter between

MARIE ANTOINETTE BELLE	**1st Applicant**
MARIE JULIE MARLENE VIDOT *(rep. by Frank Elizabeth)*	**2nd Applicant**

and

TATIANA JOYCELINE PHARLA (formerly Vidot) *(rep. by Bernard Georges)*	**1st Respondent**
SELBY JIM DANNY VIDOT	**2nd Respondent**
MARGARET SYLVIA VIDOT	**3rd Respondent**
JOHN MAXIME VIDOT	**4th Respondent**
CLIFFORD FRAZIER VIDOT	**5th Respondent**
RALPH GILBERT VIDOT	**6th Respondent**
STANLEY DORENVILLE VIDOT	**7th Respondent**
SONY JUSTIN FRANCIS VIDOT	**8th Respondent**
THEOPHANE HENRI VIDOT	**9th Respondent**
NAJIA THERESE VIDOT	**10th Respondent**
CHRISTINA MELBA FRANCOISE VIDOT *(2nd to 11th respondents unrepresented)*	**11th Respondent**

Neutral Citation:	*Belle & Anor v Pharla & Ors* (MA71/2021) [2021] SCSC 924 (20 December 2021).
Before:	Carolus J
Summary:	Intervention – Section 117 of the Seychelles Code of Civil Procedure ("SCCP")– Joinder - Section 112 SCCP.
Delivered:	20 December 2021

ORDER

(a) In terms of section 112 of the SCCP, I find that the 2nd applicant Marie Julie Marlene Vidot and the other heirs of the deceased namely Marie Yvon Maxime Vidot, Petrina Marlene Belle, Don Dean Belle, Dina Doreen Belle and Bertine Louise Belle, should be joined as respondents to the Petition for division in kind of parcel C6455 in MC 114/2020.

(b) Before they are joined as respondents to the Petition they must make the necessary application to be registered as co-owners of parcel C6455. This must be done forthwith and the Court will not condone any unnecessary delay in doing so.

(c) Once they are registered as co-owners of parcel C6455, the 1st respondent/Petitioner in the Petition for division in kind in MC 114/2020 shall amend the Petition to add them as respondents thereto, and serve them and the original respondents with the amended Petition with summons.

(d) The Petition for division in kind in MC 114/2020 is stayed until such time as the above is complied with.

(e) All parties shall bear their own costs.

RULING

E. CAROLUS J

Background, Pleadings & Evidence

[1] This order arises out of a motion to intervene in MC 114/2020 ("the Principal Petition"). In terms of the Principal Petition the petitioner therein Tatiana Joyceline Pharla (formerly

Vidot) (1st respondent herein) seeks the division in kind of parcel C6455 of which she and the respondents to the petition (2nd to 11th respondents herein) are the registered co-owners.

[2] The motion for intervention is made by way of notice of motion supported by an affidavit sworn by the 2nd applicant Marie Julie Marlene Vidot, to which relevant documents are exhibited. In terms of their motion the applicants seek an order adding them as parties to the Principal Petition, leave to file their statements of demand and any other order deemed fit by the Court.

[3] In her affidavit the 2nd applicant avers that she is the daughter of the late Dorenville Vidot (Birth Certificate exhibited) who passed away on 9th June 1999 (Death Certificate exhibited) leaving behind 16 children including the 2nd applicant, as confirmed by the judgment of N. Juddoo J in CS 311/199 dated 9th June 1999. The late Dorenville Vidot will be referred to as the deceased in this judgment.

[4] The 2nd applicant avers that parcel C6455 was and is part of the deceased's estate and that as one of his heirs she is a joint-proprietor of the property. However the executor of the deceased's estate Mr. Gerald Pragassen, by way of an affidavit on transmission by death sworn on 26th December 2018 and registered on 27th January 2020 (exhibited) transferred parcel C6455 only to the following persons, all of whom are respondents to the present motion for intervention: the deceased's surviving wife Tatiana Joyceline Pharla (formerly Vidot); their four children born during their marriage namely Najia Therese Vidot, Ralph Gilbert Vidot, Clifford Frazier Vidot and Margaret Sylvia Vidot; and their six children born prior to their marriage who were declared to be the children of the deceased by the judgment of N. Juddoo J of 9th June 1999 referred to above, namely Stanley Dorenville Vidot, John Maxime Vidot, Christina Melba Francoise Vidot, Sony Justin Francis Vidot, Selby Jim Danny Vidot and Theophane Henri Vidot. She avers that she has neither authorised nor consented to the said transfer nor been compensated for the same.

