

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC ...
MA118/2022
(CS122/2021)

In the matter between:

JACINTHA VOLCERE

1ST APPLICANT

(rep. by S. Rajasundaram)

LINA HOAREAU

2ND APPLICANT

(rep. by S. Rajasundaram)

MAUREEN PAYET

3RD APPLICANT

(rep. by S. Rajasundaram)

EUGENE ESPARON

4TH APPLICANT

(rep. by S. Rajasundaram)

SYLVETTE ESPARON

5TH APPLICANT

(rep. by S. Rajasundaram)

And

JILL BERNADETTE ESPARON

1ST RESPONDENT

(rep. by France Bonte)

CHRISTEL NATALIE AZAIS

2ND RESPONDENT

(rep. by France Bonte)

Neutral Citation: *Jacintha Volcere & ors vs. Jill Esparon & Ors* [2022] SCSC
MA118/2022

Before: Dodin J

Heard: submissions 11 July 2022 and 19 July 2022

Delivered: 5 August 2022

RULING

DODIN J.

- [1] The Petitioners are the mother, the brother and sisters of the deceased. The 1st Respondent is the lawful wife of the deceased and mother of one minor child of the deceased Jill Bernadette Esparon. The 2nd Respondent is the mother of another minor child of the deceased Ellie Andrea Esparon.
- [2] 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.
- [3] 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 1st Respondent is null and void;
- [4] 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.
- [5] 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.
- [6] 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.
- [7] Learned counsel for the Respondents objected to the Petition raising two points only, namely that the Petitioners have no locus standi and their Plaint has no chance of success

and is frivolous and vexatious; secondly that the affidavit 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.

[8] Anyone can challenge the marriage of any two persons during the publication of the same prior to the marriage. If any irregularity is discovered after the marriage, it is up to the Civil Status to attend to deal with it as it deems fit. Of course a party to the marriage may challenge the validity of it directly to the Court but whether a person not a party to the marriage has locus standi to challenge the validity of the marriage after the marriage is not a matter to be determined at this stage.

[9] 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.*

[10] In this case it appears that despite this being a plaint to declare the marriage between the deceased and the 1st Respondent null and void, the Plaintiffs are linking and relying on the succession to the estate of the deceased as the reason to obtain an injunction. To do that they must establish that they have a legal right to the estate of the deceased.

[11] Articles 735 to 738 of the Civil Code provides the following in respect of degree and secession which this Court has just analysed in its ruling in CA 05/2022:

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].*

[12] Further, article 747 of the Civil Code of Seychelles Act provides:

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]

[13] Hence since this Court is not determining the Plaintiff, the issue of locus standi is left to be determined on the merits if the case gets to that distance. On the aspect of injunction, the Plaintiff has not established to the Court that they have a lawful interest in the estate of the deceased or that the subject matter to be tried relates wholly or intricately on the disposition of the estate of the deceased. Furthermore even if the marriage of the deceased and the 1st Respondent is declared null and void, only the children of the deceased would inherit and none of the Plaintiffs have a remote chance of inheriting anything from the estate as heirs in the second degree.

[14] Consequently this application for injunction is dismissed.

[15] I award costs to the Defendants.

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

C G Dodin

Judge