

SUPREME COURT OF SEYCHELLES

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Reportable/ Not Reportable/ Redact  
[2023] SCSC 274  
CS 143/2022

In the matter between:

**ETHELLE VERONIQUE BISTOQUET**  
In her capacity as mother & legal guardian of  
minor RENE RAPHAEL JOSEPH BISTOQUET  
(*rep. by Divino Sabino*)

**Plaintiff**

and

**DANIEL BENOITON**  
(*Unrepresented*)

**1<sup>st</sup> Respondent**

**EUGENIA BENOITON**  
(*Unrepresented*)

**2<sup>nd</sup> Respondent**

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**Neutral Citation:** *Bistoquet v Benoiton & Anor* (CS143/2022)[2023] SCSC 274... (06 April 2023)

**Before:** Carolus J  
**Summary:** Action en Recherche de Paternite  
**Heard:** 23 March 2023  
**Delivered:** 06 April 2023

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**ORDER**

1. I declare that the late Rene Joseph Benoiton is the biological father of Rene Raphael Josef Bistoquet.
2. The Chief Officer of the Civil Status is directed to rectify the Act of Birth of Rene Raphael Josef Bistoquet by entering therein the name Rene Joseph Benoiton as his father's name, and changing the surname of Rene Raphael Josef Bistoquet from Bistoquet to Benoiton.
3. A copy of this judgment is to be served on the Chief Officer of the Civil Status.

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**JUDGMENT**

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CAROLUS J

- [1] The plaintiff Ethelle Veronique Bistoquet is the mother of minor Rene Raphael Josef Bistoquet (“the child”) born on 9<sup>th</sup> October 2022, as shown by the child’s Certificate of Birth (Exhibit P1). She has filed the present action in her capacity as the mother and legal guardian of the child, to have the late Rene Joseph Benoiton (“the deceased”) declared as the child’s father. The defendants to the action are the parents of the deceased as shown by the deceased’s Certificate of Birth (Exhibit P2)
- [2] In terms of the plaint the plaintiff avers that the defendants are the sole legal heirs of the deceased who died in Chennai, India, on 17<sup>th</sup> May 2022. She avers that she and the deceased were in a relationship for eleven years immediately prior to his death, that they had been living together for the last nine of these eleven years, and that their relationship was known and acknowledged by their respective families and society in general. She avers that in April 2022, the deceased went to Chennai to undergo surgery and died there on 17<sup>th</sup> May 2022 following the surgery. At the time of his death the child had already been conceived and was born five months later. The plaintiff further avers that during her pregnancy, the deceased’s family recognised that she was expecting his child and treated her accordingly; that since the child’s birth they have been treating him as the deceased’s son and providing her with their full support in raising him; and that the child is and has always been recognised as the child of the deceased by the family of the deceased, the plaintiff’s family and by society.
- [3] The Plaintiff therefore prays this Court to –
- a) Declare that Rene Raphael Josef Bistoquet is the child of the late Rene Joseph Benoiton;
  - b) Order the Chief officer of Civil Status to record that fact in the Register of Births and amend the Birth Certificate of the child Rene Raphael Josef Bistoquet accordingly;
- [4] The defendants, having been served with the plaint, appeared in Court and admitted the plaint. The matter was consequently fixed for ex-parte hearing.

[5] At the hearing, the plaintiff, in essence confirmed the matters averred in the plaint. She produced deceased's death certificate confirming that he had died in Chennai India on 17<sup>th</sup> May 2022 (Exhibit P3). She also produced the child's birth certificate in which her name was entered as the child's mother and the father's name was left blank (Exhibit P1). In support of her claim she also produced four photographs which were mounted on one sheet (Exhibit P4), showing (1) herself and the deceased on their last trip to La Digue (top left), (2) herself and the deceased in Qatar (bottom left); (3) the child at two weeks old with Daniel Benoiton his grandfather and the father of the deceased (top right); and (4) the child with Eugenia Benoiton his grandmother and the mother of the deceased (bottom right). She stated that the two photographs of herself and the deceased had been taken by a friend of hers, and that the two of the child with his grandparents had been taken by the deceased's brother.

[6] In response to the Court's enquiry the plaintiff stated that the deceased was not married and that Rene Raphael Josef Bistoquet is his only child.

[7] Proof of the descent of a child and of parenthood is dealt with in the Civil Code of Seychelles Act. Article 373 provides as follows –

*373. Proof of parenthood, maternal and paternal, may be established by all relevant facts or by possession of status (possession d'état).*

[8] Article 376 further provides -

*376.(1) The descent of children shall be proved by their acts (actes) of birth.*

*(2). In the absence of an act of birth, the possession of status (possession d'état) of the child is sufficient.*

[9] Article 377 contains provisions setting out the circumstances in which possession of status (referred to in Articles 373 and 376 above) may be established. It reads as follows:

*377.(1) Possession of status (possession d'état) may be established when there is a sufficient coincidence of facts indicating the relationship of descent and parenthood between a person and the family to which the person claims to belong.*

(2) *The principal facts are—*

(a) *That that person has always borne the name of the parent whose child he or she claims to be;*

(b) *That the parent has been treating him or her as his child and that, in his capacity as parent, he has provided for his or her education, maintenance and start in life;*

(c) *That he or she has always been recognised in society as a child of that parent;*

(d) *That he or she has been recognised as such by the family.*

Emphasis is mine.

[10] Article 381 provides for the right to bring an action to prove parental descent as follows:

*381.(1) The right to prove parental descent is for the benefit for the child alone..*

*(2). An action under this article may be brought by a child's parent, even if under age, or by the child's guardian, at any time during the child's minority.*

[11] I have considered the testimony of the plaintiff which I have found to be a credible witness. I have also taken into account that the defendants have admitted the plaintiff. On that basis, I am satisfied on a balance of probabilities that the child Rene Raphael Josef Bistoquet is, in accordance with Article 377 in possession of status of a natural child of the late Rene Joseph Benoiton, as provided in Articles 373 and 376(2),

[12] Accordingly I declare that the late Rene Joseph Benoiton is the biological father of Rene Raphael Josef Bistoquet, and make the following Orders -

(a) The Chief Officer of Civil Status is directed to rectify the Act of Birth of Rene Raphael Josef Bistoquet by entering therein the name Rene Joseph Benoiton as his father's name, and changing the surname of Rene Raphael Josef Bistoquet from Bistoquet to Benoiton.

(b) A copy of this judgment is to be served on the Chief Officer of the Civil Status.

Signed, dated and delivered at Ile du Port Victoria on 6<sup>th</sup> April 2023

Carolus J

Carolus J