

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 395
MC91/2020

In the Ex Parte matter:

GALINA ABRAMOVA

1st Petitioner

SVETLANA ABRAMOVA

(on her own behalf and as legal representative
of Maria Abramova)

2nd Petitioner

VOLKOVA NATALIA

(as legal representative of Volkova Michel
and Volkov Alexander)

(Represented by Frank Elizabeth)

3rd Petitioner

VS

ACT OFFSHORE LIMITED

(Represented by Mr. Georges)

Respondent

Neutral Citation: *Abramova & Ors vs ACT Offshore Ltd* (MC91/2020) [2021] SCSC 395 (5
July 2021)

Before: E. Carolus, Judge

Summary: Conflict of laws - Applicable law for determination of validity of foreign
Will and dispositions made thereunder - Law applicable to transfer of shares
in IBC incorporated in Seychelles under IBC Act.

Delivered: 5 July 2021

ORDER

The Petition is Dismissed.

ORDER

E. Carolus, Judge

Background

- [1] This petition concerns the inheritance of shares in two International Business Companies namely Omni Commerce Ltd and Intelligence Development Ltd (“the IBCs”) which are averred to be owned by the late Mr. Mikhail Yuriyevich Abramov (the “deceased”). The petitioners seek the transfer of the shares to the legal heirs of the deceased (his minor children and surviving spouse) and his mother who is allegedly a legatee under his Will. It is not clear whether the children are also legatees under the will.
- [2] The petition is brought by Galina Abramova (1st petitioner) who is averred to be the mother of the deceased; Svetlana Abramova (2nd petitioner) in her own capacity as the surviving spouse of the deceased, and as mother and guardian of Maria Abramova the minor daughter of the deceased; and Natalia Volkova (3rd petitioner) in her capacity as mother and guardian of Michel Volkova and Alexander Volkov the minor children of the deceased. The Respondent is ACT Offshore Limited, averred to be the registered agent of the two Companies.
- [3] The petition was filed on 29th October 2020. An affidavit in support thereof in the English language, dated 29th January 2021 and sworn by 3rd petitioner Natalia Volkova in Zurich (duly apostilled) was filed on 17th February 2021. A document was filed on 10th March 2021 in the Russian language, duly apostilled, to which was attached an affidavit in the English language stated therein to be made by 2nd petitioner Svetlana Abramova on 22nd January 2021, and which appears to be a translation of the aforementioned document and apostille in Russian, although there is nothing to confirm that this is the case. The translation appears to have been made in Russia from the statement in the Russian language at the end of the document and the stamp thereon, but is not apostilled. It is also not possible to ascertain whether the translation was made by a certified interpreter. Also filed on 10th March 2021 is a bundle of two documents, duly apostilled: the first is in the Russian language and the second is an affidavit in the English language which is stated therein to be made by a Russian lawyer Odyagaylo Vladimir Fedorovich on 23rd October 2020. Again the affidavit appears to be a translation of the first document although there is nothing to confirm the same and it is also not possible to know whether the translation was made by a certified interpreter. Yet another document in the Russian language was

filed on 10th March 2021, again duly apostilled, and accompanied by an affidavit in the English language which is stated therein to be made by the 1st petitioner Galina Abramova on 21st January 2021. Again the affidavit appears to be a translation of the first document in Russian but it is not possible to ascertain whether the translation was made by a certified interpreter or not and it is not apostilled. With the exception of the affidavit of the 3rd petitioner, the aforementioned defects affect the admissibility of these documents and the extent to which they may be relied upon by the Court.

