

SUPREME COURT OF SEYCHELLES

Reportable
[2024] SCSC
CS 119/2022

In the matter between:

LAURA BERLOUIS
(rep. by Vanessa Gill)

Plaintiff

JONATHAN BERLOUIS
(rep. by Vanessa Gill)

Plaintiff

and

THE ESTATE OF THE LATE OGILVY BERLOUIS

Herein represented by its executor,

Josephine Claude Marise Berlouis

Defendant

(represented by Basil Hoareau)

Neutral Citation: *Berlouis and Anor v The Estate of the late Ogilvy Berlouis* (CS 119/2022)
[2024] SCSC (4th June 2024).

Before: Pillay J
Summary: Res judicata – abuse of process
Heard: By way of submissions
Delivered: 4th June 2024

ORDER

- [1] The pleas in limine are upheld. The Complaint is dismissed.
- [2] In view of the nature of the matter, no order is made as to costs
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RULING

PILLAY J:

- [1] The Plaintiffs' prayers before the Court is for a declaration that:

The dispositions in the Will of Ogilvy Berlouis dated 20 December 2017 be varied in accordance with the law

And for an order that:

The estate of the late Ogilvy Berlouis to be distributed by his executor in accordance with the law in order that the Plaintiffs obtain their rightful share thereof.

- [2] The Defendants opted to defend the matter, proceeded to file a defence including a plea in limine which the counsels agreed to address before we proceed with the hearing of the matter.
- [3] The plea in limine is in three parts:
- (1) The Plaintiff ought to be dismissed – in accordance with section 92 of the Seychelles Code of Civil Procedure – as it is frivolous and vexatious and/or does not disclose any cause of action.*
 - (2) Further the Plaintiff ought to be dismissed – under the inherent powers of the Court – on the ground that it is frivolous and vexatious or an abuse of the Court's process.*
 - (3) The judgement rendered by the Supreme Court in case number 74/20 has the authority of a final judgment and the effect of res judicata in relation to the present suit, as the present suit and the one in CS 74/20 relate to the same subject matter, the same cause and between the same parties and brought by the same Plaintiff against the same Defendant, in the same capacities.*
- [4] Learned counsel for the Defendant submitted that this is the third case instituted on the basis of Article 920 and 913 of the Civil Code of Seychelles Act seeking a reduction of the gratuitous disposition made by the late Mr. Berlouis, being CS146/2018, CS74/2020 and now the present suit.
- [5] He submitted that in CS146/2018 the first Plaintiff instituted the action against the Estate as the first Defendant and against one Olivia Berlouis. The cause of action of the first suit was that the late Mr. Berlouis had gratuitously disposed of his property, in excess of the disposable portion. In the first suit the first Plaintiff was demanding that parcel B2447 be returned to the hotchpot, in accordance with Article 920 and 913 of the former Civil Code. The demand was for the reduction of the gratuitous disposition which the late Mr. Berlouis

had allegedly made in excess of the disposable portion. That suit was withdrawn by the first Plaintiff.

- [6] Thereafter the first and second Plaintiffs instituted the second suit. The defendants in the second suit were the Estate, the first Defendant, and Maryse Berlouis (second Defendant). The second suit was heard and dismissed by the Supreme Court. The cause of action of the second suit was once again based on the fact that Ogilvy Berlouis had disposed his property gratuitously, in excess of the disposable portion. The first and second Plaintiffs were challenging the disposition made by the late Mr. Berlouis in his testament dated 20th December 2017, in effect demanding a reduction of the disposition made in the testament which exceeded the disposable portion on the basis of Article 920 and 913 of the former Civil Code.
- [7] The present suit filed 25th October 2022 seek a reduction of the alleged gratuitous disposition made by the late Mr. Berlouis in his Will in excess of the disposable portion on the basis of Articles 920 and 913 of the former Civil Code.
- [8] With regard to the plea that the Complaint is frivolous and vexatious and does not disclose a reasonable cause of action Learned counsel for the Defendant submitted that it is evident that the cause of action of the present suit is based on Article 920 of the former Civil Code read with Article 913 of the same in that the claim is a challenge of the disposition made by the testator in excess of the disposable portion. It was his submission that on the basis of Article 920 and 718 of the former Civil Code the cause of action could only arise after the death of the testator and did not exist during his lifetime. The suit being one for an action for reduction could have been brought only upon the opening of Mr. Berlouis' succession. As such he submitted that the cause of action could only be brought against those who benefitted and not the testator.
- [9] It was his submission that the cause of action could not be brought against the Defendant but should have been brought against the person who benefitted being Josephine Claude Marise Berlouis in her personal capacity. Therefore, he submitted, the Complaint has not been instituted against the proper party and as such is frivolous and vexatious and does not disclose any reasonable cause of action against the Defendant.

