

**IN THE SUPREME COURT OF SEYCHELLES**

**CIVIL SUIT NO. 70 OF 2012**

Dave Vincent Mathiot

Plaintiff

Versus

Dave Vincent Mathiot, Executor of the Estate of Georges William Jupiter	Defendant No. 1
Theresine Jupiter	Defendant No.2
Daphne Jupiter	Defendant No. 3
Paquerette Jupiter	Defendant No.4
Emmanuel Jupiter	Defendant No.5
Frankly Jupiter	Defendant No. 6
Gilbert Jupiter	Defendant No.7
Hubert Jupiter	Defendant No.8
Wilfred Jupiter	Defendant No.9
Lira Jupiter	Defendant No.10
Frieda Jupiter	Defendant No.11

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**Hearing:** 3<sup>rd</sup> July 2013

**Counsel:** Karen Domingue for the Plaintiff  
William Hermine for the Defendants No.2 to 11  
Bridgitte Confaint for the Attorney General / Ministre Public

**Judgment:** 20<sup>th</sup> September 2013

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**JUDGMENT**

**Egonda-Ntende CJ**

1. The plaintiff was born on 5<sup>th</sup> April 1976. At the time of his birth he was not acknowledged by his father. The plaintiff contends in this action that his father was the late Georges Jupiter, now deceased, who passed away on the 6<sup>th</sup> June of 2011. He now brings this action seeking to be declared the natural son of the late George Jupiter. As of now he is the executor of the Estate of the late George Jupiter.
2. Defendants no. 2 to 11 are the mother and siblings of the late George Jupiter. Defendants no.2 to 11 opposed this action basically on two grounds. Firstly that this action was time

barred. Secondly the defendants denied the allegation that the plaintiff was the natural son of George Jupiter and put him to strict proof of those allegations.

3. The defence that this matter was time barred was dealt with as a plea in *limine litis*. It was heard as a preliminary point of law. I dismissed it as I found that the plaintiff was within time in bringing this action. The only defence that remains if it really is a defence is that it is up to the plaintiff to prove his case. The position of the Attorney General as *Ministre Public* was that it had no objection to this application being granted if sufficient evidence was produced to show that the plaintiff is the son of the deceased in this matter.
4. The plaintiff called 3 witnesses in this matter. The first witness was the plaintiff in person. The second plaintiff's witness was the mother of the plaintiff. The third witness was Ms Marie-Angel Barbe, an Assistant Registrar at the Magistrates Court of Victoria. The defendants called three witnesses. Mrs Lyra Jupiter and Ms Pacquette Jupiter, sisters of the deceased, George Jupiter and Mrs Theresine Jupiter, mother of the deceased George Jupiter.
5. The evidence adduced in this case reveals that the deceased, who used to work at sea, came ashore one day in 1975 and met with PW2, the mother of the plaintiff. They slept together that night and apparently the plaintiff was conceived. PW2 notified the deceased later that she was pregnant with his child. The deceased refused to acknowledge paternity. The plaintiff was born on 5 April 1976. The plaintiff took his mother's name.
6. PW2 decided to go to the law and commenced proceedings in the Magistrates Court at Victoria on 13 February 1978 to declare the deceased the putative father of the plaintiff. On the 12 April 1978 the deceased appeared in court as a defendant in Civil Suit No. 48 of 1978. He admitted paternity and was declared the father of the plaintiff. Proceedings were adjourned to allow for a probation report. When it was produced the deceased was away at sea and the case was adjourned *sine die* in relation to maintenance orders.

7. PW2 took the plaintiff to the deceased's mother and apparently he used to spend sometime with her paternal grandmother. PW2 stated in her testimony that the deceased did provide some assistance through members of his family to support the plaintiff.
8. All the defendants' witnesses were united in stating that the deceased never acknowledged the plaintiff as his son to them and so they were not aware that he was his son. They admitted that he attended the burial and that they had seen him growing up and visiting DW2's home. DW2 is the mother of the deceased. The defendants were not willing to have a DNA examination carried out to determine the paternity of the plaintiff or whether George Jupiter was the father of the plaintiff.
9. It appears that at some point the deceased decided to settle down giving up the life at sea. He acquired land and made some developments. He also started interacting with the plaintiff whom he acknowledged as his son in writing. This acknowledgment was tendered in evidence as exhibit P5. It is very short and I will set it out.