[4] Also of note is that although the petition lists 12 documents which the petitioners rely on in support of the petition, only one of those namely “[t]he Affidavit of advocate of Moscow City Bar Odyagaylo Vladimir Fedorovich N.108 dated 27.08.2020” has been filed in these proceedings. As stated at paragraph [4] above the original affidavit in Russian is accompanied by what appears to be an English translation of it but which the court is unsure was made by a certified interpreter. At this stage I also find it appropriate to mention that it is trite that any document to be relied upon in an application/petition and to be used in conjunction with an affidavit in support of such application/petition must be exhibited to such affidavit. Vide *Lablache de Charmoy v Lablache de Charmoy* SCA MA08/2019 [17 September 2019]; *Laurette & Ors v Savy & Ors* SCA MA13/2019 [22 October 2019]; *Trevor Zialor v R* SCA MA16/2017 [17 October 2017]. As Robinson JA stated in *Lablache de Charmoy v Lablache de Charmoy* (supra) at paragraph 11 of her Order, “Counsel for the applicant should be mindful that the affidavit stands in lieu of the testimony of the applicant”. Just as a person giving oral testimony before a Court would tender documentary evidence as exhibit to the Court, so must these supporting documents which are documentary evidence be exhibited to the affidavit. At the very least these documents should have been attached to the petition.

[5] The respondent having been served with the petition failed to put in an appearance whereupon the court ruled that the matter be decided ex-parte on written submissions of counsel for the applicants, which were duly filed. Ms Aliyah appearing on behalf of Mr. Georges later appeared in court on behalf of the respondent and stated that she was instructed that according to their records the two companies in question do not exist, that

the respondent neither represents nor acts for these companies and that the respondent would abide to whatever decision the Court makes.

The Petition

[6] It is averred in the petition that the late Mikhail Yuriyevich Abramov a Russian National who was ordinarily resident of Moscow passed away testate on the 20th August 2019 and that at the time of his death he was sole owner of two companies registered as International Business Companies in Seychelles under the International Business Companies Act 2016 as amended, namely Omni Commerce Ltd and Intelligence Development Ltd. Neither his Birth Certificate or his Death Certificate nor his Will has been exhibited. There are also no documents to show that he owned the two IBCs or even the existence of the IBCs.

[7] It is averred that he left the following “four successors and one surviving spouse entitled to inherit from [his] estate as per his last Will and Testament in Law”, in the follow shares:

- (i) Mrs Galina Abramova (1st petitioner), the mother of the deceased – entitled to inherit 11/14 (eleven fourteenth) of 1/2 (one half) share of the deceased’s estate under his Will;
- (ii) Svetlana Abramova (2nd petitioner) – entitled to 1/2 share of the deceased’s estate as the surviving spouse of the deceased;
- (iii) Maria Abramova (represented by the 3rd petitioner her mother Svetlana Abramova), the minor daughter of the deceased – entitled to 1/14 share of the deceased’s estate as his successor under the law;
- (iv) Alexander Volkov (represented by the 3rd petitioner his mother Natalia Volkova), the minor son of the deceased – entitled to 1/14 share of the deceased’s estate as his successor under the law; and
- (v) Michel Volkova (represented by the 3rd petitioner his mother Natalia Volkova), the minor daughter of the deceased – entitled to 1/14 share of the deceased’s estate as his successor under the law.

- [8] There is no documentary evidence establishing the relationship of the petitioners and their children to the deceased. Further, as stated above, no copy of the Will has been exhibited. This puts in question not only the status of the petitioners to make the present petition as heirs and/or legatees of the deceased, but also the entitlement of such heirs and/or legatees to the succession of the deceased.
- [9] It is averred that a Notarial Certificate from Russia has provided for the shares in the two Seychelles registered companies under Russian Law in the proportions mentioned above which certificate has been attached to the petition. No such certificate is attached to the petition. Mention is also made of a Certificate of Title, issued by Russian Federation Notary in the right of spouses to share in common joint property, but again this is not attached to the petition.
- [10] It is further averred that the petitioners have been legally advised that the testator's other heir under the law, his father Mr. Abromov Yury Ivanovich is not entitled to inherit from the deceased's estate in accordance with Article 1157 of the Russian Civil Code. According to the supporting affidavits this is because he has refused his inheritance. No document attesting to the same is attached. It is also averred that the petitioners have been legally advised that the testator's son Georgiy Michailovich Abramov has attained the age of majority and in accordance with Article 1149 of the Russian Civil Code does not have the right to an obligatory share of the deceased's succession because of the existence of the Will.
- [11] The petitioners aver that in light of the above, it is just and necessary for the Court to firstly interpret sections 6(3) and 115 of the IBC Act; secondly to pronounce itself on (1) the validity of the Will and (2) the applicable law that should govern the dispositions made under the Will (in regards to the shares in the IBCs) in Seychelles i.e. whether the applicable law is Seychellois or Russian law. If the Will is valid and can be recognised and executed under the laws of Seychelles, the Court should direct whether Russian law or the Laws of Seychelles are applicable, under which legal regime the property should be distributed, and how the shares in the two companies should be distributed among the heirs of the deceased.

