

SUPREME COURT OF SEYCHELLES

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**Reportable**  
[2022] SCSC ... 791  
CS 52/21

In the matter between:

**AARON BARRADO**  
*(rep. by France Bonte)*

**Plaintiff**

and

**BABHRA MOTEE NEE LABONTE**  
*(rep. by Wilby Lucas)*

**Defendant**

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**Neutral Citation:** *Barrado v Motee* (CS 52/21) [2022] SCSC ..... 791 ..... (..... 14<sup>th</sup> .....  
September 2022).

**Before:** Pillay J

**Summary:** section 225 as read with section 239 of the Seychelles Code of Civil  
Procedure  
Res Judicata  
Prescription

**Heard:** By way of submissions

**Delivered:** 14<sup>th</sup> September 2022

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**ORDER**

The plea in limine is upheld and the Plaint is dismissed.

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**RULING**

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**PILLAY J:**

- [1] This ruling is a result of the plea in limine raised by the Defendant in her Defence.
- [2] The Defendant in her Defence raised three pleas in limine as follows:

*(1) The subject matter raised in the Plaintiff's Complaint is better described as default of judgment which the Plaintiff seek to enforce notably as per paragraph 5 of the Complaint. Section 225 as read with section 239 of the Seychelles Code of Civil Procedure provide for the correct procedure on an Application for execution. In that The Plaintiff cannot commence a default judgment by way of a Complaint. The Defendant move for the dismissal of the Complaint. (sic)*

*(2) The subject matter raised in the Complaint is Resjudicata. An application for Execution of Judgment was filed by the Plaintiff's Attorney against the Defendant dated 22<sup>nd</sup> day of August 2017 vide MA 247/2017 arising in CS 113/10.*

*Contents of the Application is the same subject matters pleaded in the Complaint and for the provision of Sections 225 and 239 of the Seychelles Code of Civil Procedure which resulted to the dismissal of the Application. The Complaint shall be dismissed.*

*(3) The relief claimed under paragraph 6 of the Complaint, Particulars of Loss and Damages is time barred on the basis of 5 years prescription. The succession opened on the passing away of Anthony Joseph Barrado in April 2009 or on the date the Judgment was delivered in June, 2016 (sic)*

[3] Learned counsel for the Defendant requested that the pleas be heard before the hearing hence the present Ruling. He submitted that the law clearly and sets out the procedure and pre-conditions for enforcing a judgment. It was his submission on the basis of section 225 of the Seychelles Code of Civil Procedure that the complaint must fail for non-compliance as enforcement of a judgment should be done by way of petition or an application with an affidavit in support and not by way of complaint.

[4] It was the submission of Learned counsel for the Defendant that "an application for execution of judgment was filed by the Plaintiff's attorney against the Defendant dated 22<sup>nd</sup> day of August 2017 vide MA 247/2017 arising in CS 113/10." He submitted that the "content of the application is the same subject matter pleaded in the complaint and for the same relief."

[5] He went on to add that the relief claimed under paragraph 6 of the Complaint is time barred on the basis of 5 years prescription. He submitted that the succession opened at the passing away of Anthony Joseph Barrado in April 2009 or the date of judgment in June 2016.

[6] Learned counsel went on to submit on procedural irregularities and unlawful intervention into the duties of the Executors. In order to explain these irregularities and intervention he quoted the remarks of Twomey CJ found in her ruling dated 29<sup>th</sup> July 2019 as follows

*“The matter was called in numerous occasions before Nunkoo J. What followed were Kafkaesque procedural twists and turns with the parties ignoring the basis of the application and both parties filing bizarre pleadings, the likes of which I have never seen before or in any case not in compliance with any civil procedural rules or forms. I took over the matter on the 29<sup>th</sup> May 2019 on my brother’s departure from the jurisdiction by which time the Respondent had had a change of counsel.”*

Her pronouncement then as to the ‘Kafkaesque procedural twists and turns with the parties ignoring the basis of the application and both parties filing bizarre pleadings’ is as true now as it then was. I do not understand the basis of Learned counsel’s submissions with regards to the Executors so I will proceed to ignore that part of the submissions as they have no bearing on the issues at hand.

