

SUPREME COURT OF SEYCHELLES

Reportable
[2024]
XP 20/2024

EXP: XOLISILE THOBEKA MALCOUZANE
(rep. by Kimberly Pillay)

Neutral Citation: Exp: Xolisile Thobeka Malcouzane (XP 20/2024) [2024]
(5th June 2024).
Before: Pillay J
Summary: Sale of Minor’s Immovable Property – Article 457 of the Civil Code of
Seychelles
Heard: 17th May 2024
Delivered: 5th June 2024

ORDER

[1] The Application is allowed and the property, namely J1347 shall be sold by notarial contract on the following terms:

- (i) *after the deduction of fees due from the sale of the property, the sum of SCR 1 million from the sale of the property shall be paid into a minor’s account at Nouvobanq wherein it may not be accessed without order of the Court until the minor attains the age of 18;*
- (ii) *details of minor’s account and deposit to be provided to the Registrar of the Supreme Court within one month of the sale;*
- (iii) *prior to transfer of the sale proceeds to South Africa, the Applicant shall forward to the Attorney General the transfer documents prior to registration.*

[2] The Registrar of Lands shall remove the restriction on land parcel J1347 for the purpose of the sale of the said land.

[3] The Registrar of Lands to be informed accordingly.

JUDGMENT

PILLAY J:

- [1] The Applicant seeks an order of the Court allowing her to sell her minor son's share in land parcel J1347 to a third party, by way of notarial contract and for the Registrar of Lands to remove the restriction on land parcel J1347 for the purpose of the sale of the said land.
- [2] The Applicant avers that she is the mother and legal guardian of the [REDACTED] [REDACTED] who was born in South Africa on [REDACTED] and holds Seychelles National Identity Number [REDACTED]
- [3] She avers that both, herself and her minor son are residents and domiciled in South Africa. She avers that she and her minor son inherited immovable property situated in the Seychelles namely parcels J1347 and J2410, upon the death of her late husband [REDACTED], also known as [REDACTED]
- [4] She avers that a restriction order has been placed on both land parcels in line with section 67 (2) and 84 of the Land Registration Act, by the Land Registrar, when both parcels were registered on both her and her minor son.
- [5] The Applicant avers that the house which she and her minor son are currently residing in, in South Africa, belongs to Rita Maylitine Ladouceur. She further avers that on 21st August 2023 she received a letter from Rita Maylitine Ladouceur's attorney, requesting for her and her son to vacate the said house within two months from the date of the letter, failing which legal action would be taken against her.
- [6] She avers that as a result she and her son have no other place to reside, it is therefore absolutely necessary and it is in the interest of her son for her to sell land parcel J1347, which would enable her to purchase a new home in South Africa for her and her son.
- [7] The Applicant avers that she has already found a potential buyer for the said land parcel, at a very advantageous price and further avers that it would be a manifest advantage for

her minor son, to proceed with a private sale of the land by notarial contract in the sum of SR 4, 750, 000.00cts.

- [8] The Applicant further avers that she and her son would not achieve the aforesaid sum by way of public auction, even with a reserved price and within time to prevent her and her son from being rendered homeless.
- [9] She further avers that the property to be purchased in South Africa shall be registered on her and her son.
- [10] The Application was served on the Attorney General in his capacity as the *Ministere Publique's* under section 151 of the Seychelles Code of Civil Procedure. His conclusions are that the Order may be made subject to certain conditions namely that a portion of the money is paid into a minor's account in Seychelles for the minor and that before the money is transferred to South Africa the transfer documents relating to the property being purchased in South Africa is sent to Seychelles before registration.
- [11] The Application is grounded in Article 457 (1) and (4) of the Civil Code which provides that:

(1) without authorisation of the court, no guardian shall –

- (a) borrow money on behalf of the ward or sell or mortgage the ward's property; or*
(b) make a compromise involving the property of the ward.

....

(4) (a) If it is an absolute necessity or manifest advantage that the property be sold otherwise, the property may be sold by notarial contract, provided that such sale and its conditions have first been approved by the Court.

(b) The guardian shall state his or her opinion as to the proposed sale and the judge shall, if satisfied that such sale is in the interests of the ward, authorise the sale.

[12] I have perused the Application along with the attached documents, duly apostilled. I see no reason to refuse the Application. Accordingly, the Application is allowed and the property, namely J1347, shall be sold by notarial contract on the following terms:

- (i) *after the deduction of fees due from the sale of the property, the sum of SCR 1 million from the sale of the property shall be paid into a minor's account at Nouvobanq wherein it may not be accessed without order of the Court until the minor attains the age of 18;*
- (ii) *details of minor's account and deposit to be provided to the Registrar of the Supreme Court within one month of the sale;*
- (iii) *prior to transfer of the sale proceeds to South Africa, the Applicant shall forward to the Attorney General the transfer documents prior to registration.*

[13] The Registrar of Lands shall remove the restriction on land parcel J1347 for the purpose of the sale of the said land.

[14] The Registrar of Lands shall be informed accordingly.

Signed, dated and delivered at Ile du Port on

5th June 2024

Pillay J

