

COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] (18 December 2023)

SCA 27/2022

(Arising in Ex P 53/2021)

Therese Hoareau

(rep. by Mr. Wilby Lucas)

Appellant

And

The Curator

(represented by Ms. Shireen Denys)

Respondent

Neutral Citation: *Hoareau v The Curator* (SCA 27/2022) [2023] (Arising in Ex P 53/2021) (18 December 2023)

Before: Twomey-Woods, Tibatemwa-Ekirikubinza, Gunesh-Balaghee, JJA

Heard: 6 December 2023

Summary: **Application for vesting order - failure to comply with section 6 of the Curatelle Act 2021**

Delivered: 18 December 2023

ORDER

The appeal is set aside with costs.

JUDGMENT

GUNESH-BALAGHEE JA (Dr. M. Twomey-Woods, Dr. L. Tibatemwa-Ekirikubinza JJA concurring)

1. This is an appeal against a ruling of the Supreme Court setting aside an application made by the appellant (then applicant) who was seeking an order from the Court:

“(a) to declare Mr Cyrus Morel as an Absentee in term (sic) of section 2 of the [Curatelle] Act;

(b) To direct the Curator to apply for a vesting order in compliance with section 5 of the Act within a reasonable time of this declaration.

(c) To fix the case with a returning date during which time the Curator shall file its Application.” (sic)

2. I observe that at the time the application was lodged, the Curatelle Act 1892 was still in force. However, prior to the hearing of the application, the Curatelle Act 1892 was repealed by the Curatelle Act 2021. The appellant lodged an amended application on 28 February 2022; in the circumstances the application had to be determined in accordance with the provisions of the Curatelle Act 2021 (“the Act”).
3. In the application, the appellant averred that Cyrus Morel was and still is the owner of an immovable property (“the property”). He immigrated to Switzerland in 1960 and was physically absent from Seychelles since then. Prior to his departure, he assigned the property to Edouard Hoareau, the appellant’s late father, who has been living on the property with his family since then. The appellant and two of her siblings were born during the time the family was occupying the property. The appellant and two of her siblings, as well as one of the sibling’s sons, have built on the property and occupied same for more than 50 years without interruption. They want to “legalise their occupation of the property”. The appellant averred that steps were taken without any success to locate the legal representative and relatives of Cyrus Morel. She therefore made an application seeking that Cyrus Morel be declared an absentee so that he could be represented by the Curator in “*the forthcoming legal proceedings*”.
4. The learned Judge set aside the application on the ground that the application had no merit. The appellant is appealing against the judgement on 3 grounds which are reproduced verbatim below-

“2.1 The Learned Trial Judge erred in the misinterpretation (sic) of the Curatelle Act in its finding that the Appellant has no locus standi to apply for a declaration for an absentee without consultation with the Curator in the first place.

2.2 The Learned Trial Judge has failed to determine that only upon (sic) the refusal of the Curator that an interested Party can come to court with an application for someone to be declared as an absentee.

2.3 The learned Trial Judge has failed to interpret the provision of section 14 and 15 of the Act and at that stage the Curator can intervene which the Appellant contended that the involvement the Curator can be only after a declaration that the a deceased person or an absent owner is an absentee. (sic)”

5. The relief which is being sought from this Court is set out verbatim below-

“(a) To quash the decision for reason (sic) that the Application was wrongly decided.

(b) To establish at which stage the Curator can participate in the proceedings whether before or after an absent owner has been declared as an absentee.

(b) Who can bring such an application for a declaration as an absentee.

(c) Any other order this Honourable court deem (sic) fit and necessary in the circumstance (sic).”

6. At the outset, I must point out that the grounds of appeal are very loosely drafted and fail to clearly specify what the appellant finds objectionable with the ruling. Be that as it may, it can be gathered that the appellant is in effect alleging that the learned Judge was wrong to rule that she could not make the application to declare Cyrus Morel an absentee and that her interpretation of the relevant sections of the Act was wrong.