- [10] Learned counsel added that the suit is fatally flawed as it was instituted against a non-existent person. He submitted that “the estate of the late Ogilvy Berlouis” is not a physical or legal person as foreseen by section 109 of the Seychelles Code of Civil Procedure. He submitted that an action pursued against a deceased person can only be pursued against the executor of the estate of the deceased person.
- [11] As regard the plea that the Complaint is an abuse of process of the Court, Learned counsel submitted that the suit is an abuse of process because it has not been instituted against the proper party, against a non-existent person thereby rendering it a nullity. He further submitted that the suit is an abuse of process of the Court as “it is the third suit seeking for a reduction of the alleged disposition, made over and above the reserved portion, by the late Mr. Berlouis.”
- [12] He submitted that the second suit was dismissed after a “full-blown hearing”. It was his submission that the Plaintiffs are seeking to litigate again over an identical question which has already been decided against them. He further submitted that by raising new matters in the present suit which ought to have been raised and litigated in the second suit, the Plaintiffs are abusing the process of the Court. Learned counsel relies on *Gomme v Maurel* [2012] SLR 342 as well as *Gill v Film Ansalt* [2013] SLR 127 in support of this proposition.
- [13] As for the plea that the matter is res judicata, Learned counsel relies on section 1351 of the Civil Code of Seychelles 2020 in view that the present matter was instituted on 28 October 2022. He submitted that “in order for a final judgment to have the effect of res judicata there must be between the subject matter of a previous judgment and a fresh suit, a threefold identity if subject matter (objet), cause of action (cause) and parties (personnes).”
- [14] He submitted that between the suit in CS 74/2020 and the present suit there is the threefold identity of “objet”, “cause” and “personnes” in that the same claim is being made, namely an action for reduction of the disposition made by the late Mr Berlouis in his Will of 20th December 2017, in excess of the disposable portion, both cases being grounded in Article 920 and Article 913 of the Civil Code. Both actions relate to the alleged excessive disposition made by the late Mr. Berlouis in his Will of 20 December 2017. On that basis he submitted that the Complaint ought to be dismissed.

- [15] For her part on the plea that the matter ought to be dismissed in accordance with section 92 of the Seychelles Code of Civil Procedure as it is frivolous and vexatious and/or discloses no reasonable cause of action Learned counsel for the Plaintiff submitted that it is clear on a perusal of the Plaint that the cause of action is a civil claim against the Defendant for a share in the succession of the deceased's estate as the dispositions in the deceased's Will contravenes the law in that no provision was made for the Plaintiffs, who were at the time of the execution of the Will as well as at his death, reserved heirs.
- [16] It was her submission that the cause of action emanates from the application of Article 913 of the Civil Code of Seychelles as highlighted in the case of *Jimmy Basset v Anne Figini (born Basset) and Ors CS 145/2011*. It was further her submission that the Plaintiffs being reserved heirs of the late Ogilvy Berlouis, should be entitled to a share of the estate of the deceased and therefore, the first and second prayers reflect a real, genuine cause of action brought in good faith against the Defendant. The cause of action is brought against the Executor of the Estate of the late Ogilvy Berlouis as it was upon his death that the succession opened and enabled Article 913 to be invoked. Learned counsel further relies on the case of *Desaubin and others v Sedwick (SCA 12 of 2012) [2014] SCCA 20 (14 August 2014)* as support for the cause of action she invoked on behalf of the Plaintiffs in line with Article 920 of the Civil Code of Seychelles. Learned counsel contended that there is a reasonable cause of action disclosed in the Plaint and cannot be dismissed for failing to comply with section 92 of the Seychelles Code of Civil Procedure.
- [17] As regards the plea of abuse of process Learned counsel for the Plaintiff submitted that it is imperative that one considers the powers of the Supreme Court more specifically section 4 of the Courts Act. She submitted that "although the Court has inherent powers, it cannot be used to dismiss a Plaint on the basis that it is frivolous and vexatious or an abuse of the Court's process unless it can be proven that the Plaint is such". It was her contention that the Plaint cannot be dismissed because it has been brought in good faith and discloses a reasonable cause of action which hinges on Article 913 and Article 920 of the Civil Code of Seychelles.
- [18] Learned counsel submitted that the Plaintiffs claim is serious, genuine and based on succession and the distribution of the disposable portion of the estate of the late Ogilvy Berlouis. She submitted that "it cannot be reasonable to deem the plaint as being frivolous

or vexatious because it has not been brought with the purpose of harassing or frustrating or even to worry the Defendant.”

