

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC 668
XP 114/2020

In the matter between:

**GIRALDA MARIE DE CHARMOY
LABLACHE**
of Anse Possession, Praslin
(rep. by S Barbe)

Petitioner

and

JEVA TESSA DE CHARMOY LABLACHE
of Anse Possession, Praslin
(rep. by S Rouillon)

Respondent

Neutral Citation: *De Charmoy Lablache v De Charmoy Lablache* (XP 114/2020) [2023] SCSC 668
(__ September 2023)
Before: Govinden CJ
Summary: Contested application for appointment of Executrix
Heard: 21/3 23; 1/11/22
Delivered: 11 September 2023

JUDGMENT

GOVINDEN CJ

The Pleadings

[1] This is a decision in a contested application for appointment of Executrix. In the second Amended application for the appointment of an executor the petitioner averred as follows;

“The humble application, of Giralda, Mare De Charmoy Lablache, also known as “Geralda” of Anse Possession, Praslin, Seychelles respectfully showeth:

That Etienne, Allen De Charmoy Lablache, also known as "Allan", "Alan", and "Alain" died intestate in Seychelles on 29th March 2019 (copy death certificate attached).

That the late Etienne, Allen de Charmoy Lablache and I were married on 16th December 1973.

That the late Etienne, Allen De Charmoy Lablache is survived by his wife and children, namely:

- (a) Giralda, Marie De Charmoy Lablache, also known as "Géralda" (wife) – [REDACTED]*
- (b) Gervais, Gerard De Charmoy Lablache born on 18th September 1974 – NIN [REDACTED]*
- (c) Jeva, Tessa De Charmoy Lablache, born on 14th April 1979 – [REDACTED]*
- (d) Melisa, France De Charmoy Lablache, born on 18th March 1988 – NIN [REDACTED]*
- (e) Francesca, Chantal de Charmoy Lablache, born on 22nd July 1992 – Nin [REDACTED]*

(Birth certificates attached)

That at the date of the late Etienne, Allen de Charmoy Lablache also known as Allan", "Alan", and "Alain" left the following:

- (a) Parcels of land situated at Anse Possesson, Baie St Anne, Praslin, surveyed as PR6627, PR3395 and PR3394.*
- (b) Standing in his Savings Account, Account Number: [REDACTED] Bank, Grand'Anse Praslin, Seychelles, a number of money.*
- (c) Standing in his Fixed Deposit, Account Number: [REDACTED] at the [REDACTED] Bank, Grand'Anse Praslin, Seychelles.*
- (d) A white i10 (vehicle)*

That it is necessary for the executor to be appointed in respect of the estate of the late Etienne, Allen de Charmoy Lablache also known as "Allan", "Alan", and "Alain".

That the Petitioner is conversant with the functions and power of the Executor and is prepared to abide by them.

That the Petitioner is the wife of the late Etienne, Allen De Charmoy Lablache also known as "Allan", "Alan", and "Alain" and is willing to be so appointed.

That the Petitioner is not subject to any legal disability.

That the Petitioner has the consent of the other heirs to be so appointed.

WHEREFORE the Petitioner prays this Honourable Court for an order appointing her Executor of the wealth of the late Etienne, Allen de Charmoy Lablache also known as "Allan", "Alan", and "Alain".

- [2] The Petitioner submitted through her Counsel that they are supporting their new application with an Affidavit in support previously attached with their original application dated the 13th of August 2020, sworn by the Petitioner, which averred as follows :

"I Giralda, Marie De Charmoy Lablache, also known as "Géralda" of Anse Possession, Praslin, Seychelles, make oath and say as follows:

That the statement contained in the Application are true and correct to the best of our knowledge, belief and information"

- [3] In an Affidavit dated the 13th of August 2020 filed in support of the 1st Petition all the averred legal heirs except Jeva, Tessa De Charmoy Lablache, consented to the appointment of the Petitioner as Executrix. The case proceeded inter partes when Jeva intervened and contested the petition.