[5] The 2nd applicant avers that the 1st respondent has excluded her and other joint-proprietors of parcel C6455 from the Principal Petition. She states that these other joint proprietors are Marie Yvon Maxime Vidot, a son of the deceased; Marie Antoinette Belle (1st applicant herein) who is stated in the judgment of N. Juddoo J dated 9th June 1999 to have had a

relationship with the deceased; and the four children born of the relationship between the deceased and the said Marie Antoinette Belle, namely Petrina Marlene Belle, Don Dean Belle, Dina Doreen Belle and Bertine Louise Belle.

[6] The 2nd applicant avers that she has an interest in the Principal Petition in that her rights as joint-proprietor of parcel C6455 will be affected by the outcome of the said Petition and therefore she needs to intervene therein to protect her rights and interests. She further avers that none of the parties to the Petition can adequately represent her legal interests and proprietary rights in the said property and that unless she is allowed to intervene she will not be able to adequately protect such rights and interest.

[7] The 1st respondent filed a "REPLY TO MOTION FOR LEAVE TO INTERVENE" dated 2nd June 2021 opposing the motion for the reasons stipulated in the two supporting affidavits also dated 2nd June 2021 sworn by herself. The reply and affidavits dated 2nd June 2021 replace the original reply dated 12th May 2021 and two supporting affidavits both dated 17th May 2021. The second set of documents dated 2nd June 2021 were filed to reflect amendments to the Principal Petition and supporting affidavits so that the petitioner (1st respondent herein) was referred to therein as Tatiana Joyceline Pharla (formerly Vidot) instead of Tatiana Joyceline Vidot. I note the following inconsistencies between the two affidavits dated 2nd June 2021, which since they both bear the same date, I will refer to as the first and second affidavit according to the order in which they are attached to the reply: the first affidavit being the one immediately following the reply and the second affidavit being the one following the first affidavit.

[8] In paragraph 3 of the first affidavit dated 2nd June 2021 the 1st respondent denies paragraph 3 of the affidavit in support of the motion that the 2nd applicant is the daughter of the deceased. However in paragraph 3 of the second affidavit dated 2nd June 2021, the same is admitted.

[9] In paragraph 7 of the affidavit in support of the motion 2nd applicant avers that *"as an heir of the Deceased, I am a joint-proprietor of Title number C6455"*. This is admitted by the 1st respondent in paragraph 7 of the first affidavit dated 2nd June 2021 but in paragraph 6

of the second affidavit dated 2nd June 2021 she admits only that 2nd applicant is an heir but denies that she is a joint-proprietor of the property.

[10] Paragraph 8 of the affidavit in support of the motion speaks of the transfer of parcel number C6455 by way of affidavit on transmission by death to some of the heirs of the deceased by the executor of the deceased's estate. The 1st respondent denies this in paragraph 8 of the first affidavit dated 2nd June 2021 but admits it in in paragraph 7 of the second affidavit dated 2nd June 2021.

[11] At paragraph 9 of the affidavit in support of the motion the 2nd applicant avers that she has not authorised or consented to the transfer of parcel C6455 by the affidavit on transmission by death and that she has not been compensated for the same. This is admitted by the 1st respondent in paragraph 9 of the first affidavit dated 2nd June 2021 but at paragraph 8 of the second affidavit dated 2nd June 2021, she states that it is not within her knowledge.