- [19] It was her submission that “an abuse of process must involve more than a simple unfairness to the accused”. She submitted that “the facts of the current case before the Court does not qualify an abuse of process because a fresh suit is being filed with fresh subject-matter and fresh cause of action which is completely different from the grounds in the previous plaint.” It is her submission that the Defendant is not subjected to any unfairness or prejudice because of the current suit before the Court.
- [20] Learned counsel relies on the cases of *Gill v Film Ansalt (2013) SLR 137*, *Gomme v Maurel (2012) SLR 342*, *R. v Yuan Mei Investment (1999) SLR 14*, *Nourrice v Assary (1991) SLR 80* and *Attorney General v Marzorocchi SCA 8/1996, LC 312*.
- [21] As regards the third plea that the judgment in case CS74/20 is res judicata Learned counsel relied on the case of *Nourrice* above for the proposition that an earlier application dismissed for procedural irregularity is not subject to the rules of res judicata. She submitted that in view of the findings of the Learned Judge that “The Plaintiffs in the instant case do indeed have a genuine claim but sadly it was not brought in the proper manner.” the Plaintiffs case was previously dismissed due to a procedural irregularity as it was not brought in the proper manner.
- [22] It was further her submission that the subject matter is different from the previous case compared to the present matter. She submitted that while the current case the subject matter is related to succession/distribution of the dispositions in the Will, the subject matter of the previous case is mainly to do with the legality of the Will. She further submitted that “it is clear that the previous case disclosed numerous causes of action relating to the succession, role of the executor, declaration of the Will to be made void as well as moral damages. In comparison, the current matter discloses a concise and clear cause of action which is limited to the succession of the late Ogilvy Berlouis and the rightful dispositions that ought to be made in relation to the Plaintiff by the executor.” On that basis she submitted that the causes of action are different for the previous and current case.

- [23] Learned counsel submitted that the parties are not entirely the same. Although it is clear that the Plaintiffs are the same, she submitted that the Defendant, however, has now changed in the current case, as instead of two Defendants there is now only one.
- [24] She further submitted that the matter can be subject to the principles of res judicata in that there was no final judgment. It was her submission that the Court gave an “order” based on the plea in limine and did not take into account the merits of the case. She submitted that no decision was taken by the Court in CS 74/20 so the current plea is not “renewing” an issue that has previously been decided. Learned counsel submitted that it was in the interests of justice to dismiss the plea in limine litis and the matter be heard on its merits.
- [25] On 21st September 2023, Learned counsel for the Plaintiff filed further submission in response to submissions of the Learned counsel for the Defendant that “the Estate” is not a person, whether physically or legally, consequently the suit could not have been instituted against “the Estate”.
- [26] She submits that “the Estate” can be sued and has been sued on numerous occasions before this Court, even leading to “the Estate” being subject to legal proceedings before the Court of Appeal. Learned counsel submits that the term “Executor” needs to be understood, from its creation on 1st January 1976 with the enactment of the Civil Code of Seychelles. She submits that “Estates” existed for eternity and were called “Succession” under the old Civil Code. It is her submission that clarity was given in Article 1029 of the Civil Code.
- [27] Learned counsel submits that there is a distinction of an Executor representing an Estate. She submits that the person being sued is actually “the Estate” and the representative of the Estate is the Executor. She relies on Article 1029 of the Civil Code for her argument that in this particular proceedings, the Executor, being the representative of the Estate is being sued and thus has capacity.
- [28] She submits that by virtue of Article 1027 of the Civil Code, the Estate can be subject to legal proceedings as it is compelled to distribute the remainder of the succession in accordance with the rules of intestacy once the debts have been paid off. She further submits that by virtue of Article 1026 of the Civil Code, the Estate can own legal property thus must be a legal or moral person and can be sued.

