

## IN THE SUPREME COURT

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### Reportable

2024

MC23/2023

In the matter between:

**JANE HUNT**  
(*rep. by Wilby Lucas*)

**Petitioner**

and

**ANTHONY HUNT**  
(*rep. by Alexia Amesbury*)

**Respondent**

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**Neutral Citation:** *Hunt v Hunt* (MC 23/2023) 2024 1<sup>st</sup> March 2024.

**Before:** Dodin J.

**Summary:** Demand in licitation – section 98 of Immovable Property (Judicial Sales) Act

**Heard:** 19<sup>th</sup> October, 2023

**Delivered:** 1 March 2024

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### ORDER

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### RULING

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#### DODIN J.

- [1] The Petitioner and the Respondent were appointed joint executors to the estate of the late Marie-Celine Hunt and proceeded to execute their duties of executor in accordance with a judgment by consent entered into by all the heirs dated 7<sup>th</sup> July, 2020 in case Civil Side No: 4/2018.
- [2] It was a term of the judgment by consent that joint executors were to sell two parcels of land namely V4510 and V4603 within a period of 18 months failing which the properties were to be sold by licitation.

- [3] The two parcels remain unsold in 2023 and the Petitioner moved the Court in licitation for sale under section 98 of the Immovable Property (Judicial Sales) Act in accordance with clause 7(h) of the judgment by consent.
- [4] The Respondent who is a joint executor to the estate is now objecting to the sale by licitation raising a plea in limine litis in respect of the conditions of sale under sections 103 and 112 of the Immovable Property (Judicial Sales) Act which at the time of the judgment by consent was to be in accordance with articles 1686, 1687 and 1688 of the Civil Code of Seychelles Act, now repealed by the Civil Code of Seychelles Act, 2020. On the merits, the Respondent is contesting the evaluations and distribution of the estate of the deceased including the two parcels now the subject of licitation.
- [5] Whilst articles 1686, 1687 and 1688 were repealed by the coming into force of the new Civil Code on 23<sup>rd</sup> November, 2020, the judgment by consent was already in existence since the 7<sup>th</sup> July 2020 and was guided by the then existing provisions. The repealed provisions therefore do not have any alteration effect on the existing judgment. Therefore this plea in limine litis raised by the Respondent is erroneous and misconceived. I dismiss the same accordingly.
- [6] Section 98 of the Immovable Property (Judicial Sales) Act provides:

*“In any case where according to law, the sale by licitation of an immovable property can only take place under judicial authority (en justice) the demand in licitation shall from henceforth be made, ex parte, by petition to a Judge setting forth a summary description of the property sought to be licitated, and the respective names, places and abode, and callings of the several parties against whom the licitation is to be prosecuted. The Judge shall, upon the petition being presented to him, note thereon the day and hour when the same has come to his hands.”*

There is no dispute that the Petitioner has complied with the requirements of this provision.

- [7] The objections on the merits are raised under sections 103 and 112 of the Immovable Property (Judicial Sales) Act. These sections provides as follows:


103 “*Within thirty days, after the expiry of the period for notice prescribed in section 102, any defendant in the licitation, or any inscribed or judgment creditor may, if he think fit, object to the licitation, or to any of the clauses or conditions of the memorandum of charges, or to any nullities in the proceedings, such objections shall be made, heard and determined in like manner and subject to the same rules as are hereinbefore prescribed in sections 85 and 86, the provisions of which said sections are hereby extended and applied to the proceedings*”.


112”*The Judge may also, before deciding upon the demand, order an appraisement (expertise) by an appraiser to be named by him. In such case the appraiser shall, within a delay to be fixed by the Judge, make and file in the registry his report which shall in a summary manner give a description of the property, the estimated value thereof, and the basis upon which such valuation is made. The report shall further state whether or not the property can conveniently be divided in kind, and if so divisible shall set forth the proposed lots in conformity with this Act and the provisions of the Civil Code of Seychelles. In no case of appraisement under the provisions of this Chapter shall it be necessary to administer an oath to the appraiser. The parties to the division in kind shall be summoned, by a notice served upon them in person or at the domicile elected by them in accordance with section 110, four days at least before the day fixed for the appraisement, to attend at the time and place where the said appraisement is to be made.*”

- [8] This Petition has come before the Court pursuant to a judgment by consent entered into by the successors of the estate of the late Marie Celine Hunt, in which the Respondent who is also an heir and an executor bound himself to the course of action to be taken in the event of the executors failing to sell the two parcels of land within 18 months of the judgment. In the judgment by consent, the value of the parcels had already been established and agreed upon together with the proportion of the proceeds to be assigned to each heir. The Petitioner has already complied with these provisions upon the filing of the Petition for sale by licitation as per the judgment by consent.

- [9] The objections of the Respondent do not only go beyond the provisions of the judgment by consent but also places the Respondent in the unenviable conflicting position of going against his own judgment, which as executor he is under obligation to enforce. Not only is this not acceptable, it also speaks volumes in respect of an executor who should be discharging the function of executor in accordance with law and in this case in accordance with the Judgment of the Court.
- [10] This Court therefore finds that the objections on the merits are nothing more than a disguised attempt to reopen the distribution of assets and proceeds of the succession and in the process challenging the judgment by consent which the Respondent, the Petitioner and the other heirs have already acceded to and has been made final by the Court.
- [11] I therefore find these objection to be frivolous and vexatious and of no merits. They are dismissed accordingly.
- [12] I award costs to the Petitioner.

Signed, dated and delivered at Ile du Port on 1<sup>st</sup> March 2024.

  
Dodin J.

The seal of the Seychelles Supreme Court is a circular emblem. It features a central crest with a bird, possibly a frigatebird, perched on a branch. The words "SEAL OF THE SEYCHELLES" are inscribed in a circle around the top, and "SUPREME COURT" is inscribed around the bottom. There are small stars on either side of the central crest.