[12] There are other inconsistencies which I shall not waste further time in pointing out. However not only is it clear that there are discrepancies between the two affidavits dated 2nd June 2021, but it also appears that in the first of these two affidavits, reference has been made to the wrong paragraphs of the affidavit in support of the motion. However as stated these two affidavits were sworn on the same date and both of them were filed together with the 1st respondent's answer in support thereof. There is no indication as to which affidavit was made first although, as explained above, the Court has referred to them as the first and second affidavit for convenience and clarity. Affidavit evidence is the sworn written evidence of the deponent and the Court in this case is faced with conflicting evidence contained in the two affidavits sworn by the same person which ultimately affects the extent to which such evidence may be relied on. Furthermore, in addition to its work, the Court now has the tedious task of having to sift through the two affidavits and deciding which parts thereof to rely on. Such a careless and lackadaisical approach of counsel to their work is unacceptable and should be strongly discouraged.

[13] Despite the inconsistencies highlighted above I will attempt to summarise the affidavit evidence of the 1st respondent as best as I can. First, she raises a point of law that the motion for intervention is wrong in form and therefore defective as one cannot intervene in a case

filed by way of petition but can only do so in in a suit commenced by plaint. She states that the proper course of action for the 2nd applicant would be to file an application for joinder instead.

[14] On the merits, the 1st respondent denies that the 1st applicant is an heir of the deceased or that she has any rights to or interests in, or is a co-owner of parcel C6455. She avers that the 1st applicant was the deceased's mistress while she (the 1st respondent) was married to him. She further avers that the deceased converted a store into a small house on the said parcel for the 1st applicant to live in while she (the 1st respondent) lived in a house on the same parcel which she and the deceased built for them to live in. She avers that the 1st applicant could not have been included in the Principal Petition as she has no interest in the land.

[15] With regards to the 2nd applicant, it does not appear that the 1st respondent is contesting that she (2nd applicant) is the daughter of the deceased and consequently his heir, but is relying on the fact that she has not been registered as a co-owner of parcel C6455 pursuant to the filing of the affidavit on transmission by death, to oppose the motion for intervention. At paragraph 6 of the 2nd affidavit dated 2nd June 2021, the 1st respondent avers that *"[p]aragraph 7 of the affidavit, that the 2nd prospective intervener is an heir of the deceased, is admitted save that it is denied that that she is a joint proprietor of parcel C6455 as she was not registered as such"*. In the same vein at paragraph 11 of the same affidavit it is averred that *"[p]aragraph 12 of the affidavit, which states that the 2nd prospective intervener has an interest in the matter, is admitted. However it is repeated that she is not a registered join-proprietor of parcel C6455"*. The 1st respondent further avers at paragraph 8 of the same affidavit of 2nd June 2021 that it is not within her knowledge whether or not the 2nd applicant authorised or consented to the transfer of parcel C6455 to the current registered proprietors as she was not the one who swore the affidavit on transmission by death effecting such transfer. She goes on at paragraph 10 to deny that she has not excluded the 2nd applicant and other joint-proprietors of parcel C6455 from the Principal Application but avers that the documents she relied on to prepare the petition did not disclose them as joint-proprietors. She further avers that in any event she is seeking

the extraction of her 50% share in the property as the deceased's widow and that any other person's interest therein will not affect her share.

[16] The other respondents have not filed any objections to the motion for intervention.

[17] Counsel for the 1st respondent has filed submissions both on the point of law and the merits which will be referred to as appropriate in the analysis below. Counsel for the applicants has declined to file any submissions despite having been allowed time to do so.

Analysis

Point of Law

[18] I shall deal with the point of law before addressing the merits of the Application that is, whether an Application under section 117 of the SCCP to intervene can properly be made in a matter commenced by way of Petition.

[19] Section 117 of the SCCP provides as follows –

> *117. Every person interested in the event of a pending suit shall be entitled to be made a party thereto in order to maintain his rights, provided that his application to intervene is made before all parties to the suit have closed their cases.*

[20] The word "suit" is defined as follows in section 2 of the SCCP –

> *"suit" or "action" means a civil proceeding commenced by Plaint;*

Underlining is mine.

