

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC 367

XP204/2019

In the ex parte matter of the estate of
the late Adelaide Gruel Dit Lalande:

JEANINE LINA CESAR

1st Petitioner

and

MEDLINE REGINA RENAUD

2nd Petitioner

(Both represented by Mrs. Alexia Amesbury)

Neutral Citation: *Ex-Parte: Jeanine Cesar & Or (XP204/2019) [2022] SCSC 367*

(24 March 2022)

Before: B. Adeline, Judge

Summary: Appointment of joint executrix

Heard: 12 March 2021, 16 March 2021, 22 June 2021, 15 July 2021

Delivered: 24 March 2022

FINAL ORDER

Application by way of petition to be appointed joint executrix – Estate of the deceased consists of immovable property – Articles 724 (4) and 1026 of the Civil Code of Seychelles Act – Petitioners have a lawful interest in the estate and is not subject to any legal incapacity – This Court appoints Jeanine, Lina, Cesar of Belonie, Mahe, Seychelles and Medline, Regina, Renaud of Mont-Buxton, Mahe, Seychelles joint executrix of the estate of the deceased, Adelaide, Gruel, Dit Lalande who died intestate on the 29th January 1831.

ORDER

B. Adeline, J

[1] By way of a joint petition, one Jeanine, Lina, Cesar (“the 1st Petitioner”) of Belonie, Mahe, Seychelles and one Medline, Regina, Renaud (“the 2nd Petitioner”) of Mont-Buxton, Mahe, Seychelles apply to this Court for an Order appointing them joint

executrix of the estate of the late Adelaide, Grue, Dit Lalande (“the deceased”) who passed away on the 29th January 1831, exhibit A1. The Petitioners filed this petition in Court on the 31st October 2019, prior to coming into force the Civil Code of Seychelles Act, 2020 and the Curatelle Act, 2021 in July 2021, thus this Court having jurisdiction to determine it.

[2] The Petitioners filed this joint petition pursuant to Article 1026 of the Civil Code of Seychelles Act, 1975 which has since been repealed. The joint petition is supported by an affidavit jointly sworn by the 1st and 2nd Petitioners as well as the necessary relevant documents required by Practice Direction No 1 of 1989, and other documents which for the purposes of determining this petition are relevant.

[3] In the supporting joint affidavit to the petition, the Petitioners aver, amongst other things, that Adelaide, Gruel, dit Lalande (“the deceased”) passed away intestate on the 29th January 1831. She was married to Bertrand Lalande who passed away on the 22nd June 1813, thus predeceased her. The deceased was survived by her six children including her daughter Jeanne Lalande who was born on the 03rd September 1806, and who passed away on the 13th October 1862, and her daughter Bidal Lalande who was born on the 02nd January 1808, and passed away on the 31st March 1885.

[4] The deceased’s daughter Jeanne, Lalande was not married to anybody. She was survived by her five children, including her daughter Antoinette Lalande who passed away on the 27th February 1918.

[5] Antoinette Lalande who was also not married to anybody, had three children including a son by the name of Adolphe, Cesar, Olivier Lalande who was born on the 14th March 1863, and who passed away on the 05th February 1898. He had five children including a daughter by the name of Delphine, Alexina, Lalande who was born on the

31st August 1886 and died on the 15th September 1958. Delphine, Alexina, Lalande was married to Charles Camela. She had three children including a son named Charly, Emmanuel, Cesar born on the 17th June 1908 who passed away on the 26th March 1988.

[6] Charly, Emmanuel, Cesar had three children, including a daughter by the name of Margrita, Francine, Cesar born on the 08th March, 1933 who was married to Maxime Nibourette. She, who has an actual hereditary right in the estate of the deceased, is a mother of 7 children including the 1st Petitioner Jeanine, Lina Cesar born on the 26th July 1957 who represents her in these proceedings, and who has obtained her consent for her appointment as executrix of the estate of the deceased.

[7] The Petitioners aver, that the deceased's daughter Bidal, Lalande was married to Victor, Francois, Savy born on the 11th June, 1798 and passed away on the 16th August 1866. They had 6 children, including their son Vildoric, Victorin, Savy who was born on the 11th December 1843, and passed away on the 29th February 1892.

[8] Vildoric, Victorin, Savy was married to one Marie, Laurestine, Morel. They had children one of whom was Charles, Fury, Savy born on the 26th January 1873, who passed away on the 09th May 1949. He was married to Marie, Octavie, Renaud who passed away on the 17th September 1955.