[12] In terms of the petition, the petitioners pray this court to:

- (a) Declare whether or not the Will authorised and executed by the Russian Notary in accordance with Russian Law can be recognized and executed in in the territory of Seychelles and/or is it possible to enforce it in Seychelles under Russian law or under Seychelles law;
- (b) Declare whether Seychelles or Russian law should be the applicable law to determine the validity of the Will and the dispositions made thereunder;
- (c) Declare the respective shares of the heirs and the surviving spouse in the two Seychelles registered companies;
- (d) Direct the Registered Agent of the two companies, namely ACT Offshore Limited to amend their register of shareholders and register the shares in the two companies in the names of the petitioners in accordance with their respective shares in accordance with the law.

Analysis

[13] In its analysis, the Court will seek to determine the applicable law with regards to the validity of the will and the dispositions made thereunder, as well as address the law applicable to the transfer of shares in the two IBCs to the deceased's heirs and the actual transfer of such shares to them. These issues will be discussed below in that order, in light of the submissions of counsel for the petitioner, relevant case law and the evidence before the Court.

Applicable law in regards to validity of the Will and the Dispositions made thereunder

[14] It is to be noted that although counsel for the applicants submits at page 4 of his submissions that the applicable law is Russian law, it is not clear whether this is with respect to the validity of the will and the dispositions thereunder or the transfer of shares, or both. He submits that Russian law is the applicable law by reason of the deceased's domicile, nationality and sufficiency of connection test. With regards to sufficiency of connection he cites several cases which however mostly relate to recognition of

Receivership Orders and bear no relevance to inheritance issues in terms of private international law which arise in this case.

[15] It was established in *Rose v Mondon* (1964) SLR 134 that the formal validity of a will is determined by the place of execution of the will; that the validity of a will as to movable property is determined by the testator's domicile and is to be tested against the requirements of the law of the testator's domicile (obiter); and that validity of a will in respect of immovable property is determined by the law of the place where the property is situated.

[16] With regards to applicable succession laws, *Rose v Mondon* (supra) applied the principle from *Austin v Bailey* (1962) M.R. 115 citing the following passage at page 117 of the report:

*The validity of the will of the testatrix regarding the disposal of her estate is governed, in the case of the movable property as well as in the case of immovable property bequeathed by her, by the applicable successoral law. There is no specific text in the Civil Code which lays down what is the applicable law regarding movable property, but it is settled case law that the maxim 'mobilia sequuntur personam' applies and that the law applicable is the law of the "lieu d'ouverture" of the succession and consequently the law of the domicile of the testatrix (See Battifol, *Traite Elementaire de Droit International Prive*, 3rd edn., para. 651; Niboyet *Traite de Droit International Prive Francais 2e. Edn.*, vol. 4, pages 413, 764; Clunet, *Journal du Droit International Prive*, 1940-1945, pages 112, 805). The successoral law regarding immovable property is the law of the place where it is situated. This rule derives from the second paragraph of art. 3 of the Civil Code which provides that "les immeubles, meme ceux possedes par des etrangers, sont regis par la loi francaise" (see Battifol, *op. cit.*, para. 652; Niboyet *op. cit.* pages 198, 758; Clunet, *op. cit.*, 1955, p. 408)"*

Emphasis added.

