

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 1123
MA 113/2020

In the matter between:

DOMINIC MONDON
(herein rep. by Ms. Almeida)

Petitioner

and

ALWYN TALMA
(rep. by Joel Camille)

1st Respondent

and

BERNARD GEORGES
(in person)

2nd Respondent

Neutral Citation: *Dominique Mondon v Alwyn Talma & Anor 113/2020 [2022] SCSC 1123*
Before: M Vidot J
Summary: Revoking appointment of joint executors and appointment of other persons as executor in their stead
Heard: 07 September 2022
Delivered: 19 December 2022

RULING

M Vidot J

- [1] By a Ruling dated 13th July 2013, the Respondents, Alwyn Talma and Bernard Georges were appointed joint-executors of the Estate of Ravinia Mondon (hereafter “the Deceased”) who died intestate on 16th August 2010. The Petitioner is the son of the Deceased. It is averred that from the time of their appointments, the Respondents have failed in their duties as executors in that;

- i. that they failed to compile an inventory of the estate of the Deceased;
- ii. they failed to liquidate the estate of the Deceased;
- iii. they have failed to ensure that the properties left behind by the Deceased are vested in the name of the heirs despite being requested to do so;
- iv. they have failed to inform the heirs of any steps that they have undertaken in the administration and liquidation of the estate of the Deceased.

[2] In view of these allegations, the Petitioner, prays that the Court;

- (a) Revokes the appointment of the 1st and 2nd Respondents as executors of the Estate of the late Ravinia Mondon;
- (b) Appoint the Petitioner as the new executor of the Estate of the late Ravinia Mondon;
and
- (c) Make any Orders that the Court deems fit in the circumstances.

[3] When the Respondents appeared before Court in answer to the Petition, the 1st Respondent stated that he was opposing the Petition, whilst the 2nd Respondent indicated that he was not opposing the Petition and in fact requested that Court grants the reliefs prayed for in the Petition and asked that Court revokes his appointment as executor of the Estate of the Deceased, a request that Court acquiesced to. The 1st Respondent proceeded to file a response.

[4] In his Reply to the Petition, the 1st respondent claims that at all material times he was able and willing to perform his duty as executor but that he could not have a meeting of minds with the 2nd Respondent to settle the estate of the Deceased. He declares that he is able and willing to perform his duty as executor and remained instructed by two legal heirs, namely Agnes Mondon and Noemie Woodcock to remain as executor. He further alleges that at the time of his appointment as executor the estate of the Deceased was being safeguarded through the appointment of the 2nd Respondent and that the Petitioner instructs the

representative of the 2nd Respondent to finalise the inventory of the estate and perform other duties required by law, pertaining to the estate.

[5] The Deceased is survived by her seven children. They are;

i. Dominique Mondon;

ii. Franky Mondon;

iii. Timothe Mondon

iv. Monique Hermitte

v. Agnes Mondon;

vi. Noemie Woodcock; and

vii. Anne Vidot

[6] The Petitioner acknowledged that there was another child, a brother, Francois who has been lost and not found and that he has children.

[7] There is serious dispute between the heirs who have broken out into two groups who are opposed as to whether the first Respondent should carry on as executor. The two groups are not talking to one another. This was explained by Dominique Mondon and Monique Hermitte. Agnes Mondon and Noemie Woodcock are however in favour of the first Respondent remaining as executor. The first Respondent was in a relationship with Agnes Mondon. They have a child together. Agnes and Noemis describe the first Respondent as their executor and that he is needed to protect their interest.

[8] The Petitioner testified that since his appointment Mr. Talma has done absolutely nothing in respect of the Estate. He has not been in contact with him. Actually, they are not on talking terms due to some disputes within the family. Nonetheless, he has approached Mr. Georges, but nothing was resolved. He however accepted proposals from Counsel for the first Respondent, that the latter is maintained as executor and that he is appointed so that together they can discharge duties of executorship. Mr. Mondon was amenable to such

proposal if it would help complete the executorship of the estate, despite not being comfortable with Mr. Talma remaining as executor.

- [9] Mrs. Monique Hermitte, one of the siblings supports the petition. She notes that as per Exhibit P9, the siblings had consented to the appointment of the two joint executors on 30th July 2013. However, she notes that since such appointment, absolutely nothing has been done but she has not talked to Mr. Talma as to why this is so. She adds that as Mr. Talma is in a relationship with Agnes Mondon, who objects to the manner of distribution of the estate, he has not done anything to resolve the executorship. However, she has talked to Mr. Georges, the co-executor, but nothing was resolved. She also signified her consent to have Dominique Mondon appointed executor but disagrees that Mr. Talma remains as executor.
- [10] Alwyn Talma testified that because the heirs are split into two factions, thus the reason why there was appointment of joint executors. He was supposed to represent the interest of Noemie Woodcock and Agnes Mondon and Mr. Georges to represent the other siblings. He has talked to Mr. Georges about the executorship of the estate but he has always indicated that the heirs cannot agree on is distribution. However, he says that he is willing complete his duties as executor but in the instance that the parties do not agree he does not know what to do. However, he acknowledges that the executors have done absolutely nothing since appointment.
- [11] Noemie Woodcock and Agnes Mondon are not in agreement to Dominique Mondon being appointed executor. They insist that Mr. Talma will remain as executor. Mrs. Woodcock adds that Dominique is incapable of discharging the duty of executor. After avoiding the questions, she finally admitted that the executors have not discharged their duties in respect of the estate.
- [12] Agnes Mondon too state that Mr. Talma was named executor to protect the interest of one set of siblings while Mr. Georges was to protect the interest the interest of another set. She says that she opposes the Application because she is not on good terms with Dominique Mondon and she feels that Dominique will not be able to discharge the duty of executor but states that she is agreeable to a joint appointment of the Petition and Mr. Talma but