- [29] It is her submission that “Estates” are given specific recognition under Article 1029 of the Civil Code and can own property and have debts.
- [30] She refers to the cases of *Philip Radegonde v The Estate of George Philippe Morgan Herein represented by its Executor, Michel Gardette (CS 114/2018) [2020] SCSC 156* as well as *Emmanuel Bibi & Ors v The Estate of the late Joseph Samuel Bibi represented by the joint executors Marcus Labrosse and Raneel Achanne Bibi [2022] Appeal SCA 73/2019 SCCA 76 (16 December 2022) (Appeal from CS26/2017) SCSC 1052*.
- [31] Learned counsel submits that if “counsel maintains that bringing this suit against the ‘Estate’ is fatal to the suit, this would subsequently” invalidate the cases abovementioned which would be contrary to the rules of natural justice.
- [32] She submits that it is unheard of for litigants to bring claims against deceased persons specially as the person is no longer in existence. She submits that if the Plaintiffs are “abusing the process” by bringing the case against the wrong party, that can easily be remedied by an amendment.
- [33] Let is start with the first plea raised.

Plaint is frivolous and vexatious and/or does not disclose any reasonable cause of action

- [34] In the case of *Lotus Holding Company Ltd v Seychelles International Business Authority (121 of 2010) [2010] SCSC 19 (29 July 2010)* “a vexatious proceeding” was defined as;

[10] *The answer may be provided in Civil Procedure, 2010 Volume 1, at page 71,*

‘..... two or more sets of proceedings in respect of the same subject matter which amount to harassment of the defendant in order to make him fight the same battle more than once with the attendant multiplication of costs, time and stress. In this context it is immaterial whether the proceedings are brought concurrently or serially.’

- [35] In the case of *Frank Elizabeth v The President of the Court of Appeal (2010) SLR 382*

Turning to the question of whether a matter is ‘frivolous or vexatious’ we note that the two words are not defined in the Seychelles Code of Civil Procedure. In fact we

have not been able to come across a legislative interpretation of the words though the words are used in legislation in many jurisdictions. We shall start by looking at their dictionary definition. According to the Oxford Dictionary and Thesaurus (at page 600) frivolous is defined as 'adj. 1 paltry, trifling, trumpery. 2 lacking seriousness; given to trifling; silly.' We take it that this word in relation to a claim or petition means that the claim or petition has no reasonable chances of success.

Vexatious is defined at page 1750 of the Oxford Dictionary (supra) as 'adj. 1 such as to cause vexation. 2 Law not having sufficient grounds for action and seeking only to annoy the defendant.' Vexatious therefore relates to the effect on a defendant. It is vexatious if an adverse party is made to defend something that would not succeed.

It appears from the wording of section 92 of the Seychelles Code of Civil Procedure that a finding of any one of these, frivolous or vexatious would be sufficient to trigger an order for stay of the action, or dismissal of the same on such terms as may be just.

In light of binding case law as shown above, in this jurisdiction the present petition has no chance of success. It is frivolous. The defence is being made to labour to defend something that has no chance of success. This action is therefore vexatious too.

For the foregoing reasons we are satisfied that the objections to the petition are seized with merit. The petition discloses no reasonable cause of action. The petition is frivolous and vexatious. This petition is untenable, improper and an abuse of the process of this court. It is both surprising and disturbing that it was commenced by a member of the Bar of the Supreme Court. This petition is dismissed with costs.

[36] Therefore, if the current proceedings amount to a harassment of the Defendant as well as amounts to an abuse of process then it would be frivolous and vexatious.

[37] I propose to consider whether the matters are subject to the rules of res judicata before proceeding to consider whether the circumstances amount to an abuse of the process of the Court for reasons that abuse follows on from res judicata.

Res judicata

[38] The law on res judicata is found in Article 1351 of the Civil Code of Seychelles which provides as follows:

- (1) *A final judgment has the effect of res judicata only in respect of the subject matter of the judgment.*
- (2) *It is necessary that the demand relate to the same subject matter, that it relate to the same cause of action, that is be between the same parties and that it be brought by them or against them in the same capacities.*

[39] Indeed, as argued by Learned counsel for the Defendant, in accordance with the case of *Nourrice v Assary [1991] SLR 80*, striking out and dismissal in terms of section 92 of the Seychelles Code of Civil Procedure is one based on procedural irregularity and cannot constitute a final decision on the merits by the Court. However, I will address this further when dealing with the issue of abuse of process.

