

# SUPREME COURT OF SEYCHELLES

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**Reportable**

[2024]

XP38/2023

In the exparte matter of:

**ROMIO EGBERT DUBIGNON  
RICCO RITCHIE DUBIGNON  
JUSTIN JOHN DUBIGNON and  
MARJONA JENNIFER DUBIGNON (BORN LABICHE)**

**Petitioners**

acting in their capacities as the joint guardians of  
RUSSEL RICARDO DUBIGNON (a Minor)  
(rep. by Mr Olivier Chang-Leng)

**In the presence of the ATTORNEY GENERAL acting as Ministère Public**  
(rep. by Ms. Shireen Denys)

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**Neutral Citation:** *Exparte Dubignon & Ors* (XP38/2023) (delivered on 3<sup>rd</sup> April, 2024).

**Before:** A. Madeleine, J

**Summary:** *Appointment of Fiduciary - Co-owned Property - Division of co-owned Property in kind - Article 821 Civil Code of Seychelles Act, 2020 - Section 13(1) Curatelle Act, 2021 – Article 391 Civil Code of Seychelles Act – Guardianship of Minors*

**Heard:** 23<sup>rd</sup> February 2024

**Delivered:** 3<sup>rd</sup> April 2024

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## ORDER

- (a) I hereby appoint Marjona Jennifer Dubignon (born Labiche), the 4<sup>th</sup> Petitioner, as fiduciary in relation to the land comprised in title V11757;
- (b) The fiduciary - Marjona Jennifer Dubignon (born Labiche) – is hereby ordered to proceed with the sub-division of land parcel V11757 in accordance with the proposed subdivision plan of Ah-Kong Land Surveys dated May 2023;
- (c) The fiduciary - Marjona Jennifer Dubignon (born Labiche) - is hereby ordered to allocate the land parcel that corresponds to the sub-divided plot no. 2 on the proposed subdivision plan of Ah-Kong Land Surveys dated May 2023 to Romio Egbert Dubignon, the 1<sup>st</sup> Petitioner;

- (d) The fiduciary is hereby ordered to allocate the land parcel that corresponds to the sub-divided plot no. 3 on the proposed subdivision plan of Ah-Kong Land Surveys dated May 2023 to Ricco Ritchie Dubignon, the 2<sup>nd</sup> Petitioner;
  - (e) The fiduciary is hereby ordered to allocate the land parcel that corresponds to the sub-divided plot no. 1 on the proposed subdivision plan of Ah Kong Land Surveys dated May 2023 to minor Russel Ricardo Dubignon represented by the 3<sup>rd</sup> and 4<sup>th</sup> Petitioners;
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## **JUDGMENT**

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### **A. MADELEINE, J**

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#### Introduction

- [1] This Judgment arises from an application by the Petitioners herein, namely Romio Egbert Dubignon – the 1<sup>st</sup> Petitioner, Ricco Ritchie Dubignon – the 2<sup>nd</sup> Petitioner – and Justin John Dubignon together with Marjona Jennifer Dubignon (born Labiche) – the 3<sup>rd</sup> and 4<sup>th</sup> Petitioners respectively – acting in their capacities as joint guardians of minor Russel Ricardo Dubignon, for the following orders –
- (a) an order appointing Marjona Jennifer Dubignon (born Labiche), the 4<sup>th</sup> Petitioner as fiduciary for the co-ownership of the land comprised in title V11757;
  - (b) an order permitting the fiduciary to proceed with the sub-division of the said land comprised in title V11757 in the manner set out in the survey plan proposed by Ah-Land Kong Surveys;
  - (c) an order permitting the fiduciary to allocate the land parcel that corresponds to the sub-divided plot no. 2 on the survey plan proposed by Ah-Land Kong Surveys to Romio Egbert Dubignon – the 1<sup>st</sup> Petitioner;
  - (d) an order permitting the fiduciary to allocate the land parcel that corresponds to the sub-divided plot no. 3 on the survey plan proposed by Ah-Land Kong Surveys to Ricco Ritchie Dubignon – the 2<sup>nd</sup> Petitioner;

