

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 84

CS 94 of 2019

In the matter of:

DANIELLE LUC

(rep by Ms. K. Dick)

Plaintiff

and

FULGENCIA KNOWLES

(rep by Mr. R. Durup)

Defendant

Neutral Citation: *Luc v Knowles* (CS 94 of 2019) [2021] SCSC 84 (26th March 2021)

Before: Andre J

Summary: Disposition by Will; Prescription

Heard: 2nd December 2020 (Closure of Pleadings)

Delivered: 26th March 2021

ORDER

The Court makes the following orders:

- (i) The plaint is dismissed on the *plea in limine litis* on the ground of prescription of five as analysed; and
- (ii) Each party shall bear their own costs.

JUDGMENT

ANDRE J

Introduction

[1] This Judgment arises out of a plaint dated the 1st April 2019 and filed on the 24th June 2019, wherein Danielle Luc (*“plaintiff”*), prays for judgement in her favour and that Fulgencia Knowles (*“defendant”*)

pays her the sum of Seychelles Rupees One Hundred and Eight Thousand Three Hundred Seventy-Nine and Sixty Five cents (SCR 108,379.65/-) with costs and interest. The above claim arises out of an alleged disbursement of funds from the account of one late Kenneth Alfred Knowles ("*the deceased*"); and any other Order that the Court deems fit.

- [2] The defendant by way of statement of defence of the 27th August 2019 as filed on the 28th August 2019, **raised a plea in limine litis stating that the plaint is time barred**. It is also averred by the defendant that the plaintiff was not the concubine of the deceased, she was merely working in the same household as the deceased. The defendant claims that she was at all material times married and in a committed relationship with the defendant. It is further averred by the defendant that at no point did the deceased ever inform her of any valid will. She claims that she had was entitled to the assets of the deceased, as the married spouse and that to her knowledge and belief the deceased had died intestate. (Emphasis is mine).
- [3] The defendant denies the fact that due to the disbursement the bequest of the deceased to the plaintiff was rendered meaningless, and avers that the plaint is sought to be dismissed with costs based on the above-stated defence.

Factual and procedural background

- [4] The plaintiff alleges that she was the concubine of the deceased. The defendant at all material times was the legal spouse of the deceased.
- [5] The plaintiff alleges that the deceased held an account at the Seychelles Commercial Bank, bearing account number 5113983002.
- [6] The plaintiff further alleges that the deceased passed away on 21st July 2013 and upon his death had left the whole of his estate including the

funds in the above-mentioned account to the plaintiff by means of a will.

- [7] Plaintiff avers that two days after the death, the defendant, without first verifying the fact, swore an affidavit stating that the said Kenneth Alfred Knowles died intestate. The defendant removed the sum of Seychelles Rupees One Hundred and Eight Thousand Three Hundred Seventy-Nine and Sixty-Five cents (SCR 108,379.65/-) held in the above-mentioned account. The plaintiff further avers that in receiving the said funds, the defendant committed a fault for which the defendant is liable. As the spouse of the deceased, the defendant was not entitled to the total of the said funds. The plaintiff moves for an Order be given in the favour of the plaintiff and that the defendant pays the total sum of Seychelles Rupees One Hundred and Eight Thousand Three Hundred Seventy-Nine and Sixty-Five cents (SCR 108,379.65/-) with interest and cost.
- [8] The defendant claims that the plaintiff was merely a worker in the household where the deceased also worked and not his concubine.
- [9] The defendant further admits that as the married spouse of the deceased, she was entitled to the assets and to her knowledge and belief her husband had died intestate.
- [10] Furthermore, the defendant prays that the Court dismisses the plaint with costs.

Evidence

- [11] At the hearing the plaintiff testified and called two witnesses and the defendant testified on her own behalf.
- [12] The plaintiff testified that the reason behind the filing of this plaint is because she wishes to carry out the wishes of her late partner, as well

as give a share of the money to the deceased children; namely Philip Knowles, Kenny Knowles and Maryse Knowles (an adoptive child).