[40] In the case of *Wilfred Freminot & Anor v Christopher Gill & Anor (CIVIL APPEAL SCA 30/2016 & CROSS APPEAL SCA 32/2016) [2019] SCCA 10 (10 May 2019)* the Court of Appeal explained that in order:

For the plea of res judicata to be applicable, there must be between the first case and the second case the threefold identity of "objet", "cause" and "personnes".

The "objet" is what is claimed. "La cause" is the fact, or the act whence the right springs. It might be shortly described as the right which has been violated. (See de Bertier de Sauvigny & ors. V. Courbevoie ltée. & ors., 1955 M.R. 215)."

[41] The Court further explained that:

The same view is expressed in the Mauritian jurisprudence. For example, in Mohammad Abdel Negib Dowlut v Central Electricity Board 2012 SCJ 392, the Supreme Court of Mauritius, citing French authorities, stated: "A party can successfully invoke "l'autorité de la chose jugée" if he establishes that the previous and the subsequent litigation involve, the same parties acting in the same capacity, the same subject matter and are founded on identical grounds which constitute the cause of action,

[42] The records show that CS146/2018 was filed on 15th October 2018. The first Plaintiff instituted the action against the Estate of the first Defendant represented by its Executor and against one Olivia Berlouis. The cause of action of the first suit was that the late Mr. Berlouis had made a disguised donation to the second Defendant by transferring immovable property B2447 to her. The first Plaintiff demanded that parcel B2447 be

returned into the estate of the deceased to allow for distribution as per the laws of succession. That suit was withdrawn by the first Plaintiff.

- [43] Thereafter the first and second Plaintiffs instituted the second suit against the Estate, the first Defendant, and Maryse Berlouis the second Defendant. The second suit was heard and dismissed by this Court. The cause of action of the second suit was based on the fact that Ogilvy Berlouis had left the entirety of his estate to the second Defendant in excess of the disposable portion. The first and second Plaintiffs were challenging the disposition made by the late Mr. Berlouis in his testament dated 20th December 2017, which they believed were in breach of Article 913 of the Civil Code.
- [44] The present suit filed 25th October 2022 seeks a reduction of the alleged gratuitous disposition made by the late Mr. Berlouis in his Will made to Josephine Claude Maruse Berlouis which was in excess of the disposable portion on the basis of Articles 920 and 913 of the former Civil Code. It is filed against the Estate of the Late Ogilvy Berlouis represented by its Executor Maryse Berlouis.
- [45] In all three matters the Plaintiffs sought and seeks a re-distribution of the succession of the Late Ogilvy Berlouis.
- [46] All three matters arise from the same set of facts, the dispositions made by the Late Ogilvy Berlouis albeit the first matter related to a transfer effected before his death whereas the second matter and the current matter concerns the dispositions made in his last Will and Testament dated 20th December 2017 and seeking a reduction of same.
- [47] The first matter was filed by the first Plaintiff, as the daughter and an heir of the deceased. The second matter, and similarly the third matter, was filed by the first Plaintiff and second Plaintiff as children and heirs of the deceased. All three matters were filed with the Estate of the Late Ogilvy Berlouis represented by its Executor Maryse Berlouis as a party or the sole party.
- [48] From the above I find that the rule of res judicata applies in that there is a threefold identity of subject matter, cause of action and parties between the second and current matter before the Court.

Abuse of process

- [49] The Court of Appeal in the case of Gomme v Maurel & Anor (SCA 06 of 2010) [2012] SCCA 28 (07 December 2012) explained the law on abuse of process:

The rationale behind the rule of res judicata and its strict application is grounded on a public policy requirement that there should be finality in a court decision and an end to litigation in a matter which has been dealt with in an earlier case. Because of the imaginative use that has been made to go round the rule, courts have developed the rule of abuse of process. The rule of abuse of process encompasses more situations than the three requirements of res judicata.

- [50] Domah JA added that:

*Abuse of process is not a new discovery under the rule of law and the court's control of cases coming to court. The "source of the doctrine of abuse of process" may be traced to a 1947 decision of Somervell LJ in **Greenhalgh v Mallard [1947] 2 All ER 255 at 257**. The scope may be found in the following pronouncement of the court. Abuse of process is:*

... not confined to the issues which the court is actually asked to decide, but ... covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them:

- [51] His Lordship went on to explore "a recent application of the doctrine, ... refer[ing] to Sir Thomas Bingham MR as he then was, in *Barrow v Bankside Agency Ltd* [1996] 1 WLR 257 at 260:

The rule is not based on the doctrine of res judicata in a narrow sense, nor even on any strict doctrine of issue or cause of action estoppels. It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on for ever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed."

