

IN THE SUPREME COURT OF SEYCHELLES

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**Reportable**

[2022] SCSC ...

CA 05/2022

In the matter between:

**JACINTHA VOLCERE**

**1<sup>ST</sup> APPLICANT**

*(rep. by S. Rajasundaram)*

**LINA HOAREAU**

**2<sup>ND</sup> APPLICANT**

*(rep. by S. Rajasundaram)*

**MAUREEN PAYET**

**3<sup>RD</sup> APPLICANT**

*(rep. by S. Rajasundaram)*

**EUGENE ESPARON**

**4<sup>TH</sup> APPLICANT**

*(rep. by S. Rajasundaram)*

**SYLVETTE ESPARON**

**5<sup>TH</sup> APPLICANT**

*(rep. by S. Rajasundaram)*

And

**JILL BERNADETTE ESPARON**

**1<sup>ST</sup> RESPONDENT**

*(rep. by France Bonte)*

**CHRISTEL NATALIE AZAIS**

**2<sup>ND</sup> RESPONDENT**

*(rep. by France Bonte)*

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**Neutral Citation:** *Jacintha Volcere & ors vs. Jill Esparon & Ors* [2022] SCSC .....  
CA05/2022

**Before:** Dodin J

**Heard:** submissions 13 July 2022

**Delivered:** 5 August 2022

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**RULING**

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**DODIN J.**

- [1] The Petitioners are appealing the decisions of the Master and the Curator of Vacant Estates appointing the Respondents joint executrix to the estate of the late Dickson Gervais Godfrey Esparon, hereinafter referred to as “the deceased” who died intaestate in Seychelles on the 22<sup>nd</sup> day of November 2021.
- [2] The Petitioners are the mother, the brother and sisters of the deceased. The 1<sup>st</sup> Respondent is the lawful wife of the deceased and mother of one minor child of the deceased Jill Bernadette Esparon. The 2<sup>nd</sup> Respondent is the mother of another minor child of the deceased Ellie Andrea Esparon.
- [3] The Petitioners/Appellants now file a motion moving the Court for an Injunction Order against the Respondents ordering that they be restrained and prevented from disposing off the assets/estate both movable and immovable of the deceased.
- [4] In their affidavit in support the Petitioners/Appellants state the following reasons, inter-alia in support of the motion, namely that the main relief they are all claiming in the main suit is for declaration that the marriage held between the deceased Gervais Dickson Esparon and the 1<sup>st</sup> Respondent is null and void; that the Supreme Court of Seychelles presided by Master, by virtue of its ruling dated 8<sup>th</sup> March 2022 dismissed their Notice of Motion dated 22<sup>nd</sup> February 2022; that they have filed an appeal against the decision and the said Ruling dated 8<sup>th</sup> March 2022 and the said Appeal in CA 05/2022 is pending before this Court whereby both Repsondents are the Respondents in the said Appeal CA 05/2022.
- [5] The Petitioners/Appellants further aver in their affidavit that while all the matters referred to above are pending before this Court, they are reasonably given to understand that both the Executors are attempting to dispose off and dissipate the assets being estate of the deceased. That if the Executors are not restrained by an injunction order from this Court, their rights and title are seriously prejudiced and nor would the executors be able to compensate in future in case injunction order is not granted. That it is in the interest of

justice, equity and in the best interest of the estate of the deceased for an injunction to be issued.

- [6] They further aver that they verily believe and have been legally advised that no serious prejudice would be caused to the Respondents if the injunction order is granted whilst they would suffer irreparable loss and serious prejudice if an injunction order is not granted.
- [7] Learned counsel for the Petitioners in his submission set out the essentials the court must give consideration to in determining whether to grant an injunction and repeated the with some elaboration the averments of the Petitioners in their affidavit.
- [8] Learned counsel for the Respondents objected to the Petition raising two points only, namely that the Petitioners have no locus standi as declared by the Master to intervene in this matter and therefore their appeal and Petition are frivolous and vexatious; secondly that the affidavits do not disclose any right, interest or title that any of the Petitioners could have in the deceased's estate hence this Petition is without any foundation or merit.
- [9] The issue to be determined is whether the Petitioners have established sufficient interest in the estate of the deceased to intervene in the succession to the deceased's estate. Learned counsel for the Petitioners has not addressed that issue directly in his submission and the Petitioners have not addressed how they consider themselves eligible to a share of the deceased estate in their affidavit. Affidavits are evidence and the court must be satisfied on the evidence before it that the Petitioners have established their credentials to be entitled to a share of the deceased's estate to the satisfaction of the Court.
- [10] The Curatelle Act has the following provisions: Sections 23 and 37 of the Curatelle Act 2021:

*23.(1) The appointment of testamentary executors shall be confirmed by the Curator.*

*(2) 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 Curator shall appoint an executor, at the instance of any person having a lawful interest [emphasis mine].*

