

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC ...
CS111/2019

In the matter between:

Maxime Lewis Beaufond
(rep by D Sabino)

Plaintiff

vs

Mary Leontine Beaufond
(rep by G Ferley)

1st Defendant

Joel Maxime Esparon
(rep by G Ferley)

2nd Defendant

The Registrar General
(rep by Miss Rose)

3rd Defendant

Neutral Citation: [Maxime Beaufond vs Mary Beaufond \(C1111/2019\)00/2017](#) [2022] SCSC

()

Before: Govinden C-J

Summary: Succession; interpretation of Last Will and Testament

Heard : 28th October 2022

Delivered: 24th March 2022

ORDER

(1) The Registrar of land is ordered to amend the Land Register so that only half undivided share of parcel V7930IS registered in the name of the Plaintiff, the other half undivided share shall be registered in the name of the 1st Defendant.

(2) The Registrar of Lands is ordered to enter a restriction against parcel V7930, so that it is not transferred during the lifetime of the 1st Defendant.

(3) The usufructuary interest granted in favour of the 1st Defendant on the property is revoked.

(4) The ~~the~~ Defendants are to pay jointly and severally to the Plaintiff the sum of RS 100,000 in damages

(5) The Plaintiff shall be entitled to the costs of these proceedings.

JUDGMENT

GOVINDEN CJ

Background

[1] The Plaintiff and the 1st Defendant are siblings and are beneficiaries of the last Will and the Testament of Raymond Andre Ghislain , their uncle, herein after also referred to as “the testator”. The 2nd Defendant is the nephew of both Defendants and the 3rd Defendant is responsible for the registration of land transfers. Mr Ghislain passed away on the 8th of June 2002 and the land title V7930, herein after also referred to as “the property” formerly owned by him was registered entirely in the name of the 1st Defendant through the registration of an Affidavit on Transmission by Death dated the 26th of December 2016. Before his death, the testator and the 1st Defendant had held half undivided share each in the property. In his will he had bequeathed to the 1st Defendant his half share. Subsequently the 1st Defendant transferred the title to the 2nd Defendant whilst keeping a lifetime usufructuary interest to herself, which had produced the bone of contention in this case.

[2] According to the Plaintiff it was an express stipulation of the Will that the share of the testator in the property would devolve upon the 1st Defendant upon the death of the

testator and afterwards upon the death of the 1st Defendant the testator's share would devolve to the Plaintiff and that the transfer of the property to the 2nd Defendant was done in breach of this express condition. The Plaintiff also says that the 3rd Defendant, by allowing the 1st Defendant to effect the said transfer, acted in breach of its function. As a result, the Plaintiff claims that the Defendants have all committed a *faute* of which they have to make right.

[3] Accordingly, he prays for the following remedies; that the court orders the 2nd Defendant to return the property to him or order that the transfer between the 1st and 2nd Defendant is void; order the revocation of the usufructuary interest; order the Defendants to register a caution on the property reflecting the Plaintiff's interest and to order the Defendants to pay to her SR 350,000 in damages.

[4] The 1st and 2nd Defendants are however of the view that the proper construction of the Will is to the effect that the testator's share of the property would have devolved upon the Plaintiff only should the 1st Defendant had predeceased the testator. As a result it is their case that they have not committed any *faute*.

[5] As for the 3rd Defendant, it is her case that she committed no breach of her functions by allowing the 1st Defendant to transfer the property as there were no encumbrances on the property at that time.

Evidence

[6] Through the mutual agreement, the Plaintiff was allowed to testify by way of affidavit evidence. According to him, the intent of the testator was to transfer to the 1st Defendant his undivided share in the property for her lifetime and then for the same share to be transferred to him upon her death. He avers that his late uncle had promised to give him a share of the land to thank him for assisting him with paying off a loan.

[7] The Plaintiff also called the Deputy Land Registrar who proved that official documents filed with the Lands Registrar shows that the 2nd Defendant as the owner of parcel V7930 and that he obtained ownership by way of a transfer from the 1st Defendant dated the 18th of July 2017. He also produced a copy of the transcribed Last Will and Testament; the

Affidavit of Transmission by death, which is dated the 26th of December 2016 and the registered document granting usufructuary interest to the 1st Defendant dated the 18th of July 2017. According to the witness, the transfer from the 1st to the 2nd Defendant was registered by his office because the provisions of the Will did not prevent the 1st Defendant from transferring her undivided shares.

[8] With these witnesses the Plaintiff closed his case.

[9] The first two Defendants called the 1st Defendant. According to her, it was her lawyer who advised her that she had effected the transfer to the 2nd Defendant. She talked about an embittered and acrimonious relationship that she had with her brother the Plaintiff that could have motivated her to do the transfer to the son of her sister, being the 2nd Defendant.

[10] Thereafter, Mrs Marie Gabriel Nolla Beaufond, the mother of the 2nd Defendant gave evidence in favour of the first two Defendants. According to her, in her own words, “*maybe if Maxime will have treated his sister in a good way maybe things will have not been like it is*”. She also spoke of the bad blood that exist between the Plaintiff and the 1st Defendant that had resulted in the 1st Defendant seeking to effect a transfer to her son in order to deny the Plaintiff of the benefit of the share after the 1st Defendant’s death. According to her, it was the 1st Defendant that took care of Raymond Ghislain during his living and that the Plaintiff had even used racial slurs against the 1st Defendant as she had married a coloured man.