- [52] As simply put by Kerr LJ in **Bragg v Oceanus Mutual Underwriting Association (Bermuda) Ltd**[1982] 2 Lloyd's Rep 132 at page 137:

it is clear that an attempt to re-litigate in another action issues which have been fully investigated and decided in a former action may constitute an abuse of process, quite apart from any question of res judicata or issue estoppels on the ground that the parties or their privies are the same.

[53] In the case of *Vijay Construction (Proprietary) Limited v Eastern European Engineering Limited* (SCA 28 of 2020) [2022] SCCA 58 (21 October 2022) the Court of Appeal stated thus:

[38] *Rejection of res judicata leaves in play the possibility that the present proceedings are an abuse of process. This, in a sense as an extended version of the res judicata principle, was explained Sir James Wigram, Vice-Chancellor, in Henderson v Henderson* (1843) 3 Hare 100, 67 ER 313

“... where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter[s] which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. **The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.**” (highlighting my own)

[54] The Court went on to “express[ed] the view that the subsequent litigation would be an abuse of process only if it would be manifestly unfair to the defendant or would bring the administration of justice into disrepute.”

[55] The above is in line with the finding in *Lotus Holding Company Ltd v Seychelles International Business Authority* (121 of 2010) [2010] SCSC 19 (29 July 2010) that

[13] *noted in Dow Jones and Co Inc v Jameel* [2005] EWCA Civ. 75 at paragraph 54, by Lord Phillips of Worth Matravers M.R.,

‘An abuse of process is of concern not merely to the parties but to the court. It is no longer the role of the court simply to provide a level playing field and to referee whatever game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirement of justice.’

[14] *It is possible with proceedings between the same parties over the same subject matter and where the relief sought is identical that 2 different judges of the same court hearing the different proceedings may eventually arrive at different conclusions, contradicting each other. This would be embarrassing to the courts and to the administration of justice. The possibility should not be allowed to happen.*

[56] **In Berlouis & Anor v The Estate of the late Ogilvy Berlouis & Anor (CS 74/2020 [2021]** SCSC this Court did indeed find that:

The facts in the current matter cannot be said to amount to an abuse. It is beyond doubt that the deceased could not have gifted the entirety of his estate to the second Defendant in view of the provisions of Article 913. The Plaintiffs in the instant case do indeed have a genuine claim but sadly it was not brought in the proper manner.

[57] This Court still stands by its finding, that it came to after a full trial, that the deceased could not have gifted the entirety of his estate to his Executor, Maryse Berlouis. This Court could not have made the finding at paragraph [56] above without considering the evidence that was recorded. The gift, by the deceased, of the entirety of his estate, gave rise to a cause of action for reduction. The said cause of action existed from the time the succession opened and was in existence when the first case was filed. The findings of this Court in **CS 74/2020 [2021]** has not created a new cause of action that was not available to the Plaintiffs in 2018 when the first case was filed or in 2020 when the second case was filed.

[58] To my mind this matter falls squarely within the realm of abuse of process of the Court. CS146/2018 was filed in 2018 and subsequently withdrawn. Thereafter, CS74/2020 was filed. The matter proceeded to hearing and was subsequently dismissed on the basis that there was no cause of action against the Defendant. It is noted that the findings made by the Court in CS74/2020 that “*It is beyond doubt that the deceased could not have gifted the entirety of his estate to the second Defendant in view of the provisions of Article 913*” was made on the basis of evidence that had been led in the case during the trial. Such finding could not have been made otherwise. Therefore, in filing the matter a third time, it amounts to the Plaintiffs abusing the process of the Court.


[59] However much I may sympathise with the position of the Plaintiffs, on the basis of the above discussion I find that the matter is an abuse of process of the Court. So being it is frivolous and vexatious bordering on harassment of the Defendant.

[60] Given the above I decline to consider whether the Estate can be sued as it would be purely academic at this juncture.

[61] On the basis of the above, the pleas in limine are upheld. The Complaint is dismissed.

[62] In view of the nature of the matter, no order is made as to costs.

Signed, dated and delivered at Ile du Port on 4th June 2024


Pillay J