[17] The general rule that testamentary succession of movables is governed by the law of domicile of the deceased at the time of his death is also established under UK and French law. The position in the UK is clearly set out set out at page 560 Cheshire, G. C. 1961, *Private International Law*, Sixth edn., Oxford University Press, as follows:

"(ii) Testamentary succession

The general rule established in this country and in the U.S.A. is that testamentary succession to movables is governed exclusively by the law of the domicil of the deceased as it existed at the time of his death. When a testator dies domiciled abroad leaving assets in England, it is true that probate must be taken out in

England, and it is also true that the assets must be administered in this country according to English law, but nevertheless all questions concerning the beneficial succession must be decided in accordance with the law of the domicil. The duty of the executor is to ascertain who, by the law of the domicil, are entitled under the will, and that being ascertained to distribute the property accordingly”

Emphasis added

[18] In France, it is stated at page 8, *Guide de droit international privé des successions* that -

“l’art. 3 du Code Napoléon; dans le droit français la succession mobilière est soumise à la loi du dernier domicile du défunt et la dévolution et la transmission de biens immobiliers à la loi de chacun des États où ceux-ci se trouvent. Dans cette catégorie des systèmes scissionnistes s’intègrent aussi les pays qui appartiennent à la common law (lex domicilii pour la masse mobilière, lex rei sitae pour les immobiliers). L’art. 78 du Code belge de droit international privé, adopté par la Loi du 16 juillet 2004, prévoit: „§1er. La succession est régie par le droit de l’Etat sur le territoire duquel le défunt avait sa résidence habituelle au moment de son décès. § 2. La succession immobilière est régie par le droit de l’Etat sur le territoire duquel l’immeuble est situé. Toutefois, si le droit étranger conduit à l’application du droit de l’Etat sur le territoire duquel le défunt avait sa résidence habituelle au moment de son décès, le droit de cet Etat est applicable.”

Emphasis added

[19] It is averred in the petition that the deceased was ordinarily resident in Russia and his Will was executed at his place of his residence. If the Will was executed in Russia as averred, in line with the principle established in *Rose v Mondon* (supra) it should be Russian law that determines the Will’s formal validity. However as previously pointed out, the Will of the deceased is neither attached to the petition nor exhibited in any of the affidavits in support thereof. Consequently this Court is unable to ascertain whether the Will was indeed executed in Russia and consequently to make any finding as to the same.

[20] In regards to the validity of the Will as far as it concerns the shares in the two IBCs, according to the principle in *Rose v Mondon* (supra) the applicable law is determined by the testator's domicile, as shares are considered to be movable property. In that respect section 42 of the International Business Companies Act, 2016 (the “IBC Act”), provides

that, “[a] share in a company is movable property”. It is clear therefore that to determine the applicable successoral law and the validity of the dispositions, both the deceased’s domicile and the ownership of the shares are material.

[21] With regards to his domicile it is averred in the petition that the deceased was ordinarily resident in Russia and that he was a Russian national. If these averments are true and unless further issues arise in relation to his residence and citizenship (e.g. in the event that he is not actually resident in Russia or if there is a change of his domicile Vide *Sullivan v Sullivan* (1975) SLR 104 on domicile of choice versus domicile of origin; and *Rose v Mondon* (supra) where a Seychellois citizen who had passed away in Kenya was held not to lose his domicile of origin in Seychelles) his domicile can be considered to be Russia and the applicable law Russian law. However neither official documents in support of such averments nor the Birth and Death certificates of the deceased were attached to the petition. In the circumstances the Court cannot make a finding as to either the domicile of the deceased or consequently the applicable law.

[22] As to ownership of the shares, it is further averred in the petition that at the time of his death the deceased was 100% owner of the two IBCs by the deceased. However no ownership documents (or other documents providing information regarding the shareholder(s) and/or unlimited beneficial owner of the company and the nature of their ownership (direct shareholder or beneficial owner through trust declaration or other instrument)) were attached to the petition or exhibited to any of the supporting affidavits.