[7] The Plaintiff submitted in reply that “the contention of the Defendant that the subject matter of this suit is “default”, is a wrong assumption, based on misapplication and misinterpretation of paragraph 5 of the Plaintiff.” It was his submission that the Defendant “with a view to discover the subject matter of the suit from the pleadings, has wrongly resorted to paragraph 5 of the plaintiff, whereas this paragraph is irrelevant and has nothing to do with the subject matter of the suit.”

[8] It was his submission that the subject matter is “descriptively and distinctly pleaded in paragraph 3 and 4 of the Plaintiff.

[9] On the plea that the matter is res judicata Learned counsel for the Plaintiff submitted that the pre-requisites for a plea of res judicata to succeed are that:

- (a) The previous judgment should have been a final judgment of a court of competent jurisdiction.*
- (b) The subject matter in both suits should be the same.*
- (c) Cause of action should be the same in both cases; and*
- (d) The parties should be the same in both cases.*

- [10] Learned counsel for the Plaintiff submitted that the previous case relied on by the Defendant, MA 247 of 2017 arose in the Judgment in the original action in CS 276/2003. It was his submission that the first case was “simply an application made by the Plaintiff for Execution of a Judgment” and not a suit of action. Learned counsel went on to distinguish between “judgments” given by Courts in suits and “orders” made by Judges in Applications or Petitions and concluded that “no order made in an application for execution of judgment is final.”
- [11] He went on to add that the subject matter in the instant suit is not “Execution of Judgement” as stated by the Defendant proceeding to submit that therefore the subject matter is not the same in both cases without further expanding on the issue.
- [12] In relation to the third requisite, cause of action, Learned counsel submitted that in the first case the cause of action arose from the Defendant’s default to satisfy the Judgment given in favour of the Plaintiff in Civil Suit CS 113 of 2010. It was his submission that in the second case, being the instant suit, “the cause of action arose from the Defendant’s refusal or neglect to distribute or pay or deliver or transfer to the Plaintiff half of the properties/assets, which belong to the estate of the Anthony Joseph Barrado deceased including al movables, immovable, cash, moneys in bank accounts held in the name of the deceased at the time of his death and half of all income and revenue, which the Defendant derived, as mesne profits through rental, interest on bank deposits or otherwise from properties/assets of the said estate accrued as from 30<sup>th</sup> November 2009 to date.” On that basis he submitted that the cause of action and remedies sought in both cases are substantially of a different nature, character and based on different factual circumstances.
- [13] As to the plea of prescription Learned counsel for the Plaintiff relied on Article 2271 and 2262 for the proposition that the “instant suit is a rem action in respect of right of ownership of land or other interests...belong[ing] to the estate of the late Anthony Josphe Barrado...[t]herefore, the instant suit falls under exception to the five-year rule and is barred by prescription only after twenty years.”

[14] Learned counsel for the Plaintiff went to argue that the cause of action is a “continues cause of action” as it is continuously running and the claim amount is accruing progressively from date of death of the deceased until judgment is given in the matter.

[15] The history of this case is summarised in the Plaint in paragraph 3 and 4. The Defendant in her Defence acknowledged the existence of the judgment in CS No 113/20 delivered on 8<sup>th</sup> June 2016 but disputed the Plaintiff’s claim that she had not complied with the orders of the Court.