- (e) an order permitting the fiduciary to allocate the land parcel that corresponds to the sub-divided plot no. 1 on the survey plan proposed by Ah-Land Kong Surveys to minor Russel Ricardo Dubignon as represented the 3<sup>rd</sup> and 4<sup>th</sup> Petitioners; and
  - (f) any other order which this Honourable Court deems fit and appropriate in the circumstances.
- [2] The application has been made by way of Petition supported by the affidavit of the four Petitioners, and served on the Attorney General in his capacity as Ministère Public.
- [3] By agreement between counsel for the Petitioners and the representative of the Attorney General in relation to the interest of Minor Russel Ricardo Dubignon, this Court ordered the Director of Surveys to carry out a survey of the land comprised in title V11757 situated at Les Mamelles, Mahe and to report whether the said plot can be conveniently subdivided between the existing co-owners taking into account the topography of the plots that derive from the said land parcel V11757.<sup>1</sup>
- [4] On 30<sup>th</sup> October 2023, Mr Oniare Nicholas, a Land Surveyor from the Survey Division tendered a report dated 26<sup>th</sup> September 2023 and a Notice of Conditional Permission for Development dated 17 October 2023 to the court. The Notice of Conditional Permission and exhibits attached thereto confirm that the Physical Planning Authority has approved the subdivision of land parcel V11757 into the three plots – plot nos. 1, 2 and 3 – as proposed in the subdivision layout plan prepared by Ah-Kong Land Surveys (hereinafter referred to as the “proposed subdivision plan of Ah-Kong Land Surveys”).
- [5] The Attorney General then filed conclusions as Ministère Public confirming that he holds no objection to the petition to the extent of the interest of the minor in the proposed subdivision as approved the Physical Planning Authority, provided that the subdivision is executed as per the survey plan produced in the Petitioners’ Affidavit.
- [6] The Court then proceeded to determine the application on the evidence of the Petitioners.

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<sup>1</sup> Order 19 July 2023

### Evidence of the Petitioners

- [7] The Affidavit of the Petitioners show that the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners, namely Romio Egbert Dubignon and Ricco Ritchie Dubignon, along with minor Russel Ricardo Dubignon are co-owners in indivision of the land comprised in title number V11757 situated at Les Mamelles, Mahe. The 3<sup>rd</sup> and 4<sup>th</sup> Petitioners, namely Justin John Dubignon and Marjona Jenifer Dubignon (born Labiche) are the parents and joint guardians of minor Russel Ricardo Dubignon. The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners and the minor acting through his joint guardians – being the 3<sup>rd</sup> and 4<sup>th</sup> Petitioners – are no longer desirous of remaining in co-ownership and desire to sub-divide the land. They have caused Ah-Kong Land Surveys to survey the land and prepare a survey plan for the purpose of subdividing the land into 3 plots of equal size and value. The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners and the minor acting through his joint guardians have agreed that upon subdivision, the 1<sup>st</sup> Petitioner shall be granted plot no. 2, the 2<sup>nd</sup> Petitioner shall be granted plot no. 3 and the minor shall be granted plot no. 1. The 3<sup>rd</sup> and 4<sup>th</sup> Petitioners – the joint guardians of minor Russel Ricardo Dubignon – have determined that the minor will not suffer any prejudice in the subdivision and allocation of plot no.1 given that each subdivided plot is of equal in size and value. According to the proposed subdivision plan of Ah-Kong Land Surveys produced in the Petitioner's Affidavit, each plot is of an extent of 371 square metres.
- [8] The Petitioner's Affidavit also show that there are no fiduciaries appointed in relation to land parcel V11757 due to the refusal of the Land Registrar to register an appointment of fiduciary by notarial deed as per letter dated 21<sup>st</sup> March 2023 produced in the Petitioner's Affidavit. Nonetheless, the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners together with the 3<sup>rd</sup> and 4<sup>th</sup> Petitioners acting as the joint guardians of minor Russel Ricardo Dubignon, have agreed to appoint the 4<sup>th</sup> Respondent as the fiduciary in relation to land parcel V11757.
- [9] At the hearing, the 4<sup>th</sup> Petitioner, Marjona Jenifer Dubignon (born Labiche), testified in terms of the Affidavit in support of the Petition. She also testified that she is married to Justin John Dubignon and that she is the mother of Romio Egbert Dubignon, the 1<sup>st</sup>

Petitioner, Ricco Ritchie Dubignon, the 2<sup>nd</sup> Petitioner and the minor, Russel Ricardo Dubignon. The minor was born on 8<sup>th</sup> August 2006 as confirmed by his certificate of birth produced in evidence. She further testified that her three children are the co-owners of a plot of land, namely parcel V11757, situated at Les Mamelles, Mahe as confirmed by certificate of official search produced in evidence. The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners are of age and together with minor Russel Ricardo Dubignon, who is represented by husband and herself, have agreed to subdivide land parcel V11757 as per the subdivision plan proposed by Ah-Kong Land Surveys. The intention is that all three children will have their own plot of land. Plot no.1 is to be allocated to the minor, Plot no. 2 to Romio Egbert Dubignon, the 1<sup>st</sup> Petitioner and plot no. 3 to Ricco Ritchie Dubignon, the 2<sup>nd</sup> Petitioner. Furthermore, the Physical Planning Authority has approved the subdivision of land parcel V11757 into the three plots of 371 sqm each as proposed in the subdivision plan prepared by Ah-Kong Land Surveys dated May 2023 produced in evidence. The witness also confirmed her approval for the subdivision of land parcel V11757 and her appointment as fiduciary.

#### Law and Analysis

- [10] The Civil Code of Seychelles, Act 2020 (hereinafter referred to as the “Civil Code”) provides, inter alia, the following in relation to co-ownership –

#### ***“CO-OWNERSHIP***

*815.(1) Co-ownership arises when property is held by two or more persons jointly.*

*(2) In the absence of any evidence to the contrary it is presumed that co-owners are entitled to equal shares.*

.....