[23] The petitioners have also prayed this Court to declare whether or not the Will authorised and executed in accordance with the Russian law can be recognized and executed in in the territory of Seychelles. Their counsel has not expressly addressed this point in his submissions. According to *Rose v Mondon* (supra) and Article 999 of the Civil Code a foreign Will can be recognised in Seychelles. Article 999 provides that, “[a] person whose domicile is in Seychelles and who finds himself in a foreign country may make his will by a document under private signature as provided by article 970 of this Code, or in accordance with the law of that country”. However both *Rose v Mondon* (supra) and Article 999 concern a Will made by a person domiciled in Seychelles whereas in the

present case, the testator is alleged to be domiciled in Russia. Furthermore as stated at paragraph 18 above, since the Will has not been produced before this Court it is not possible to ascertain whether it was indeed executed in Russia. Consequently this Court considers it futile to address the issue of whether a Will authorised and executed in accordance with foreign law can be recognized and executed in Seychelles.

Applicable law to Transfer of Shares and Direction to Registered Agent to transfer the shares

[24] The Petitioners pray this Court to declare the respective shares of the heirs and the surviving spouse in the two IBCs and direct the registered agent to register the shares in their names. Neither these issues nor the legal provisions relating thereto were addressed in counsel's written submissions.

[25] The petitioners aver in paragraph 8 of the petition that “. . . *it is just and necessary for the Court to interpret Section 6(3) and 115 of the IBC Act*”. However there is no subsection (3) in section 6 of the IBC Act, 2016. Section 6 relates to ‘Companies which may be incorporated or continued’ and section 115 relates to ‘Notice of meetings of members’. These provisions clearly do not relate to transfer of shares of a deceased person to his heirs/ legatees.

[26] With regards to the law of movables in private international law, Cheshire, G. C. 1961, *Private International Law*, Sixth edn., Oxford University Press points out that shares of stock of a company are connected to the place where the issuing company has its residence and states at page 508:

“The rule of private international law is that shares are deemed to be situated in the country where they can be effectively dealt with as between the shareholder and the company. In other words, shares which are transferable only by an entry in the register are deemed to be situated in the country where the register of branch registrar is kept.”

[27] Section 104 of the IBC Act provides that an up-to-date register of members shall be kept at a company's registered office unless the company is a listed company (section 106). It provides:

104. (1) Subject to section 106, every company shall keep at its registered office in Seychelles a register to be known as a register of members, and enter in it the following information as appropriate for the company –

- (a) *the name and address of each person who holds any shares in the company;*
- (b) *the number of each class and series of shares held by each shareholder;*
- (c) *the name and address of each person who is a guarantee member of the company;*
- (d) *the date on which the name of each member was entered in the register of members; and*
- (e) *the date on which any person ceased to be a member.*

[28] Section 161 further provides that an IBC shall at all times have a registered office in Seychelles, which is the principal place of business of its registered agent. In view of these provisions, the shares of the two IBCs in question can therefore be deemed to be situated in Seychelles and consequently the transfer of such shares should be done in accordance with the IBC Act.

[29] Transfer of a deceased member's shares are dealt with under section 60 of the IBC Act:

60. A transfer of the share of a deceased member of a company made by the deceased member's personal representative, although the personal representative is not a member of the company, is as valid as if the personal representative had been a member at the time of the execution of the instrument of transfer.

[30] Section 2 of the IBC Act defines “personal representative” as “the executor or administrator for the time being of a deceased”.

[31] Under section 61 of the IBC Act shares can also be transferred by operation of law:

61. Shares in a company may pass by operation of law, notwithstanding anything to the contrary in the memorandum or articles of the company.

[32] The register of members can also be rectified upon application to Court where information that is required to be entered in the register is omitted under section 108:

108. (1) If –

(a) information that is required to be entered in the register of members under section 104 is omitted from the register or inaccurately entered in the register; or

(b) there is unreasonable delay in entering the information in the register, a member of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the Court for an order that the register be rectified.