- [4] In her Amended Affidavit in response to the Petition she averred in the following terms;

"I, Mrs Jeva Tessa De Charmoy Lablache a businesswoman, of Anse Possession, Praslin, of NIN: [REDACTED] make oath and say as follows:

I object to the Petitioner for Giralda Marie De Charmoy Lablache to be appointed as the executrix of my late father Etienne Allen De Charmoy Lablache for the following reasons:

That, I am advised and verily believe, the Petition although amended twice now is incorrect and incomplete in that;

- (a) The Applicant does not have the consent of all heirs to be appointed and the mention of the other heirs is vague and incomplete. I have not consented to the appointment as the Applicant has already told me I will get nothing from the estate;*

(b) The Amended Petition is not supported by an Affidavit or of any documents of consents of heirs or supporting documents in relation to the properties referred to in the averments made in the Amended Petition.

For this reason the whole Petition is defective and should be set aside as a preliminary point of law before looking at any of the merits of the Petition.

That because of serious obvious conflict of interest and animosity of the Petitioner towards me where for example, in relation to Parcel PR3394 one Ms Muriel Villiod a French National has built a Villa called the Pigeon Bleu in which she is carrying on an illegal international guest house rental business and sharing the proceeds with the Petitioner and other heirs. I genuinely believe that the Applicant is not a fit and proper person to carry out this task and that she may be influenced by other members of the family in making her decisions and carrying out her duties; therefore in this respect this amounts to a legal incapacity.

That the Applicant is not a genuine fit and proper person on the way she is running her business Chalets Anse Possession on title PR6627 where she has a licence limited to 8 room and she rents 11 rooms.

That in this case neither of the Applicant nor Ms Villiod have requested for the regularisation or authority for running an illegal guest house on the property of my late father from which the Petitioner and Villiod are enjoying the benefits. With regards to this plot she is of the view that Ms Villiod only owns the house but not the land. She collects rent from the latter but could not show proof of receiving them.

That during the earlier mentions of this case I have given the opposing party a full bundle of documents in support of my averments made in my replying Affidavit and the same arguments and documents are relied on in this Affidavit unless stated otherwise.

That having taken legal advice on the legal issues involved in paragraph 1 to 5 of this Affidavit and having a close and personal knowledge of the facts and other associated issues, I make this Affidavit confirming that the statements herein are true and correct to the best of my knowledge, belief and information.”

The evidence

- [5] The Petitioner lives at Anse Possession Praslin and is the owner of the Guest House BUSINESS “Chalet Anse Possession”. She has been running this business for 20 years and is the wife of the now deceased Alan De Charmoy Lablache, who passed away on the 29th of March 2019, also referred to as “the deceased”. The marriage has 4 issues, they are: Gervais, Gerard De Charmoy Lablache; Jeva, Tessa De Charmoy Lablache; Melisa, France

De Charmoy Lablache; Francesca, Chantal De Charmoy Lablache. At the time of his death the Petitioner's husband owned parcels PR 6627; PR 3394 and PR 3395 and they are all still registered on his name.

- [6] The Petitioner wants to be appointed as Executor because she is still strong, is the pillar of the family and needs to prevent any future succession disputes. She claims to be medically fit and being able to discharge all the functions of Executor fairly with regards to all of her children. The Petitioner is of the view that she has a good relationship with all of her children, except Tessa, who after getting married became estranged with her and now they are not on speaking term. She is of the view that Tessa is objecting to her application as she thinks that she would favour others over her.
- [7] Under cross-examination the Petitioner stated that there is one French person by the name of Muriel Villiod who was granted a right to occupy a PR 3394 and is running the Pigeon Bleu Guest House thereon; and the plot has a mortgage. This person would help her with marketing. She denied that she started to create problems with Tessa when the latter built the Villa de Mer Guest House on her parcel. She denied preventing Tessa from using a right to use a car park given to her by her late father. She denied the allegation that the other heirs want to break a laundry that the Respondent is using on one of the deceased properties. She stated that if she is appointed as Executor she will be able to give the Respondent the Villa Colibri, something that she has been asking for. She undertook to give account of any profit that the Villa Anse Possession business would have made.
- [8] Ms Mellissa De Charmoy Lablache testified that she has never received any profits from the business of Chalet Anse Possession and that she gets on well with her mother. She is on good terms with all her siblings except the Respondent. She is of the view that if her mother is appointed as Executor she would do a good job as she loves all of her children. She already has a parcel in her name transferred to her by her father. She denies any allegation that she and others heirs want to break down the Respondent's Laundry. She lives in her mum's house and was allowed to live in the adjacent Villa Torterelle by her mother during the Covid 19 period.