[16] The Plaintiff particularised his loss and damage as follows:

<i>(1) Loss of his half of the value of the vehicle S82</i>	<i>Rs.200,</i>
<i>000.00</i>	
<i>(2) Loss of his half of money in Nouvobanq</i>	<i>Rs. 54,</i>
<i>586.85</i>	
<i>(3) Loss of his half of the contents of the houses</i>	<i>Rs.150,</i>
<i>000.00</i>	
<i>(4) Loss of his own personal furniture and effects</i>	<i>Rs.150,</i>
<i>000.00</i>	
<i>(5) Loss of Calice Du Pape and Bois Noir Cut Timber</i>	
<i>left on the property under the care of the Defendant</i>	<i>Rs.100, 000.00</i>
<i>(6) Loss of half of rent collected from</i>	
<i>(a) Ministry of Education for 80 months Re: Lease Agreement</i>	
<i>(b) Defendant’s Brother’s Workers 12 months @ Rs. 2, 500.00</i>	
<i>per month Re. Para 25 of Judgment</i>	<i>Rs. 30, 000.00</i>
<i>(c)Creation Line for 11 months @ Rs. 3, 500.00 per month</i>	
<i>(Letter of 30<sup>th</sup> May 2012)</i>	<i>Rs. 38, 500.00</i>
<i>(c) Interest on all the above at 10%</i>	

[17] With the above in mind, what is the nature of the Plaintiff’s action?

[18] The Plaintiff argues that the “subject matter” of the suit is found in paragraphs 3 and 4 and not paragraph 5 as “assumed” by the Defendant. Yet at no point does the Plaintiff actually defines the nature of his action, be it the “subject matter” or the “cause” as he distinguishes them.

[19] Paragraph 3 of the Plaint reads thus:

*Following a Supreme Court Judgment in CS No. 113/2010 and among one of the orders, the Defendant should pay or deliver or transfer or convey to the Plaintiff half of the properties/assets, which belong to the estate of the said deceased including all movables, immovable, cash, moneys in bank accounts held in the name of the deceased at the time of his death and half of all income and revenue which the Defendant derived through rental, interest on bank deposits or otherwise from properties/assets of the said estate accrued as from 30<sup>th</sup> November 2009 to date.*

[20] Paragraph 4 of the Plaintiff reads thus:

*That the Defendant has to date failed to comply with the above in that*

- (a) She has failed to pay the Plaintiff half the value of the vehicle S82 at the time of death of the deceased;*
- (b) To pay half of the amount of money in the Nouvobanq account;*
- (c) To give an audit of all rental and revenue earning activities that is being undertaken on the property T.1359 from the death of the deceased to date.*

[21] Paragraph 5 of the Plaintiff reads thus:

*The Defendant has failed, refused, neglected and/or ignored to abide by the above order of this Honourable Court in the above mentioned Judgment.*

[22] Essentially the Plaintiff's claim is based on a judgment he obtained from the Supreme Court in CS No 113/20 delivered on 8<sup>th</sup> June 2016. What he seeks now is for the Court to order the Defendant to satisfy that judgment.

[23] It is noted that part of his claim is for the Defendant to give an audit of rental revenues. The Defendant along with the Plaintiff are joint-executors. If one of the executors has failed in their duties there is provision under the Civil Code from which the Plaintiff may seek redress.

[24] In fact the Learned Chief Justice explained to Learned counsel for the Plaintiff that he has all the orders made by the Court now he has to execute those orders.

[25] Indeed the rule with regard to res judicata; the principles applicable were clearly enunciated in the case of **Cable and Wireless (Seychelles) Ltd v Innocente Gangadoo (Civil Appeal**

SCA 14/2015) [2018] SCCA 29 (31 August 2018) by Twomey JA and again in the later case of **Wilfred Freminot & Anor v Christopher Gill & Anor (CIVIL APPEAL SCA 30/2016 & CROSS APPEAL SCA 32/2016) [2019] SCCA 10 (10 May 2019)** by Robinson JA.

[26] Simply put

*“For the plea of res judicata to be applicable, there must be between the first case and the second case the threefold identity of "objet", "cause" and "personnes”.*

*The "objet" is what is claimed. "La cause" is the fact, or the act whence the right springs. It might be shortly described as the right which has been violated. (See de Bertier de Sauvigny & ors. V. Courbevoie ltée. & ors., 1955 M.R. 215).”*

[27] In line with Article 1351 (1) of the Civil Code of Seychelles which provides that:

*The authority of a final judgment shall only be binding in respect of the subject-matter of the judgment. It is necessary that the demand relate to the same subject-matter; that it relate to the same class, that it be between the same parties and that it be brought by them or against them in the same capacities.*

I have to agree with Learned counsel for the Plaintiff in that the plea of res judicata cannot apply to the application for execution made by the Plaintiff in MA 247 of 2017 which was struck out for want of prosecution in that it had been filed contrary to the procedure applicable as it is not a final judgment.

