

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC ...
XP232/2022

534

In the matter of Ex-parte

MARIE LUCIANNE MOREL
(rep. by Manuella Parmentier)

PETITIONER

and

THE ATTORNEY GENERAL

MINISTERE PUBLIQUE

Neutral Citation: *Ex-parte Marie Lucianne Morel* (XP232/2022) [2023] SCSC 534 13 July 2023).

Before: Vidot J

Summary: Applications to in terms with section 510 of the Civil Code of Seychelles for investment of income of an interdicted person

Heard: 18 January 2023

Delivered: 13 July 2023

ORDER

Application to sell the interdicted person's share in land parcel T573 allowed but the proceeds of sale to be invested for the future maintenance of the interdicted person

RULING

VIDOT J

The Application

- [1] The Petitioner is the sister and legal guardian of Elsia Marie-Therese Morel (hereafter “Elsia”) who is 71 years old. She lives at Baie Ste. Anne, Praslin and cared for by a live-in carer, provided by the Petitioner and Elsia’s other siblings namely, Bernadette Regina Parmentier, Justin Morel and Marie-Anne Baker.
- [2] Elsia has been diagnosed with paranoid schizophrenia and mental retardation as per medical certificates (Exhibit P2) filed with the Petition. For this reason, she requires to be cared for. Therefore, a house was built specifically for her needs, belonging to one of her siblings, Bernadette Parmentier. Her siblings have in fact jointly taken care of her to financially support her and bear expenses equally for her care and upkeep. The siblings have computed expenses up to December 2021 to have amounted to SR617,002.82. A breakdown of such expenses was produced as exhibit P3.
- [3] It is averred that they have made payment for a foreign carer and have to bear the cost of Gainful Occupation Permit (GOP). Elsia’s sole income is her social security benefit which has varied between SR3100.00 and SR 5750.00 over the years. In January 2015, the Petitioner set up a bank account with the Seychelles Commercial Bank Limited to better manage Elsia’s income and expenses. A bank statement marked Exhibit P6 was produced to Court.
- [4] The Petitioner and other sibling are now asking that part of expenses they have incurred thus far to be reimbursed so as to alleviate some of the financial burden from them.
- [4] Elsia is entitled to rights and interests in immovable property, namely land parcel T573 in which she holds 1/336 share. The Petitioner desires to sell Elsia’s share in the property to Bernadette Regina Parmentier. The property is administered by joint executors, Marise Green and Allen Hoareau who has since 2005 tried to sell the property. In 2014, a prospective buyer made an offer of €15,000,000.00 whilst in 2019, another prospective buyer made an offer of €18,000,000.00. The executors filed an application before the Supreme Court seeking permission to finalise the sale. Pursuant to an Order dated 29th March 2019, in court case XP19/2019 [2019] SCSC 282, the Court granted such permission

but unfortunately the sale did not go through. The Petitioner states that it appears that there is little prospect of the property being sold any time soon. It is therefore felt that selling Elsia's share to one of her siblings would be advantageous to her and ensure her continued care and maintenance.

[5] The Petitioner further states that the value of Elsia's share in the property is SR450,000.00 and that if the sale of that share is permitted, the consideration shall be paid into account number 53014220000 with the Seychelles Commercial Bank (SCB) created to benefit Elsia. It is further averred that if her share in the property is not sold, then she will suffer as her care and wellbeing will occasion hardships on her siblings who are maintaining her. Unless, the Court authorises the sale, Elsia will be deprived of potential disposable income. Therefore, it is felt that the sale will be in her best interest

[6] Therefore, the Petitioner prays to Court for the following;

to grant an Order permitting the Petitioner to deal with the shares of Elsia by;

- (a) the sale and transfer of Elsia's share in the property and transfer the proceeds of sale into the above mentioned bank account with SCB; and
- (b) allowing the Petitioner to discharge Elsia's debt to her siblings by distributing the proceeds of sale in equal share to those siblings.

The Attorney General's Intervention

[7] The Attorney General (AG) appeared in this case in his role as Ministère Publique pursuant to section 151 of the Seychelles Code of Civil Procedure (SCCP) and expressed some concerns in respect of the petition.

[8] The AG notes that Article 510 (1) of the Civil Code of Seychelles (CC) states that "*[t]he income of an indicted person shall in principle be employed to improve the condition and assist the recovery of the interdicted person*". The AG questioned whether or not income realised from the sale of Elsia's share in the property, as is being proposed, can properly be used to defray costs that have already been incurred by the Petitioner and other siblings.

The AG further adds that the proceeds of such sale could be used in the manner alleged but considers that this could only be the case if those costs can be properly accounted for.

- [9] The AG further states that despite ledger notes produced by the Petitioner which is averred show the cost incurred by each sibling, these are not sufficiently substantiated by other evidence, such as receipts and bank statements. (That being the case the Petitioner produced certain receipts and invoices). It is further said that such factfinding exercise should be undertaken by the court. The AG also called for the Court to assess if the proceeds of sale should be used to repay any debts that are said to be owing to the siblings, including the Petitioner.
- [10] Further, the AG disputes that there has been a proper evaluation of the of the said property, having regard that the duty is to ensure and safeguard other best interest of Elsia, who has been interdicted. The AG states that it is necessary that proper valuation be carried out and that the Court should be satisfied that the price being offered should reflect true market value.
- [11] The AG also states that in circumstances where the Petitioner is claiming that the sale of Elsia's share in the property should be used to repay the debt owed to her and her siblings, therefore, it is necessary for each of those siblings to have sworn an affidavit setting the amount of debt owed in relation to the care. This is to ensure that there are bona fide reasons to order the disposal of Elsia's share in the property.

