

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2021] SCSC 931

CS70/2021

In the matter between:

**ANTOINE JOHN BRISTOL**  
**MARIEVONNE THERESITA BRISTOL**  
**BERNARD RICHARD BRISTOL**  
*(rep. by Mr. Brian Julie)*

**First Plaintiff**  
**Second Plaintiff**  
**Third Plaintiff**

and

**CHARLIE EMILE JOSEPHINE**  
*(unrepresented)*

**Defendant**

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**Neutral Citation:** Bristol John Antoine & Ors v Josephine Emile Charlie (*CS No. 70/2021*)  
[2021] SCSC 931 (30 December 2021)

**Before:** Andre J

**Summary:** Presumption of paternity; ‘*Recherche de paternite*’; Articles 321 and 340 of the Civil Code (Cap 33) (“Civil Code”)

**Heard:** 10 December 2021

**Delivered:** 30 December 2021

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**ORDER**

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The Plaintiff is allowed and the Court makes the following order:

- (i) The Plaintiffs Antoine John Bristol, Marievonne Theresita Bristol, and Bernard Richard Bristol are declared as the biological children of the deceased, late Georges Antoine Josephine, and that the Chief Civil Status Officer of the Civil Status office is ordered to record that fact in the register of births and amend the Plaintiffs’ birth Certificates accordingly.

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**JUDGMENT**

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**EX-PARTE**

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**ANDRE J**

**Introduction**

- [1] This Judgment arises out of a plaint filed on 21 July 2021 wherein Antoine John Bristol, Marievonne Theresita Bristol, and Bernard Richard Bristol (“*Plaintiffs*”), are moving for orders that Plaintiffs are declared as the biological children of late George Antoine Josephine (“deceased”) and that the Chief Civil Status Officer record that fact in the register of births and amend the Plaintiffs’ birth certificates accordingly.
- [2] The defendant is the brother of the deceased, and he appeared before this Court on 27 October 2021 and confirmed that he has no objections to the plaint, hence the hearing proceeded ex-parte on the above-mentioned date.

**Plaintiffs’ case**

- [3] This is an action of “*recherche de paternite*” brought under Article 340 of the Civil Code.
- [4] The Plaintiffs' names are registered as Antoine John Bristol, Marievonne Theresita Bristol, and Bernard Richard Bristol with only the name of their mother one Johnette Bristol appearing in their birth certificates (Exhibit P2).
- [5] The Plaintiffs seek to prove that their biological father is the late George Antoine Josephine, who died intestate on the 27<sup>th</sup> day of December 2020. The birth and death certificates of the deceased are provided as Exhibit P1.
- [6] Because of the aforesaid, and given that the Plaintiffs are widely recognized as the deceased’s children by society at large and by the deceased’s family, the Plaintiffs seek the above-stated Orders.

## **Evidence**

[7] The third Plaintiff, Bernard Richard Bristol, in essence, testified in support of the plaint as follows:

[8] That himself, the Second and Third Plaintiffs are the biological children of the deceased, who is their father, but that his name does not appear on their birth certificates.

[9] That the Plaintiffs' mother referred to above, lived in concubinage with the deceased at Les Mamelles during which time the Plaintiffs were born.

[10] The deceased did not acknowledge them and as result, their surname on their birth certificates is that of their mother, although they were known and accepted in the community and to the neighbors as the children of the deceased.

[11] He further testified that in his capacity as their father, the deceased contributed towards their livelihood, maintenance, and education and that the deceased's brother, the Defendant their uncle, has always known them as the deceased's children.

[12] That the deceased even granted the Third Plaintiff, Bernard Richard Bristol, a general power of attorney to manage the deceased's estate in September 2020. (Exhibit P3)

[12] Finally, that the court grants orders that Plaintiffs namely, Antoine John Bristol, Marievonne Theresita Bristol, and Bernard Richard Bristol be recognized as the natural children of the deceased namely late Georges Antoine Josephine, and that the Chief Executive Officer of Civil Status record this fact in the Plaintiffs' Birth Certificates.

## **Legal analysis and findings**

[13] The instant application concerns the paternity of a child.

[14] Article 334 of the Civil Code provides that:

*“The recognition of an illegitimate child shall be made by an authentic document if it has not been made in the act of birth. It may also be made by a declaration signed or marked before a Judge, a Magistrate, a civil status officer, or the Registrar of the Supreme Court.”*

[15] Article 340, in turn, provides that:

*“1. It shall not be allowed to prove paternal descent, except:*

- (b) when an illegitimate child is in possession of status with regard to his natural father or mother as provided in Article 321*
- (d) where there exists letters or other writings emanating from the alleged father containing the unequivocal admission of paternity.*
- (e) when the alleged father or mother have notoriously lived together as husband and wife, during the period of conception.*
- (f) where the alleged father has provided for or contributed to the maintenance and education of the child in the capacity of a father.”*

[16] Article 321 of the Code, further provides that:

- “1. Possession of status may be established when there is sufficient coincidence of fact indicating the relationship of descent and parenthood between a person and the family to which he claims to belong.*

*The principal facts are:*

*That the person has always borne the name of the father whose child he claims to be;*

*That the father has been treating him as his child and that, in his capacity as a father; he was providing for his education, maintenance, and start in life;*

*That he has always been recognized as a child of that father in society; and*

*That he has been recognized as such by the family.*

- 2. Natural descent may also be established by the possession of status, both as regards the father and the mother in the same manner as legitimate descent.”*

[17] As transpired from the evidence of the third Plaintiff, Bernard Richard Bristol, the deceased has always been recognized as the father of the Plaintiffs in society, by the mother of the Plaintiffs, and even by the deceased's brother; that the deceased, during his lifetime treated the Plaintiffs as to his children from their birth, up to his death by maintaining them as his children. This is further corroborated by Defendant's admission of 27 October 2021.

[18] It is considered that the evidence as led by the third Plaintiff, Bernard Richard Bristol, on behalf of the Plaintiffs is sufficient on a balance of probabilities towards the proof of enjoyment of possession of status by the Plaintiffs vis-à-vis the deceased. The evidence adduced has established sufficient coincidence of facts indicating the relationship of descent and parenthood between the deceased and the Plaintiffs.

### **Conclusion**

[19] It follows thus, that the following orders are made:

- (i) The Plaintiffs; Antoine John Bristol, Marievonne Theresita Bristol, and Bernard Richard Bristol are declared as the biological children of the deceased, late Georges Antoine Josephine, and that the Chief Civil Status Officer of the Civil Status office is ordered to record that fact in the register of births and amend the Plaintiffs' birth Certificates accordingly.
- (ii) I so order.

Signed, dated, and delivered at Ile du Port on the 30<sup>th</sup> day of December 2021

**S. ANDRE**

**Judge of the Supreme Court**