*818.(1) Where property is co-owned, a fiduciary may be appointed.*

*(2) A fiduciary shall be appointed either by the agreement of all co-owners, or by the court on the application of any co-owner or of an interested party.*

.....

*821.(1) Where the co-owners of property do not agree to stay in a state of indivision, a fiduciary shall be appointed.*

*(2) (a) The fiduciary shall apply to the court for an order for the property to be divided in kind among the co-owners.”*

(Emphasis added)

- [11] In addition to section 821 of the Civil Code, section 13(1)(b) of the Curatelle Act, 2021 (hereinafter referred to as the “Curatelle Act”) empowers the court to order the division of co-owned property in kind among the co-owners —

***“Division of property among co-owners***

*13.(1) A court may make, in respect of co-owned property, an order —*

*(b) for the division of the property in kind among the co-owners;”*

(Emphasis added)

- [12] This is subject to the order being consistent with section 13(3) of the Curatelle Act which stipulates that —

*“(3) No order may subdivide immovable property in a manner that is contrary to any order relating to the subdivision of land or to the requirements of the laws relating to planning.”*

- [13] Having considered the evidence of the Petitioners, I am satisfied that the land comprised in title no. V11757 is co-owned by Romio Ebgert Dubignon, Ricco Ritchie Dubignon and Russel Ricardo Dubignon as confirmed by the Certificate of Official Search produced in evidence. I am equally satisfied from the affidavit in support of the petition and the testimony of the 4<sup>th</sup> Petitioner that the co-owners of land parcel V11757 do not agree to

remain in indivision and have applied to this court for an order to divide the co-owned property in kind. Romio Egbert Dubignon – the 1<sup>st</sup> Petitioner - and Ricco Ritchie Dubignon - the 2<sup>nd</sup> Petitioner – who are both of age, have made oath before the Senior Assistant Registrar of the Supreme Court and have signed and initialled each page of the affidavit in support of the petition. The parents of minor Russel Ricardo Dubignon, namely Justin John Dubignon – the 3<sup>rd</sup> Petitioner – and Marjona Jennifer Dubignon (born Labiche) – the 4<sup>th</sup> Petitioner – acting as the joint guardians in terms of Article 391 of the Civil Code have also deponed, signed and initialled each page of the affidavit in support of the petition. Thus, in terms of Article 821(1) of the Civil Code, a fiduciary must be appointed.

- [14] The co-owners of land parcel V11757 have agreed to appoint their mother, the 4<sup>th</sup> Petitioner herein, namely Marjona Jennifer Dubignon (born Labiche), as fiduciary. Having heard the said Marjona Jennifer Dubignon (born Labiche), I am satisfied that her husband and herself represent the interest of the minor and have jointly given their consent for the appointment of a fiduciary to land parcel V11757 by the court. I am also satisfied that Marjona Jennifer Dubignon (born Labiche) is ready and willing to be appointed as the fiduciary.
- [15] I am further satisfied from the proposed subdivision plan of Ah-Kong Land Surveys dated May 2023 and the Physical Planning Authority's Notice of Conditional Permission for Development dated 17 October 2023 that land parcel V11757 can be subdivided into three plots of 371sqm each. In addition, the proposed subdivision will not contravene section 13(3) of the Curatelle Act.

#### Order

- [16] I therefore grant the application and make the following orders –

- (a) I hereby appoint Marjona Jennifer Dubignon (born Labiche), the 4<sup>th</sup> Petitioner as fiduciary in relation to the land comprised in title V11757;



- (b) the fiduciary - Marjona Jennifer Dubignon (born Labiche), the 4<sup>th</sup> Petitioner – is hereby ordered to proceed with the sub-division of land parcel V11757 in accordance with the proposed subdivision plan of Ah Kong Land Surveys dated May 2023;
- (b) that the fiduciary - Marjona Jennifer Dubignon (born Labiche) – the 4<sup>th</sup> Petitioner - is hereby ordered to allocate the land parcel that corresponds to the sub-divided plot no. 2 on the proposed subdivision plan of Ah Kong Land Surveys dated May 2023 to Romio Egbert Dubignon, the 1<sup>st</sup> Petitioner;
- (d) that the fiduciary is hereby ordered to allocate the land parcel that corresponds to the sub-divided plot no. 3 on the proposed subdivision plan of Ah Kong Land Surveys dated May 2023 to Ricco Ritchie Dubignon, the 2<sup>nd</sup> Petitioner;
- (e) that the fiduciary is hereby ordered to allocate the land parcel that corresponds to the sub-divided plot no. 1 on the proposed subdivision plan of Ah Kong Land Surveys dated May 2023 to minor Russel Ricardo Dubignon represented by the 3<sup>rd</sup> and 4<sup>th</sup> Petitioners;

Signed, dated and delivered at Ile Du Port, Mahe on 3<sup>rd</sup> April 2024.

  
A. Madeleine, 