

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC 192
XP 05/2023

In the ex parte matter of:

THE ATTORNEY GENERAL
(Represented by Ms Shireen Denys)

Applicant

Neutral Citation: *The Attorney General* (XP 05/2023) [2023] SCSC 192 (10th March 2023)

Before: Adeline J

Summary: Application to order an enquiry to be carried out to ascertain death/Section 2 read with Section 3 of the Presumption of Death Act.

Heard: 15 February 2023

Delivered: 10 March 2023

FINAL ORDER

Application, by petition to order an enquiry to ascertain death – Applicant has reasons to believe that the persons are dead – Application is allowed, and accordingly, I order that a Magistrate (whose selection shall be approved by the Minister) holds a public enquiry into the circumstances under which Alberto Antat and Rodney Payet disappeared.

ORDER

Adeline, J

[1] The Applicant in this application, has brought this application by way of petition supported by an affidavit under Section 2 read with Section 3 of the Presumption of Death Act, (“the Act”). By its application, the Applicant petitions this court for an order ordering a

Magistrate to conduct an enquiry to ascertain whether one Alberto Antat and one Rodney Payet are dead, and can, therefore, be declared dead under Section 2 of the Act.

- [2] The affidavit evidence in support of the petition is sworn by Police Sergeant Davis Simeon, (“Sgt Simeon”) who is the investigation officer assigned to this matter and who is assigned to the Criminal Investigation Department of the Police Force.
- [3] In his affidavit, Sgt Simeon, avers, that he is the Investigating Officer in this matter, and as such, he is well aware of the facts and circumstances of this matter, based on the information received and collected during the course of his investigation.
- [4] Sgt Simeon also avers, that it was in the morning of the 8th October 2018, together with their colleagues, that Antat and Payet were seen by Sgt Ernesta carrying out their usual duties outside their military barrack.
- [5] As per Sgt Simeon’s averment, after they had completed their duties, Antat went on the phone to call his grantmother, and was seen to be happy. Sgt Simeon avers that at around 12 hours, one Sgt Ernesta went to the kitchen, and when he noticed that Antat and Payet were not around, he assumed that the pair had gone fishing in the area having heard them speaking about it earlier in the morning.
- [6] It is an averment made by Sgt Simeon, that Sgt Ernesta decided to go to the seaside to check on “the catch of fishes” by both, Antat and Payet, specifically in the area they were talking about earlier in the morning. It is also an averment made by Sgt Simeon that upon looking in the sea, a distance from where he was, that Sgt Simeon saw a floating object drifting, and Antat and Payet on that object.
- [7] It is averred by Sgt Simeon, that Sgt Ernesta did call one gentleman by the name of Michel for assistance. It is also averred by Sgt Simeon, that the said Michel did waive his hat at Antat and Payet but the exercise was in vain because there was no signs, gestures or any other form of response from either of them.

- [8] Sgt Simeon avers, that a binocular was used to observe them on their floating object, and that it was at that point, that the gentleman, Michel, realised that they were both on a raft that was drifting. Michel then informed Sgt Ernesta that it was Antat and Payet, who then sought for the assistance of the Coast Guard based on Mahe, as well as personnel on Aldabra Island.
- [9] Sgt Simeon also avers, that two vessels were deployed in an attempt to try to reach Antat and Payet on their raft, but neither of the two could because they both encountered engine problems. Sgt Simeon avers, that while the engines were being repaired, Michel walked to the edge of the island to keep his eyes on them, as he saw both, Antat and Payet still on their raft drifted a distance away as they gradually disappeared.
- [10] It is averred by Sgt Simeon, that at around 1745 hours, the engines of one of the two boats were fixed, and as the boat was about to start its journey towards Antat and Payet, one immediately failed again. As per Sgt Simeon's averment, with only one engine working, the boat went out at sea to search the area where Antat and Payet were seen on a raft, but it avoided going too far feared that the working engine would also fail leaving them stranded.
- [11] Sgt Simeon avers, that great efforts were made and multiple searches were conducted to find Antat and Payet but without success. He avers, that their whereabouts have been unknown, and their mortal remains were not found, and that as such, there are reasons to believe, that Alberto Antat and Rodney Payet are no longer living, and given that their mortal remains have never been found, there is a legal impediment for a formal proof of death and to register the same as such.
- [12] Section 2 of the Presumption of Deaths Act under which this application is made, reads;
- “The Attorney General, the relatives of a person who has disappeared, or anyone interested in the property of the person who has disappeared, may wherever he or any of them have reasons to believe that such person is dead, but such death cannot be proved or registered

because the dead body has not been found, or else because it is not possible to give formal proof of such death, lodge a petition at the Registry of the Supreme Court requesting a Judge to order an inquiry in order to ascertain whether such person is dead.”

[13] Section 2 must be read with Section 3 of the same Act, that reads;

“If the person has disappeared while residing in Seychelles, a Judge shall, on receiving such petition, order a Magistrate (whose selection shall be approved by the Minister) to hold a public enquiry into the circumstances under which the person alleged to be dead disappeared, and the judge shall direct such Magistrate to summon as a witness any person whose evidence he may think necessary. The evidence of the witness shall be taken on oath and taken down in writing”.

[14] On account of the affidavit evidence, I am satisfied, that the Applicant’s application does have merits, in that, the Applicant has reason to believe, that Alberto Antat and Rodney Payet are dead, but that such death cannot be proved, or registered, because the dead body has not been found, and it is not possible to give a formal proof of such death.

[15] In the circumstances, the application is allowed, and accordingly, I order a Magistrate (whose selection shall be approved by the Minister) to hold a public enquiry into the circumstances under which Alberto Antat and Rodney Payet alleged to be dead disappeared.

[16] Therefore, I direct the Magistrate so ordered, to summon the Commissioner of Police to produce any evidence that may be at its disposal as well as any other persons whose evidence would be relevant and necessary to establish the circumstances Alberto Antat and Rodney Payet disappeared.

Signed, dated and delivered at Ile du Port 10 March 2023.