- [13] The plaintiff testified further that she was notified by Ms. Tessie Ellinas, the best friend of the deceased that there was a document left by the deceased for her after the deceased death. She later found out that it was a last will and testament. She went to see Mr. Bernard Georges who was signatory of the will and was then advised that the will is going to be registered and that she can go to the bank to notify them. The bank informed her that unfortunately the money had already been disbursed to the defendant. The plaintiff did not receive a cent of what had been bequeathed to her.
- [14] The plaintiff's first witness was Ms. Gracie Arrisol, a representative from the Seychelles Commercial Bank confirmed that the deceased held an account bearing the account number 5113983002 with a balance of Seychelles Rupees One Hundred and Eight Thousand Three Hundred Seventy-Nine and Sixty-Five cents (SCR 108,379.65/-) at the time of his death.
- [15] That the total sum was disbursed to the defendant by reliance on affidavits. The defendant had fully indemnified the bank against all actions, proceedings, claims, demands, costs and expenses. She avers also that upon receiving a letter from Mr. Bernard Georges, the bank conducted an internal investigation and Mr. Charles Lucas, Attorney-at-Law, issued two letters to the defendant. The bank confirmed that the defendant failed to adhere to their demand to return the money.
- [16] The second witness was Mr. Bernard Georges, in his capacity as the attorney-at-law of the deceased, and knew him as a good friend. He testified that he drafted the will as per the instructions of the deceased and it was his intention to bequeath all his movable and immovable

properties including monies in the bank to the plaintiff. He further confirmed that the will was dated 29th November 2006 and was registered on 9th October 2013.

[17] The defendant in her evidence produced Receipt No. 0953 and Receipt No.51 (*Exhibit D1*) to show that she had used some of the funds from the account belonging to the deceased to pay of the funeral arrangements and expenses. She confirmed that the total funeral expenses amounted to Seychelles Rupees Forty-Two Thousand Five Hundred and Seventy-Five (SCR 42,575.00). The defendant further admitted receiving the letter from Mr. Charles Lucas in August 2014, but at that moment she had used up all the money for renovations to her bathroom. The Court notes though that the defendant failed to prove that marble was in fact placed on the tomb of the deceased.

Applicable law and analysis

[18] First and foremost, the defendant has raised *plea in limine litis* in this matter upon which the claim of the plaintiff stands or falls.

[19] The *plea in limine litis* is based on prescription arising out of the provisions of Article 2271 of the Civil Code of Seychelles (Cap 33).

[20] Article 2271 provides that:

“1. All rights of action shall be subject to prescription after a period of five years except as provided in articles 2262 and 2265 of this Code”.

[21] Article 2262 provides for prescription of twenty years arising in all real actions in respect of rights of ownership of land or other interests in land, which provision, does not apply in to the circumstances of the current matter.

[22] Article 2265 is specific to prescription of ten years if the party claiming the benefit of such prescription produces a title which has been acquired for value and in good faith and

again the circumstances of this case does not give rise to the application of the provisions of that stated article.

[23] The plaintiff in the plaint afore-mentioned avers and further testified in support that the defendant committed a *faute* which was when the defendant signed an affidavit (*Exhibit P3*) on the 21st July 2013 and affidavit is claimed to be a fraud/false.

[24] The plaintiff filed her plaint dated 1st April 2019 on the 24th June 2019 and this almost five and a half years after the impugned affidavit.

[25] Prior to the plaint being filed, the defendant received two separate letters of demand from Attorney-at-Law Charles Lucas on behalf of the Seychelles Savings Bank (*Exhibit P5*). The letters did not and does not act as an institution of legal proceedings as by law established and hence do not act as an interruption to prescription as provided for in the cases of *Teemooljee 7 Co. Ltd v Thomas* [1965] SLR 169 and *Antoine and Another v Lormerna Pierre* (SCA 19/2001).

[26] It is to be noted, however, that prior to the plaint, the plaintiff did file a previous plaint before the Magistrates Court, namely in the matter of *Cs No. 60/2018 Danielle Luc v Fulgencia Knowles*, wherein the current cause of action is the subject matter. The fate of the plaint was dealt with by Learned Magistrate Ng’hwani in a judgment of the 22nd June 2018 wherein she dismissed the same on the basis that the court had no jurisdiction (*Exhibit P7*).

[27] Now in that light, the provisions of Article 2247 of the Civil Code comes into play wherein it is provided in no uncertain terms that:

“If the proceedings are dismissed owing to a formal defect,

...

The interruption shall be deemed not to have occurred.”

[28] It is the contention of the defendant that the plaint ought not to have been deemed as an interruption of prescription as the matter was dismissed for want of jurisdiction on the

ground of formal defect. Since the current plaint ought to have been filed long before the 24th June 2019, the matter before is time barred and ought to be dismissed with costs.

[29] It follows that the court shall not consider the legal issues arising on the merits of the case for it shall be purely academic.

Conclusion and Final determination

[30] In the result, the court orders as follows:

[i] The court dismisses the plaint by upholding the *plea in limine litis* on the ground of prescription of five as analysed;

[ii] Each party shall bear their own cost.

Signed, dated and delivered at Ile du Port on 26th March 2021.

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ANDRE J