[21] This issue of whether the word "suit" refers only to matters commenced by way of a Plaint has arisen and been determined many times by our Courts. One such case is that of *Ex Parte Allen Jude Medine* (CS 266/2004) [2007]. In that case the Applicant made an ex parte application seeking a declaration to establish his paternal descent under Article 340 of the Civil Code of Seychelles Act. Paragraph 3 of that Article provides that this must be done by way of an "action". The Court held that in view of the definition of "action "in the SCCP a party seeking a declaratory relief in respect of paternal descent under Article 340

should commence the action by way of plaint. In my view this is a correct statement of the law.

[22] This interpretation is followed in the case of *Morin v Ministry of Social Affairs* (2011) SLR 201, referred to in counsel for the 1st respondent's submissions. In that case the court considered the question of whether one can intervene in judicial review proceedings and found that the proceedings having been commenced by way of Petition and not by plaint could not be referred to as "a pending suit" envisaged by section 117 SCCP. Consequently it held that although Air Seychelles which was seeking to intervene in the proceedings was an interested person in those proceedings and its presence before the court may be necessary, the law as it stands does not allow its intervention.

[23] This position has been maintained in several other cases including *Stravens v MLUH* (MC 007/2013)SCSC231 (25 July 2014) in which Renaud J found that section 117 of the SCCP only applied to suits and not to a Petition for Judicial Review.

[24] In view of the established case law, I find that the present application for intervention was not properly made, as it was made to intervene in a Petition for division in kind which was not commenced by way of a plaint.

[25] However I do not believe that an interested party in a matter commenced by way of an Application or a Petition should be left without recourse. In *Ex Parte Tornado Trading & Enterprises Est* (XP150/2018) SCSC 633 (4th July.2018) Vidot, J held that a person who is not a party to judicial review proceedings, in that case a company BWT, commenced by way of Petition cannot intervene in such proceedings under section 117 of the SCCP which only allows a person to do so in a pending suit. He stated as follows –

> *Section 2 of the SCCP defines "suit" as "civil proceedings commenced by plaint". It does not appear that the definition includes proceedings began by way of Petition. That suggests that BWT would not have been able to file a motion for intervention.*

[26] Vidot J however went on to say that the court has a discretion under section 112 of the SCCP to order the joinder of any person as a party to the case whose presence would be relevant to the outcome of the case. In that respect he states –

> *Nonetheless section 112 of the SCCP provides that no cause or matter shall be defeated by reason of mis-joinder or non-joinder of parties. The court is further given the discretion at any time with or without application of either party, and on any such terms as may appear to the court to be just, order that any persons who ought to have been joined, or whose presence before the Court may be necessary in order to enable the court to effectively and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. Section 2 of the SCCP defines "cause" to include any action, suit or original proceedings between a plaintiff and a defendant, whilst "matter" is defined as every proceeding in court not in a cause. This means that the court may cause BWT to be joined.*

[27] Section 112 of the SCCP provides as follows:

> *112. No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.*
>
> *The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the names of any persons improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added.*

[28] The Court is therefore empowered under that section, to add as a party, any person whom it considers ought to have been joined, or whose presence before the court, it considers necessary *"to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter"*.

[29] I do not find this to be the case in regards to the 1st applicant. I agree with counsel for the first respondent that as a concubine of the deceased, she has no legal rights or interest in

parcel C6455. The matter would have been different if her children who have been declared as children of the deceased by the judgment of N. Juddoo J dated 9th June 1999 had been minor children. However it appears from the same judgment that they are of age.

[30] As regards the 2nd applicant, I find that as an heir of the deceased which is not disputed, she is entitled to a share of parcel C6455, and therefore has an interest in the property. According to the judgment of N. Juddoo J, other than the 2nd applicant and the 2nd to 11th respondents, the deceased had other children namely Marie Yvon Maxime Vidot and the children that he had with the 1st applicant namely Petrina Marlene Belle, Don Dean Belle, Dina Doreen Belle and Bertine Louise Belle, who are also heirs of the deceased and entitled to a share of his succession. It is only as a consequence of being excluded from the affidavit on transmission by death, that they and the 2nd applicant were not registered as proprietors of property left behind by the deceased.