Appeal

*37.(1) A person aggrieved by a decision of the Curator may appeal to the Court.*

*(2) The Court may affirm, reverse, amend or alter, the decision appealed from, or remit the matter to the Curator with the directions of the Court thereon, and may make any orders as to costs and all such orders shall be final and conclusive on all parties.*

*(3) No appeal under this section shall operate as a stay of execution, but the Curator, or after an appeal has been lodged, the Court, may stay execution on such terms as may be just and necessary.*

[11] Article 747 of the Civil Code of Seychelles Act:

*747.(1) Children or their descendants succeed to their ascendants without distinction of gender or primogeniture, even if they are born of different marriages or relationships.*

*(2) They take in equal shares and per head if they are all of the first degree and inherit in their own right.*

*(3) They take per stirpes when all or some of them inherit by representation.*

*(4) In each order, the closest heir by degree excludes more remote heirs [emphasis mine]*

Hence since the children are of the 1<sup>st</sup> degree, subject to the rights of the spouse of the deceased under article 745(2)(a) and the qualifying partner under article 745(2)(b) the remainder of the secession devolves on the descendant in the 1<sup>st</sup> degree to the exclusion of those in more remote degree.

[12] Articles 735 to 738 of the Civil Code provides the following in respect of degree and secession:

*735.(1) The proximity of relationship shall be established by the number of generations.*

*(2) Each generation is a degree.*

*736.(1) A sequence of degrees forms a line.*

*(2) A direct line is the sequence of degrees between persons who descend*

one from the other.

(3) A collateral line is the sequence of degrees between persons who do not descend one from the other, but who can trace their descent to a common ancestor.

(4) The direct descending line links the ancestor with the descendants.

(5) The direct ascending line links a person with his or her ascendants.

737.(1) In the direct line, there are as many degrees as there are generations between the persons.

(2) A child is, in relation to the parent, in the first degree, the grandchild, in the second, and correspondingly the parent and the grandparent with regard to the children and grandchildren.

738.(1) In the collateral line, the degrees rank by generations from one of the parents up to, but not including, the common ancestor and from the latter to the other parent.

(2) Siblings are related in the second degree, uncle or aunt and nephew or niece are related in the third degree, first cousins in the fourth degree, and so on [all emphasis mine].

[13] In this case the Petitioners as per their own averments, are neither siblings of the two children of the deceased nor their collateral successors. They are the ascendant and the siblings of the deceased and therefore cannot inherit in the first degree since the deceased has children who inherit as descendants in the first degree. Under article 747(4) as the heirs in the first degree and being the closest heir by degree they exclude more remote heirs. Taken with section 23 of the Curatelle Act, the Petitioners do not have any lawful interest in the succession of the deceased.

[14] This takes the Court back to the issue of injunction. The Court would entertain application or Petition for injunction if the Court is satisfied that the Applicant or Petitioner *i.* has locus standi in the matter at hand; *ii.* There is a sufficiently serious matter

to be tried; *iii.* the Applicant or Petitioner has a reasonably good chance of success; *iv.* That if the injunction is not granted, the Applicant or Petitioner would suffer substantial and irreparable loss which the Respondent would be unable to make good; *v.* that considering all the circumstances of the case the Court concludes that it is in favour of granting the injunction than not to grant. This is not exhaustive as the Court can consider any other issues peculiar to the case. Each of the above must be satisfied in sequence and failing to satisfy one test fails the entire process, that is, if the Applicant or Petitioner fails test *i.* the Court cannot proceed to test *ii* and the same applies up to test *v.*

[15] Whilst this Petition for injunction does not require this Court to determine the appeal, I wish to remind counsel of the need to ensure that litigants are not led into believing that a matter can be fought and won on principles alone. The law must be adhered to so that litigants do not keep throwing good money after bad money when their chance of success is equivalent to finding a snowball in hell. I am reminded of Dingake J.A. strong remark in *Savoy Development Limited v Sharifa Salum SCA MA 22/2021 Arising in SCA10/2021*.

*“On the facts of this case the application borders on an abuse of Court warranting some sanction by this Court, on the Attorney handling this matter or his client, for a number of reasons ... Ordinarily, although I am of the considered view that some sanction would be appropriate to express this Court’s displeasure, I will temper justice with mercy and refrain from imposing some punitive costs and hope the message will be heeded”.*

[16] Considering my findings above, the Petitioners have not satisfied the Court that they have a lawful interest in the estate of the deceased. They have not satisfied this Court that they have locus standi to intervene in the intestate succession to the deceased and entitled to his estate. Hence their appeal has a remote chance of success. This Court therefore cannot grant an injunction as petitioned.

[17] This Petition is dismissed with costs to the Respondents.

Signed, dated and delivered at Ile du Port, Victoria on 5<sup>th</sup> day of August 2022

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C G Dodin

Judge