- [9] Under cross-examination she stated that most of the profits of her mother's Villa goes towards its expenses such as in the land, cleaning and utilities. She claims that Ms Villiod owns her Villa because she built it. She stated that despite the friendship between Ms Villiod and her mother, the latter would have to take possession of her Villa and pay off her mortgage. She goes on to state that all previous family meetings with regards to the appointment of Executor failed because of the Respondent.
- [10] Gervais De Charmoy Lablache has consented to his mother being appointed as the Executor. He stated that he helps in his mother's business and he is on good terms with her. The same being with regards to his siblings except Tessa, with whom he is not on speaking terms. He supports his mother's appointment as she loves all her children the same. On the other hand, he does not trust the Respondent. He has his own plot of land given to him by his father and a Guest House business thereon and he has no objection to the Respondent using a right of way on it. He denied having any intention to break down the Respondent's Laundry and said that he does not participate in the profit of his mother's business.
- [11] Francesca De Charmoy Lablache was the third child of the Petitioner to testify. She has given her consent to the appointment of the Petitioner as the Executor. Her relationship with the Respondent has turned sour after the passing away of her dad. This was because in her own words, "*she wanted to dictate her own terms*" with regards to which parts of her father's estate would be apportioned to her. She produced the account documents relating to her father's two accounts and the proof of ownership of his land parcels cited in the Petition.
- [12] In cross-examination she was of the view that the fact that her mother had run her business effectively for a number of years is proof that she can be an Executor. Though, she has not rendered accounts to her with regards to any profits. She maintained that the Respondent wanted to have the Villa Colibri house in her name and wanted things her own ways, this being the reasons why they could not reach a settlement with regards to the appointment of the Executor. She accepts that her mother and Ms Villiod has a mutual agreement with regards to the latter's business and that they had agreed that the parcel being occupied by

Ms Villiod would not be included in the assets of the estate given that it is encumbered. However, now she is aware that it should be part of the assets. The Villa Anse Possession includes Villa Torterelle; Villa Serein; Villa Colibri and Villa Pigeon Bleu.

- [13] The Respondent testified in her case. Her maiden name is Jeva Tessa De Charmoy Lablache and the name she uses after marriage is Tessa La Cage. She is running a Guest House called Villa Face Mer at Anse Possession Praslin. She is of the view that her mother is not competent to be an Executor because the way she is running her business is upside down. She does not keep records and has not carried out a proper inventory; and does not even provide payslip to her workers. She is of the view that she had started distributing her father's estate even if she is not the Executor as she had allowed her daughter Mellissa to occupy the Villa Torterelle free of charge and to drive her father's car for three years. According to her, her mother is under the thumb of Gervais and if appointed, it would be the latter that would be the Executor.
- [14] With regards to the Villa Pigeon Bleu, she said that Ms Villiod started to occupy it since 2006. She further testified that Ms Villiod had told her that she gives 80% of the income of her business to the Petitioner and that this is shared with Gervais and that this amounts to cash payments of Euros 10,000 every 6 months and that when Ms Villiod is not in the country it is her mum that manages the place. She stated that her father had granted her an easement with regards to a soakaway and septic tank and also a laundry on parcel PR6627, which serves her business. According to her, however, Gervais had threatened to destroy them.
- [15] Under cross-examination she admits that she is not on speaking terms with her mother and the rest of her siblings. She is the owner of 2 parcels transferred to her by her father. Her business is situated on one of them.
- [16] The Respondent's husband Mr Arnaud La Cage supported her case. He also stated that the Petitioner had failed to do an inventory of the estate. He further added that at some point he was assisting the Petitioner in her business and he noticed that she does not keep records and no payslips are issued. To him this shows that she would not be able to properly carry out the duties of an Executor. He testified further that there is bad blood between his family

and that of his wife's family and a total distrust. He also corroborated his wife's version that the Petitioner and Gervais had threatened to break up their easement with a view to ruin their business.