[31] Counsel for 1st respondent submits that in drafting the application for division in kind the petitioner relied on the affidavit on transmission by death and the official search document for parcel C6455, neither of which disclosed the applicants as registered proprietors of the of the parcel, hence the reason why they were not made parties to the Principal Petition. It is further submitted that in order to claim an interest in the property the 2nd applicant first has to take steps to be registered as a co-owner.

[32] I agree that the 2nd applicant and the other heirs of the deceased identified in paragraph [30] above have to be registered as co-owners of parcel C6455 in order to be made parties to a Principal Petition for division in kind, and to exercise their rights as co-proprietors of the property. This is also so that their share to the property may be ascertained and the share of the other parties who are already registered adjusted where necessary. However given that they are heirs of the deceased and entitled to a share of his succession, and that the reason why they are not registered as co-proprietors of the property is because they were excluded from the affidavit of transmission by death without, it seems, any legal basis, it is my view that the fact that they are not registered co-proprietors should not be used to prevent them from exercising their rights in regards to such property.

[33] I also agree with the submissions of counsel for the 1st respondent that given that the 1st respondent as the surviving spouse of the deceased is entitled to one half of the property, registration of the 2nd applicant and other heirs of the deceased as co-owners will not affect her half share in that she will still be entitled to a half share after their registration as co-proprietors. Their registration as co-owners will not reduce her share. It is the undivided half share to which all the deceased's children are entitled in equal shares, which will be affected by such registration, as it will then be co-owned by all of them, making their shares smaller. However I do not agree with Counsel's submission that *"the right to divide the property in kind is one which affects the right of the petitioner only as a co-owner and not one which affects the whole co-ownership"* in that regard. Counsel fails to take into account that the property is still undivided with no specific part being allocated to the 1st respondent as the owner of a half share and to the other co-owners of the other undivided half share. It is only when the appraiser submits his report and proposes the lots to be allocated to the parties to a division in kind that there is demarcation of the property. The parties are then permitted to show cause against the confirmation of appraiser's report. They can do so for example, as has happened in numerous instances previously, where the formation of the lots is done in a manner where one party is allocated the best part of the property and the others are left with the less favourable part which is either unbuildable or difficult to develop.

[34] It is my view therefore, that to proceed with the division in kind without the 2nd applicant and other heirs of the deceased being made parties to the Petition for such division in kind will put them at a disadvantage in that they will not be able to contest the allocation of plots, should they wish to do so. Consequently, in terms of section 112 of the SCCP, I find the 2nd applicant Marie Julie Marlene Vidot and the other heirs of the deceased namely Marie Yvon Maxime Vidot, Petrina Marlene Belle, Don Dean Belle, Dina Doreen Belle and Bertine Louise Belle, who are entitled to a share of parcel C6455, ought to have been joined as respondents to the Principal Petition and that their presence is necessary in order for the court to decide on the said Petition effectively and completely. However as stated, before this is done they will need to be registered as co-owners of parcel C6455 and must make the necessary application in that regard.

Decision

[35] Accordingly, I hold that Marie Julie Marlene Vidot, Marie Yvon Maxime Vidot, Petrina Marlene Belle, Don Dean Belle, Dina Doreen Belle and Bertine Louise Belle, should be joined as respondents to the Principal Petition.

[36] However, they must first be registered as co-owners of parcel C6455, and must make the necessary application in that regard forthwith. The Court will not condone any unnecessary delay in doing so.

[37] Once they are registered as co-owners of parcel C6455, the 1st respondent/Petitioner in the Principal Petition for division in kind in MC 114/2020 shall amend the Petition to add them as respondents thereto, and serve them and the original respondents with the amended Petition with summons.

[38] The Principal Petition is stayed until such time as the above is complied with.

[39] I dismiss the application insofar as it concerns the 1st applicant.

[40] Each party shall bear their own costs.

Signed, dated and delivered at Ile du Port on 20th December 2021.

E. Carolus J