The law

[11] Whenever a court interprets the provisions of a Will, it is required to ascertain the testator's intention. *Mansingh v General Council of the Bar* 2014 2 SA 26 (CC) para 27. However, no interpreter can dive into a testator's mind, nor determine with mathematical precision what was really contemplated when a Will was conceived or drafted. Also, when a Will is interpreted the deceased testator thus cannot testify to his actual intention or the document's purpose at the time of its execution. Consequently, at the date of

interpretation a court can only infer or presume what a testator had in mind when he executed the document forming the subject of the judicial enquiry (that is, an inferred or presumed intention). This is determined by having regard to all legally relevant and admissible evidence, and by using generally accepted legal standards and values, as well as techniques of legal interpretation. Although a testator's intention is a subjective element, the process of its determination is objective in form. This is known as objective interpretation.

[12] The content of the Will of the deceased in this case is not being contested. However, it appears that the Plaintiff and the Defendant have contrary views as to what interpretation to give to it. This makes the job of this court easier, there would hence be no need to resort to extrinsic evidence to interpret the true intent of the testator. The court will hence give the proper meaning to the intention of the testator by resorting to the literal meaning of the text of the testament for which the parties hold diametrically opposed views.

Discussions and determination

[13] The court in this case is left with a very narrow factual issue for determination, namely as to what should be the proper construction to be given to the last Will and testament. More particularly when it comes to the bequeathment of the testator's undivided share to the 1st Defendant.

[14] The content of the Last Will and Testament is as follows;

Before me, Charles Lucas, Notary Public of Suite 205, Premier Building, Albert Street, Victoria, Mahe, Seychelles.

*Appeared: **Raymond Andre Ghislain**, habitually resident of Beau Vallon, Mahe, Seychelles who being of sound mind and desirous of settling the succession of his means after his death dictated the following last Will and Testament which has been typewritten on this page:*

1. *I revoke all my former wills and testaments.*
2. *I give all my movable property, including proceeds of bank accounts, bonds and stocks to **Mary Leontine Beaufond** of Beau Vallon, Mahe, Seychelles.*
3. *I bequeath my half undivided share in title no. V7930 to **Mary Leontine Beaufond** for her life and thereafter the same to **Maxime Beaufond** of 4 Melbourne Road, Walphemstowe, E17 6LR, London.*
4. *In the event that he has predeceased the aforesaid **Mary Leontine Beaufond**, his heirs shall inherit the same in accordance to the laws of succession of Seychelles.*
5. *In the event that **Mary Leontine Beaufond** predeceases me I bequeath all the legacies in her favour to **Maxime Beaufond** or his heirs as re-cited above.*

*In witness whereof, I the said **Raymond Andre Ghislain**, have hereunto set my hands this 4th day of February 2022 in the presence of the undersigned Notary Public.*

- [15] The operating provision which is controverted and which needs to be interpreted is the expression “for her life” in paragraph 3. Does it mean that the Defendant is bequeathed the half undivided share of the property for her to own during her lifetime after which it would devolve upon the Plaintiff, a view subscribed by him or does it show the intention of the testator to bequeath his half undivided share to the 1st Defendant and after having inherited this right, the right to dispose of it during her lifetime, a view subscribed by the 1st and 2nd Defendant.
- [16] I have thoroughly considered the facts and circumstances of this case, including the testimonies of parties and tested their veracities. I have also given close attention to the content of the documentary evidence produced, including that of the Last Will and Testament. I also appraised myself to the principle applicable to the interpretation of Notarial Deeds, especially when it comes to the notarial document in issue.
- [17] Having done so, it appears to me that the literal meaning of “for her life” in the 3rd paragraph of the Last Will of the testator can only mean what its literal meaning conveys , that is for her lifetime. There is no need therefor for this court to apply any

other rules of interpretation. This proper construction conveys the following meaning to this phrase; the half undivided share in the property is bequeathed to the 1st Defendant only for her lifetime and after her death it would then devolve upon the Plaintiff. I find therefore that this was the true intention of the testator. However, contrary to this intent, the 1st Defendant transferred it to the 2nd Defendant, which makes this transfer void. Thereafter, contrary to the intent of the testator, the 3rd Defendant registered the undivided share in parcel V7930 in the name of the 2nd Defendant, something which makes the registration void.

[18] It is to be noted however, that I find that the nullity is only with regards to the half share of parcel V7930 belonging formerly to the testator. The other undivided half belonging to the 1st Defendant could have been properly transferred by her.

[19] This finding is strengthened by content of the Affidavit of Transmission by Death of the 1st Defendant in which she avers at paragraph 5 that “...*the deceased had left his undivided share to me during my lifetime*”.

[20] Going through the entirety of the evidence, I am convinced that the 1st and 2nd Defendant knew that the essence of the intention of the testator as reflected by the provisions of his Last Will and Testament was for the ownership of the undivided shares in the property to be retained by 1st Defendant until her death and upon her demise, for the same to be transferred to her brother. However, due to the embittered relationship between the parties they consciously took a decision to go against this intention as a form of punishment of the Plaintiff. This cannot be done in law as the wish of the testator is sacrosanct, even if there is the intervention of an Attorney at Law. To my mind, the level of ill intent in this *demarche* is tantamount to bad faith.

[21] Accordingly, I will make the following orders;

Order

(1) I order that the Registrar of Lands to amend the Land Register so that only half undivided share of parcel V7930 is registered in the name of the Plaintiff , the other half undivided share shall be registered in the name of the 1st Defendant.

(2) I order the Registrar of Lands to enter a restriction against parcel V7930, so that it is not transferred during the lifetime of the 1st Defendant.

(3) I revoke the usufructuary interest granted in favour of the 1st Defendant on the property.

(4) I order the Defendants to pay jointly and severally to the Plaintiff the sum of RS 100,000 in damages

(5) The Plaintiff shall be entitled to the costs of these proceedings.

Signed, dated and delivered at Ile du Port on day..... of March 2022

Govinden CJ