The law

[17] French law provides for forced heirship and therefore the automatic passage of ownership of property on death of the *de cuius* to his heirs (*saisine de droit*). In contrast, the English common law provides for testamentary freedom – the deceased's property is his own to deal with as he so chooses. Consequently, those to whom the property is bequeathed or those who inherit by legal provision do not automatically take it on the death of *de cuius* but must await its distribution to them by an intermediary (an executor or a trustee). In Seychelles with the promulgation of the New Civil Code forced heirship will take place only in the event of the deceased dying without leaving a Will. In the instance that the deceased so chooses he or she may have the liberty to decide who inherits his property through testamentary disposition. The new Code came into operation on the 1st of July 2021, accordingly, this case, which had been filed prior to shall be determined in accordance with the former Code.

[18] Seychellois succession law is derived from French law but Article 1026 of the Civil Code of Seychelles provides that:

“If the succession consists of immovable property, or of both immovable and movable property, and if the testator has not appointed a testamentary executor or if an executor so appointed has died or if the deceased has left no will, the Court shall appoint such an executor, at the instance of any person or persons having a lawful interest. A legal person may be appointed to act as an executor. But a person who is subject to some legal incapacity may not be so appointed.”

[19] Further, Article 774 of the Civil Code also provides that:

“1. Where a succession consists of movable property only, it may be accepted purely and simply or subject to the benefit of inventory. Where the succession includes both movable and immovable property it shall not be necessary to accept it, and an executor shall be appointed as provided by this Code. However, if the succession consists of movable property only, the heirs and legatees may, by agreement, elect to appoint an executor, in which case the distribution shall

proceed as if the succession included immovable as well as movables; however, the Court may also appoint an executor on the application of any interested party.

2. A succession consisting of immovable property only or of both movable and immovable property shall devolve upon an executor who shall act as a fiduciary ...”

[20] Practice Direction No 1 of 1989 provided that persons seeking the confirmation of the appointment of a testamentary executor or the appointment of an executor should submit to the Registry of the Supreme Court-

1. The death certificate of the deceased.

2. The conveyance, deed of title or other document showing the entitlement of the deceased to ownership of immovable property.

3. The bank statement, savings book or certificate of deposit showing ownership of any movable assets of the deceased, consisting of money, cash or securities.

4. The marriage certificate of any surviving spouse of the deceased.

5. The death certificate of the deceased's spouse, if any.

6. Birth certificates of all heirs.

7. Affidavits of alias where necessary in order to explain or reconcile any differences or discrepancies in names which appear in the supporting documents.

[21] Insofar as the duties of an executor are concerned, Articles 1025, 1027 and 1028 of the Civil Code of Seychelles provide in relevant part that:

“Article 1025: ... Any executors appointed shall act as fiduciaries with regard to the rights of the persons entitled under the will, as provided by this Code, and also with regard to the distribution of the inheritance.

Article 1027: The duties of an executor shall be to make an inventory of the succession to pay the debts thereof, and to distribute the remainder in accordance with the rules of intestacy, or the terms of the will, as the case may be ...

Article 1028: The executor, in his capacity as fiduciary of the succession, shall also be bound by all the rules laid down in this Code under Chapter VI of Title I of Book III relating to the functions and administration of fiduciaries, insofar as they may be applicable.”

[22] With regard to the obligations of the executor/fiduciary, Articles 825 and 830 of the Civil Code provide in relevant part that:

“Article 825: The functions of the fiduciary shall be to hold, manage and administer the property, honestly, diligently and in a business-like manner as if he were the sole owner of the property. He shall be bound to follow such instructions, directions and guidelines as are given to him in the document of appointment by the unanimous agreement, duly authenticated, of all the co-owners or by the Court...

Article 830...He shall not be personally liable in respect of any act done or obligation incurred in the proper exercise of his functions.”