Ground 2.3

7. I shall first deal with ground 2.3 which can be easily disposed of. The question of the interpretation of sections 14 and 15 of the Act which relate to the sale of immovable property vested in the Curator clearly did not arise in the present case as they are of no relevance to the subject matter of the application before the Supreme Court. In fact, sections 14 and 15 of the Curatelle Act 1892 which are entitled “Curator to apply for vesting order” and “Vesting order may be made at the instance of third party” are the provisions corresponding to sections 5 and 6 of the current Curatelle Act. It is obvious from the above

that although the appellant filed an amended application after the coming into force of the Act, she is labouring under the misapprehension that it is the Curatelle Act 1892 which applies. Ground 3 is misconceived and is accordingly set aside

Grounds 2.1 and 2.2

8. I propose to deal with grounds 2.1 and 2.3 together. In order to determine the questions raised in this appeal, I find it relevant to set out the relevant extracts of the the Act -

9. Section 2 defines “absentee” as follows:

“absentee” means a *person absent from and not legally represented in Seychelles who there is reason to believe is entitled to property in Seychelles;*”

10. Sections 5 and 6 enunciate -

“5. Vesting order

(1) Whenever the Curator has reason to believe that there is a vacant succession, unclaimed property belonging or any property belonging or accruing to an absentee, the Curator shall apply to a Judge for an order to vest that vacant succession, unclaimed property or property of the absentee in the Curator.

(2) The order shall be granted as of course, upon the ex parte petition of the Curator supported by affidavit that diligent inquiry has been made and that the Curator or other deponent believes that the succession or property for which the order is claimed is vacant or unclaimed or belongs to an absentee as the case may be.

(3) ...

6. Request for Curator to act

(1) Failing application by the Curator under section 5 any person may apply, after reasonable notice has been given in writing calling upon the Curator to make an application under section 5, by petition supported by affidavit for an order vesting in the Curator any vacant estate, unclaimed property or the right of any absentee.

(2) An order made under subsection (1) may be made by a Judge on a summons calling on the Curator to show cause why it should not be made, and on satisfactory proof being adduced that such order is necessary for the protection of the rights of the applicant.”

11. It is amply clear from the above provisions that there is no need for an application to be made under the Act for a person to be declared an absentee, as section 2 already defines who is an absentee.
12. Pursuant to section 5(1), where the Curator has reason to believe that any property belongs or accrues to an absentee, i.e., a person who is absent from or not legally represented in the Seychelles, he has an obligation to apply to the Judge for an order to vest in him that property. Once the Curator holds such a belief, he must make a diligent inquiry to ascertain that the property in question belongs or accrues to a person who is indeed an absentee. It is only then that he may apply for a vesting order in respect of the property. Section 5(2) provides that the procedure for making the application is by way of a petition, *ex parte*, supported by an affidavit which attests to the above.
13. Pursuant to section 6(1), whenever there is a property belonging to an absentee and for any reason the Curator has failed to make an application for a vesting order in respect of that property, any person may make an application by a petition supported by an affidavit for a vesting order in the Curator of that property. However, before an application may be made under section 6(1), the person must first give reasonable notice to the Curator calling upon him to make an application for a vesting order under section 5. It is only where the Curator fails to act, after reasonable notice, that the person may himself make an application for a vesting order.
14. The application must be made by way of a petition supported by an affidavit which shows that reasonable notice was given to the Curator but he failed to act. The Judge may entertain an application for a vesting order in the Curator by a person other than the latter only where the above conditions are met. Before he makes the order, the Judge must issue a summons

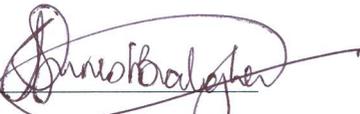
on the Curator calling upon him to show cause why the order should not be made. Further, the person who makes the application has to adduce satisfactory proof that the order is necessary to protect his rights.

15. In the case at hand, it is clear that the application was flawed in that the appellant did not comply with the provisions of section 6 of the Act which provides important safeguards with a view to ensure that property which is vested in the Curator is indeed property which accrues or belongs to an absentee and that the order is made because it is necessary to protect the rights of the appellant.

16. In her judgment, the learned Judge rightly noted that the appellant had failed to satisfy the requirements of section 6. In the circumstances, she was perfectly right in dismissing the application.

17. Grounds 2.1 and 2.2 fail.

18. For all the reasons given above, we find that the appeal is devoid of any merit. We accordingly set aside with costs.


K. Gunesh-Balaghee JA

I concur:-


Dr. M. Twomey-Woods JA

I concur:-


Dr. L. Tibatemwa-Ekirikubinza JA

Signed, dated and delivered at Ile du Port on 18 December 2023.