‘I George William Jupiter of Belonie, Mahe, Seyhelles owner of Parcel V2168 hereby authorize my son Dave Mathiot to build a mall house on my property. This 12 day of September 2003.  
Signed, George William Jupiter.’

10. Further evidence was adduced that showed that the plaintiff borrowed money against the security of V2168 and the deceased was the chargor in that transaction signing the relevant papers in 2007.
11. The law with regard to establishment of paternity is found Article 340 of the Civil Code of Seychelles which states,

‘1. It shall not be allowed to prove paternal descent, except:  
(a) In cases of rape or abduction, provided that the time when the rape or abduction took place coincides with that of the conception.  
(b) When an illegitimate child is in possession of status with regard to his natural father or moth as provided article 312.  
(c) In cases of seduction, provided that the seduction was brought about by fraudulent means, by abuse of authority or promise of marriage.

- (d) When there exist letters or other writings emanating from the alleged father containing an unequivocal admission of paternity.
- (e) When the alleged father and mother have notoriously lived together as husband and wife, during the period of conception.
- (f) When the alleged father has provided for or contributed to the maintenance and education of the child in the capacity of the father.

(2) The right to prove paternal descent under this Article is for the benefit of the child alone, even if born of an incestuous or adulterous relationship.

(3) An action under this Article may be brought –

- (a) by the child’s mother, even if she is under age, or by his guardian, at any during the child’s minority; or
- (b) if action has not been brought under sub-paragraph (a), by the child within 5 years of his coming of age or within 1 year of the death of the alleged father whichever is the later.

(4) A child whose paternal descent has been proved under this Article is entitled to bear his father’s name (in addition to a share in his father’s succession under the title Succession.)’

12. The foregoing provisions are discussed in Planiol, *Traite Elementaire De Droit Civil* translated into English as *Treatise on The Civil Law*, Volume 1, part1 at page 838 in the following words,

‘1525 General Idea

The law did not desire to permit research of paternity except in cases where certain proof appeared to be possible. As there could be no direct proof, it became necessary to rely upon an avowal by the father, express or tacit, or upon a very strong presumption. Five cases where research is permissible were thus established and they are limitatively set forth by the law.’

13. Later on paragraph 1526—3 the treatise continues Page 841,

‘Third Case: Written Avowal of Paternity

The father’s avowal is a direct proof. When however it is not adduced in the form of an acknowledgment, its effect is left to the court’s discretion. Article 340, #3 provides that avowal serves solely as a basis for judicial acknowledgement of paternity. It may be contained in a letter or other private writing emanating from the father. Such writing must be produced in evidence..... It makes no difference whether the writing is or is not addressed to the mother herself or to somebody else, or whether it is signed or not provided it is written by the father..... A verbal avowal is of no value..... The writing should contain an unequivocal avowal of

paternity..... It must be precise, formal and with no secretiveness..... Advice to have an abortion performed has been held to be an unequivocal avowal when proof of relationship is established.....’

14. I suppose no avowal could be clearer or more precise than that expressed in P5. The deceased acknowledged the plaintiff as his son in very clear and precise terms as he granted him permission to build a house on his land. This, in my view, and on the basis of the authorities, is sufficient to satisfy the requirements of Article 340 (1) (d) of the Civil Code of Seychelles. Needless to point out though there was other evidence too to support this conclusion. The proceedings before the Magistrates Court in 1978 record an admission by the deceased that he was the father of the plaintiff. This amounts to a judicial acknowledgement.
15. During the hearing of this case in court I had occasion to observe the plaintiff and the defendants. It was clear they had strong resemblance to each other just as the plaintiff appears to have strong resemblance to the photographs of his father adduced in this case.
16. The only defence of the defendants was to put the plaintiff to strict proof. The plaintiff has satisfied this hurdle and established unequivocally that George William Jupiter is the natural father of Dave Vincent Mathiot and I so find.
17. With regard to the costs of this action given that this is a family matter and perhaps not to embitter the parties any further I will order each party to bear its own costs of these proceedings.

Signed, dated and delivered at Ile Du Port this 20<sup>th</sup> day of September 2013

FMS Egonda-Ntende  
**Chief Justice**