[9] The couple had few children including their daughter Elizade, Gironflin (Eliane) Savy who was born on the 09th September 1902, and who passed away on the 21st December 1990. She was married to France, Merlo, Renaud born on the 06th July 1904, who passed away on the 06th October 1973. They were survived by their son France, Joseph, Renaud born on the 19th March, 1928, who passed away on the 03rd June 1993. France, Joseph, Renaud was married to Regina, Micheline, Renaud nee

Roucou. They had 5 children, including the 2nd Petitioner Medline, Regina, Sultana, Renaud born on the 09th September 1956.

[10] The Petitioners aver, that at the time of her death, the deceased owned immovable properties in the depths of Grand Anse, Mahe, Seychelles, Les Mamelles, Mahe, Seychelles and La Misere, Mahe, Seychelles, notably, lot LDD, LPD and LD amongst others.

[11] The Petitioners aver, that it is necessary for them to be appointed as joint executrix of the estate of the deceased, and that they are willing and ready to be so appointed in order to perform the duties and obligations of executors as prescribed by law, particularly, under the provisions of the Civil Code of Seychelles Act which duties and obligations are now prescribed under the Curatelle Act 2021.

[12] On account of the affidavit evidence and the documentary evidence tendered in support of the petition coupled with the questions put to the Petitioners by the Court and the answers given in reply, it looks as if, that not all the heirs are known to the Petitioners inspite of the fact that reasonable steps have been taken to find them. Therefore, not all the names of the heirs are disclosed and mentioned in the affidavit. I am, however, of the view, that the absence of the names of all the heirs does not hinder the appointment of an executor, or the Petitioners as joint executors in the instant case, in view of Articles 724, 774 and 1029 of the Civil Code.

[13] To decide whether or not this petition should succeed, it is appropriate at this juncture, to remind ourselves of the provisions of Article 1026 of the Civil Code of Seychelles Act that provides;

“If the succession consists of immovable property, or of both immovable and movable property, and if the testator has not appointed a testamentary executor or if an executor so appointed has died or if the deceased has left no Will, the Court shall appoint such an executor, at the instance of any person or persons having a lawful interest. A legal person may be appointed to act as an executor. But a person who is subject to some legal incapacity may not be so appointed.” The underlined emphasis is mine.

[14] The reading of Article 724 (4) of the Civil Code of Seychelles Act suggests, that where there are immovable property, the heirs of the deceased cannot inherit the property as of right under the principle of *Saisine de plein droit*. The property has to be vested in an executor who shall act as fiduciary for the heirs.

[15] Thus, by virtue of Article 1026 of the Civil Code of Seychelles Act, the Court has to be satisfied, that a person who applies to be the executor of a deceased’s estate has;

(i) a lawful interest in the estate and

(ii) is not subject to any legal incapacity from exercising the duties that is conferred on him by law once appointed.

[16] These two statutory requirements have been emphasised in many case law authorities, notably, *Hoareau v. Hoareau* [1985] SCR 112 and in the matter of the estate of the late *Louis, Joseph, Maxime Larue and Emmeline, Beronis Larue nee Pool* (MC68/2018) [2018] SCSC 2018 (25 November 2018), for example.

[17] In the case of *Essack vs. Fernandez* (16 of 2005) [2000] SCCA 18 (28 November 2006) the Court of Appeal gave a meaning to the concept of “lawful interest” in Article 1026. The Court said the following;

“It transpires that a person with a lawful interest within the meaning of Article 1026 is not somebody who had an actual or potential hereditary right in the estate to be administered. It is someone who in good faith has a legitimate concern that in the administration of that particular estate, the provisions of the law will be complied with. An actual or potential heir maybe one of such person but not necessarily so. That is, indeed, reflected in all decisions given by the Supreme Court on this matter”.

[18] Therefore, the meaning attributed to the concept “lawful interest” clearly indicates, that an applicant may not necessarily be a heir with a vested interest in the estate of the deceased, (as the 1st Petitioner to this petition is) although, he or she can be one (as the 2nd Petitioner to this petition is), and once the Applicant has shown that he or she has a “lawful interest”, and that he is “not subject to any legal incapacity”, the Court is bound to appoint the executor to ensure that the estate of the deceased is wound up and distributed according to the rules of succession.

[19] In the final analysis, therefore, this Court is satisfied, that the Petitioners have adduced sufficient evidence to show that they do meet the statutory requirements for their appointment as joint executrix of the estate of the deceased, and therefore, their joint application is allowed. Accordingly, this Court appoints Jeanine, Lina, Cesar of Belonie, Mahe, Seychelles and Medline, Regina, Renaud of Mont-Buxton, Mahe, Seychelles joint executrix of the estate of the deceased Adelaide, Gruel, dit Lalande who died intestate on the 29th January 1831.

Signed, dated and delivered at Ile du Port on 24th March 2022.

B. Adeline

Judge of the Supreme Court