(2) On an application under subsection (1), the Court may –

(a) either refuse the application, with or without costs to be paid by the applicant, or order the rectification of the register, and may direct the company to pay all costs of the application and any damages the applicant may have sustained;

(b) determine any question relating to the right of a person who is a party to the proceedings to have his name entered in or omitted from the register of members, whether the question arises between –

(i) two or more members or alleged members; or

(ii) between one or more members or alleged members and the company; and

(c) otherwise determine any question that may be necessary or expedient to be determined for the rectification of the register of members.

[33] However in the absence of any documentary evidence that the deceased was indeed the owner of shares in the two IBCs the Court cannot order the registered agent to transfer such shares.

[34] Related to the issue of the transfer of the shares are the share of the deceased's succession to which the heirs are entitled. Before concluding, I find it necessary to say a few words on the subject. It is established by Seychelles courts that foreign law must be pleaded and proved as fact and if that is not done, foreign law is presumed to be the same as Seychelles law. Vide (*Dauban v de Faily* (1943) SLR 93; *Beitsma v Dingjan* (No 1) (1974) SLR 292; *Teemooljee v Pardiwalla* (1975) SLR 39; *Biancardi v Tabberer Travel* (1975) SLR 91; *Sounardin v D'Offay* (1976) SLR 236; *Privatbanken Aktieselskab v Bantele* (1978) SLR 226; *Intour v Emerald Cove* (2000) SLR 21; *La Serenissima v Boldrini* (2000-2001) SCAR 225).

[35] The Petitioner submits that Russian law should apply to the dispositions under the Will and the affidavit of Russian lawyer Odyagaylo Vladimir Fedorovich outlines the position

of Russian succession laws relevant to the present case. As per the affidavit, under Russian law, the surviving spouse is entitled to 1/2 of the estate of the deceased, unless there is a marriage contract. However the reasons for the share attributed to the mother of the deceased (11/14 of the one half remaining estate) and the deceased's minor children (1/14) is not entirely clear. Furthermore, the full value of the estate is unknown and the Court does not know the proportion of the deceased's estate that the shares in the two IBCs make up: it is not known whether the shares in the two IBCs comprise the deceased's entire estate or constitutes only a portion of it. This could have been clarified by the Certificates of Title listed as documents to be relied upon and the Will if they had been produced.

Decision

[36] In conclusion, relying on the decision in *Rose v Mondon* (supra) I find that the formal validity of the Will is determined by the place of its execution; the validity of a Will as to movable property is determined by the testator's domicile and is to be tested against the requirements of the law of the testator's domicile; and where it concerns movable property the applicable successoral law is also the law of the domicile of the deceased. Shares in the IBCs being movable property according to the IBC Act, the validity of the disposition of the Seychelles IBC shares forming part of the deceased's estate, should be determined in accordance with the successoral law of the deceased's domicile.

[37] As stated above, the Court is not in a position to make any finding as to the formal validity of the Will and the validity of the dispositions thereunder in the absence of the Will itself and other supporting documents proving the domicile of the deceased. Further, no proof of the ownership of the shares in the two IBCs having been brought by the petitioners, the Court cannot order the transfer of such shares to the heirs and/or legatees. In addition, the value of the whole of the deceased's estate is unknown and the share of the succession of the deceased to which the heirs and/or legatees are entitled as stated in the petition and affidavits cannot be verified as the Will has not been produced, rendering it difficult to make a determination as to the proportion of the shares to which the heirs and/or legatees are entitled. Also worth noting as stated at paragraph 3 hereof are the

defects in the affidavits in support of the petition and their effect on the extent to which reliance may be placed on them by the Court.

[38] In the circumstances, I have no option but to dismiss the petition.

Signed, dated and delivered at Ile du Port on 5 July 2021.

E. Carolus

Judge