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- [12] Agnes Mondon too states that Mr. Talma was named executor to protect the interest of one set of siblings while Mr. Georges was to protect the interest of another set. She says that she opposes the Application because she is not on good terms with Dominique Mondon and she feels that Dominique will not be able to discharge the duty of executor but states that she is agreeable to a joint appointment of the Petitioner and Mr. Talma but

then states that it is better that someone who is not within the family is appointed. She too agrees that to date Mr. Talma has not discharged his duty as executor and that both executors have failed.

[13] It is not disputed that Dominique Mondon has the legal right to seek appointment of an executor as per Article 1026 of the Civil Code which provides that an appointment of executor to the estate of an intestate may be made by any person having a lawful interest without the consent of any heirs; see **Ex-parte Jean [1974]LSC 437 [13]**. However, in this case not only does the Petitioner seeks the appointment of an executor, but also the removal of previously appointed executors.

[13] Article 1027 of the Civil Code provides as follows;

“The duties of an executor shall be to make an inventory of the succession to pay the debts thereof, and to distribute the remainder in accordance with the rules of intestacy, or the terms of the will, as the case may be.

He shall be bound by any debts of the succession only to the extent of its assets shown in its inventory.

The manner of payment of debts and other rights and duties of the executor, in so far as they are not regulated by this code, whether directly or by analogy to the rights and duties of successors to moveable property, shall be settled by court.”

[14] It is abundantly clear, from testimonies of both witnesses of for the Petitioner and the Respondents that the latter have done absolutely nothing as regard the executorship of the estate of the deceased since their appointment on 13th July 2013. No inventory has been compiled and the immovable property has not been transferred according to the rules of intestacy. Since the passing of the deceased, her property has remained as it was then.

[15] The opposing sets of siblings including the first respondent is confused as to the role of an executor. An executor is not appointed to safeguard the interest of a particular person or heirs or as in this case, a set of siblings only. The first respondent states that he was appointed to safeguard the interest of Noemie and Agnes whilst Mr. Georges to safeguard

that of the other set of siblings. This is a misconception which indicates that the first respondent has no clue of his role as executor. The duties of an executor are as laid down in the Civil Code and it is about protecting interests of all heirs (or legatees). An executor is duty bound to consider the interest of all parties concerned. Listening to the testimony of Mr. Talma, it is clear that he has no idea at all of what is expected of him as an executor. He appears to lay blame on Mr. Georges, who being in the legal profession should have been guiding him as to what to do. Since 2013, he has been incompetent in discharging his executorship duties. The first Respondent was not even aware that as per Article 1033 a joint or co-executor may act alone.

[16] That being the case, I do not believe that in retaining him as executor will be of benefit. He has been involved with Agnes Mondon and feels that he is obligated to have her interest at heart and ignore those of the siblings who are opposed to him. He and Agnes have reluctantly intimated that he would not object to work with the Petitioner as joint executor. I fear that such arrangement will not resolve the issue of executorship of the estate of the deceased. There is already too much bad blood between the two sets of siblings. I feel that he should be removed as executor and another person appointed in his stead.

[17] The Petitioner was amenable to another person being appointed executor rather than himself as an effort to appease the conflict between the sets of siblings. Even, if he is amenable to work with Mr. Talma, it is evident that due to the discord between the heirs, such will not work. I do not believe that he will be the best person to discharge the duties of executor.

[18] Therefore, I make the following orders;

- (i) The appointment of Mr. Alwyn Talma as executor of the estate of the late Ravinia Mondon is revoked and he is removed from the position of executor of the deceased;
- (ii) I refuse the appointment of the Petitioner as executor of the estate.
- (iii) The Petitioner has indicated that he will be willing to accept the appointment of Mr. Barnett Fanchette as executor in his stead. However, the latter has not appeared

before Court to signify his consent. Therefore, this case shall be called again on 19th December 2022 at 9 am and the Petitioner shall ensure the attendance of Mr. Fanchette to signify his consent to the appointment. Noemie Woodcock and Agnes Mondon shall too be given an opportunity to nominate another person for appointment as executor and who shall too report to this court on 19th December 2022 at 9 am.

Signed, dated and delivered at Ile du Port this 19 December 2022.



M VIDOT

JUDGE