

SUPREME COURT OF SEYCHELLES

Reportable
XP 35/23

In the ex parte matter between :

Rita Elisabeth Hortence
(rep. by Wilby Lucas)

Applicant

and

Paul Reverra

1st Respondent

Aubrey Reverra

2nd Respondent

Ricky Reverra

3rd Respondent

Helen Vidot nee Reverra

4th Respondent

Sheila Reverra

5th Respondent

Wakeford Reverra
(unrepresented)

6th Respondent

Neutral Citation: *Rita Hortence and ors vs Paul Revera and ors* [2024] SCSC Exp 35/2023

Before: Govinden CJ

Summary: Application for a declaration to establish a qualifying relationship (Article 260 as read with Article 259 of the Civil Code of Seychelles Act).

Heard: 12 January 2024

Delivered: 27 May 2024

ORDER

JUDGMENT

GOVINDEN CJ

Introduction

- [1] This is an amended ex parte Application filed on 28 July 2023 seeking an order from this Court to declare the Applicant as a qualifying partner of the Deceased Wilhem John Revera with whom she had been living in a continuous relationship for more than seven years in terms of article 259 as read with article 260 of the Civil Code of Seychelles Act 2020. That as a qualifying partner of the said Wilhem John Revera, she is entitled to the succession of the said Wilhem John Revera.
- [2] The Application is supported by the Affidavit of the Deponent namely Rita Elisabeth Hortense of Baie Lazare, Mahe Seychelles which Affidavit has been sworn in her capacity as the common law wife of Wilhem John Revera.
- [3] The grounds on which she is relying upon in support of the Application for a declaration to establish a qualifying relationship are contained in Paragraphs 4-10 of this affidavit.
- [4] In Paragraph 4 of her affidavit the deponent avers that they have been living together in a qualifying relationship for more than 40 years and at Paragraph 5 that three children were born out of the said relationship namely; Paul Michael Hortence who was born on the 15th of July 1977, Josianne Margaret Hortence who was born on the 13th of November 1978 and Jones Alex Hortence who was born on the 29th of May 1983. Certified copies of their birth certificates are provided.
- [5] The Deponent further avers at Paragraph 6 and 7 that, eventhough the said Wilhem John Rivera never recognized their children, as a father he took care of all his children and contributed towards their education, wellbeing and welfare and they called him daddy.
- [6] The Deponent further avers at Paragraph 8 and 9 that the Deceased died intestate on 16th December 2022 and that at that time they were living together as a family. Copy of his death certificate is attached.

[7] At paragraph 10, Deponent avers that it is necessary and in the interest of justice to obtain a court order to declare them as the biological children of the Deceased so that they can benefit towards their father's succession which consists of immovable and movable properties.

[8] The Respondents, Paul Reverra, Aubrey Reverra, Ricky Reverra, Helen Vidot nee Reverra, Sheila Reverra and Wakeford Reverra are all biological brothers and sisters of the said Wilhem John Revera. They are not objecting to the averments raised in the Application for a declaration to establish a qualifying relationship.

Law

[9] The concept of a qualifying relationship as defined under article 260 is a new concept introduced in the new Civil Code Act of 2020.

[10] Article 260(1) of the Code provides that;

(1) [...] a qualifying relationship means either a marriage, or a domestic relationship between two persons of full age and capacity characterised by stability and continuity, and to which there is no legal impediment.

(2) Factors which give rise to a presumption of stability and continuity include that there is a child born of the relationship or the parties have acquired property in their joint names.

[11] Article 259 (1) of the said Code further provides that;

a) The parties to a qualifying relationship which has subsisted for at least seven years will, where the relationship ends inter vivos, share equally the property which has been acquired by each during the relationship in the context of the relationship, other than property acquired by one of the parties on succession or from a third party by way of a gift inter vivos or by will.

(b) In cases to which sub-paragraph (a) refers the court may, having regard to all the circumstances of the case, make such order as the court thinks fit relating to the property that is shared for the benefit of a child of the relationship.

The article 259 is a response to property issues when the relationship of parties who are not married ends. The article represents a change from the previous situation. It expands the current rights available under the Matrimonial Causes Act to other domestic relationships.

Evidence

- [12] The Petitioner testified that she has been living with one Wilhem John Reverra who is now deceased for a continuous period of more than 40 years but that they never got married for reason that the Deceased's mother never approved of their relationship.
- [13] Petitioner testified that during this long relationship, three children were born but that their father herein the Deceased did not officially or legally acknowledge them as his children. However, they have been living together as family until the death of Wilhem John Reverra on 16th December 2022. Their birth certificates were produced as exhibits.
- [14] The Petitioner further testified that during their cohabitation the Deceased acquired immovable property, a parcel of land registered in his sole name, with a dwelling house described as the family house situated at Anse Gouvernment, Baie Lazare, Mahe. Certificate of title was produced as exhibit.
- [15] Petitioner also testified that she had prior filed a petition before the Curator for her appointment as Executor to the succession of Wilhem John Reverra but it was ruled that she had no locus standi to petition until she can obtain a declaration from this Court that she is a qualifying partner in terms of Article 260 of the Civil Code Act and that she is entitled to claim the succession of her late common law husband.
- [16] Josianne Margaret Hortence, one of the Petitioner's children, testified in support of the Petitioner's testimony.
- [17] All the Respondents were summoned and served to appear before the Court. The 1st, 2nd and 4th Respondents failed to put up appearance and the Court ordered for the Petition to be heard ex-parte against them. The 3rd, 5th and 6th Respondents appeared and confirmed that

they had no objection for the Court to accede with the declaration prayed for by the Petitioner.

[18] As transpired from the evidence of the Petitioner, Rita Elisabeth Hortence supported by the testimony of one of her children Josianne Margaret Hortence, she had been living in a continuous and stable relationship with her partner Wilhem John Reverra herein the Deceased for more than 7 years. She had given birth to three children for her partner Wilhem John Reverra and they were all living together in a domestic relationship until the death of the said partner. During this relationship, the Deceased had acquired immovable property.

[19] It is considered that the evidence as led by the Petitioner, Rita Elisabeth Hortence has established sufficient coincidence of facts towards the proof of enjoyment of a stable and continuous relationship by the Petitioner vis-à-vis the deceased.

Conclusion

[20] It follows thus, that:

The Petitioner, Rita Elisabeth Hortence, is declared as being the qualifying partner of the deceased, late Wilhem John Reverra in terms of Article 260 of the Civil Code of Seychelles Act and by that virtue she is entitled to the right and interest of the succession of the said Wilhem John Reverra.

Signed, dated and delivered at Ile du Port on of 2024

Govinden CJ