

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 433
MA 103/2020

In the matter between

DIANA ODILE BERNADETTE PETROUSSE	1 ST APPLICANT
MELDA COLLETTE PETROUSSE	2 ND APPLICANT
JOSEPH RENE PETROUSSE	3 RD APPLICANT
TACIANA FRANCISCA PILLAY	4 TH APPLICANT
MARGARET BERTHA PILLAY	5 TH APPLICANT
PHILOMENA ANTOINETTE PETROUSSE	6 TH APPLICANT
MARC CONSTANT BRIAN PETROUSSE	7 TH APPLICANT
NOEL ELIZABETH	8 TH APPLICANT
PATRICE ELIZABETH	9 TH APPLICANT
JUDY BONNELAME & ORS (all rep. by France Bonte)	10 TH APPLICANT

Neutral Citation: In the matter of *Diana Odile Petrousse & Ors (MA 103/20) [2020] SCSC 433*
Before: G. Dodin
Heard: 07 April 2021
Delivered: 16 July 2021

JUDGMENT

Dodin J

- [1] The Applicants are co-owners in in-division of several parcels of land situated at Anse Louis, Mahe, registered as Titles C.9072, C9073, C9074, C.9075, C.9922, C.9937 and C.9589 which are subdivisions of parent parcel C.9154. C9154 was a subdivision of

C.8211, which is a subdivision of C.7260, which comes from the main parcel C.1670 owned by the late Albert Petrousse.

- [2] The late Albert Petrousse died testate and his last Will is registered as Transcription 46 No 117. The Will contains a provision prohibiting the heirs from mortgaging or selling the land for a period of 99 years. Consequently a restriction has been entered against the parent parcel, now subdivided that prevents the mortgaging or transfer of the land.
- [3] The heirs are in agreement that the restriction is highly prejudicial to all of them as they cannot charge, own or transfer the land and hence hinder the development of the land.
- [4] The heirs are also in agreement that they cannot remain co-owners in in-division for the period of 99 years.
- [5] The Applicants further aver that they have contracted the services of Surveyor Michel Leong for the partition of the land and they are all in agreement as to the proposed partition by the said Surveyor which is as follows:

C.9072	to	Diana Odile Bernadette Petrousse
C.9073	to	Melda Collette Petrousse
C.9074	to	Joseph Rene Petrousse
C.9075	to	Francisca Taciana Pillay
C.9922	to	Margaret Bertha Pillay
C.9937	to	Philomena Antoinette Petrousse

C.9589 jointly to: Marc Constant Petrousse
Marie Emma Petrousse
Marie Renette Petrousse
Giselle Veronique Adele Pillay
Harry Robed Adrien Pillay
Taciana Francisca Pillay
Robert Hevelien Pillay
Sheila Sherley Pillay
Sonny Didier Pillay
Marie-May Janina Pillay

- [6] The Applicants aver that it is fair and necessary that the restriction be removed so that the Applicants may be able to hold the properties in their own names, free of any such conditions in order that they can mortgage and deal with their respective properties freely.
- [7] The Applicants therefore move the Court for an order removing the restrictions on the properties and to approve the allotment proposed by Surveyor Michel Leong.
- [8] Having considered the Application and the affidavit in support as well as other attached documents, I find that the restriction imposed by the provision in the will restricting mortgage and sale of the land for 99 years to be oppressive and an unreasonable hindrance to the development of the land. It is also prejudicial to the actual heirs of the late Albert Petrouse as they are prohibited from fully appreciating their right to succession during their lifetime. I also find that the heirs are in agreement to the proposed allotment drawn up by Surveyor Michel Leong which I consider to be fair and just considering each heir's share in the property.
- [9] I therefore make the following orders in respect of the Will and the properties:
- i. The provision of the Will prohibiting the sale and mortgage of the property is declared null and void and is struck off;
 - ii. The restriction entered against the parent parcel C1670 now existing against the subdivisions is removed forthwith against each of the subdivided parcel against which it had been entered;
 - iii. The Registrar of Lands is ordered to remove the restriction against the parcels, C.9072, C9073, C9074, C.9075, C.9922, C.9937 and C.9589;
 - iv. The allotment proposed by Surveyor Michel Leong is approved; and
 - v. The parcels are registered in the names of the respective Applicants as per the allotment as reflected also in paragraph 5 of this judgment, subject to any payment of fees or taxes that may be required by law.

[10] A copy of this Judgment shall be served on the Registrar of Lands.

Signed, dated and delivered at Ile du Port on 16 July 2021.

A blue circular seal of the Supreme Court of the Seychelles. The outer ring contains the text "SEAL OF THE SEYCHELLES SUPREME COURT". The inner circle features a central emblem, possibly a coat of arms, surrounded by a wreath. A blue ink signature is written across the seal and extends to the right.

G. Dodin
Judge