The Petitioner's Further Affidavit

- [12] In response to the AG's expressed concerns, the Petitioner filed further affidavit and attached thereto some receipts explaining of expenses incurred for the upkeep and wellbeing of Elsia.

The Petitioner's Testimony

- [13] The Petitioner's testimony was merely a confirmation of her Petition and affidavits attached therewith. She produced several documents that inter alia included Court Order XP19/2019 appointing the executors of Estate of Francois Mondon that includes land

parcel T573, GOP permits of 2 people who were employed as carer with the Petitioner, a few receipts for utilities that include electricity and telephone, payment to Seychelles Revenue Commission, Court Order MC05/2019 [2019] SCSC 329, appointing the Petitioner as guardian of Elsia, ledger of monthly expenses for Elsia, consent forms from Bernadette Parmentier, Marie-Anne Baker and Justin Morel, consenting and supporting the Petition, Seychelles Commercial Bank account statement for account 5301422000, and an Acknowledgement of Debt, dated 07 August 2022

- [14] She gave evidence pertaining to Elsia's medical condition as supported by her medical reports. As a result of that, she has required attention for her care and wellbeing. It is felt that in future Elsia will require an additional carer. The expenses for her maintenance will have to be catered for and notes that the cost of living has increased. To that end she testifies that the siblings have to be reimbursed as money is becoming tight and they will need to continue maintaining the care and upkeep of Elsia.

Discussions

- [15] Allen Hoareau and Marise Green who are joint executors of the Estate of Francis Mondon that includes parcel T573 were summoned by Court to come and express their position in respect of the proposed sale of Elsia's share of the property. They indicated that they do not object to that proposal.
- [16] Firstly, I wish to deal with the house that Elsia is now occupying. As per evidence, it was built for the benefit of the sibling's mother and Elsia by Mrs. Parmentier. There is no indication and certainly no affidavit from Mrs. Parmentier that it was otherwise. There is nothing to show that Elsia had to pay for such accommodation. Therefore, the house that Elsia occupies will not be part of the consideration in this Application. In any case, the house is still in Mrs. Parmentier's name and therefore, still her house.
- [17] One of the AG's complaints is that the Petitioner did not produce sufficient supporting documents to the support the amount of contributions that the siblings spent on Elsia. This is correct. However, following from the few receipts that were produced, the Court could form a sufficiently good idea of what was spent. I noticed that there are two pay slips for

three different employees but the seven payslips are each for a different year. The two GOP applications produced are for two of these people only. They are dated 24th September 2020 and 14th December 2022. Only one payslip for these employees namely Niraula was produced. Though the GOP for one Rel-Ann Torrevillas dated 24th September 2020 was produced, the payslip that was produced for her, predates the date of the GOP.


- [18] Despite the ledger of expenses having been prepared by the Petitioner, I consider that the expenses stipulated therein, in view of the cost of living, the expenses appear to be fair and reasonable. Therefore, the Court accepts it as a fair breakdown.
- [19] In regards to the land parcel, the Petitioner has not produced any appraiser's report in respect of its value. A recent evaluation of the property would have been helpful. However, I take note of the offers that were made previously for parcel T573. In 2014 the offer was €15,000,000.00 and in 2019, it was €18,000,000 as indicated in the Executor Appointment Oder in XP19/2019 dated 29th March 2019. However, it is now 2023. Therefore, it is expected that the value would have increased and in the absence of an evaluation report, such an assessment would be considered reasonable. I consider the value to be around €21,000,000.00. Therefore, I consider the value of Elsia's share to be in excess of SR450,000.00, which value was based on the evaluation of the land parcel at the time it was put up for sale.
- [20] Article 510(1) of the Civil Code states that the "income of the interdicted person shall in principle, be employed to improve the condition or assist the recovery of the interdicted person" [underline mine]. This is consistent with the Petitioner's evidence that the sale was "*to benefit Elsia in the future.....in the future we might need another carer because one is not enough.*" She added that money is bit tight for the siblings at present and that they needed to sell so that Elsia may enjoy her share. This is in contradiction with the prayer of the Petitioner's petition which asks that the proceeds of sale be distributed amongst the siblings for expenses incurred thus far.
- [21] Article 510(1) seems to suggest that improvement to the interdicted present or future condition as consideration, and not past condition. If the consideration was to be used to reimburse the siblings that does not give confidence that future wellbeing of Elsia is

guaranteed. What if the siblings decide not to continue to contribute towards her maintenanc. I do not believe that it was the intention of the siblings to seek reimbursement for assistance they were giving to Elsia. They were doing it out of the goodness of their heart for her. The Acknowledgment of Debt of 07th August 2022 signed by the Petitioner was an afterthought. There wasn't such mention in the in the Order for appointment of Guardian (case MC05/2019 [2019] 329). The proceeds of sale has to be used to improve the condition of Elsia. If the funds are dissipated, her welfare, as has been said, is not guaranteed.

[18] I therefore make the following Orders;

- i. Elsia's 1/336 share in land parcel T573 may be sold to Bernadette Regina Parmentier;
- ii. I set the consideration for the sale of such share at SR550,000.00
- iii. The proceeds of the sale shall be invested in the bank account that has been opened by the Petitioner. The Petitioner shall continue to maintain the funds in that account in terms with her appointment as guardian of Elsia.
- iv. The Petitioner shall at all times keep proper records of use of such funds.

Signed, dated and delivered at Ile du Port on 13th July 2023.



Vidot J