[23] In Rajasundaram & Ors v Pillay (SCA 09/2013) [2015] SCCA 12 the Court of Appeal stated:

“The purpose of an executor appointment is to have the executor share out the succession among the heirs. Winding up a succession estate means evaluating the share of the heirs under the laws of succession and then to propose and make a physical allocation of property to the heirs where that is possible and to sell the land and share out the proceeds of sale to the heirs where partition is impossible” (at paragraph 19)

Analysis and determination

[24] I have given careful consideration to the evidence before me, with a view to find where the truth lies in this heavily contested family case. I have carried out this exercise whilst looking closely at the credibility of the witnesses as tested by the test of trials by cross examinations. I have also given much thoughts to the preliminary objection of Learned counsel for the Respondent with regards to what he considered as lack of evidential support of the Petitioner’s pleading. I am satisfied that the Amended Petition is properly supported by the Petitioner’s affidavit of the 13th of August 2020 and its annexed documents. I will therefore dismiss the preliminary objection raised with respect of in sufficiency in the application of the Petitioner.

[25] The issue left for this court determination is a straightforward one , namely that given the state of the relationship between the two opposing camps , the Petitioner would be able to effectively carry out her duties as the Executor of the deceased estate. It is an Executor’s

duty to ensure that they are acting in accordance with the above mentioned provisions of the Civil Code and carry out their duties in the best interests of the estate, free from personal bias and conflict. The most common responsibilities of an executor are realizing the assets of the estate; and attending to distribution in accordance with the provisions in the will. This calls for constant communication and a strong sense of trust between the fiduciaries and all involved.


- [26] The fiduciary duties of an Executor mean that he or she has to act in the best interests of the estate and to not act in their own interests if those interests are not in line with those of the estate and beneficiaries; to manage and protect all of the assets of the estate until they are distributed to the beneficiaries; to ensure and be responsible for settling all the liabilities of the estate (where appropriate); to keep full and accurate records of the management of the estate and its distribution, and provide a summary of the financial transactions to the beneficiaries on distribution; to ensure that they do not act with bias towards the beneficiaries, but attempt to mediate a resolution to any conflict; to ensure that assets are not wasted and do not diminish in value; to attend to any outstanding taxation obligations of the estate; to ensure that money collected from the sale of assets, where not immediately distributed, is invested; and to carry out the above duties with care, trust and honesty.
- [27] If a conflict arises, an executor cannot take sides with one or more beneficiaries. The Executor should try to mediate a resolution to the conflict. Communicating regularly with the beneficiaries about what is happening with the estate is a good way of minimising misunderstandings and conflict.
- [28] In this case it is clear that the Petitioner is legally capable. The only issue that is before the court is whether as a matter of fact she would be able to carry out her fiduciary duties given the very acrimonious relationship that exist between her and the Respondent as highlighted by the above testimonies.
- [29] Having carefully examined the relationship between the Petitioner and the Respondent it is clear to me that she would have great difficulties to carry out her responsibilities free of biasness and act in the best interest of the estate and if conflict arises for them to mediate the conflict through a reconciliation procedure. The level of mistrust is such that no

communication would happen that would give any meaningful account as to what is happening with the estate during the course of the Executorship.

[30] Moreover, I find that the dealings of the Petitioner with the estate of her late husband are not transparent and are opaque in many respects. It is clear that she has a joint business venture with Ms Villiod and that this venture is not fully disclosed to the Respondent and that no other legal heirs seems to be aware of what is happening with the profits of this business or are even given account of the financial position. The same applies to that of Villa Anse Possession, which the Petitioner manages on a plot belonging to the late Alan De Charmoy Lablache. This is a failure to keep full and accurate records of the management of the estate. I am not satisfied that the situation with regards to transparency will get better if the Petitioner is appointed as the Executor. It is, therefore, with great reticence that this court will use its wide discretion under the provision of Article 774 of the Civil Code and dismiss this Petition with cost in favour of the Respondent.

[31] It has been held that Executors are duly bound bylaw to carry out their duties in accordance with their legal obligations and as such personal differences between the parties, which is often the case in post succession circumstances such as this one, should not necessarily prevent a court from appointing one as Executor as it is the very court that appoints them that is also empowered to supervise their activities so that they act fairly; transparently in accordance to law. I accept that this preposition is acceptable however only to the extent that the relationship between the parties is such that it permit a certain level of trust and understanding to prevail. Unfortunately, this is not one of such a case. This is a fit case where a third or parties party not connected with the facts of the case be appointed as Executor(s).

Signed, dated and delivered at Ile du Port Victoria on 11th of *Spun* 2023.



Govinden R.

Chief Justice