[28] It was made clear that striking out and dismissal in terms of section 92 of the Seychelles Code of Civil Procedure is one based on procedural irregularity and cannot constitute a final decision on the merits by the Court in the case of **Nourrice v Assary [1991] SLR 80**.

[29] That said, this Court cannot ignore the history of this case. The attempted execution in MA 247 of 2017 arose from the judgment delivered in case CS 113/10. Indeed it is the judgment in the case of CS 113/10 which the Plaintiff now seeks to once again enforce in the guise of a claim of money.

[30] There is no doubt that the object is the same in the current matter and that of the matter in CS 113/10. The claim by the Plaintiff is to enforce the orders made by the Court in the matter in CS 113/10. The cause is the same in that it arises from the succession of the deceased Anthony Joseph Barrado. The parties are the same in that they are the sole legal heir of the deceased, the Plaintiff, and the concubine, the Defendant.

[31] The Plaintiff's attempt to enforce the said judgment by way of Plaintiff is contrary to the provisions of the Seychelles Code of Civil Procedure. Furthermore the Plaintiff falls afoul of Article 1351 of the Civil Code of Seychelles as these issues have already been litigated in CS 113/10.

[32] As regard the plea of prescription, no submissions were forthcoming from the Defendant. The Plaintiff however addressed the issue arguing that it was within the time limit of 20 years as the rights were rights in rem in respect of rights of ownership in land by the deceased.

[33] Indeed Article 2271 of the Civil Code of Seychelles provides as follows:

*(1) All rights of action shall be subject to prescription after a period of five years except as provided in articles 2262 and 2265 of this Code.*

*(2) Provided that in the case of a judgment debt, the period of prescription shall be ten years.*

[34] Article 2265 of the Civil Code of Seychelles provides thus:

*All real actions in respect of rights of ownership of land or other interests therein shall be barred by prescription after twenty years whether the party claiming the benefit of such prescription can produce a title or not and whether such party is in good faith or not.*

[35] Article 2262 provides that:

*If the party claiming the benefit of such prescription produces a title which has been acquired for value and in good faith, the period of prescription of article 2262 shall be reduced to ten years.*



[36] The issue however is whose rights are in question. In my humble opinion it is not the rights of the deceased that is in issue but the rights of the Plaintiff in the succession of the deceased. The Plaintiff's cause of action in CS 113/10 arose at the time of opening of the succession. However that is no longer an issue as judgment was delivered on that issue. The issue as decided above is the enforcement of the decision in CS 113/20 or the issue of the conduct of the Executors. The applicable time period that found in Article 2271 (2). However I do not propose to make any pronouncement on whether or not the Plaintiff is still within the time limit to execute the judgment in view of the above finding that the Plaintiff being a veiled attempt at execution is not made in the proper manner. For those reasons I dismiss the plea that the Plaintiff is prescribed.

[37] It is noted that per the proceedings of 20<sup>th</sup> September 2017 before Twomey CJ the application in MA 247/2017 arising in CS 113/10 was struck out for want of prosecution as it was not brought by the proper procedure. The Learned Chief Justice went as far as informing Learned counsel for the Plaintiff that "the Court does not direct process servers to carry out inventory, to account for monies, to get the Plaintiff to pay for his half-share, you already have all that, you execute the Judgment." The remarks of the Learned Chief Justice still ring true.

[38] The Court therefore finds in favour of the Defendant.

[39] The Plea in limine is upheld as per above findings and the Plaintiff is dismissed.

Signed, dated and delivered at Ile du Port on ..... 14<sup>th</sup> September 2022 .....



Pillay J