

SUPREME COURT OF SEYCHELLES

Reportable
[2024]
MA107/2024
(Arising in CS103/2023)

In the matter between:

SABRINA JULIE
(*rep. by Mr. Rajasundaram*)

Applicant

and

ROSE MARY JULIE
(*rep. by Ms. Dick*)

Respondent

Neutral Citation: *Julie v Julie* (MA107/24 arising from CS103/2023) [2024]
Before: A. Madeleine, J
Summary: Section 11 of Evidence Act
Heard: 10 May 2024 and 7 June 2024
Delivered: 8 July 2024

REASONS FOR ORDER

A. MADELEINE, J

Introduction

[1] On 7th June 2024, I dismissed an application by the Applicant herein for an order under section 11 of the Evidence Act for the examination of Mr John Renaud (a former Attorney-At-Law) in the main suit - *CS103/2023 Rose Mary Julie v Sabrina Julie* - through a sworn statement.

[2] I now give reasons for the said order.

Basis for the Application

[3] The basis for the application as made out in the affidavit of the Defendant (Applicant herein) are as follows. The claim in the main suit involves “*facts as to the background of how the Plaintiff in the main suit signed the Transfer dated of title V1685*” to the Defendant, “which was executed and attested by the Attorney Mr John Renaud as early in the 2009”. The testimony of Mr John Renaud is highly necessary and crucial to disprove the averments of the plaint. However, he is not active in the private practice in law courts and due to his past health conditions, he refrains from attending courts. Summoning Mr John Renaud will prove inconvenient to him in view of his age and health conditions.

Objections to the Application

[4] Counsel for the Plaintiff in the main suit objects to the application and placed on record that she will not file any affidavit in response but will submit on the law.

[5] In her submissions, Counsel for the Plaintiff emphasized that besides the age of Mr John Renaud, there are no sufficient reasons given for the application. She pointed out that it is not uncommon for the elderly members to attend court and give evidence. She relied on Section 168 of the Seychelles Code of Civil Procedure to emphasised that even when facts are proved by affidavit, the right to cross examine the maker is safeguarded. Ms Dick, indicated that there are alternative procedures that could be followed and to which she will not object as long as she is able to cross-examine the witness, namely giving evidence by way of video link and taking evidence at the residence of the witness.

Law and Analysis

[6] Section 11 of the Evidence Act allows for the examination of a party or a witness in any civil cause or matter before an examiner – through rogation. It stipulates that –

“The Supreme Court may in any civil cause or matter, when a party or witness cannot attend before the court through illness or other lawful impediment and where it shall appear necessary for the purposes of

justice, make an order for the examination on personal answers or upon oath or solemn affirmation before any person appointed to be examiner; and at any place, of any witness or person, and may make such order as may seem proper as to notices to be given to interested parties and as to the mode in which such examination is to be conducted, and may order any deposition so taken to be filed in the registry of the court, and the court may, at the hearing of such cause or matter, of the court, and the court may, at the hearing of such cause or matter, empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the court may direct. Every examiner so appointed shall have power to administer an oath or solemn affirmation.”

- [7] Mr John Renaud is not a party to the main suit but the Attorney-At-Law who prepared the transfer document in relation to the property *in lite*. The Defendant proposes to call him as a witness in support of her defence. It does not appear that any application for summons were made or obtained to require the attendance of Mr John Renaud to give evidence or to produce documents in the main suit as per sections 152 and 153 of the Seychelles Code of Civil Procedure. The supporting affidavit merely state that it would not be convenient to summon him to attend court in view of his age and past medical conditions.
- [8] While it is known that Mr. John Renaud is an elder member of the Seychelles Bar, the supporting affidavit does not exhibit any medical certificate to establish that he cannot attend court through an illness. His “*past medical conditions*” are not on court record and these are not information within the personal knowledge of the Defendant. The Court is therefore not privy of the nature of the illness which makes it impossible for Mr Renaud to attend court and give evidence in the main suit.
- [9] In the circumstances, summons will first have to be issued and served on Mr Renaud whereupon his medical impediment will be established to the satisfaction of the Court to determine the procedure by which his evidence may be taken in court. The averment of old age is not sufficient for purposes of section 11 of the Evidence Act.

Signed, dated and delivered at Ile du Port on 8th July 2024.

A. Madeleine J